

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
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Lead Corporations Counsel
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation of THE
12 CALIFORNIA CORPORATIONS
13 COMMISSIONER,

14 Complainant,

15 v.

16 EXCEL ESCROW CORP.,

17 Respondent.

) OAH Case Nos.: 2007100272 and 2007110358

) File No.: 963-2155

) **SETTLEMENT AGREEMENT**

) **HEARING DATE:** April 1-2, 2008

) **TIME:** 9:00 a.m.

) **LOCATION:** OAH, Los Angeles
6th Floor

) **ASSIGNED TO:** Eric C. Sawyer

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21 In the Matter of the Order of THE
22 CALIFORNIA CORPORATIONS
23 COMMISSIONER,

24 Complainant,

25 vs.

26 EXCEL ESCROW CORP.,

27 Respondent.
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1 This Settlement Agreement ("Agreement") is entered into between Excel Escrow Corp.
2 ("Excel Escrow") and the California Corporations Commissioner ("Commissioner") with respect to
3 the following facts:

4 **RECITALS**

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

7 B. Excel Escrow is an escrow agent licensed by the Commissioner pursuant to the
8 Escrow Law of the State of California (California Fin. Code, § 17000, *et seq.*). Excel Escrow
9 currently holds escrow agent's license number 963-2155 with its principal place of business located at
10 9395 Wilshire Blvd., Beverly Hills, California 90210.

11 C. Simon Darvish ("Darvish") is Excel Escrow's president. Darvish is authorized to enter
12 into this Agreement on behalf of Excel Escrow.

13 D. On or about September 13, 2007, the Commissioner issued his Notice of Intention to
14 Issue Order Suspending Escrow Agent's License and Accusation to Excel Escrow (collectively
15 "Notice of Intention") pursuant to section 17608 of the Financial Code. The Commissioner's Notice
16 of Intention sought to impose a two-week suspension against Excel Escrow for its failure to timely
17 file its annual audit report for the fiscal year ended December 31, 2006, pursuant to Financial Code
18 sections 17406 and 17602.5.

19 E. On or about September 13, 2007, the Commissioner issued an Order Imposing
20 Penalties Pursuant to California Financial Code Section 17408 ("Order"). This Order imposed
21 penalties in the amount of \$14,100.00 for Excel Escrow's failure to timely file its annual audit report
22 for the fiscal year ended December 31, 2006 as required by California Financial Code section 17406.

23 F. Both the Notice of Intention and Order were served on Excel
24 Escrow via certified mail, return receipt requested, at its address of record on file with the
25 Department on or about September 13, 2007 and September 14, 2007, respectively. Excel Escrow
26 filed its request for hearing on the Commissioner's Notice of Intention and Order with the
27 Department on or about September 26, 2007.

28 G. On or about September 26, 2007, the Commissioner brought a Motion for Leave to

1 File a First Amended Accusation pursuant to Government Code section 11507.

2 H. On or about September 27, 2007 the Commissioner brought a Motion to Consolidate
3 Proceedings pursuant to Government Code section 11507.3, subdivision (a). The Office of
4 Administrative Hearings ("OAH") subsequently consolidated this matter for hearing.

5 I. The OAH set this matter to commence hearing on December 12, 2007 at the hour of
6 9:00 a.m.

7 J. On or about November 13, 2007, Excel Escrow, by and through its counsel of record,
8 filed a motion to continue the existing hearing date in this matter. On or about November 21, 2007,
9 OAH granted Excel Escrow's motion, continuing the parties' hearing to April 1-2, 2008, commencing
10 at the hours of 9:00 a.m.

11 K. It is the intention and desire of the parties to resolve this matter without the necessity
12 of a hearing and/or other litigation.

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

15 **TERMS AND CONDITIONS**

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

18 2. Excel Escrow hereby admits the allegations contained in the Notice of Intention and
19 Order. The admissions of Excel Escrow are solely for the limited purposes of these proceedings and
20 any future proceeding(s) that may be initiated by or brought before the Commissioner against Excel
21 Escrow. It is the intent and understanding of the parties that this Agreement, and the admissions of
22 Excel Escrow contained herein, shall not be binding or admissible against Excel Escrow in any
23 action(s) brought against Excel Escrow by third parties.

24 3. Excel Escrow agrees to the following conditions:

- 25 (i) That the Order is hereby deemed a final order. Excel Escrow
26 acknowledges penalties accruing pursuant to the Order for the untimely
27 filing of its 2006 annual audit report totaled \$14,100.00. As full settlement
28 of the Order, Excel Escrow agrees to pay the Commissioner the sum of

1 \$7,050.00 in penalties, which shall be paid in full within ten (10) days of
2 the date of execution of this Agreement. Excel Escrow's penalty payment
3 must be forwarded to counsel for the Commissioner, Blaine A. Noblett, at
4 his address of record, within the time provided.

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6 (ii) The immediate issuance by the Commissioner of an order suspending
7 Excel Escrow's escrow agent's license for a period of two (2) calendar days
8 commencing on April 18, 2008 and ending on April 21, 2008, during
9 which period Excel Escrow shall not accept any new escrow business, but
10 may continue to service prior and open escrows, in accordance with
11 Financial Code section 17609. In connection with the suspension, Excel
12 Escrow shall file with the Department at close of business on April 17,
13 2008, a list of all open escrows with escrow numbers and escrow party
14 names along with a copy of the signed escrow instructions and signed
15 deposit receipt(s) for the last opened escrow, signed by the president of
16 Excel Escrow under penalty of perjury. For purposes of this Agreement,
17 open escrow shall mean an escrow wherein the parties to such escrow have
18 already entered into a binding agreement and monies and/or escrow
19 instructions have been submitted to Excel Escrow regarding the
20 transaction. Additionally, Excel Escrow will be required to immediately
21 engage its certified public accounting ("CPA") firm to review the records
22 of Excel Escrow after the suspension has been completed and report its
23 findings regarding compliance with the suspension ("CPA Report") to the
24 Department within 30 days of completion of the suspension period. Excel
25 Escrow's CPA shall file its CPA Report with the Department directly. The
26 Commissioner reserves the right to audit Excel Escrow for compliance
27 with the suspension notwithstanding the findings of the CPA review.

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1 A copy of the suspension order is attached and incorporated hereto as
2 Exhibit A.

3 4. The parties hereby acknowledge and agree that this Agreement is intended to
4 constitute a final and complete resolution of the matters set forth herein, including the allegations set
5 forth in the Notice of Intention and Order, and constitutes the entire Agreement between the parties
6 with respect thereto. This Agreement supercedes any and all prior or contemporaneous agreements
7 between the parties hereto.

8 5. Notwithstanding any other provision contained herein, nothing in this Agreement shall
9 operate to limit the Commissioner's ability to investigate and prosecute violations of the Escrow Law
10 not addressed herein, or to assist any other agency (county, state, or federal) with any prosecution,
11 administrative, civil or criminal, brought by such agency against Excel Escrow.

12 6. Excel Escrow acknowledges its right to an administrative hearing Under California
13 Financial Code sections 17408 and 17608 in connection with the penalty and/or any suspension, and
14 hereby waives its right to a hearing, and to any reconsideration, appeal, or other rights which may be
15 afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the California
16 Code of Civil Procedure, or any other provision of law in connection with this matter.

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

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

25 9. The waiver of any provision of this Agreement shall not operate to waive any other
26 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
27 must be in writing signed by the parties hereto.

28 10. Each signatory hereto represents and warrants that he/she possesses the necessary

1 capacity and authority to execute this Agreement and bind the parties hereto.

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

5 Dated: 4/1/08 PRESTON DuFAUCHARD
6 California Corporations Commissioner

7 By _____
8 Alan S. Weinger
9 Lead Corporations Counsel

10 Dated: _____ EXCEL ESCROW CORP.

11 By _____
12 Simon Darvish
13 President
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4 signature shall be deemed the same as an original signature.

5 Dated: _____ PRESTON DUFAUCHARD
6 California Corporations Commissioner

7 By _____
8 Alan S. Weinger
9 Lead Corporations Counsel

10 Dated: 3/31/08 EXCEL ESCROW CORP.

11
12 By _____
13 Simon Barvish
14 President

State of California - Department of Corporations

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EXHIBIT A

1 PRESTON DUFAUCHARD
 California Corporations Commissioner
 2 WAYNE STRUMPFER
 Deputy Commissioner
 3 ALAN S. WEINGER (BAR NO. 86717)
 Lead Corporations Counsel
 4 BLAINE A. NOBLETT (BAR NO. 235612)
 Corporations Counsel
 5 320 West 4th Street, Suite 750
 Los Angeles, California 90013-2344
 6 Telephone: (213) 576-1396 Fax: (213) 576-7181
 7 Attorneys for Complainant

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

11 In the Matter of the Accusation of THE
 12 CALIFORNIA CORPORATIONS
 13 COMMISSIONER,

File No.: 963-2155

14 Complainant,

SUSPENSION ORDER

15 v.

16 EXCEL ESCROW CORP.,

17 Respondent.
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19
 20 Pursuant to the Settlement Agreement entered into between the California Corporations
 21 Commissioner ("Commissioner") and Excel Escrow Corp. ("Excel Escrow") on April 1, 2008,
 22 attached and incorporated herein as Exhibit 1, it is hereby ordered that the escrow agent's license
 23 issued to Excel Escrow is suspended for a period of two (2) calendar days, commencing on April 18,
 24 2008 and ending on April 21, 2008, during which period Excel Escrow shall not accept any new
 25 escrow business, but may continue to service prior and open escrows, in accordance with Financial
 26 Code section 17609.

27 It is further ordered that Excel Escrow shall file with the Department at close of business on
 28 April 17, 2008, a list of all open escrows with escrow numbers and escrow party names along with a

1 copy of the signed escrow instructions receipt(s) for the last opened escrow, signed by the
2 president of Excel Escrow under penalty of perjury. Open escrow means an escrow
3 wherein the parties to such escrow have already entered into a binding agreement and monies and/or
4 escrow instructions have been submitted to Excel Escrow regarding the transaction. Additionally,
5 Excel Escrow is ordered to immediately engage its certified public accounting ("CPA") firm to
6 review the records of Excel Escrow after the suspension has been completed to determine Excel
7 Escrow's compliance with this Order and report its findings to the Department within 30 days of
8 completion of the suspension period. Excel Escrow's CPA shall file its report with the Department
9 directly. The Commissioner reserves the right to audit Excel Escrow for compliance with the
10 suspension notwithstanding the findings of the CPA review.

11 Pursuant to the terms of the Settlement Agreement, Excel Escrow admits the following for
12 purposes of this Order and any future proceedings initiated by or brought before the California
13 Corporations Commissioner only:

14 1.d Excel Escrow is, and was at all times relevant, an escrow agent licensed by the
15 Commissioner pursuant to the Escrow Law of the State of California (California Fin. Code, § 17000,
16 *et seq.*). Excel Escrow has its principal place of business located at 9395 Wilshire Blvd., Beverly
17 Hills, California 90210.

18 2.d Excel Escrow's fiscal year ended for 2006 was December 31st. Pursuant to California
19 Financial Code section 17406, subdivision (a), Excel Escrow's 2006 annual audit report was to have
20 been received by the Commissioner with 105 days from the close of its fiscal year, *i.e.*, on or before
21 April 16, 2007.

22 3.d The Commissioner served Excel Escrow at its address of record with two writtend
23 demands for its annual audit report on November 14, 2006 and again on May 10, 2007.

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4. On September 5, 2007, Excel Escrow filed its annual audit report with the
Commissioner one hundred forty-one days after the April 16, 2007 filing deadline in violation of
Financial Code section 17406, subdivision (a).

DATED: April 1, 2008
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner



By _____
Alan S. Weinger
Lead Corporations Counsel