

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 WAYNE STRUMPFER  
Deputy Commissioner  
3 ALAN S. WEINGER (CA BAR NO. 86717)  
Lead Corporations Counsel  
4 JUDY L. HARTLEY (CA BAR NO. 110628)  
Senior Corporations Counsel  
5 Department of Corporations  
320 West 4<sup>th</sup> Street, Ste. 750  
6 Los Angeles, California 90013-2344  
Telephone: (213) 576-7604 Fax: (213) 576-7181

7 Attorneys for Complainant  
8

9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA  
11

12 In the Matter of the Accusation of THE ) OAH NO. L-2007010669  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) File No.: 963-2077  
14 )  
Complainant, ) SETTLEMENT AGREEMENT  
15 )  
16 vs. ) TRIAL DATE: May 15 & 16, 2007  
17 NEWPORT BEACH ESCROW CORP. and ) ASSIGNED TO:  
DAMIAN ROBERT KUTZNER, )  
18 )  
19 Respondents. )

20 This Settlement Agreement is entered into between Newport Beach Escrow Corp.  
21 (“Newport”) and Damian Robert Kutzner (“Kutzner”), on the one hand, and the California  
22 Corporations Commissioner ("Commissioner"), on the other hand, and is made with respect to the  
23 following facts:

24 **RECITALS**

25 A. Newport is a corporation in good standing, duly formed and existing pursuant to the  
26 laws of the State of California, and authorized to conduct business in the State of California.

27 B. Newport is an escrow agent licensed by the Commissioner pursuant to the Escrow  
28 Law of the State of California (California Financial Code § 17000 et seq.). Newport has its principal

1 place of business located at 660 Newport Center Drive, Suite 250, Newport Beach, California 92660.

2 C. Kutzner is, and was at all times relevant herein, the owner and president of Newport.

3 D. On December 12 and 15, 2006, respectively, Newport and Kutzner were personally  
4 served by the Commissioner with a Notice of Intention to Issue Order to Revoke Escrow Agent’s  
5 License and To Issue an Order Pursuant to Section 17423 (Bar from Employment, Management or  
6 Control of an Escrow Agent), Accusation and accompanying documents dated December 11, 2006  
7 (“Accusation”). Newport and Kutzner have filed Notices of Defense with the Commissioner and a  
8 two-day hearing before the Office of Administrative Hearings is scheduled to commence on May 15,  
9 2007.

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

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

14 **TERMS AND CONDITIONS**

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

17 2. Newport and Kutzner hereby stipulate to the facts contained in the Accusation. The  
18 stipulations of fact by Newport and Kutzner herein are solely for the limited purposes of these  
19 proceedings and any future proceeding(s) that may be initiated by or brought before the  
20 Commissioner against Newport and/or Kutzner. It is the intent and understanding between the  
21 parties that this Settlement Agreement, and particularly the stipulations of fact by Newport and  
22 Kutzner herein, shall not be binding or admissible against Newport and/or Kutzner in any action(s)  
23 brought against Newport and/or Kutzner by any individual or entity other than the Commissioner.

24 3. Newport hereby agrees to the issuance by the Commissioner of an order revoking  
25 Newport’s escrow agent’s license. The revocation shall become effective sixty (60) days from the  
26 date of execution of this Settlement Agreement to allow Newport to complete and/or transfer any  
27 pending escrows, and properly close out the trust account(s). A copy of the revocation order is  
28 attached and incorporated as Exhibit A.

1           4. Newport acknowledges its right to an administrative hearing under Financial Code  
2 section 17608 in connection with the revocation described in paragraph 3 above, and hereby waives  
3 its right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded  
4 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of  
5 Civil Procedure, or any other provision of law in connection with these matters.

6           5. Kutzner hereby agrees to the issuance by the Commissioner of an order barring  
7 Kutzner from any position of employment of any escrow agent for a period of ten (10) years. The  
8 bar order shall not become effective until sixty (60) days after the date of execution of this  
9 Settlement Agreement to allow Kutzner to facilitate, as necessary, the completion and/or transfer of  
10 any escrow transactions pending at Newport as contemplated by paragraph 3 above. Kutzner  
11 acknowledges and understands that his agreement to be barred for a definitive period of time  
12 constitutes a waiver of California Government Code section 11522, which provides for the  
13 opportunity to apply for reinstatement or reduction of penalty after a period of not less than one year  
14 has elapsed from the effective date of the decision or from the date of the denial of a similar petition.  
15 A copy of the bar order is attached and incorporated as Exhibit B.

16           6. Kutzner acknowledges his right to an administrative hearing under Financial Code  
17 section 17423 in connection with the bar described in paragraph 5 above and hereby waives his right  
18 to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to  
19 the Escrow Law, the California Administrative Procedure Act, the California Code of Civil  
20 Procedure, or any other provision of law in connection with this matter herein.

21           7. The parties hereby acknowledge and agree that this Settlement Agreement is intended  
22 to constitute a full, final and complete resolution of this matter, including any further action that  
23 could be initiated by the Commissioner for failure to file the December 31, 2005 annual audit report.  
24 The parties further acknowledge and agree that nothing contained in this Settlement Agreement shall  
25 operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with  
26 any prosecution, administrative, civil or criminal, brought by any such agency against Newport  
27 and/or Kutzner based upon any of the activities alleged in this matter or otherwise.

28           8. The Commissioner shall cause this Settlement Agreement to be filed with the Office

1 of Administrative Hearings immediately upon its execution by all parties hereto.

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

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

15 11. This Settlement Agreement is the final written expression and the complete and  
16 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
17 between the parties with respect to the subject matter hereof, and supercedes all prior or  
18 contemporaneous agreements, negotiations, representations, understandings, and discussions  
19 between and among the parties, their respective representatives, and any other person or entity, with  
20 respect to the subject matter covered hereby.

21 12. In that the parties have had the opportunity to draft, review and edit the language of  
22 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any  
23 part of this Settlement Agreement will be applied in any action relating to, connected, to, or  
24 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil  
25 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,  
26 language of a contract should be interpreted most strongly against the party who caused the  
27 uncertainty to exist.

28 13. This Settlement Agreement may be executed in one or more counterparts, each of

1 which shall be an original but all of which, together, shall be deemed to constitute a single  
2 document.

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

5 Dated: 5/1/07 PRESTON DuFAUCHARD  
6 California Corporations Commissioner

7 By \_\_\_\_\_  
8 ALAN S. WEINGER  
9 Lead Corporations Counsel

10 Dated: 4/30/07 NEWPORT BEACH ESCROW CORP.

11 By \_\_\_\_\_  
12 DAMIAN ROBERT KUTZNER, President

13 Dated: 4/30/07  
14 By \_\_\_\_\_  
15 DAMIAN ROBERT KUTZNER, an individual

16 APPROVED AS TO FORM:

17 LOEB & LOEB LLP

18 By \_\_\_\_\_  
19 MICHAEL L. MALLOW, ESQ. for NEWPORT BEACH  
20 ESCROW CORP. and DAMIAN ROBERT KUTZNER

21  
22 PRESTON DuFAUCHARD  
23 California Corporations Commissioner

24 By \_\_\_\_\_  
25 JUDY L. HARTLEY  
26 Senior Corporations Counsel

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10 OF THE STATE OF CALIFORNIA  
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12 In the Matter of the Accusation of THE ) File No.: 963-2077  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) ORDER REVOKING ESCROW AGENT’S  
14 ) LICENSE  
Complainant, )  
15 )  
16 vs. )  
17 NEWPORT BEACH ESCROW CORP. and )  
DAMIAN ROBERT KUTZNER, )  
18 )  
19 Respondents. )

20 Pursuant to the Settlement Agreement entered into between Newport Beach Escrow Corp.  
21 (“Newport”), Damian Robert Kutzner (“Kutzner”) and the California Corporations Commissioner  
22 (“Commissioner”) on May 1, 2007, the escrow agent’s license issued by the Commissioner to  
23 Newport is hereby revoked effective July 2, 2007.

24 Pursuant to the terms of the Settlement Agreement, Newport stipulates to the following facts  
25 as alleged in the Accusation for purposes of this action and any future proceedings initiated by or  
26 brought before the California Corporations Commissioner only:

27 1. Newport is an escrow agent licensed by the Commissioner pursuant to the Escrow  
28 Law of the State of California (California Financial Code Section 17000 et seq.). Newport has its

1 principal place of business located at 660 Newport Center Drive, Suite 250, Newport Beach,  
2 California 92660. Kutzner is, and was at all times relevant, the owner and president of Newport.

3 2. On August 3, 2006, the Commissioner commenced a regulatory examination of the  
4 books and records of Newport. The August 2, 2006 Escrow Trial Balance obtained at the  
5 commencement of the examination disclosed that three escrows, including the fee account, had debit  
6 balances totaling \$18,557.73. Additionally, a review of the most recent trust account reconciliation  
7 dated June 30, 2006 revealed thirty-five (35) adjusting items, some dating back to September 2005,  
8 resulting in an adjusted bank balance of negative \$392,134.26. Further review into the debit balances  
9 disclosed on the August 2, 2006 Escrow Trial Balance revealed that the debit balances totaled  
10 \$25,244.73 and were caused by overdrafts on the fee account in violation of California Financial  
11 Code section 17409 and unauthorized disbursements of trust funds from two escrows in violation of  
12 California Financial Code section 17414(a)(1) and California Code of Regulations, title 10, section  
13 1738.

14 3. The debit balances disclosed on the August 2, 2006 Trial Balance consisted of (i) an  
15 overdraft of \$4,175.00 in the fee account, (ii) unauthorized disbursements of \$11,889.19 made  
16 against a phantom deposit of funds in the same amount in escrow number 3871, (iii) an unauthorized  
17 disbursement of \$2,180.54 in escrow number 3954, and (iv) an overdraft of \$313.00 in escrow  
18 number 4572. A review of the ledger for the fee account disclosed that the fee account had been  
19 continuously overdrawn since March 17, 2006 in violation of California Financial Code section  
20 17409, which prohibits the deposit of escrow trust funds into accounts other than those specifically  
21 designated as escrow funds.

22 4. A review of the escrow files for escrow numbers 3871, 3954 and 4572 revealed that  
23 (i) the debit balance of \$11,889.19 in escrow number 3871 was caused by one unauthorized  
24 disbursement on March 18, 2006 of \$2,195.00 to Newport and two unauthorized disbursements on  
25 March 18, 2006 of \$2,750.00 and \$6944.19, respectively, to Newport's former unreported escrow  
26 manager, Danielle Steffani ("Steffani"), (ii) the debit balance in escrow number 3954 was actually  
27 \$9,180.54 and consisted of one unauthorized disbursement on March 18, 2006 of \$2,180.54 to  
28 Newport and two unauthorized disbursements on April 7, 2006 of \$3,500.00 each to Steffani, and

1 (iii) that the \$313.00 debit balance in escrow number 4572 had been corrected by a title refund on  
2 August 3, 2006.

3 5. The regulatory examination also disclosed that Newport (i) did not have a person  
4 stationed at its business location that met the experience requirements of California Financial Code  
5 section 17200.8, (ii) had failed to report at least two escrow managers in violation of California  
6 Financial Code sections 17209(g) and 17212.1 and California Code of Regulations, title 10, section  
7 1726, (iii) had failed to report trust fund misappropriations as required by California Financial Code  
8 section 17414(c) as more fully discussed below, and (iv) had failed to provide books and records to  
9 the Commissioner in violation of California Financial Code section 17404 and California Code of  
10 Regulations, title 10, sections 1732.2, 1732.3, and 1737.3 as follows:

11 a. Month End Reports, including checks issued/adjusted, receipts  
12 issued/adjusted, wires issued/adjusted, trial balance and “current status” reports and trust  
13 reconciliation “top sheets” and outstanding checks, for the months of July 2005 through January  
14 2006.

15 b. Receipts and bank deposit tickets for the period of March 1, 2006 through  
16 August 3, 2006.

17 c. Financial statements (balance sheet, income statement and general ledger as of  
18 July 31, 2006).

19 d. General bank account reconciliation as of July 31, 2006;

20 e. List of bank accounts and affiliates; and

21 f. Cleared checks that paid the current surety bond premium.

22 6. On September 26, 2006, Newport provided the Commissioner with a copy of the July  
23 31, 2006 and August 31, 2006 trust account reconciliations and trial balances. The August 31, 2006  
24 trust account reconciliation contained amended top sheets dated September 18, 2006 and September  
25 25, 2006. A review of the most recent top sheet for the August 31, 2006 trust account reconciliation  
26 disclosed that adjustment number 13 is listed as a book adjustment, but is actually a bank  
27 adjustment. When properly applied to the book and bank balances, it transforms the balance from a  
28 positive \$110,433.13 to a negative \$47,760.87.



1           7. Newport discovered the misappropriation of trust funds by Steffani on April 24, 2006,  
2 but never reported it to the Commissioner as required by California Financial Code section 17414(c).  
3 Instead, the Commissioner learned that trust funds had possibly been misappropriated during the  
4 course of the August 2, 2006 regulatory examination. California Financial Code section 17414,  
5 subsection (c), requires that any person having knowledge of any abstraction or misappropriation of  
6 trust funds must immediately report it in writing to the Commissioner.

7           8. On October 31, 2006, Newport provided the Commissioner with a copy of the  
8 September 30, 2006 trust account reconciliation and trial balance. Demands were made for the  
9 general account bank statements and reconciliations for the months of July, August and September  
10 2006, but were not provided. The September 30, 2006 trust account reconciliation disclosed a trust  
11 account shortage of \$25,624.22 that when added to the escrows showing a positive balance for  
12 which no funds exist (\$760.10), results in a trust account shortage of at least \$26,384.32.

13           9. Based upon the condition of the books and records, the Commissioner was unable to  
14 determine the exact extent of the shortage in the trust account beyond the \$26,384.32 found through  
15 September 30, 2006. The Commissioner made demands upon Newport to cure the trust account  
16 shortage found through September 30, 2006, but Newport failed to cure the trust account shortage  
17 until November 9, 2006.

18           10. Pursuant to California Financial Code section 17406, Newport was required to submit  
19 its audited financial statement for its fiscal year ended December 31, 2005 (“2005 audit report”) to  
20 the Commissioner by April 15, 2006. On November 7, 2005, the Commissioner notified Newport in  
21 writing that its 2005 audit report was due April 15, 2006. Newport failed to submit the 2005 audit  
22 report by April 15, 2006. On June 2, 2006, Newport was sent a further letter demanding that the  
23 2005 audit report be filed and notifying Newport that California Financial Code section 17408  
24 authorizes penalties for failure to file the report at \$100.00 per day for the first five days and \$500.00  
25 per day thereafter. Newport was also notified in the letter that failure to file the 2005 audit report  
26 could result in an administrative action. Newport has yet to file the 2005 audit report as required by  
27 California Financial Code section 17406.

28           11. Pursuant to California Financial Code section 17209(g), an application for an escrow

1 agent’s license is required to contain a completed statement of identity and questionnaire (“SIQ”) for  
2 all individual stockholders, directors, officers, trustees, managers, and other persons participating in  
3 the escrow business. Two separate SIQs for Kutzner were filed in connection with the Newport  
4 application. Kutzner’s SIQs, dated December 18, 2003 and April 8, 2004, respectively, stated that  
5 Kutzner had never been a defendant in any civil action other than a divorce, condemnation or  
6 personal injury action. Kutzner executed the SIQs under penalty of perjury that all of the  
7 information submitted in his SIQs was true and correct. The issuance of the escrow agent’s license  
8 was based upon all the information submitted with the application, including Kutzner SIQs.

9           12.       Subsequent to the August 2, 2006 regulatory examination, the Commissioner learned  
10 that Kutzner had been a defendant in an action brought by the Federal Trade Commission (“FTC”) in  
11 November 2002 wherein Kutzner was alleged to have engaged in numerous false and deceptive  
12 practices in violation of Section 5(a) of the FTC Act and Section 521(a) of the Gramm-Leach-Bliley  
13 Act. The civil action resulted in a Stipulated Judgment and Order for Permanent Injunction against  
14 Kutzner on or about May 5, 2003. Accordingly, the SIQs submitted by Kutzner in connection with  
15 the Newport application were false as Kutzner failed to disclose the FTC action, which had resulted  
16 in a final judgment against him only months prior to the first SIQ filed with the Commissioner.

17 Dated: May 3, 2007  
18           Los Angeles, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

19  
20 By \_\_\_\_\_  
21           Alan S. Weinger  
22           Lead Corporations Counsel

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9 BEFORE THE DEPARTMENT OF CORPORATIONS  
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12 In the Matter of the Accusation of THE ) File No.: 963-2077  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) ORDER BARRING DAMIAN ROBERT  
14 ) KUTZNER FROM ANY POSITION OF  
Complainant, ) EMPLOYMENT, MANAGEMENT OR  
15 ) CONTROL OF ANY ESCROW AGENT  
16 vs. )  
17 NEWPORT BEACH ESCROW CORP. and )  
DAMIAN ROBERT KUTZNER, )  
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19 Respondents. )

20 Pursuant to the Settlement Agreement entered into between Newport Beach Escrow Corp.  
21 (“Newport”), Damian Robert Kutzner (“Kutzner”) and the California Corporations Commissioner  
22 (“Commissioner”) on May 1, 2007, Kutzner is hereby barred from any position of employment,  
23 management or control of any escrow agent for a period of ten (10) years. This Order shall be  
24 effective July 2, 2007.

25 Pursuant to the terms of the Settlement Agreement, Kutzner stipulates to the following facts  
26 as alleged in the Accusation for purposes of this action and any future proceedings initiated by or  
27 brought before the California Corporations Commissioner only:  
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1           1.       Newport is an escrow agent licensed by the Commissioner pursuant to the Escrow  
2 Law of the State of California (California Financial Code Section 17000 et seq.). Newport has its  
3 principal place of business located at 660 Newport Center Drive, Suite 250, Newport Beach,  
4 California 92660. Kutzner is, and was at all times relevant, the owner and president of Newport.

5           2.       On August 3, 2006, the Commissioner commenced a regulatory examination of the  
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7 commencement of the examination disclosed that three escrows, including the fee account, had debit  
8 balances totaling \$18,557.73. Additionally, a review of the most recent trust account reconciliation  
9 dated June 30, 2006 revealed thirty-five (35) adjusting items, some dating back to September 2005,  
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16           3.       The debit balances disclosed on the August 2, 2006 Trial Balance consisted of (i) an  
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15 reconciliation “top sheets” and outstanding checks, for the months of July 2005 through January  
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17               b.       Receipts and bank deposit tickets for the period of March 1, 2006 through  
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19               c.       Financial statements (balance sheet, income statement and general ledger as of  
20 July 31, 2006).

21               d.       General bank account reconciliation as of July 31, 2006;

22               e.       List of bank accounts and affiliates; and

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12 2006, but were not provided. The September 30, 2006 trust account reconciliation disclosed a trust  
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14 which no funds exist (\$760.10), results in a trust account shortage of at least \$26,384.32.

15 9. Based upon the condition of the books and records, the Commissioner was unable to  
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17 September 30, 2006. The Commissioner made demands upon Newport to cure the trust account  
18 shortage found through September 30, 2006, but Newport failed to cure the trust account shortage  
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20 10. Pursuant to California Financial Code section 17406, Newport was required to submit  
21 its audited financial statement for its fiscal year ended December 31, 2005 (“2005 audit report”) to  
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4 agent’s license is required to contain a completed statement of identity and questionnaire (“SIQ”) for  
5 all individual stockholders, directors, officers, trustees, managers, and other persons participating in  
6 the escrow business. Two separate SIQs for Kutzner were filed in connection with the Newport  
7 application. Kutzner’s SIQs, dated December 18, 2003 and April 8, 2004, respectively, stated that  
8 Kutzner had never been a defendant in any civil action other than a divorce, condemnation or  
9 personal injury action. Kutzner executed the SIQs under penalty of perjury that all of the  
10 information submitted in his SIQs was true and correct. The issuance of the escrow agent’s license  
11 was based upon all the information submitted with the application, including Kutzner SIQs.

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13 that Kutzner had been a defendant in an action brought by the Federal Trade Commission (“FTC”) in  
14 November 2002 wherein Kutzner was alleged to have engaged in numerous false and deceptive  
15 practices in violation of Section 5(a) of the FTC Act and Section 521(a) of the Gramm-Leach-Bliley  
16 Act. The civil action resulted in a Stipulated Judgment and Order for Permanent Injunction against  
17 Kutzner on or about May 5, 2003. Accordingly, the SIQs submitted by Kutzner in connection with  
18 the Newport application were false as Kutzner failed to disclose the FTC action, which had resulted  
19 in a final judgment against him only months prior to the first SIQ filed with the Commissioner.

20 Dated: May 3, 2007  
21 Los Angeles, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

22  
23 By \_\_\_\_\_  
24 Alan S. Weinger  
25 Lead Corporations Counsel  
26  
27  
28

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California Corporations Commissioner  
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7 Attorneys for Complainant  
8

9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA  
11

12 In the Matter of the Accusation of THE ) Case No.: 963-2077  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) ACCUSATION  
14 )  
Complainant, )  
15 )  
16 vs. )  
17 NEWPORT BEACH ESCROW CORP. and )  
DAMIAN ROBERT KUTZNER, )  
18 )  
19 Respondents. )

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

22 I

23 Respondent Newport Beach Escrow Corp. ("Newport") is, and at all times relevant herein  
24 was, an escrow agent licensed by the California Corporations Commissioner ("Commissioner" or  
25 "Complainant") pursuant to the Escrow Law of the State of California (California Financial Code  
26 Section 17000 et seq.). Newport has its principal place of business located at 660 Newport Center  
27 Drive, Suite 250, Newport Beach, California 92660.  
28



1 Respondent Damian Robert Kutzner ("Kutzner") was at all times relevant herein, the owner  
2 and president of Newport.

## 3 II

4 On or about August 3, 2006, the Commissioner commenced a regulatory examination of the  
5 books and records of Newport. The August 2, 2006 Escrow Trial Balance obtained at the  
6 commencement of the examination disclosed that three escrows, including the fee account, had debit  
7 balances totaling \$18,557.73. Additionally, a review of the most recent trust account reconciliation  
8 dated June 30, 2006 revealed thirty-five (35) adjusting items, some dating back to September 2005,  
9 resulting in an adjusted bank balance of negative \$392,134.26. Further review into the debit balances  
10 disclosed on the August 2, 2006 Escrow Trial Balance revealed that the debit balances totaled  
11 \$25,244.73 and were caused by overdrafts on the fee account in violation of California Financial  
12 Code section 17409 and unauthorized disbursements of trust funds from two escrows in violation of  
13 California Financial Code section 17414(a)(1) and California Code of Regulations, title 10, section  
14 1738, as described in more detail below.

15 The regulatory examination also disclosed that Newport (i) did not have a person stationed at  
16 its business location that met the experience requirements of California Financial Code section  
17 17200.8, (ii) had failed to report at least two escrow managers in violation of California Financial  
18 Code sections 17209(g) and 17212.1 and California Code of Regulations, title 10, section 1726, (iii)  
19 had failed to report trust fund misappropriations as required by California Financial Code section  
20 17414(c) as more fully discussed below, and (iv) had failed to provide books and records to the  
21 Commissioner in violation of California Financial Code section 17404 and California Code of  
22 Regulations, title 10, sections 1732.2, 1732.3, and 1737.3 as follows:

23 a. Month End Reports, including checks issued/adjusted, receipts issued/adjusted, wires  
24 issued/adjusted, trial balance and "current status" reports and trust reconciliation "top sheets" and  
25 outstanding checks, for the months of July 2005 through January 2006.

26 b. Receipts and bank deposit tickets for the period of March 1, 2006 through August 3,  
27 2006.

28

- 1 c. Financial statements (balance sheet, income statement and general ledger as of July
- 2 31, 2006).
- 3 d. General bank account reconciliation as of July 31, 2006;
- 4 e. List of bank accounts and affiliates; and
- 5 f. Cleared checks that paid the current surety bond premium.

6 On or about September 26, 2006, Newport provided the Commissioner with a copy of the  
7 July 31, 2006 and August 31, 2006 trust account reconciliations and trial balances. The August 31,  
8 2006 trust account reconciliation contained amended top sheets dated September 18, 2006 and  
9 September 25, 2006. A review of the most recent top sheet for the August 31, 2006 trust account  
10 reconciliation discloses that adjustment number 13 is listed as a book adjustment, but is actually a  
11 bank adjustment. When properly applied to the book and bank balances, it transforms the balance  
12 from a positive \$110,433.13 to a negative \$47,760.87.

13 On or about October 31, 2006, Newport provided the Commissioner with a copy of the  
14 September 30, 2006 trust account reconciliation and trial balance. Demands were made for the  
15 general account bank statements and reconciliations for the months of July, August and September  
16 2006, but were not provided. The September 30, 2006 trust account reconciliation disclosed a trust  
17 account shortage of \$25,624.22 that when added to the escrows showing a positive balance for  
18 which no funds exist (\$760.10), results in a trust account shortage of at least \$26,384.32.

19 Based upon the condition of the books and records as described above, the Commissioner  
20 had been unable to determine the exact extent of the shortage in the trust account beyond the  
21 \$26,384.32 found to date. The Commissioner had made demands upon Newport to cure the trust  
22 account shortage found to date, but Newport failed to cure the trust account shortage until on or  
23 about November 9, 2006.

24 III

25 The debit balances disclosed on the August 2, 2006 Trial Balance consisted of (i) an  
26 overdraft of \$4,175.00 in the fee account, (ii) unauthorized disbursements of \$11,889.19 made  
27 against a phantom deposit of funds in the same amount in escrow number 3871, (iii) an unauthorized  
28 disbursement of \$2,180.54 in escrow number 3954, and (iv) an overdraft of \$313.00 in escrow

1 number 4572. A review of the ledger for the fee account disclosed that the fee account had been  
2 continuously overdrawn since on or about March 17, 2006 in violation of California Financial Code  
3 section 17409, which prohibits the deposit of escrow trust funds into accounts other than those  
4 specifically designated as escrow funds.

5 A review of the escrow files for escrow numbers 3871, 3954 and 4572 revealed that (i) the  
6 debit balance of \$11,889.19 in escrow number 3871 was caused by one unauthorized disbursement  
7 on or about March 18, 2006 of \$2,195.00 to Newport and two unauthorized disbursements on or  
8 about March 18, 2006 of \$2,750.00 and \$6944.19, respectively, to Newport's former unreported  
9 escrow manager, Danielle Steffani ("Steffani"), (ii) the debit balance in escrow number 3954 was  
10 actually \$9,180.54 and consisted of one unauthorized disbursement on or about March 18, 2006 of  
11 \$2,180.54 to Newport and two unauthorized disbursements on or about April 7, 2006 of \$3,500.00  
12 each to Steffani, and (iii) that the \$313.00 debit balance in escrow number 4572 had been corrected  
13 by a title refund on or about August 3, 2006.

#### 14 IV

15 Newport discovered the misappropriation of trust funds by Steffani on or about April 24,  
16 2006, but never reported it to the Commissioner as required by California Financial Code section  
17 17414(c). Instead, the Commissioner learned that trust funds had possibly been misappropriated  
18 during the course of the August 2, 2006 regulatory examination. California Financial Code section  
19 17414, subsection (c), requires that any person having knowledge of any abstraction or  
20 misappropriation of trust funds must immediately report it in writing to the Commissioner.

#### 21 V

22 Pursuant to California Financial Code section 17406, Newport was required to submit its  
23 audited financial statement for its fiscal year ended December 31, 2005 ("2005 audit report") to the  
24 Commissioner by April 15, 2006. Newport has yet to file its 2005 audit report with the  
25 Commissioner despite numerous demands.

26 On or about November 7, 2005, the Commissioner notified Newport in writing that its 2005  
27 audit report was due April 15, 2006. Newport failed to submit the 2005 audit report by April 15,  
28 2006.

1 On or about June 2, 2006, Newport was sent a further letter demanding that the 2005 audit  
2 report be filed and notifying Newport that California Financial Code section 17408 authorizes  
3 penalties for failure to file the report at \$100.00 per day for the first five days and \$500.00 per day  
4 thereafter. Newport was also notified in the letter that failure to file the 2005 audit report could  
5 result in an administrative action.

6 Newport has yet to file the 2005 audit report as required by California Financial Code section  
7 17406.

## 8 VI

9 Pursuant to California Financial Code section 17209(g), an application for an escrow agent's  
10 license is required to contain a completed statement of identity and questionnaire ("SIQ") for all  
11 individual stockholders, directors, officers, trustees, managers, and other persons participating in the  
12 escrow business. Two separate SIQ's for Kutzner were filed in connection with the Newport  
13 application. Kutzner's SIQ's, dated December 18, 2003 and April 8, 2004, respectively, stated that  
14 Kutzner had never been a defendant in any civil action other a divorce, condemnation or personal  
15 injury action. Kutzner executed the SIQ's under penalty of perjury that all of the information  
16 submitted in his SIQ's was true and correct. The issuance of the escrow agent's license was based  
17 upon all the information submitted with the application, including Kutzner SIQ's.

18 Subsequent to the August 2, 2006 regulatory examination, the Commissioner learned that  
19 Kutzner had been a defendant in an action brought by the Federal Trade Commission ("FTC") in or  
20 about November 2002 wherein Kutzner was alleged to have engaged in numerous false and  
21 deceptive practices in violation of Section 5(a) of the FTC Act and Section 521(a) of the Gramm-  
22 Leach-Bliley Act. The civil action resulted in a Stipulated Judgment and Order for Permanent  
23 Injunction against Kutzner on or about May 5, 2003.

24 Accordingly, the SIQ's submitted by Kutzner in connection with the Newport application  
25 were false as Kutzner failed to disclose the FTC action, which had resulted in a final judgment  
26 against him only months prior to the first SIQ filed with the Commissioner.

27 Pursuant to California Financial Code section 17209.3, a false statement of a material fact in  
28 an application constitutes grounds to deny the license application. Moreover, under California

1 Financial Code section 17702 it is unlawful for any person to willfully make any untrue statement of  
2 a material fact in any application or to willfully omit any material fact, which is required to be stated  
3 in any application filed with the commissioner.

4 VII

5 California Financial Code section 17608 provides in pertinent part:

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

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

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

13 California Financial Code section 17423 provides in pertinent part:

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

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

21 VII

22 Complainant finds that, by reason of the foregoing, Respondents have violated California  
23 Financial Code sections 17200.8, 17209 subsection (g), 17212.1, 17404, 17406, 17409, 17414  
24 subsection (a)(1), 17414 subsection(c), 17414.1, 17419 and 17702 and California Code of  
25 Regulations, title 10, sections 1726, 1732.2, 1732.3 and 1737.3, made false statements of material  
26 fact in the application, which are grounds for the commissioner to refuse to issue the license  
27 originally, and it is in the best interests of the public to revoke the escrow agent's license of  
28 Respondent Newport, and to bar Respondent Kutzner from any position of employment,  
management or control of any escrow agent.

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WHEREFORE, IT IS PRAYED that the escrow agent’s license of Respondent Newport be revoked, and that Respondent Kutzner be barred from any position of employment, management or control of any escrow agent.

Dated: December 11, 2006  
Los Angeles, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
Judy L. Hartley  
Senior Corporations Counsel