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California Corporations Commissioner
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7 Attorneys for Complainant
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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of THE CALIFORNIA) File No.: 963-0453
CORPORATIONS COMMISSIONER,) OAH No.: 2006060460
13)
14 Complainant,) SETTLEMENT AGREEMENT
15 vs.)
16 CALIFORNIA INVESTORS ESCROW CO.,)
17 Respondent.)
18)
19)

20 This Settlement Agreement is entered into between the California Corporations
21 Commissioner ("Commissioner") and California Investors Escrow Co., and is made with respect to
22 the following facts:

23 **RECITALS**

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

27 B. California Investors Escrow Co. currently holds escrow agent's license number 963-
28 0453 with its principal place of business located at 7151 W. Manchester Avenue, 2nd Floor, Los

1 Angeles, California 90045.

2 C. Philip Gilboy is the president of California Investors Escrow Co. and is authorized to
3 enter into this settlement agreement on behalf of California Investors Escrow Co.

4 D. California Investors Escrow Co. failed to timely file its 2007 audited financial report
5 (“audit report”) with the Commissioner, in violation of Financial Code section 17406. The audit
6 report was due on March 15, 2008 but was not filed until September 15, 2008.

7 E. On May 22, 2008, the Commissioner filed an Accusation and Notice of Intention to
8 Issue Order Suspending Escrow Agent’s License pursuant to Financial Code Section 17608 against
9 California Investors Escrow Co.

10 F. Further, on May 22, 2008, the Commissioner issued an Order Imposing Penalties
11 Pursuant to Financial Code section 17408 (“penalty order”) to California Investors Escrow Co. due
12 to its failure to timely file the audit report. The Commissioner issued an order setting aside the
13 penalty order on October 22, 2008.

14 G. California Investors Escrow Co. timely requested an administrative hearing which
15 was set for March 6, 2009.

16 H. It is the intention and desire of the parties to resolve these matters without the
17 necessity of a hearing and/or other litigation.

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

20 **TERMS AND CONDITIONS**

21 1. This settlement agreement is entered into for the purpose of judicial economy and
22 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

23 2. California Investors Escrow Co. hereby admits the allegations contained in the
24 Accusation filed on May 22, 2008. California Investors Escrow Co.’s admissions herein are solely
25 for the limited purposes of this proceeding and any future proceeding that may be initiated by or
26 brought before the Commissioner against California Investors Escrow Co. It is the intent and
27 understanding between the parties that this settlement agreement, and particularly California
28 Investors Escrow Co.’s admissions herein, shall not be binding or admissible against California

1 Investors Escrow Co. in any action(s) brought against California Investors Escrow Co. by third
2 parties.

3 3. California Investors Escrow Co. agrees to pay to the Commissioner the sum of
4 \$5,000.00 in full and final satisfaction of the regulatory violations specifically alleged in the
5 Accusation filed on May 22, 2008. This payment shall be due on January 1, 2009. The payment
6 shall be mailed to the Commissioner’s corporations counsel, Miranda Maison, at 1515 K Street,
7 Suite 200, Sacramento, CA 95814.

8 4. California Investors Escrow Co. further agrees to an automatic revocation of its
9 escrow agent’s license if the payment agreed to in Paragraph 3 is not timely paid in strict compliance
10 with the terms thereof.

11 5. California Investors Escrow Co. acknowledges it has waived its right to an
12 administrative hearing under California Financial Code sections 17608 and 17408 in connection with
13 the Accusation, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other
14 rights which may be afforded pursuant to the Escrow Law, the California Administrative Procedure
15 Act, the California Code of Civil Procedure, or any other provision of law in connection with these
16 matters.

17 6. California Investors Escrow Co. acknowledges and agrees that the revocation
18 provided for above in paragraph 4 shall not be the exclusive remedy available to the Commissioner
19 in pursuing future violations but may be sought and employed in addition to any other remedy
20 available pursuant to the Escrow Law.

21 7. California Investors Escrow Co. hereby agrees to the immediate issuance by the
22 Commissioner of an order suspending California Investors Escrow Co.’s escrow agent’s license for a
23 period of fourteen (14) calendar days (“suspension order”). The 14-day suspension period shall
24 commence on December 15, 2008 and end on December 21, 2008, and commence on January 5,
25 2009 and end on January 11, 2009.

26 In connection with the suspension, California Investors Escrow Co. shall file with the
27 Commissioner at close of business the business day immediately preceding the date on which the
28 suspension period is to commence a list of all open escrows with escrow numbers and escrow party

1 names along with a copy of the signed escrow instructions and signed deposit receipt(s) for the last
2 opened escrow. For purposes of this settlement agreement, the term “open escrow” shall mean an
3 escrow wherein the parties to such escrow have already entered into a binding agreement and monies
4 and/or escrow instructions have been submitted to California Investors Escrow Co. regarding the
5 transaction. A copy of the suspension order is attached and incorporated as Exhibit A.

6 This suspension order does not preclude California Investors Escrow Co. from: (1)
7 continuing to service prior and open escrows; (2) responding to regulatory inquiries from the
8 Department of Corporations or other agencies; (3) making the penalty payment described in this
9 settlement agreement; and, (4) otherwise responding to customer inquiries concerning open escrows.

10 Additionally, California Investors Escrow Co. will be required to engage its certified public
11 accounting firm to review the records of California Investors Escrow Co. after the suspension has
12 been completed and report its findings of compliance with the suspension to the Commissioner
13 within 30 days of completion of the suspension. The Commissioner reserves the right to audit
14 California Investors Escrow Co. for compliance with the suspension notwithstanding the findings of
15 the certified public accountant’s review.

16 8. The parties hereby acknowledge and agree that this settlement agreement is intended
17 to constitute a full, final and complete resolution of the violations specifically alleged in the
18 Accusation filed on May 22, 2008. The parties further acknowledge and agree that nothing
19 contained in this settlement agreement shall operate to limit the Commissioner's ability to assist any
20 other agency (county, state or federal) with any prosecution, administrative, civil or criminal,
21 brought by any such agency against California Investors Escrow Co. based upon any of the activities
22 alleged in these matters or otherwise.

23 9. Each of the parties represents, warrants, and agrees that it has received, or
24 acknowledges the right to seek, independent legal advice from its attorney(s) with respect to the
25 advisability of executing this settlement agreement.

26 10. Each of the parties represents, warrants, and agrees that in executing this settlement
27 agreement it has relied solely on the statements set forth herein and, if applicable, the advice of its
28 own counsel. Each of the parties further represents, warrants, and agrees that in executing this

1 settlement agreement it has placed no reliance on any statement, representation, or promise of any
2 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
3 party or any other person or entity to make any statement, representation or disclosure of anything
4 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
5 any way fraudulently induced to execute this settlement agreement; and (2) to preclude the
6 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
7 settlement agreement.

8 11. This settlement agreement is the final written expression and the complete and
9 exclusive statement of all the agreements, conditions, promises, representations, and covenants
10 between the parties with respect to the subject matter hereof, and supercedes all prior or
11 contemporaneous agreements, negotiations, representations, understandings, and discussions
12 between and among the parties, their respective representatives, and any other person or entity, with
13 respect to the subject matter covered hereby.

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

21 13. This settlement agreement may be executed in one or more counterparts, each of
22 which shall be an original but all of which, together, shall be deemed to constitute a single
23 document.

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14. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this settlement agreement.

Dated: 12/12/08 PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel

Dated: 12/12/08 CALIFORNIA INVESTORS ESCROW CO.

By _____
Philip Gilboy
President