

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
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Lead Corporations Counsel
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5 Department of Corporations
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7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation of THE) File No.: 963-2000
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) SETTLEMENT AGREEMENT
14)
Complainant,)
15)
16 vs.)
17 A BETTER CHOICE ESCROW, INC.,)
18 Respondent.)
19 _____)

20 This Settlement Agreement is entered into between a Better Choice Escrow, Inc. (“Better
21 Escrow”) and the California Corporations Commissioner (“Commissioner”), and is made with
22 respect to the following facts:

23 **RECITALS**

24 A. Better Escrow is a corporation in good standing, duly formed and existing pursuant to
25 the laws of the State of California, and authorized to conduct business in the State of California.

26 B. Better Escrow currently holds escrow agent’s license number 963-2000 with its
27 principal place of business located at 5831 Firestone Boulevard, South Gate, California 90280.
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1 Better Escrow has been licensed by the Commissioner pursuant to the California Escrow Law since
2 August 18, 2003.

3 C. David Sarinana is the president and owner of Better Escrow and is authorized to enter
4 into this Settlement Agreement on behalf of Better Escrow.

5 D. On May 18, 2006, Better Escrow was personally served with a Notice of Intention to
6 Issue Order Revoking Escrow Agent’s License; Accusation and accompanying documents issued by
7 the Commissioner on May 10, 2006 (“Accusation”). Better Escrow was also personally served on
8 May 18, 2006 with an Order Imposing Penalties Pursuant to California Financial Code Section
9 17408 issued by the Commissioner on May 10, 2006 (“Order”). Better Escrow has filed Notices of
10 Defense with the Commissioner. The matters have yet to be set for hearing.

11 E. Better Escrow has now filed its 2004 Audit Report, 2005 Audit Report, and response
12 to the December 29, 2004 regulatory examination report with the Commissioner.

13 F. It is the intention and desire of the parties to resolve these matters without the
14 necessity of a hearing and/or other litigation.

15 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
16 forth herein, the parties agree as follows:

17 **TERMS AND CONDITIONS**

18 1. This Settlement Agreement is entered into for the purpose of judicial economy and
19 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

20 2. Better Escrow hereby admits the allegations contained in the Accusation and Order.
21 Better Escrow’s admissions herein are solely for the limited purposes of this proceeding and any
22 future proceeding that may be initiated by or brought before the Commissioner against Better
23 Escrow. It is the intent and understanding between the parties that this Settlement Agreement, and
24 particularly Better Escrow’s admissions herein, shall not be binding or admissible against Better
25 Escrow in any action(s) brought against Better Escrow by third parties.

26 3. Better Escrow hereby agrees to the immediate issuance by the Commissioner of an
27 Order suspending Better Escrow’s escrow agent’s license for a period of one week to commence on
28 January 18, 2007 and end on January 24, 2007. In connection with the suspension, Better Escrow

1 shall file with the Commissioner at close of business the day immediately preceding the date on
2 which the suspension is to commence a list of all open escrows with escrow numbers and escrow
3 party names along with a copy of the signed escrow instructions and signed deposit receipt(s) for the
4 last opened escrow. For purposes of this Settlement Agreement, open escrow shall mean an escrow
5 wherein the parties to such escrow have already entered into a binding agreement and monies and/or
6 escrow instructions have been submitted to Better Escrow regarding the transaction. Additionally,
7 Better Escrow will be required to immediately engage its certified public accounting firm to review
8 the records of Better Escrow after the suspension has been completed and report its findings of
9 compliance with the suspension to the Department within 30 days of completion of the suspension.
10 The Commissioner reserves the right to audit Better Escrow for compliance with the suspension
11 notwithstanding the findings of the CPA review. A copy of the suspension order is attached and
12 incorporated as Exhibit A.

13 4. Better Escrow agrees that the Order is hereby deemed a final order. Better Escrow
14 acknowledges that the penalties accruing pursuant to the Order for the untimely filing of its 2004
15 Audit Report, 2005 Audit Report, and response to the December 29, 2004 regulatory examination
16 report totaled \$61,200.00 as of September 6, 2006; the date when the last item was filed. As full
17 settlement of the Order, Better Escrow agrees to pay to the Commissioner the sum of \$40,000.00 in
18 penalties, which shall be paid in full within ten (10) days of the date of execution of this Settlement
19 Agreement.

20 5. Better Escrow acknowledges its right to an administrative hearing under California
21 Financial Code sections 17608 and 17408 in connection with the suspension and Order, and hereby
22 waives its right to a hearing, and to any reconsideration, appeal, or other rights which may be
23 afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the California
24 Code of Civil Procedure, or any other provision of law in connection with these matters.

25 6. Better Escrow further agrees to an automatic revocation of its escrow agent's license,
26 if it is found, after a hearing to be held before an Administrative Law Judge in accordance with the
27 Administrative Procedure Act, California Government Code Sections 11500 et seq., that Better
28 Escrow has at any time during the two-year period following the effective date of this Settlement

1 Agreement, violated any of the statutes and/or rules set forth in the Accusation and/or Order.

2 7. Better Escrow hereby waives its right to any reconsideration, appeal or other right to
3 review of any finding by the Commissioner pursuant to paragraph 6 above which may be afforded
4 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
5 Civil Procedure, or any other provision of law in connection therewith.

6 8. Better Escrow acknowledges and agrees that the revocation provided for above in
7 paragraph 6 shall not be the exclusive remedy available to the Commissioner in pursuing future
8 violations but may be sought and employed in addition to any other remedy available pursuant to the
9 Escrow Law.

10 9. The parties hereby acknowledge and agree that this Settlement Agreement is intended
11 to constitute a full, final and complete resolution of the Accusation and Order. The parties further
12 acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the
13 Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution,
14 administrative, civil or criminal, brought by any such agency against Better Escrow based upon any
15 of the activities alleged in these matters or otherwise.

16 10. The Commissioner shall cause this Settlement Agreement to be filed with the Office
17 of Administrative Hearings within five days of its execution by all parties hereto.

18 11. Each of the parties represents, warrants, and agrees that it has received independent
19 legal advice from its attorney(s) with respect to the advisability of executing this Settlement
20 Agreement.

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

3 13. This Settlement Agreement is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the Parties with respect to the subject matter hereof, and supercedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the Parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 14. 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
12 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil
13 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
14 language of a contract should be interpreted most strongly against the party who caused the
15 uncertainty to exist.

16 15. This Settlement Agreement may be executed in one or more counterparts, each of
17 which shall be an original but all of which, together, shall be deemed to constitute a single
18 document.

19 16. Each signator hereto covenants that he/she possesses all necessary capacity and
20 authority to sign and enter into this Settlement Agreement.

21 Dated: _____ PRESTON DuFAUCHARD
22 California Corporations Commissioner

23 By _____
24 ALAN S. WEINGER
25 Lead Corporations Counsel

26 Dated: _____ A BETTER CHOICE ESCROW, INC.

27 By _____
28 DAVID SARINANA, President

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APPROVED AS TO FORM:
DAVIS & DAVIS
By _____
M. STEPHEN DAVIS, Attorneys for
A BETTER CHOICE ESCROW, INC.
PRESTON DuFAUCHARD
California Corporations Commissioner
By _____
JUDY L. HARTLEY
Senior Corporations Counsel