

1 ALAN S. WEINGER
2 Deputy Commissioner
3 JOHN R. DREWS (SBN 69595)
4 Corporations Counsel
5 One Sansome Street, Suite 600
6 San Francisco, CA 94104-4428
7 Tel: (415) 972-8570
8 Fax: (415) 972-8550

9 Attorneys for Complainant

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

12 In the Matter of the Accusation of)

CASE NO. 2011030608

13 THE CALIFORNIA CORPORATIONS)
14 COMMISSIONER,)

AGENCY NO. 963-2511

15 Complainant,)

**FIRST AMENDED ACCUSATION
RE INTENT TO ISSUE ORDER**

16 vs.)

1. REVOKING ESCROW LICENSE OF
TRAN'S ESCROW CORPORATION

17 TRAN'S ESROW CORPORATION and)
18 NGA TRAN,)

2. BARRING NGA TRAN FROM ANY
POSITION OF EMPLOYMENT,

19 Respondents.)

MANAGEMENT OR CONTROL OF ANY
ESCROW AGENT

1 The Complainant, California Corporations Commissioner (“Commissioner”) of the
2 Department of Corporations (“Department”) is informed and believes, and based upon such
3 information and belief, alleges and charges Respondents as follows:

4 **I. INTRODUCTION**

5 1. The Commissioner is authorized to administer and enforce the provisions of the
6 Escrow Law (California Financial Code § 17000 et seq.) and the regulations promulgated thereunder
7 (Cal. Code Regs., tit. 10, § 1732.2 (10 CCR 1732.2)).

8 2. Respondent Tran’s Escrow Corporation (“Tran’s Escrow”) is an escrow agent licensed
9 by the Commissioner pursuant to the Escrow Law of the State of California (California Financial
10 Code Section 17000 et seq.). Tran’s Escrow has its principal place of business located at 90 Great
11 Oaks Boulevard, Suite 210, San Jose, California 95110.

12 3. Respondent Nga Tran (“Tran”) is, and was at all times relevant herein, the president
13 and sole shareholder of Tran’s Escrow Corporation.

14 **II. STATEMENT OF FACTS**

15 4. On or about May 18, 2010, the Commissioner commenced a special examination of
16 the books and records of Tran’s Escrow to review a particular escrow transaction handled by Tran.
17 During the special examination, the Commissioner discovered the following violations of the Escrow
18 Law and the regulations promulgated thereunder:

19 5. In the course of the special examination, Tran admitted to an examiner of the
20 Department that David Tran (brother) was employed at Tran’s Escrow and was paid through its
21 general account payroll of Tran’s Escrow in violation of Financial Code §§ 17414.1(d) and 17419.
22 Earlier, Tran had denied to another Department examiner that David Tran was an employee of Tran’s
23 Escrow.

24 6. On or about November 20, 2008, Tran closed escrow no. 00000011-001 without
25 having received the cash deposit and other funds required from the buyer by the lender's escrow
26 instructions, in violation of Financial Code § 17414(a)(1) and 10 CCR 1738 and 1738.2.

27 7. Tran was able to close escrow no. 00000011-001 without receipt of the required funds
28 from the buyers by engaging in the following activities in violation of Financial Code § 17414(a)(2):

1 (a) On or about November 20, 2008, Tran prepared, or caused to be prepared, receipt no.
2 001022 which misrepresented that the buyer had deposited the sum of \$56,000.00 into escrow. The
3 receipt was false in that the cashier's check deposited into this escrow in the amount of \$56,000.00
4 had actually been purchased by Tran's brother David with trust funds deposited into Tran's brother's
5 account that same day from the Tran's Escrow trust account. Pursuant to the special examination of
6 the Department, Respondent Tran was asked to explain the role of her brother David Tran in the
7 transaction being investigated. Tran, in a letter to the Department on Tran's Escrow Corporation
8 letterhead dated March 24, 2010 stated that "David Tran was involve in this matter, because he had
9 brought in the funds for the buyer..." This statement was not true and was a violation of Financial
10 Code §§ 17210.2 and 17414(a)(2).

11 (b) On or about November 20, 2008, Tran prepared, or caused to be prepared, a settlement
12 statement which overstated the buyer's deposit by \$56,000.00 and failed to disclose that seller's
13 proceeds were not paid to the seller, but to Tran's brother and two other persons.

14 (c) Based on the special examination of the books and records of Tran's Escrow and the
15 violations of the Escrow Law discovered therein, the Commissioner on February 14, 2011, issued an
16 Accusation and Notice of Intention to Issue Order Revoking Escrow Agent's License and to Issue
17 Orders Pursuant to California Financial Code § 17423 (Bar from employment, management or
18 control of any escrow agent).

19 8. On or about March 8, 2012, the Commissioner commenced a second special
20 examination of the books and records of Tran's Escrow to determine whether Tran was in compliance
21 with Financial Code § 17423(c).

22 9. California Financial Code section 17423(c) states:

23 Upon receipt of a notice of intention to issue an order pursuant to this
24 section, the person who is the subject of the proposed order is immediately
25 prohibited from engaging in any escrow processing activities, including
26 disbursing any trust funds in the escrow agent's possession, custody or
27 control, and the financial institution holding trust funds shall be so notified
28 by service of the notice, accusation and other administrative pleadings.
The prohibition against disbursement of trust funds may be set aside,
in whole or in part, by the commissioner for good cause.

1 10. The examination found that Tran is in violation of section 17423(c) of the Financial
2 Code for processing escrows in violation of the Accusation and Notice of Intention that was issued on
3 February 14, 2011. Tran has continued to engage in escrow processing activities such as opening and
4 closing escrows and issuing receipts.

5 11. Tran’s Escrow is also in violation of CCR 1732.2 for failure to reconcile the trust
6 account on a monthly basis. As part of the Department’s examination in March of 2012, it was found
7 that the last trust account reconciliation was completed in December 2011.

8
9 **III. STATUTORY BASES FOR REVOCATION AND BAR**

10 12. California Financial Code section 17608 provides in pertinent part:

11 The commissioner may, after notice and a reasonable opportunity to
12 be heard, suspend or revoke any license if he finds that:

13 (b) The licensee has violated any provision of this division or any
14 rule made by the commissioner under and within the authority of this
15 division.

16 13. California Financial Code section 17423 provides in pertinent part:

17 (a) The commissioner may, after appropriate notice and opportunity
18 for hearing, by order, . . . bar from any position of employment,
19 management, or control any escrow agent, or any other person, if the
20 commissioner finds either of the following:

21 (1) That the . . . bar is in the public interest and that the person has
22 committed or caused a violation of this division or rule or order of
23 the commissioner, which violation was either known or should have
24 been known by the person committing or causing it or has caused
25 material damage to the escrow agent or to the public.

26 **IV. PRAYER**

27 Complainant finds that, by reason of the foregoing, Respondents have violated California
28 Financial Code sections 17210.2, 17403.2, 17414(a)(1), 17414(a)(2), 17414.1(d), 17419, 17423(c)
and California Code of Regulations, title 10, sections 1726, 1732.2, 1738, 1738.2 and 1741.3 and it is
in the best interest of the public to revoke the escrow agent’s license of Respondent Tran’s Escrow

1 and to bar Respondent Tran from any position of employment, management or control of any escrow
2 agent.

3 WHEREFORE, IT IS PRAYED that the escrow agent's license of Respondent Tran's Escrow
4 Corporation be revoked, and that Respondent Nga Tran be barred from any position of employment,
5 management or control of any escrow agent.

6 Dated: June 18, 2012
7 San Francisco, CA

JAN LYNN OWEN
California Corporations Commissioner

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10 By _____
11 JOHN R. DREWS
12 Corporations Counsel
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1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181

6 Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation THE) Case No.: 963-2511
CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) ACCUSATION
13)
Complainant,)
14)
15 vs.)
16 TRAN’S ESCROW CORPORATION and NGA)
TRAN,)
17)
18 Respondents.)

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

21 I

22 Respondent Tran’s Escrow Corporation ("Tran’s Escrow") is an escrow agent licensed by the
23 California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow
24 Law of the State of California (California Financial Code Section 17000 et seq.). Tran’s Escrow has
25 its principal place of business located at 90 Great Oaks Boulevard, Suite 210, San Jose, California
26 95110.

27 Respondent Nga Tran ("Tran") is, and was at all times relevant herein, the president and sole
28 shareholder of Tran’s Escrow Corporation.

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II

On or about May 18, 2010, the Commissioner commenced a special examination of the books and records of Tran’s Escrow to review a particular escrow transaction handled by Tran. During the special examination, the Commissioner discovered the following violations of the Escrow Law and the regulations promulgated thereunder:

1. On or about November 20, 2008, Tran closed escrow no. 00000011-001 without having received the cash deposit and other funds required from the buyer by the lender's escrow instructions, in violation of Financial Code section 17414(a)(1) and California Code of Regulations sections 1738 and 1738.2.

2. Tran was able to close escrow no. 00000011-001 without receipt of the required funds from the buyers by engaging in the following activities in violation of Financial Code section 17414(a)(2):

(a) On or about November 20, 2008, Tran prepared, or caused to be prepared, receipt no. 001022 which misrepresented that the buyer had deposited the sum of \$56,000.00 into escrow. The receipt was false in that the cashier’s check deposited into this escrow in the amount of \$56,000.00 had actually been purchased by Tran’s brother with trust funds deposited into Tran’s brother’s account that same day from the Tran’s Escrow trust account.

(b) On or about November 20, 2008, Tran prepared, or caused to be prepared, a settlement statement which overstated the buyer's deposit by \$56,000.00 and failed to disclose that seller’s proceeds were not paid to the seller, but to Tran’s brother and two other persons.

III

California Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

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California Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, . . . bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the . . . bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

VI

Complainant finds that, by reason of the foregoing, Respondents have violated California Financial Code section 17414 subsections (a)(1) and (a)(2)and California Code of Regulations, title 10, sections 1738 and 1738.2, and it is in the best interests of the public to revoke the escrow agent’s license of Respondent Tran’s Escrow and to bar Respondent Tran from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that the escrow agent’s license of Respondent Tran’s Escrow be revoked, and that Respondent Tran be barred from any position of employment, management or control of any escrow agent.

Dated: February 14, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel

1 MARY ANN SMITH
2 Deputy Commissioner
3 JOHN R. DREWS (SBN 69595)
4 Corporations Counsel
5 Department of Corporations
6 One Sansome Street, Suite 600
7 San Francisco, California 94104
8 Telephone: (415) 972-8570
9 Facsimile: (415) 972-8550
10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF CORPORATIONS
12 OF THE STATE OF CALIFORNIA

13 In the Matter of the Accusation of) OAH: 2011030608
14 THE CALIFORNIA CORPORATIONS)
15 COMMISSIONER,) File No. 963-2511
16)
17 Complainant,) **SETTLEMENT AGREEMENT**
18 vs.)
19)
20 TRAN’S ESCROW CORPORATION AND)
21 NGA HO TRAN)
22)
23 Respondents.)
24)

25 This Settlement Agreement is entered into by and between the Complainant, the California
26 Corporations Commissioner (“Commissioner” or “Complainant”), and Respondents, Tran’s Escrow
27 Corporation and Nga Ho Tran (“Respondents”) and is made with respect to the following facts:

28 **RECITALS**

A. Respondent Tran’s Escrow Corporation (“TE”) is a corporation in good standing,
duly formed and existing pursuant to the laws of the State of California, and authorized to conduct
business in the State of California.

B. Respondent TE currently holds an escrow agent’s license number 963-2511 pursuant

1 to the Escrow Law of the State of California (California Financial Code section 17000 et seq.). TE
2 has its business address located at 90 Great Oaks Boulevard, Suite 210, San Jose, CA 95110.

3 C. Respondent Nga Ho Tran (“Tran”) is, and was at all times relevant the sole
4 shareholder, president and director of TE and is authorized to enter into this Settlement Agreement
5 on behalf of TE.

6 D. On May 18, 2010, the Commissioner commenced a special examination of the books
7 and records of TE to review a particular escrow transaction handled by Tran. During the special
8 examination, the Commissioner discovered that on November 20, 2008, Trans closed escrow no.
9 00000011-001 without having received the cash deposit and other funds required from the buyer by
10 the lender’s escrow instruction, in violation of Financial Code section 17414 (a)(1) and California
11 Code of Regulation sections 1738 and 1738.2. Tran was able to close escrow no. 00000011-001
12 without receipt of the required funds from the buyer by engaging in activities in violation of
13 Financial Code section 17414(a) (2) described below.

14 E. On November 20, 2008, Respondent Tran prepared receipt no. 001022 which
15 misrepresented that the buyer had deposited the sum of \$56,000.00 into the escrow. The receipt was
16 false in that the cashier’s check deposited into this escrow in the amount of \$56,000.00 had actually
17 been purchased by Tran’s brother with trust funds deposited into Tran’s brother’s account that same
18 day from the Tran’s Escrow trust account. On November 20, 2008, Respondent Tran prepared a
19 settlement statement which overstated the buyer’s deposit by \$56,000.00 and failed to disclose that
20 seller’s proceeds were not paid to the seller, but to Tran’s brother and two other persons.

21 F. As a result of the foregoing, on or about February 15, 2011, the Commissioner filed
22 and served his Notice of Intention to Issue Order to Revoke Escrow Agent’s License and to Issue an
23 Order Pursuant to section 17423 (Bar from Employment, Management or Control of an Escrow
24 Agent), Accusation and accompanying documents dated February 14, 2011.

25 G. Respondents have timely filed a Notice of Defense with the Commissioner requesting
26 a hearing but waived priority. After three continuances, a three day hearing is now scheduled on
27 September 18 – 20, 2012.

28

1 H. On March 8, 2012, the Commissioner commenced a special examination of the
2 books and records of Tran’s Escrow Corporation. During the examination, it was determined that
3 from February 14, 2011 to March 8, 2012, Respondent Tran opened 186 escrows and closed 91
4 escrows. This activity was a clear violation of Financial Code section 17423(c).

5 I. It is the intention and desire of the parties to resolve these matters without the
6 necessity of a hearing and or other litigation.

7 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
8 forth herein, the Parties agree as follows:

9 **TERMS AND CONDITIONS**

10 1. The purpose of this Settlement Agreement is for judicial economy and expediency,
11 and to avoid the expense of a hearing, and possible further court proceedings.

12 2. Respondents admit the allegations contained in the Second Amended Accusation.
13 The admissions of Respondents are solely for the limited purpose of these proceedings and any
14 further proceeding(s) that may be initiated by or brought before the Commissioner against
15 Respondents. It is the intent and understanding between the parties that this Settlement Agreement,
16 and particularly Respondents’ admissions herein, shall not be binding or admissible in any actions(s)
17 brought against Respondents by third parties.

18 3. Respondent TE hereby agrees to the issuance of an order revoking TE’s escrow
19 agent’s license (license number 963-2511). Respondent Tran hereby agrees to be barred from any
20 position of employment, management or control of any escrow agent. A copy of the Revocation and
21 Bar Order is attached and incorporated as Exhibit A. Respondents agree that upon issuance the
22 Revocation and Bar Order is effective immediately and deemed a final order.

23 4. Respondents acknowledge their rights to an administrative hearing under California
24 Financial Code sections 17608 in connection with the revocation and 17423 in connection with the
25 bar and hereby waive that right to a hearing, and to any reconsideration, appeal or other rights which
26 may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act (“APA”),
27 the California Code of Civil Procedure, or any other provision of law in connection with these
28 matters and by waiving such rights, consents to this Settlement Agreement becoming final.

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5. All escrow files with balances shall be transferred to other escrow agents or title companies, forthwith. Respondents further agree that TE shall file the closing audit report required by California Financial Code section 17406 (c) and (d), with the Commissioner within 105 days of the date of execution of this Settlement Agreement. Respondents acknowledge and agree that their failure to comply with the terms of this Settlement Agreement will be a breach of the Settlement Agreement and may result in further proceedings.

6. The Parties hereby acknowledge and agree that this Settlement Agreement is intended to constitute a full, final and complete resolution of the Second Amended Accusation and Order. The Parties further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agencies (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against Respondents based upon any of the activities alleged in this matter or otherwise.

7. The Commissioner shall cause this Settlement Agreement to be filed with the Office of Administrative Hearings immediately upon execution by all Parties hereto.

8. Each of the Parties represents, warrants, and agrees that it has received independent legal advice from its attorney(s) and/or representatives with respect to the advisability of executing this Settlement Agreement.

9. Each of the Parties represents, warrants, and agrees that in executing this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own counsel and/or representative. Each of the parties further represents, warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

1 10. This Settlement Agreement, including the attached order, is the final written
2 expression and the complete and exclusive statement of all the agreements, conditions, promises,
3 representations, and covenants between the Parties with respect to the subject matter hereof, and
4 supercedes all prior or contemporaneous agreements, negotiations, representations, understandings,
5 and discussions between and among the Parties, their respective representatives, and any other
6 person or entity with respect to the subject matters covered hereby. The Parties each represent and
7 acknowledge that he, she or it is executing this Settlement Agreement completely voluntarily and
8 without any duress or undue influence of any kind from any source.

9 11. In that the Parties have had the opportunity to draft, review and edit the language of
10 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
11 part of this Settlement Agreement will be applied in any action relating to, connected to, or involving
12 this Settlement Agreement. Accordingly, the Parties waive the benefit of California Civil Code
13 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
14 of a contract should be interpreted most strongly against the party who caused the uncertainty to
15 exist.

16 12. This Settlement Agreement shall not become effective until signed by all Parties and
17 delivered by all Parties.

18 13. This Settlement Agreement may be executed in one or more counterparts, each of
19 which shall be an original but all of which, together, shall be deemed to constitute a single
20 document. This Settlement Agreement may be executed by facsimile signature, and any such
21 facsimile signature by any party hereto shall be deemed to be an original signature and shall be
22 binding on such party to the same extent as if such facsimile signature were an original signature.

23 14. No amendment, change or modification of this Settlement Agreement shall be valid
24 or binding to any extent unless it is in writing and signed by all of the Parties affected by it.

25 15. Any headings of this Settlement Agreement are inserted for convenience only and
26 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

27 16. Each signator hereto warrants and represents that he or she possesses all necessary
28 capacity and the authority to sign and execute this Settlement Agreement.

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17. Any notices required under the Settlement Agreement shall be provided to each party at the following addresses:

If to Respondents to: Kathleen L. Morgan, Esq.
788a Ulloa Street
San Francisco, CA 94127

If to the Commissioner to: John R. Drews, Corporations Counsel
California Department of Corporations
One Sansome Street, Suite 600
San Francisco, California 94104

JAN LYNN OWEN
California Corporations Commissioner

Dated: 9/17/12

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 9/16/12

TRAN'S ESCROW CORPORATION

By _____
NGA HO TRAN, President

Dated: 9/16/12

By _____
NGA HO TRAN, as an individual

Approved as to Form
Kathleen L. Morgan, Esq.

Dated: 9/17/12

By _____
Attorney for TRAN'S ESCROW
CORPORATION and NGA HO TRAN

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Approved as to Form
John R. Drews

Dated: 9/17/12

By _____
Attorney for CALIFORNIA
DEPARTMENT OF CORPORATIONS

1 MARY ANN SMITH
Deputy Commissioner
2 JOHN R. DREWS (SBN 69595)
Corporations Counsel
3 Department of Corporations
4 One Sansome Street, Suite 600
San Francisco, California 94104
5 Telephone: (415) 972-8570
6 Facsimile: (415) 972-8550
Attorneys for Complainant
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20 Corporations Commissioner (“Commissioner” or “Complainant”), and Respondents, Tran’s Escrow
21 Corporation and Nga Ho Tran (“Respondents”) and is made with respect to the following facts:
22

23 **RECITALS**

24 A. Respondent Tran’s Escrow Corporation (“TE”) is a corporation in good standing,
25 duly formed and existing pursuant to the laws of the State of California, and authorized to conduct
26 business in the State of California.

27 B. Respondent TE currently holds an escrow agent’s license number 963-2511 pursuant
28

1 to the Escrow Law of the State of California (California Financial Code section 17000 et seq.). TE
2 has its business address located at 90 Great Oaks Boulevard, Suite 210, San Jose, CA 95110.

3 C. Respondent Nga Ho Tran (“Tran”) is, and was at all times relevant the sole
4 shareholder, president and director of TE and is authorized to enter into this Settlement Agreement
5 on behalf of TE.

6 D. On May 18, 2010, the Commissioner commenced a special examination of the books
7 and records of TE to review a particular escrow transaction handled by Tran. During the special
8 examination, the Commissioner discovered that on November 20, 2008, Trans closed escrow no.
9 00000011-001 without having received the cash deposit and other funds required from the buyer by
10 the lender’s escrow instruction, in violation of Financial Code section 17414 (a)(1) and California
11 Code of Regulation sections 1738 and 1738.2. Tran was able to close escrow no. 00000011-001
12 without receipt of the required funds from the buyer by engaging in activities in violation of
13 Financial Code section 17414(a) (2) described below.

14 E. On November 20, 2008, Respondent Tran prepared receipt no. 001022 which
15 misrepresented that the buyer had deposited the sum of \$56,000.00 into the escrow. The receipt was
16 false in that the cashier’s check deposited into this escrow in the amount of \$56,000.00 had actually
17 been purchased by Tran’s brother with trust funds deposited into Tran’s brother’s account that same
18 day from the Tran’s Escrow trust account. On November 20, 2008, Respondent Tran prepared a
19 settlement statement which overstated the buyer’s deposit by \$56,000.00 and failed to disclose that
20 seller’s proceeds were not paid to the seller, but to Tran’s brother and two other persons.

21 F. As a result of the foregoing, on or about February 15, 2011, the Commissioner filed
22 and served his Notice of Intention to Issue Order to Revoke Escrow Agent’s License and to Issue an
23 Order Pursuant to section 17423 (Bar from Employment, Management or Control of an Escrow
24 Agent), Accusation and accompanying documents dated February 14, 2011.

25 G. Respondents have timely filed a Notice of Defense with the Commissioner requesting
26 a hearing but waived priority. After three continuances, a three day hearing is now scheduled on
27 September 18 – 20, 2012.

28

1 H. On March 8, 2012, the Commissioner commenced a special examination of the
2 books and records of Tran’s Escrow Corporation. During the examination, it was determined that
3 from February 14, 2011 to March 8, 2012, Respondent Tran opened 186 escrows and closed 91
4 escrows. This activity was a clear violation of Financial Code section 17423(c).

5 I. It is the intention and desire of the parties to resolve these matters without the
6 necessity of a hearing and or other litigation.

7 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
8 forth herein, the Parties agree as follows:

9 **TERMS AND CONDITIONS**

10 1. The purpose of this Settlement Agreement is for judicial economy and expediency,
11 and to avoid the expense of a hearing, and possible further court proceedings.

12 2. Respondents admit the allegations contained in the Second Amended Accusation.
13 The admissions of Respondents are solely for the limited purpose of these proceedings and any
14 further proceeding(s) that may be initiated by or brought before the Commissioner against
15 Respondents. It is the intent and understanding between the parties that this Settlement Agreement,
16 and particularly Respondents’ admissions herein, shall not be binding or admissible in any actions(s)
17 brought against Respondents by third parties.

18 3. Respondent TE hereby agrees to the issuance of an order revoking TE’s escrow
19 agent’s license (license number 963-2511). Respondent Tran hereby agrees to be barred from any
20 position of employment, management or control of any escrow agent. A copy of the Revocation and
21 Bar Order is attached and incorporated as Exhibit A. Respondents agree that upon issuance the
22 Revocation and Bar Order is effective immediately and deemed a final order.

23 4. Respondents acknowledge their rights to an administrative hearing under California
24 Financial Code sections 17608 in connection with the revocation and 17423 in connection with the
25 bar and hereby waive that right to a hearing, and to any reconsideration, appeal or other rights which
26 may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act (“APA”),
27 the California Code of Civil Procedure, or any other provision of law in connection with these
28 matters and by waiving such rights, consents to this Settlement Agreement becoming final.

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5. All escrow files with balances shall be transferred to other escrow agents or title companies, forthwith. Respondents further agree that TE shall file the closing audit report required by California Financial Code section 17406 (c) and (d), with the Commissioner within 105 days of the date of execution of this Settlement Agreement. Respondents acknowledge and agree that their failure to comply with the terms of this Settlement Agreement will be a breach of the Settlement Agreement and may result in further proceedings.

6. The Parties hereby acknowledge and agree that this Settlement Agreement is intended to constitute a full, final and complete resolution of the Second Amended Accusation and Order. The Parties further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agencies (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against Respondents based upon any of the activities alleged in this matter or otherwise.

7. The Commissioner shall cause this Settlement Agreement to be filed with the Office of Administrative Hearings immediately upon execution by all Parties hereto.

8. Each of the Parties represents, warrants, and agrees that it has received independent legal advice from its attorney(s) and/or representatives with respect to the advisability of executing this Settlement Agreement.

9. Each of the Parties represents, warrants, and agrees that in executing this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own counsel and/or representative. Each of the parties further represents, warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

1 10. This Settlement Agreement, including the attached order, is the final written
2 expression and the complete and exclusive statement of all the agreements, conditions, promises,
3 representations, and covenants between the Parties with respect to the subject matter hereof, and
4 supercedes all prior or contemporaneous agreements, negotiations, representations, understandings,
5 and discussions between and among the Parties, their respective representatives, and any other
6 person or entity with respect to the subject matters covered hereby. The Parties each represent and
7 acknowledge that he, she or it is executing this Settlement Agreement completely voluntarily and
8 without any duress or undue influence of any kind from any source.

9 11. In that the Parties have had the opportunity to draft, review and edit the language of
10 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
11 part of this Settlement Agreement will be applied in any action relating to, connected to, or involving
12 this Settlement Agreement. Accordingly, the Parties waive the benefit of California Civil Code
13 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
14 of a contract should be interpreted most strongly against the party who caused the uncertainty to
15 exist.

16 12. This Settlement Agreement shall not become effective until signed by all Parties and
17 delivered by all Parties.

18 13. This Settlement Agreement may be executed in one or more counterparts, each of
19 which shall be an original but all of which, together, shall be deemed to constitute a single
20 document. This Settlement Agreement may be executed by facsimile signature, and any such
21 facsimile signature by any party hereto shall be deemed to be an original signature and shall be
22 binding on such party to the same extent as if such facsimile signature were an original signature.

23 14. No amendment, change or modification of this Settlement Agreement shall be valid
24 or binding to any extent unless it is in writing and signed by all of the Parties affected by it.

25 15. Any headings of this Settlement Agreement are inserted for convenience only and
26 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

27 16. Each signator hereto warrants and represents that he or she possesses all necessary
28 capacity and the authority to sign and execute this Settlement Agreement.

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17. Any notices required under the Settlement Agreement shall be provided to each party at the following addresses:

If to Respondents to: Kathleen L. Morgan, Esq.
788a Ulloa Street
San Francisco, CA 94127

If to the Commissioner to: John R. Drews, Corporations Counsel
California Department of Corporations
One Sansome Street, Suite 600
San Francisco, California 94104

JAN LYNN OWEN
California Corporations Commissioner

Dated: 9/17/12

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 9/16/12

TRAN'S ESCROW CORPORATION

By _____
NGA HO TRAN, President

Dated: 9/16/12

By _____
NGA HO TRAN, as an individual

Approved as to Form
Kathleen L. Morgan, Esq.

Dated: 9/17/12

By _____
Attorney for TRAN'S ESCROW
CORPORATION and NGA HO TRAN

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Approved as to Form
John R. Drews

Dated: 9/17/12

By _____
Attorney for CALIFORNIA
DEPARTMENT OF CORPORATIONS