

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 BRENT LINDGREN (CA Bar No. 170306)
Senior Corporations Counsel
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7 Attorneys for Complainant
CALIFORNIA DEPARTMENT
8 OF CORPORATIONS

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In the Matter of the ORDER of THE) OAH Case No.: 2009010271
CALIFORNIA CORPORATIONS) File No.: 963-2058
12 COMMISSIONER,) **SETTLEMENT AGREEMENT**
13 Complainant,)
14 v.)
15 CALIBER ESCROW, INC.,)
17 Respondent.)
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This Settlement Agreement (“Agreement”) is entered into between Caliber Escrow, Inc. (“Caliber Escrow”) and the California Corporations Commissioner (“Commissioner”) with respect to the following facts:

RECITALS

A. Caliber Escrow 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.

1 B. Caliber Escrow is an escrow agent licensed by the Commissioner pursuant to the Escrow
2 Law of the State of California (California Financial Code, Section 17000, *et seq.*) Caliber Escrow
3 currently holds escrow agent's license number 963-2058 with its principal place of business located
4 at 20720 Ventura Boulevard, Suite 220, Woodland Hills, CA 91364.

5 C. Larry Merton ("Merton") is president and chief executive officer of Caliber Escrow, and is
6 authorized to enter into this agreement on the part of Caliber Escrow.

7 D. On or about May 28, 2008, the Commissioner issued an Order Imposing Penalties
8 ("Order") pursuant to California Financial Code section 17408. This Order imposed penalties in the
9 amount of \$16,000. The penalties were assessed due to Caliber Escrow's failure to timely file its
10 annual audit report for the fiscal year ended July 31, 2007 as required by California Financial Code
11 section 17406. Caliber never requested a hearing or contested this Order.

12 E. On or about December 30, 2008, the Commissioner issued a Notice of Intention to Issue
13 Order Revoking Escrow Agent's License pursuant to the California Financial Code section 17608,
14 Accusation and accompanying documents. Finding that Caliber Escrow had violated Financial Code
15 section 17406 by failing to timely file its annual audit reports for 2007 and 2008, the Commissioner
16 notified Caliber Escrow of his intention to revoke Caliber Escrow's agent license.

17 F. The Order Imposing Penalties was served on Caliber Escrow on June 1, 2008, and the
18 Notice of Intention to Issue Order Revoking Escrow Agent's License, Accusation and accompanying
19 documents were served on Caliber Escrow at its address of record on file with the Department no
20 later than January 2, 2009. Caliber Escrow filed a request for hearing on the Commissioner's Notice
21 of Intent to Revoke with the Department on or about January 6, 2009. However, the 2008 audit
22 report was not filed until September 28, 2009.

23 G. The Office of Administrative Hearings set a hearing on September 29, 2009 at 9:00 a.m.
24 to address the Accusation and the Notice of Intent to Revoke License. Although the Order Imposing
25 Penalties was not at issue for the hearing, it is the intention and the desire of the parties to resolve
26 both matters without proceeding with the hearing and/or other litigation.

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

TERMS AND CONDITIONS

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

4 2. Caliber Escrow hereby admits the allegations contained in the Accusation. The
5 admissions of Caliber Escrow are solely for the limited purposes of these proceedings and any future
6 proceeding(s) that may be initiated by or brought before the Commissioner against Caliber Escrow.
7 It is the intent and understanding of the parties that this Agreement, and the admissions of Caliber
8 Escrow contained herein, shall not be binding or admissible against Caliber Escrow in any action(s)
9 brought against Caliber Escrow by third parties.

10 3. Caliber Escrow agrees that the Order is hereby deemed a final order. Caliber Escrow
11 acknowledges penalties accruing pursuant to the Order for the untimely filing of its 2007 annual
12 audit report totaled \$16,000. As full settlement of the Order, Caliber Escrow agrees to pay the
13 Commissioner the sum of \$20,000 to resolve penalties for both the 2007 and 2008 audit reports
14 which shall be paid in monthly payments of \$1,000 due on the 15th of each month, commencing on
15 or before November 15, 2009.

16 Caliber Escrow's payments shall be forwarded to the attention of Brent Lindgren, Senior
17 Corporations Counsel for the Department of Corporations.

18 4. Caliber Escrow hereby agrees to pay any assessment owed to Escrow Agent's
19 Fidelity Corporation and provide confirmation of such payment to the Department of Corporations
20 no later than October 2, 2009. In addition, Caliber Escrow further agrees to serve the 2009 audit
21 report to Kathleen Partin at the Department of Corporations no later than November 16, 2009.
22 Failure to pay the assessment or file the 2009 audit report by November 16, 2009 will result in an
23 automatic suspension of Caliber Escrow's license until such time as the 2009 audit report is properly
24 filed. Caliber agrees to waive any right to contest, appeal or request a hearing on the matter of the
25 automatic suspension.

26 In connection with any suspension, Caliber Escrow shall file with the Commissioner at close
27 of business on November 16, 2009 a list of all open escrows with escrow numbers and escrow party
28 names along with a copy of the signed escrow instructions and signed deposit receipt(s) for the last

1 opened escrow, signed by the president of Caliber Escrow under penalty of perjury. For purposes of
2 this Agreement, open escrow shall mean an escrow wherein the parties to such escrow have already
3 entered into a binding agreement and monies and/or escrow instructions have been submitted to
4 Caliber Escrow regarding the transaction. Additionally, Caliber Escrow will be required to
5 immediately engage its certified public accounting (“CPA”) firm to review the records of Caliber
6 Escrow after the suspension has been completed and report its findings regarding compliance with
7 the suspension (“CPA Report”) to the Department. Caliber Escrow’s CPA shall file its CPA Report
8 with the Department directly. The Commissioner reserves the right to audit Caliber Escrow for
9 compliance with the suspension notwithstanding the findings of the CPA review.

10 5. In the event that Caliber Escrow fails file the 2009 audit report with the Department by
11 December 31, 2009, or fails to make any of the payments outlined in paragraph 3 within two
12 business days of notice to cure or violates the Suspension outlined in paragraph 4, then the
13 Commissioner will summarily revoke the escrow agent’s license of Caliber Escrow, and Caliber
14 Escrow waives any right to contest, appeal or request a hearing on the matter of the summary
15 revocation.

16 6. The parties hereby acknowledge and agree that this Agreement is intended to
17 constitute a final and complete resolution of the matters set forth herein, including the allegations set
18 forth in Order, and constitutes the entire Agreement between the parties with respect thereto. This
19 Agreement supersedes any and all prior or contemporaneous agreements between the parties hereto.

20 7. Notwithstanding any other provision contained herein, nothing in this Agreement
21 shall operate to limit the Commissioner’s ability to investigate and prosecute violations of the
22 Escrow Law not addressed herein, or to assist any other agency, (county, state, or federal) with any
23 prosecution, administrative, civil or criminal, brought by such agency against Caliber Escrow.

24 8. Caliber Escrow acknowledges its right to an administrative hearing under California
25 Financial Code sections 17408 and 17608 in connection with the penalty and notice of intent to
26 revoke its license, and hereby waives its right to a hearing, and to any reconsideration, appeal, or
27 other rights which may be afforded pursuant to the Escrow Law, the California Administrative
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1 Procedure Act, the California code of Civil Procedure, or any other provision of law in connection
2 with this matter.

3 9. Each party hereto represents and warrants that it has received independent advice
4 from its attorney(s) and/or other representatives prior to entering into this Agreement, and in
5 executing this Agreement relied solely on the statements set forth herein and the advice of its own
6 counsel and/or representative.

7 10. In that the parties have had the opportunity to draft, review and edit the language of
8 this Agreement, no presumption for or against any party arising out of the drafting all or any part of
9 this Agreement will be applied in any action relating to or arising out of this Agreement.
10 Accordingly, the parties hereby waive the benefit of the California Civil Code section 1654 and any
11 successor statute.

12 11. The waiver of any provision of this agreement shall not operate to waive any other
13 provisions set forth herein, and any waiver, amendment and/or change to the terms of this
14 Agreement must be in writing signed by the parties hereto.

15 12. Each signatory hereto represents and warrants that he/she possesses the necessary
16 capacity and authority to execute this Agreement and bind the parties hereto.

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13. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document. A facsimile signature shall be deemed the same as an original signature.

Dated: September 29, 2009

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
Alan S. Weinger
Deputy Commissioner
California Department of Corporations

Dated: September 29, 2009

CALIBER ESCROW, INC.

By: _____
Larry Merton
President/Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Richard L. Leeds
Attorney for Caliber Escrow