

1 MARY ANN SMITH
Deputy Commissioner
2 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
3 Department of Corporations
320 West 4th Street, Ste. 750
4 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181
5 Attorneys for Complainant
6
7

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

11 In the Matter of the Accusation of THE) File No.: 963-0855
CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) SETTLEMENT AGREEMENT WITH
13) KIMBERLY M. DEBERG
Complainant,)
14)
15 vs.)
16 CRESTA VERDE ESCROW, INC., SHIRLEY)
LEWIS, and KIMBERLY M. DEBERG,)
17)
18 Respondents.)

19 This Settlement Agreement is entered into between Respondent Kimberly M. Deberg
20 (“DeBerg”) and Complainant the California Corporations Commissioner (“Commissioner”), and is
21 made with respect to the following facts:

22 **RECITALS**

23 A. DeBerg is, and was at all times relevant herein, the daughter of Shirley Lewis
24 (“Lewis”). Lewis is, and was at all times relevant, the president and sole shareholder of Cresta
25 Verde Escrow, Inc. (“Cresta Verde”), an escrow agent licensed by the Commissioner pursuant to the
26 Escrow Law of the State of California (California Financial Code § 17000 et seq.). Cresta Verde has
27 its principal place of business located at 27500 Marguerite Parkway, Suite 5, Mission Viejo,
28 California 92692. Cresta Verde also has a branch location at 28780 Front Street, Suite B4,

1 Temecula, California 92390.

2 B. On December 5, 2012, DeBerg was personally served by the Commissioner with a
3 Notice of Intention to Issue Order to Revoke Escrow Agent’s License and To Issue Orders Pursuant
4 to Section 17423 (Bar from Employment, Management or Control of an Escrow Agent), Accusation
5 and accompanying documents dated December 3, 2012. DeBerg has filed a Notice of Defense with
6 the Commissioner on the above-referenced matter.

7 C. It is the intention and desire of the parties to resolve this matter without the necessity
8 of a hearing and/or other litigation.

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

11 **TERMS AND CONDITIONS**

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

14 2. DeBerg, without admitting or denying any of the allegations contained in the
15 Accusation described in paragraph B above, hereby agrees to the issuance by the Commissioner of
16 an order barring DeBerg from any position of employment, management or control of an escrow
17 agent. The bar order shall become effective immediately upon execution of this Settlement
18 Agreement. A copy of the bar order is attached and incorporated herein as Exhibit A.

19 3. DeBerg acknowledges her right to an administrative hearing under Financial Code
20 section 17423 in connection with the bar and hereby waives that right to a hearing, and to any
21 reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the
22 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
23 provision of law in connection with this matter herein.

24 4. DeBerg further agrees that the allegations contained in the Accusation shall be
25 deemed to have been admitted should DeBerg apply to the Commissioner for reinstatement or
26 reduction of penalty under Government Code section 11522, but in that event, the admissions would
27 not be binding or admissible against DeBerg in any other action.

28

1 5. The parties hereby acknowledge and agree that this Settlement Agreement is intended
2 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and
3 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's
4 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,
5 civil or criminal, brought by any such agency against DeBerg or any other person based upon any of
6 the activities alleged in this matter or otherwise.

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

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

20 8. This Settlement Agreement is the final written expression and the complete and
21 exclusive statement of all the agreements, conditions, promises, representations, and covenants
22 between the parties with respect to the subject matter hereof, and supercedes all prior or
23 contemporaneous agreements, negotiations, representations, understandings, and discussions
24 between and among the parties, their respective representatives, and any other person or entity, with
25 respect to the subject matter covered hereby.

26 9. In that the parties have had the opportunity to draft, review and edit the language of
27 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
28 part of this Settlement Agreement will be applied in any action relating to, connected, to, or

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

5 10. This Settlement Agreement shall not become effective until signed by all parties and
6 delivered by all parties.

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

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

14 Dated: 4/24/13 JAN LYNN OWEN
California Corporations Commissioner
15
16 By _____
MARY ANN SMITH
17 Deputy Commissioner

18 Dated: April 30, 2013
19 By _____
KIMBERLY M. DEBERG, an individual

20
21 APPROVED AS TO FORM:
22 LAW OFFICES OF GREG M. MORTENSEN
23 By _____
GREG M. MORTENSEN, ESQ. Attorney for
24 KIMBERLY M. DEBERG
25
26 JAN LYNN OWEN
California Corporations Commissioner
27
28 By _____
JUDY L. HARTLEY
Senior Corporations Counsel