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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

CALIFORNIA CORPORATIONS)	OAH Case No. 2008070482
COMMISSIONER,)	
)	
Complainant,)	SETTLEMENT AGREEMENT
)	
vs.)	
)	
MONTEBELLO ESCROW, INC.,)	
)	HEARING DATE: September 29, 2008
Respondent.)	TIME: 9:00 a.m.
)	LOCATION: OAH, Los Angeles
)	

This Settlement Agreement (“Agreement”) is entered into between Montebello Escrow, Inc. (“Montebello Escrow”) and the California Corporations Commissioner (“Commissioner”) with respect to the following facts:

RECITALS

A. Montebello 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.

B. Montebello Escrow is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California, Financial Code section 17000 *et seq.* Montebello Escrow’s license number is 963-2074. Its principal place of business is located at 2539 West Via Campo, Montebello, CA 90640.

C. Daniel Aleman (“Aleman”) is Montebello Escrow’s owner. Aleman is authorized to enter into this Agreement on behalf of Montebello Escrow.

1 D. On or about June 16, 2008, the Commissioner issued his Notice of Intention to Issue
2 Order Revoking Escrow Agent’s License and Accusation to Montebello Escrow (collectively,
3 “Notice of Intention”) pursuant to section 17608 of the Financial Code. The Commissioner’s Notice
4 of Intention sought to revoke Montebello Escrow’s license, pursuant to Financial Code section
5 17602.5, for failure to timely file the annual audit reports for fiscal years 2006 and 2007, as required
6 by Financial Code section 17406.

7 E. On or about June 16, 2008, the Commissioner issued an Order Imposing Penalties
8 Pursuant to California Financial Code Section 17408 (“Order”). The Order imposed penalties in the
9 amount of \$49,000.00, plus an additional \$200.00 a day for each day after June 16, 2008 that the
10 2006 and 2007 annual audit reports were not filed. The reason for the Order was Montebello
11 Escrow’s failure to timely file its annual audit reports for fiscal years 2006 and 2007 as required by
12 Financial Code section 17406.

13 F. The Notice of Intention and Order were served on Montebello Escrow via certified
14 mail, return receipt requested, at its address of record on file with the Department on or about June
15 18, 2008. Montebello Escrow filed its request for hearing on the Notice of Intention and Order on or
16 about June 24, 2008.

17 G. On July 7, 2008, Montebello Escrow filed the annual audit report for fiscal year 2006.
18 Montebello Escrow therefore filed the annual audit report 449 days after the due date of April 15,
19 2007, as provided by Financial Code section 17406.

20 H. On July 11, 2008, Montebello Escrow filed the annual audit report for fiscal year
21 2007. The report was therefore filed 87 days after the due date of April 15, 2008, as provided by
22 Financial Code section 17406.

23 I. The Office of Administrative Hearings (“OAH”) set this matter to commence hearing
24 on September 29, 2008, at 9:00 a.m.

25 J. It is the intention and the desire of the parties to resolve this matter without the
26 necessity of a 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:

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TERMS AND CONDITIONS

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

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

3. Montebello Escrow agrees to the following conditions:

- a. That the Order is hereby deemed a final order. Montebello Escrow acknowledges that the penalties accruing pursuant to the Order for the untimely filing of its 2006 and 2007 annual audit reports total \$53,600.00. As full settlement of the Order, Montebello Escrow agrees to pay the Commissioner the sum of \$6,000.00 in penalties, which shall be paid in four equal monthly installments. The first monthly installment of \$1,500.00 shall be paid within ten (10) days of the date of execution of this Agreement, the second monthly installment shall be paid within forty (40) days of the execution of this Agreement, the third monthly installment shall be paid within seventy (70) days of the execution of this Agreement, and the fourth monthly installment shall be paid within one hundred (100) days of the execution of this Agreement. Each penalty payment must be forwarded to counsel for the Commissioner, Joyce Tsai, at her address of record, within the time provided.
- b. The immediate issuance by the Commissioner of an order suspending Montebello Escrow’s escrow agent’s license for two periods of seven (7) calendar days each, during which periods Montebello Escrow shall not accept any new escrow

1 business, but may continue to service prior and open escrows, in accordance with
2 Financial Code section 17609. The two 7-day suspensions shall take place on
3 October 27-November 2, 2008 and November 24-30, 2008. In connection with
4 these suspensions, Montebello Escrow shall file with the Department of
5 Corporations (“Department”) at close of business on October 26, 2008 and
6 November 23, 2008, a list of all then-open escrows with escrow numbers and
7 escrow party names along with a copy of the signed escrow instructions and
8 signed deposit receipt(s) for the last opened escrow, signed by the owner of
9 Montebello Escrow under penalty of perjury. For purposes of this Agreement,
10 open escrow shall mean an escrow wherein the parties to such escrow have
11 already entered into a binding agreement and monies and/or escrow instructions
12 have been submitted to Montebello Escrow regarding the transaction.
13 Additionally, Montebello Escrow will be required to immediately engage its
14 certified public accountant (“CPA”) firm to review the records of Montebello
15 Escrow after the suspensions have been completed and report its findings
16 regarding compliance with the suspensions (“CPA Report”) to the Department
17 within 30 days of completion of the second 7-day suspension period. Montebello
18 Escrow’s CPA shall file its CPA Report with the Department directly. The
19 Commissioner reserves the right to audit Montebello Escrow for compliance with
20 the suspensions notwithstanding the findings of the CPA review. A copy of the
21 suspension order is attached and incorporated hereto as Exhibit A.

22 4. Upon any failure of Montebello Escrow to comply with these terms and conditions,
23 the Commissioner shall immediately issue an Order Revoking Escrow Agent’s License and the
24 penalties of \$53,600.00 accrued pursuant to the Order Imposing Penalties Pursuant to California
25 Financial Code Section 17408 shall be immediately due and payable.

26 5. The parties hereby acknowledge and agree that this Agreement is intended to
27 constitute a final and complete resolution of the matters set forth herein, including the allegations set
28 forth in the Notice of Intention and Order, and constitutes the entire agreement between the parties

1 with respect thereto. This Agreement supersedes any and all prior or contemporaneous agreements
2 between the parties hereto.

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

7 7. Montebello Escrow acknowledges its right to an administrative hearing under
8 California Financial Code sections 17408 and 17608 in connection with the penalty and/or any
9 suspension, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other
10 rights which may be afforded pursuant to the Escrow Law, the California Administrative Procedure
11 Act, the California Code of Civil Procedure, or any other provision of law in connection with this
12 matter. Upon execution of this Agreement, the Commissioner shall request that OAH take the
13 hearing scheduled for September 29, 2008 off calendar.

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

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

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

25 11. Each signatory hereto represents and warrants that he/she possesses the necessary
26 capacity and authority to execute this Agreement and bind the parties hereto.

27 12. This Agreement may be executed in one or more counterparts, each of which shall be
28 an original but all of which, together, shall be deemed to constitute a single document. A fax

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signature shall be deemed the same as an original signature.

Dated: _____

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____

Alan S. Weinger
Acting Deputy Commissioner

Dated: _____

MONTEBELLO ESCROW, INC.

By: _____

Daniel Aleman
Owner