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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) Escrow License No.: 963-0108
12) OAH Nos. 2015050769, 2016060297
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) SETTLEMENT AGREEMENT
14)
15 Complainant,)
16 v.)
17 EXECUTIVE ESCROW COMPANY,)
18 LOYANN LOUFAY RICHARDS, as an)
individual, and DAMON LEROY KUNTZ, as)
19 an individual,)
20 Respondents.)
21)
22)
23)

24 This Settlement Agreement is entered into between Respondents Executive Escrow Company,
25 Loyann Loufay Richards (Richards), and Damon Leroy Kuntz (Kuntz) (collectively, Respondents) on
26 the one hand, and Complainant, the Commissioner of Business Oversight (Commissioner), on the
27 other hand, and is made with respect to the following facts:

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RECITALS

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2 A. Executive Escrow Company is an escrow agent first licensed on July 16, 1958 by the
3 Commissioner pursuant to the Escrow Law of the State of California (Fin. Code, § 17000 et seq.)
4 (Escrow Law).

5 B. Executive Escrow Company is an active California corporation with its principal place
6 of business located at 115 South El Camino Real, San Clemente, California 92672.

7 C. Richards is, and was at all relevant times, the president, director and sole stockholder
8 of Executive Escrow Company and is authorized to enter into this Settlement Agreement on its
9 behalf.

10 D. Kuntz is, and was at all relevant times, an employee and agent of Executive Escrow
11 Company.

12 E. On April 13, 2015, the Commissioner issued to Executive Escrow Company and
13 Richards a Notice of Intention to Issue Orders (1) Barring Richards from any Position of
14 Employment, Management, or Control of any Escrow Agent Pursuant to Financial Code Section
15 17423 and (2) Revoking Escrow Agent’s License Pursuant to Financial Code Section 17608,
16 Accusation, and accompanying documents (Accusation).

17 F. On January 13, 2016, the Commissioner issued to Respondents a Notice of Intention
18 to Issue an Order Suspending Kuntz from any Position of Employment, Management, or Control of
19 any Escrow Agent Pursuant to Financial Code Section 17423, Amended Accusation, and
20 accompanying documents (Amended Accusation).

21 G. On May 18, 2016, the Commissioner issued to Executive Escrow Company an Order
22 to Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (Discontinue Order).

23 H. Executive Escrow Company, Richards, and Kuntz have filed Notices of Defense with
24 the Commissioner on the above-referenced matters which are currently set for hearing on June 15-16,
25 2016 and July 1, 2016.

26 I. The Commissioner finds that entering into this agreement is in the public interest and
27 consistent with the purposes fairly intended by the policy and provisions of the Escrow Law.
28

1 J. It is the intention of the parties to resolve this matter for the purpose of judicial
2 economy and expediency and without the uncertainty and expense of a hearing and/or other litigation.

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

5 **TERMS AND CONDITIONS**

6 1. Waiver of Hearing Rights. Respondents agree that this Settlement Agreement shall
7 have the effect of withdrawing each of their requests for an administrative hearing on the matters set
8 forth herein. Respondents acknowledge their rights to an administrative hearing under the Escrow
9 Law in connection with the Accusation, Amended Accusation, and Discontinue Order set forth
10 above, and hereby waive such rights to hearing, and to any reconsideration, appeal, or other rights
11 which may be afforded pursuant to Escrow Law, the California Administrative Procedure Act, the
12 California Code of Civil Procedure, or any other provision of law in connection with these matters.

13 2. Admissions. Respondents admit the allegations contained in the above-referenced
14 Accusation, Amended Accusation, and Discontinue Order solely for the limited purposes of these
15 proceedings and any future proceeding(s) that may be initiated by or brought before the
16 Commissioner against Respondents. It is the intent and understanding between the parties that this
17 Settlement Agreement, and particularly the admissions of Respondents herein, shall not be binding or
18 admissible against Respondents in any action(s) brought against Respondents by third parties.

19 3. License Surrender. Executive Escrow Company hereby agrees to surrender its escrow
20 agent's license to the Commissioner in accordance with the provisions of the Escrow Law (License
21 Surrender). The License Surrender shall become effective 60 days from the Effective Date of this
22 Settlement Agreement (License Surrender Date), as such date is defined in Paragraph 22, to allow
23 Executive Escrow Company time to tender the license and all other indicia of licensure to the
24 Commissioner, complete and/or transfer any pending escrows, and properly close out the trust
25 account(s).

26 4. Wind-Down of Escrow Business. In consideration of the 60-day period to wind down
27 the escrow agent business, Executive Escrow Company and Richards will: (i) pay all outstanding
28 examination fees to the Commissioner within 30 days of the Effective Date of this Settlement

1 Agreement, as such date is defined in Paragraph 22; (ii) file with the Commissioner within five days
2 of Effective Date of this Settlement Agreement a list of pending escrows with established escrow
3 close dates along with a copy of its trust account(s) reconciliation for May 31, 2016, which
4 reconciliation(s) shall include an outstanding checklist and trial balance; (iii) submit to the
5 Commissioner by the 15th day of each month until the License Surrender Date a trust account
6 reconciliation to include the outstanding checklist and a trial balance for the prior month, provided
7 that such trust account reconciliation(s) submissions shall commence on or about July 15, 2016 for
8 June 30, 2016 and continue through at least September 15, 2016 for August 31, 2016; and, (iv) forfeit
9 the right to collect any escrow agent's fees, or other administrative fees owed to Respondents,
10 pertaining to any escrow account opened after the date of issuance of the Discontinue Order and
11 return any such amounts collected to the principal(s) no later than 30 days after the Effective Date of
12 this Settlement Agreement.

13 5. Discontinue Order. Respondents agree that the Discontinue Order issued on May 18,
14 2016, referenced in Paragraph G above, shall remain in full effect until the License Surrender Date
15 and that opening any new escrow after the Effective Date of this Settlement Agreement shall be a
16 violation of the Discontinue Order and subject Respondent(s) to the penalties for violation of this
17 Settlement Agreement referenced in Paragraph 12.

18 6. Closing Audit Report. Executive Escrow Company and Richards hereby acknowledge
19 and understand that Financial Code Section 17600, subdivision (b), requires a closing audit report to
20 be filed with the Commissioner within 105 days of the License Surrender Date (Closing Audit
21 Report) and hereby agree to timely submit the Closing Audit Report to the Commissioner's agent
22 specified in Paragraph 23 below. Executive Escrow Company and Richards agree that if they fail to
23 file the Closing Audit Report as required by Financial Code section 17600, subdivision (b), the
24 License Surrender provided for in Paragraph 3 shall not become effective and the escrow agent's
25 license of Executive Escrow Company shall be automatically revoked, and any rights to a hearing
26 regarding such revocation and to any reconsideration, appeal, or other rights which may be afforded
27 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
28 Civil Procedure, or any other provision of law in connection therewith are hereby waived.

1 7. Richards' Suspension Order. Richards hereby agrees to the issuance by the
2 Commissioner of an order suspending Richards from any position of employment, management, or
3 control of an escrow agent pursuant to Financial Code section 17423 for a period of one year
4 (Richards' Suspension Order). The suspension shall commence on the Effective Date of this
5 Settlement Agreement, as set forth in Paragraph 22, and continue for a period of one year thereafter.
6 Richards is also precluded from engaging in any escrow processing activities during the suspension
7 period. Richards additionally agrees that upon completion of the one-year suspension period, she
8 shall not undertake any position as an escrow manager, corporate officer, director, trustee or
9 stockholder, or act in any such capacity, and/or apply for any such position, with any escrow agent
10 licensed by the Commissioner or any applicant seeking licensure as an escrow agent with the
11 Commissioner. Richards acknowledges her right to an administrative hearing in connection with the
12 one-year suspension and post-suspension restrictions set forth herein and hereby waives that right to a
13 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
14 Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or
15 any other provision of law in connection with this matter. A copy of Richards' Suspension Order is
16 attached and incorporated herein as Exhibit A.

17 8. Kuntz's Suspension Order. Kuntz hereby agrees to be suspended from any position of
18 employment, management, or control of any escrow agent for a period of 60 days (Kuntz's
19 Suspension Order). The suspension shall commence on the License Surrender Date, as set forth in
20 Paragraph 3, and continue for 60 days thereafter. Kuntz is also precluded from engaging in any
21 escrow processing activities during the 60-day suspension period. Kuntz acknowledges his right to an
22 administrative hearing in connection with the 60-day suspension order and other restrictions set forth
23 herein and hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights
24 which may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the
25 California Code of Civil Procedure, or any other provision of law in connection with this matter. A
26 copy of Kuntz's Suspension Order is attached and incorporated as Exhibit B.

27 9. Continuing Education. Respondents agree that for 36 months immediately following
28 the Effective Date of this Settlement Agreement, as set forth in Paragraph 22, each Respondent shall

1 annually complete at least eight hours of continuing education offered by the California Escrow
2 Association, Escrow Institute of California, or other vendor pre-approved by the Commissioner.
3 Proof of annual compliance (Compliance Report) shall be submitted no later than June 30 of each
4 year to the Commissioner's agent specified in Paragraph 23.

5 10. Dismissal of Notices of Intention. Except as otherwise provided herein, the parties
6 agree that this Settlement Agreement shall have the effect of dismissing the Notices of Intention cited
7 in Paragraphs E and F. The dismissals shall become effective upon the Effective Date of this
8 Settlement Agreement, as such date is defined in Paragraph 22.

9 11. Administrative Penalty. In consideration of the dismissals of the Notice of Intentions
10 effected by Paragraph 10 above, Respondents agree to pay an administrative penalty to the
11 Commissioner in the amount of \$10,000.00 (Administrative Penalty). Respondents are jointly and
12 severally liable for the Administrative Penalty, which shall be due no later than 30 days from the
13 Effective Date of this Settlement Agreement, as such date is defined in Paragraph 22. Payment in the
14 form of a cashier's check shall be made payable to "The Department of Business Oversight" and
15 mailed to the Commissioner's agent specified in Paragraph 23 below. In the event the payment due
16 date falls on a weekend or holiday, the payment shall be due the next business day. Respondents
17 acknowledge that failure to timely pay the Administrative Penalty shall be a violation of this
18 Settlement Agreement and constitute cause for the Commissioner to immediately issue an order
19 pursuant to Paragraph 12. Respondents further agree that this Settlement Agreement shall constitute a
20 final decision for the purpose of the Commissioner applying ex parte to the superior court, without
21 further notice to Respondents, for a civil judgment in the amount of the Administrative Penalty
22 stipulated herein and procuring a final order pursuant to the Escrow Law or any other provision of
23 California law.

24 12. Commissioner's Remedy for Violation. Respondents agree that for 36 months
25 immediately following the Effective Date of this Settlement Agreement, as set forth in Paragraph 22,
26 if the Commissioner makes a finding that Respondent(s) has violated or is violating any provision of
27 this Settlement Agreement, or of the Escrow Law, and such Respondent(s) fails to cure said
28 violation(s) within 10 days after being provided written notice of said violation(s) by the

1 Commissioner, the Commissioner may, in her sole discretion, issue to the violating Respondent(s) an
2 order permanently barring Richards and/or, as applicable, suspending Kuntz for a period of one year,
3 from any position of employment, management, or control of any escrow agent pursuant to Financial
4 Code section 17423. Respondents waive all notice and hearing rights to contest any bar and/or
5 suspension order(s) issued pursuant to this provision, which may be afforded under the Escrow Law,
6 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
7 provision of law in connection with these matters.

8 13. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this
9 Settlement Agreement is intended to constitute a full, final, and complete resolution of the matters set
10 forth herein and that no further proceedings or actions will be brought by the Commissioner in
11 connection with these matters under the Escrow Law or any other provision of law, excepting
12 therefrom any proceeding or action if such proceeding or action is based upon facts not presently
13 known to the Commissioner or which were knowingly concealed from the Commissioner by
14 Respondents.

15 14. Commissioner's Duties. The parties acknowledge and agree that nothing contained in
16 this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other
17 agency, (county, state or federal) with any prosecution, administrative, civil or criminal, brought by
18 any such agency against Respondents or any other person based upon any of the activities alleged in
19 this matter or otherwise.

20 15. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
21 has received independent advice from its attorney(s) and/or representatives with respect to the
22 advisability of executing this Settlement Agreement.

23 16. Reliance. Each of the parties represents, warrants, and agrees that in executing this
24 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
25 counsel and/or representative. Each of the parties further represents, warrants, and agrees that in
26 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
27 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
28 failure of any party or any other person or entity to make any statement, representation or disclosure

1 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
2 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude
3 the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
4 Settlement Agreement.

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

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

18 19. Headings and Governing Law. The headings to the paragraphs of this Settlement
19 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
20 construction or interpretation of the provisions hereof.

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

27 21. Settlement Authority. Each signator hereto covenants that he/she possesses all
28 necessary capacity and authority to sign and enter into this Settlement Agreement.

1 22. Effective Date. This Settlement Agreement and the attached Orders shall become
2 effective (Effective Date) when executed by the Commissioner or her designee and transmitted by
3 electronic mail to Respondents' counsel at mdavis@ddesq.com.

4 23. Notice. Any notices required under this Settlement Agreement shall be provided to
5 each party at the following addresses:

6 If to Respondents to: Matthew S. Davis, Esq.,
7 Davis & Davis Law Group, APC
8 1900 Avenue of the Stars, Suite 960
9 Los Angeles, California 90067

10 If to the Commissioner to: Miranda LeKander, Senior Counsel
11 Department of Business Oversight
12 1515 K Street, Suite 200
13 Sacramento, California 95814

14 Dated: 6/14/16 JAN LYNN OWEN
15 Commissioner of Business Oversight

16 By _____
17 MARY ANN SMITH
18 Deputy Commissioner

19 Dated: 6/14/16 EXECUTIVE ESCROW COMPANY

20 By _____
21 LOYANN LOUFAY RICHARDS, President

22 Dated: 6/14/16 By _____
23 LOYANN LOUFAY RICHARDS, an individual

24 Dated: 6/14/16 By _____
25 DAMON LEROY KUNTZ, an individual
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27
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1 APPROVED AS TO FORM:

2 DAVIS & DAVIS LAW GROUP, APC

3

4 By _____

5 MATTHEW S. DAVIS, ESQ. Attorney for EXECUTIVE ESCROW COMPANY, LOYANN
6 LOUFAY RICHARDS, and DAMON LEROY KUNTZ

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