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9

10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) OAH Case No.: 2018030616
13 THE COMMISSIONER OF BUSINESS) Escrow License No.: 963-2642
14 OVERSIGHT,) SETTLEMENT AGREEMENT
15 Complainant,)
16 v.)
17 NEW ERA ESCROW, INC.,)
18 Respondent.)
19

20
21 This Settlement Agreement is entered into between Complainant, the Commissioner of
22 Business Oversight (Commissioner) and Respondent New Era Escrow, Inc. (New Era) (collectively,
23 the Parties), and is made with respect to the following facts:

24 **RECITALS**

- 25 A. New Era is an escrow agent licensed by the Commissioner pursuant to the California Escrow
26 Law (Fin. Code, § 17000 et seq.) (Escrow Law). New Era has its principal place of business located
27 at 509 N. Sepulveda Boulevard, Suite 101, Manhattan Beach, California 90266.
28 B. On February 20, 2018, the Commissioner issued to New Era a: (1) Notice of Intention to Issue

1 Order to Suspend Escrow Agent License, Accusation, and accompanying documents (Accusation);
2 and (2) Order to Discontinue Violations Pursuant to Financial Code Section 17602, Statement of
3 Facts in Support Thereof, and accompanying documents (Order to Discontinue Violations)
4 (Collectively, the Action).

5 C. The Action was personally served on New Era on March 2, 2018.

6 D. On or about March 12, 2018, New Era filed Notices of Defense acknowledging receipt of the
7 Action and requesting a hearing with the Commissioner.

8 E. A hearing is set in this matter in front of the Los Angeles Office of Administrative Hearings
9 (OAH) for August 20, 2018.

10 F. It is the intention and desire of the Parties to resolve this Action without the necessity of a
11 hearing and/or other litigation.

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

14 **TERMS AND CONDITIONS**

15 1. Purpose. 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. Waiver of Hearing Rights. New Era acknowledges its right to an administrative hearing
18 under the Escrow Law in connection with the Action and hereby waives such rights to a hearing, and
19 to any reconsideration, appeal, or other rights to review which may be afforded pursuant to the
20 Escrow Law, The California Administrative Procedures Act, the California Code of Civil Procedure,
21 or any other provision of law in connection with these matters.

22 3. Order to Discontinue Violations. New Era agrees that the Order to Discontinue Violations
23 issued on February 20, 2018 is final and shall remain in full force and effect.

24 4. Payment of Costs. New Era agrees to pay \$10,000.00 in costs (Costs). These Costs shall be
25 paid to the Commissioner in two equal payments of \$5,000 each, the first payment due within 30
26 days of the Effective Date of this Settlement Agreement as defined in paragraph 19, and the second
27 payment due within 60 days of the Effective Date of this Agreement as defined in paragraph 19. The
28 payment shall be made payable in the form of a cashier's check or Automated Clearing House

1 deposit to the “Department of Business Oversight,” and transmitted to the attention of:

2 Attn: Accounting – Litigation
3 The Department of Business Oversight
4 1515 K Street, Suite 200
5 Sacramento, California 95814

6 Notice of payment shall be sent to:

7 Joanne Ross, Senior Counsel
8 Department of Business Oversight
9 Enforcement Division
10 1515 K Street, Suite 200
11 Sacramento, California 95814

12 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
13 next business day.

14 5. Failure to Comply with Settlement Agreement. New Era acknowledges that failure to comply
15 with the terms of this Settlement Agreement shall be a breach of this Settlement Agreement and shall
16 be cause for the Commissioner to immediately suspend New Era’s escrow agent license for two
17 weeks or until New Era becomes compliant, whichever is longer (Suspension). New Era agrees to
18 take any actions required by the Commissioner to effect this Suspension and provide any evidence of
19 compliance that the Commissioner requests. Failure to do so may result in the immediate revocation
20 of New Era’s escrow agent license (Revocation).

21 6. Waiver of Hearing Rights. New Era hereby waives any notice of hearing rights to contest the
22 immediate Suspension or Revocation of its escrow agent license which may be afforded under the
23 Escrow Law, the California Administrative Procedures Act, the Code of Civil Procedure, or any other
24 provision of law in connection therewith.

25 7. Settlement Agreement Coverage. This Settlement Agreement is intended to constitute a full,
26 final and complete resolution of the Action, excepting therefrom any proceeding or action if such
27 proceeding or action is based upon facts not presently known to the Commissioner or which were
28 knowingly concealed from the Commissioner. The Parties further acknowledge and agree that
nothing contained in this Settlement Agreement shall operate to limit the Commissioner’s ability to
assist any other agency, (city, county, state or federal) with any prosecution, administrative, civil or

1 criminal, brought by any such agency against New Era based upon any of the activities alleged in
2 these matters or otherwise.

3 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it has
4 received or been advised to seek independent legal advice from its attorneys with respect to the
5 advisability of executing this Settlement Agreement.

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

16 10. Modifications and Qualified Integration. No amendment, change or modification of this
17 agreement shall be valid or binding in any extent unless it is in writing and signed by all of the parties
18 affected by it.

19 11. Full Integration. This Settlement Agreement is the final written expression and the complete
20 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
21 between the Parties with respect to the subject matter hereof, and supersedes all discussions between
22 and among the Parties, their respective representatives, and any other person or entity, with respect to
23 the subject matter covered hereby.

24 12. No Presumption From Drafting. In that the Parties have had the opportunity to draft, review
25 and edit the language of this Settlement Agreement, no presumption for or against any party arising
26 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,
27 connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the benefit of
28 Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,

1 language of a contract should be interpreted most strongly against the party who caused the
2 uncertainty to exist.

3 13. Voluntary Agreement. New Era enters into this Settlement Agreement voluntarily and
4 without coercion and acknowledges that no promises, threats or assurances have been made by the
5 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
6 represent and acknowledge that he, she or it is executing this Agreement completely voluntarily and
7 without any duress or undue influence of any kind from any source.

8 14. Authority for Settlement. Each party warrants and represents that such party is fully entitled
9 and duly authorized to enter into and deliver this Settlement Agreement. In particular, and without
10 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
11 enter into the covenants, and undertake the obligations set forth herein.

12 15. Waiver. The waiver of any provision of this Settlement Agreement shall not operate to waive
13 that provision in the future, or waive any other provision set forth herein, and any waiver, amendment
14 and/or change to the terms of this Settlement Agreement must be in writing and signed by the parties
15 affected by it.

16 16. Counterparts. This Agreement may be executed in any number of counter-parts by the
17 Parties, and when each party has signed and delivered at least one such counterpart to the other party,
18 each counterpart shall be deemed an original and taken together shall constitute one and the same
19 Agreement.

20 17. Signatures. This Agreement may be executed by facsimile or scanned signature, and any such
21 facsimile or scanned signature by any party hereto shall be deemed to be an original signature and
22 shall be binding on such party to the same extent as if such facsimile or scanned signature were an
23 original signature.

24 18. Governing Law. This Settlement Agreement shall be construed and enforced in accordance
25 with and governed by California law.

26 19. Public Record. New Era hereby acknowledges that this Settlement Agreement will be a
27 matter of public record. New Era further understands and agrees to not make any statement or
28 representation that is inconsistent with this Settlement Agreement.

1 20. Effective Date. This Settlement Agreement shall not become effective until signed by all
2 parties and delivered to New Era by emailing the signed Agreement to Patrick Panganiban at
3 Patrick.Panganiban@neweraescrow.com.

4 21. Capacity to Contract. Each signator hereto covenants that he/she possesses all necessary
5 capacity and authority to sign and enter into this Settlement Agreement.

6 22. Notice. Any notices required under this Settlement Agreement shall be provided to each party
7 at the following addresses:

8 If to Respondent to: New Era Escrow, Inc.
9 Attn: Patrick Panganiban
10 509 North Sepulveda Boulevard
11 Manhattan Beach, California 90266

12 If to Complainant to: Joanne Ross, Senior Counsel
13 Department of Business Oversight
14 Enforcement Division
15 1515 K Street, Suite 200
16 Sacramento, California 95814

17 Dated: 8/10/18 JAN LYNN OWEN
18 Commissioner of Business Oversight

19 By: _____
20 MARY ANN SMITH
21 Deputy Commissioner
22 Enforcement Division

23 Dated: 8/10/18 NEW ERA ESCROW, INC.

24 By: _____
25 Patrick Panganiban
26 Chief Financial Officer
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