

1 Based upon the foregoing, FIRST NATIONAL ESCROW is conducting escrow business in
2 violation of Section 17202 of the Financial Code and is conducting business in an unsafe and
3 injurious manner as to render further operations hazardous to the public or to customers.

4 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING
5 THEREFORE, it is hereby ORDERED, under the provisions of Section 17415 of the California
6 Financial Code, that FIRST NATIONAL ESCROW immediately discontinue acceptance of any
7 new escrow or joint control business, and of money, documents or other property in connection
8 therewith.

9 THIS ORDER is to remain in full force and effect until further order of the Commissioner.

10 Section 17415 of the Financial Code provides as follows:

11 (a) If the commissioner, as a result of any examination or from
12 any report made to him or her, shall find that any person subject to this
13 division is in an insolvent condition, is conducting business in such an
14 unsafe or injurious manner as to render further operations hazardous to the
15 public or to customers, has failed to comply with the provisions of Section
16 17212.1 or 17414.1, has permitted its tangible net worth to be lower than
17 the minimum required by law, has failed to maintain its liquid assets in
18 excess of current liabilities as set forth in Section 17210, or has failed to
19 comply with the bonding requirements of Chapter 2 (commencing with
20 Section 17200) of this division, the commissioner may, by an order
21 addressed to and served by registered or certified mail or by personal
22 service on such person and on any other person having in his or her
23 possession or control any escrowed funds, trust funds or other property
24 deposited in escrow with said person, direct discontinuance of the
25 disbursement of trust funds by the parties or any of them, the receipt of
26 trust funds, the delivery or recording of documents received in escrow, or
27 other business operations. No person having in his or her possession any of
28 these funds or documents shall be liable for failure to comply with the
order unless he or she has written notice of the order. Subject to
subdivision (b), the order shall remain in effect until set aside by the
commissioner in whole or in part, the person has been adjudged bankrupt,
or pursuant to Chapter 6 (commencing with Section 17621) of this division
the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of any order pursuant to
Subdivision (a), the person may request a hearing under the Administrative
Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3
or Title 2 of the Government Code. Upon receipt of a request, the matter
shall be set for hearing to commence within 30 days after such receipt
unless the person subject to this division consents to a later date. If no

1 hearing is requested 15 days after the mailing or service of such notice and
2 none is ordered by the commissioner, the failure to request a hearing shall
3 constitute a waiver of the right to a hearing. Neither the request for a
4 hearing nor the hearing itself shall stay the order issued by the
5 commissioner under subdivision (a).

6 Dated: January 3, 2011
7 Los Angeles, California

8 Preston DuFauchard
9 California Corporations Commissioner

10 By _____
11 Kathleen R. Partin
12 Special Administrator
13 (213) 576-7595
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1 JAN LYNN OWEN
Commissioner of Corporations
2 MARY ANN SMITH
Deputy Commissioner
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8 Attorneys for Complainant

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

11)
12 In the Matter of the Accusation of THE) File No.: 963-1931
COMMISSIONER OF CORPORATIONS OF)
13 THE STATE OF CALIFORNIA,) ACCUSATION FOR REVOCATION
14)
Complainant,)
15)
16 vs.)
17 FIRST NATIONAL ESCROW,)
18)
Respondent.)

19 _____
20 The Complainant is informed and believes and based upon such information and belief,
21 alleges and charges as follows:

22 I.

23 1. FIRST NATIONAL ESCROW (“Respondent” or “First National”) is an escrow agent
24 licensed by the Commissioner of Corporations of the State of California, ("Commissioner" or
25 "Complainant") pursuant to the Escrow Law of the State of California (California Financial Code
26 Section 17000 et seq.) (“Escrow Law”).

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1 2. First National had its principal place of business located at 3579 Arlington Avenue, #600,
2 Riverside, California 92506.

3 3. At all relevant times, Robert Bauer was the President of First National.

4 4. At all relevant times, Raquel Bauer was the escrow manager at First National.

5 5. First National employed as an escrow officer Karen Gardner (“Gardner”).

6 6. The Commissioner commenced a special examination of the books and records of First
7 National after receiving a complaint on or about March 23, 2010, related to an escrow arranged by
8 Gardner.

9 7. The Commissioner’s Examiner found several violations of the Escrow Law during the
10 examination, involving multiple transactions handled by Gardner, including misuse of funds, failure
11 to follow escrow instructions, and favoring one party over another in escrows.

12 8. Gardner was involved with “lapping” transactions, where she used money from escrows to
13 cover shortages in unrelated escrows, without authorization from the parties whose money she was
14 using. She repeatedly misrepresented to clients what was happening with their money. In the end,
15 Gardner’s unauthorized and illegal use of escrow funds left First National with escrow trust fund
16 shortages of over one million dollars (\$1,000,000).

17 9. As a result, on February 2, 2012, the Commissioner barred Gardner from any position of
18 employment, management, or control of any escrow agent, pursuant to section 17423 of the
19 Financial Code, for violations of Sections 17414(a)(1) and 17414(a)(2) of that law, as well Sections
20 1738 and 1738.2 of Title 10 of the California Code of Regulations.

21 10. Raquel Bauer was the escrow manager at First National at the time the losses took place. She
22 was involved in the daily operation of First National, and as escrow manager, was responsible for
23 escrow officer Gardner’s compliance with the escrow agent’s procedures and compliance with the
24 Escrow Law.

25 11. Robert Bauer was the President of First National at the same time the illegal activities took
26 place. As President of a licensed escrow agent under the California Escrow Law, Robert Bauer was
27 responsible for complying with the law and ensuring the escrow agent and its employees comply
28 with the Escrow Law.

1 12. First National declared bankruptcy in 2011. However, First National is still a licensed
2 escrow agent, and therefore must still comply with the California Escrow Law and regulations.

3 13. In order to investigate these losses and violations further, and to attempt to obtain
4 replacement funds for customers of First National, the Commissioner required information and
5 records from First National.

6 14. In 2011, the Commissioner requested First National business records from both Robert and
7 Raquel Bauer. Financial Code section 17405 and Code of Regulations, title 10, section 1730(b) state
8 that business records of an escrow agent must be provided to the Commissioner upon request, and
9 the location of those records must be made known to the Commissioner. The Bauers did not provide
10 the records as requested.

11 15. As a result of the foregoing, the Commissioner issued an order on December 14, 2011,
12 barring Robert Bauer and Raquel Bauer from any position of employment, management, or control
13 of any escrow agent, pursuant to section 17423 of the Financial Code.

14 16. In light of the losses incurred by First National's clients, the Commissioner kept First
15 National's license in effect so that a claim could be made with the Escrow Agents' Fidelity
16 Corporation ("EAFC") for the trust fund losses. (Financial Code section 17314 states that EAFC
17 shall pay a "member" for loss of trust obligations, pursuant to certain requirements. Financial Code
18 section 17312 defines "member" as a licensee.)

19 17. After filing a proof of loss claim with EAFC, the Chapter 7 Bankruptcy Trustee for First
20 National, Karl T. Anderson ("Trustee"), entered into a Settlement Agreement with EAFC. Under the
21 Settlement Agreement, EAFC agreed to pay one million dollars (\$1,000,000) for trust fund losses of
22 First National customers.

23 18. On December 19, 2012, the U.S. Bankruptcy Court, Central District of California, issued an
24 order approving this Settlement Agreement.

25 19. As of February 13, 2013, the Trustee had received the one million dollars (\$1,000,000) from
26 EAFC for the trust fund losses.

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II.

20. Pursuant to Financial Code section 17406(a), all licensees under the Escrow Law are required to file an annual audit report containing audited financial statements (“Annual Report”) within one hundred and five (105) days after the close of their fiscal year. First National failed to file its Annual Reports as required under the Escrow Law.

21. In addition, First National has been deficient in meeting the net worth requirements of Financial Code section 17210(a). First National has also failed to maintain its Surety Bond, as required under Financial Code section 17202, and failed to pay assessments due under section 17207(e) of the Escrow Law.

22. As described above, First National is also in Bankruptcy, has suffered significant trust fund losses as a result of Escrow Law violations (Financial Code Sections 17405 and 17414(a)), and its owner and manager have been barred from the industry.

III.

23. Financial Code section 17202 states, in pertinent part:

At the time of filing an application for an escrow agent's license, the applicant shall deposit with the commissioner a bond satisfactory to the commissioner in the amount of at least twenty-five thousand dollars (\$25,000). Thereafter, a licensee shall maintain a bond satisfactory to the commissioner in the amount of: (1) twenty-five thousand dollars (\$25,000) if 150 percent of the previous year's average annual trust fund obligations, as calculated under Section 17348, equals two hundred fifty thousand dollars (\$250,000) or less;

24. Financial Code section 17207(e) provides, in pertinent part:

(1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars (\$2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

1 (4) If an escrow agent fails to pay the amount due on or before the June 30
2 following the day upon which payment is due, the commissioner may by order
3 summarily suspend or revoke the certificate issued to the company.

4 25. Financial Code section 17210(a) provides:

5 An escrow agent licensed on or after January 1, 1986, shall maintain at all times a
6 tangible net worth of fifty thousand dollars (\$50,000), including liquid assets of at
7 least twenty-five thousand dollars (\$25,000) in excess of current liabilities.

8 26. Financial Code section 17405 states, in pertinent part:

9 (a) The business, accounts and records of every person performing as an escrow
10 agent, whether required to be licensed under this division or not, are subject to
11 inspection and examination by the commissioner at any time without prior notice.
12 The provisions of this section shall not apply to persons specified in Section
13 17006.

14 (b) Any person subject to this division shall, upon request, exhibit and allow
15 inspection and copying of any books and records by the commissioner or his or
16 her authorized representative.

17 27. Financial Code section 17406(a) provides:

18 Each licensee shall submit to the commissioner, at the licensee's own expense, an
19 audit report containing audited financial statements covering the calendar year or,
20 if the licensee has an established fiscal year, then for that fiscal year, within 105
21 days after the close of the calendar or fiscal year, as applicable. At that time, each
22 licensee shall also file additional relevant information as the commissioner may
23 require.

24 28. Financial Code section 17414(a) states:

25 It is a violation for any person subject to this division or any director, stockholder,
26 trustee, officer, agent, or employee of any such person to do any of the following:

27 (1) Knowingly or recklessly disburse or cause the disbursement of escrow funds
28 otherwise than in accordance with escrow instructions, or knowingly or recklessly
to direct, participate in, or aid or abet in a material way, any activity which
constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or
omission to state a material fact, orally or in writing, in escrow books, accounts,

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files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

29. Financial Code section 17608 provides:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

(a) The licensee has failed to maintain in effect a bond required under the provisions of this division.

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

IV.

Complainant finds that, by reason of the foregoing, First National Escrow has violated Financial Code sections 17202, 17207(e), 17210(a), 17405, 17406(a), and 17414(a), which constitutes grounds for the revocation of its escrow agent's license under Financial Code section 17608.

WHEREFORE, IT IS PRAYED that FIRST NATIONAL ESCROW's escrow agent's license be revoked pursuant to Financial Code section 17608.

Dated: March 18, 2013
Sacramento, CA

JAN LYNN OWEN
Commissioner of Corporations

By _____
Joanne Ross
Senior Corporations Counsel

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California Corporations Commissioner
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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE) Case No.: 963-1931
13 CALIFORNIA CORPORATIONS)
14 COMMISSIONER,) ORDER BARRING RAQUEL BAUER AND
15 Complainant,) ROBERT BAUER FROM EMPLOYMENT,
16 vs.) MANAGEMENT OR CONTROL OF ANY
17 RAQUEL BAUER) ESCROW AGENT (CALIFORNIA
18 and) FINANCIAL CODE
19) SECTION 17423)
20 ROBERT BAUER,)
21 Respondents.)

22 The Complainant is informed and believes, and based upon such information and belief,
23 alleges and charges Respondents as follows:

24 I

- 25 1. Respondent Robert Bauer was at all times relevant herein, the President of First National
26 Escrow (“First National”).
27 2. Respondent Raquel Bauer was at all times relevant herein, the escrow manager at First
28 National.

1 3. First National is an escrow agent, licensed by the California Corporations Commissioner
2 ("Commissioner" or "Complainant") pursuant to the Escrow Law of the State of California,
3 California Financial Code Section 17000 et seq. ("Escrow Law").

4 4. First National has its principal place of business located at 3579 Arlington Avenue, #600,
5 Riverside, California 92506.

6 5. First National employed as an escrow officer Karen Gardner ("Gardner").

7 6. The Commissioner commenced a special examination of the books and records of First
8 National after receiving a complaint on or about March 23, 2010, related to an escrow arranged by
9 Gardner.

10 7. The Commissioner's Examiner found several violations of the Escrow Law during the
11 examination, involving multiple transactions handled by Gardner, including misuse of funds, failure
12 to follow escrow instructions, and favoring one party over another in escrows.

13 8. The Commissioner took enforcement action against Gardner for these violations. The
14 Commissioner issued an Accusation to Bar Gardner from any position of employment, management,
15 or control of any escrow agent, pursuant to Section 17423 of the Escrow Law, for violations of
16 Sections 17414(a)(1) and 17414(a)(2) of that law, as well Sections 1738 and 1738.2 of Title 10 of
17 the California Code of Regulations.

18 9. Gardner was involved with "lapping" transactions, where she used money from escrows to
19 cover shortages in unrelated escrows, without authorization from the parties whose money she was
20 using. She repeatedly misrepresented to clients what was happening with their money. In the end,
21 Gardner's unauthorized and illegal use of escrow funds left First National with escrow trust fund
22 shortages of over one million dollars (\$1,000,000).

23 10. Respondent Raquel Bauer was the escrow manager at First National at the time the losses
24 took place. Not only was Raquel Bauer Gardner's manager, she was also involved in the daily
25 operation of the escrow agent, First National, and as escrow manager, was responsible for escrow
26 officer Gardner's compliance with the escrow agent's procedures and compliance with the Escrow
27 Law. As such, she either did know or should have known of Gardner's illegal activities.

28 11. Furthermore, Raquel Bauer personally involved herself in at least one of these lapping

1 transactions. A client to a particular escrow repeatedly spoke to Bauer, and informed Bauer that
2 Gardner had not followed the escrow instructions, and had not returned the client's money as agreed.
3 Bauer made misrepresentations to this client about where the client's money was and when it would
4 be returned. After this, the client threatened legal action via letter sent directly to Raquel Bauer.
5 Only then did the client's money get returned. The Commissioner's Examiner discovered that the
6 money that was used to refund this client came from an unrelated escrow account, without
7 authorization from the parties to that unrelated escrow.

8 12. Respondent Robert Bauer was the President of First National at the same time these illegal
9 activities took place. As President of a licensed escrow agent under the California Escrow Law,
10 Robert Bauer is responsible for complying with the law and ensuring the escrow agent and its
11 employees comply with the Escrow Law. As such, Robert Bauer had a duty to know what was
12 happening at the escrow agent and to address it promptly. In addition, he has a responsibility to
13 work with the Commissioner to provide information and assistance to address the client losses at
14 First National.

15 13. First National has declared bankruptcy. However, First National still holds an escrow agent
16 license from the Commissioner, and therefore must still comply with the California Escrow Law and
17 regulations.

18 14. In order to investigate these losses and violations further, and to attempt to obtain
19 replacement funds for customers of First National, the Commissioner required information and
20 records from First National.

21 15. On June 23, 2011, the Commissioner sent a letter to Robert Bauer, as President of First
22 National, that requested business records of First National, pursuant to section 17405 of the
23 California Financial Code and section 1730, Title 10, of the California Code of Regulations. It was
24 sent certified mail, return receipt requested, and was returned by the Post Office as unclaimed.

25 16. On July 15, 2011, the Commissioner sent a follow up letter to Robert Bauer, via regular mail,
26 requesting the same business records, and enclosing the June 23rd letter. The Commissioner sent a
27 copy of these letters, via regular mail, to First National's bankruptcy attorney, Walter Scott. The
28 letters both requested a response within fifteen (15) days.

1 17. The Commissioner also contacted Raquel Bauer via phone and requested access to the
2 records.

3 18. To date, the Commissioner has not received the requested information and records.

4 II

5 California Financial Code section 17405 provides in pertinent part:

6 (a) The business, accounts and records of every person performing as an escrow
7 agent, whether required to be licensed under this division or not, are subject to
8 inspection and examination by the commissioner at any time without prior notice....

9 (b) Any person subject to this division shall, upon request, exhibit and allow
10 inspection and copying of any books and records by the commissioner or his or her
11 authorized representative.

12 California Code of Regulations, title 10, section 1730(b) provides:

13 An escrow agent shall notify the Commissioner in writing of the location of its
14 books, records and accounts. Such books, records and accounts shall be maintained
15 at such location unless the escrow agent notifies the Commissioner in writing at least
16 15 days prior to changing the location of such books.

17 California Code of Regulations, title 10, section 1738 provides:

18 (a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid
19 out, or transferred to other accounts only in accordance with the written escrow
20 instructions of the principals to the escrow transaction or the escrow instructions
21 transmitted electronically over the Internet executed by the principals to the escrow
22 transaction or pursuant to order of a court of competent jurisdiction.

23 (b) The escrow agent shall comply with, at a minimum, the following procedures for
24 wire transfers (also known as "electronic fund transfers"):

25 (1) The instructions of the principals authorizing the wire transfer must contain, at a
26 minimum, the amount of the funds to be wire transferred, the name of the financial
27 institution, the account number and the account name, receiving the funds.

28 (2) The escrow agent shall retain confirmation of the wire transfer from the financial
institution that contains, at a minimum, the amount of the funds wire transferred and
the account number and name of the account the funds were wire transferred to.

(3) If necessary, the escrow books shall be properly adjusted to reflect the wire
transfer of funds from the escrow account.

(4) The escrow agent shall maintain a proper audit trail and adequate controls and
safeguards for funds disbursed by wire transfer. All money deposited in such "trust"

1 or "escrow" account shall be withdrawn, paid out, or transferred to other accounts
2 only in accordance with the written escrow instructions of the principals to the escrow
3 transaction or pursuant to order of a court of competent jurisdiction.

4 California Code of Regulations, title 10, section 1738.2 provides:

5 An escrow agent shall use documents or other property deposited in escrow only in
6 accordance with the written escrow instructions of the principals to the escrow
7 transaction or the escrow instructions transmitted electronically over the Internet
8 executed by the principals to the escrow transaction, or if not otherwise directed by
9 written or electronically executed instructions, in accordance with sound escrow
10 practice, or pursuant to order of a court of competent jurisdiction.

11 California Financial Code section 17423 provides in pertinent part:

12 (a) The commissioner may, after appropriate notice and opportunity
13 for hearing, by order, . . . bar from any position of employment,
14 management, or control any escrow agent, or any other person, if the
15 commissioner finds either of the following:

16 (1) That the . . . bar is in the public interest and that the person has
17 committed or caused a violation of this division or rule or order of
18 the commissioner, which violation was either known or should have
19 been known by the person committing or causing it or has caused material
20 damage to the escrow agent or to the public.

21 III

22 On November 8, 2011, the Commissioner issued a Notice of Intention to Issue an Order
23 Pursuant to California Financial Code Section 17423 (Bar from Employment, Management or
24 Control of Any Escrow Agent), Accusation and accompanying documents against Raquel Bauer and
25 Robert Bauer, and both were personally served with those documents on November 20, 2011.

26 There has been no request for a hearing received by the Commissioner.

27 The above-described violations constitute grounds under California Financial Code § 17423
28 to bar a person from any position of employment, management or control of any escrow agent.

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THEREFORE, it is hereby ordered that Respondents Robert Bauer and Raquel Bauer are barred from any position of employment, management or control of any escrow agent. This Order is effective as of the date hereof.

Dated: December 14, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner