

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 AFSANEH EGHBALDARI (CA BAR NO. 250107)
Corporations Counsel
4 Department of Corporations
5 1350 Front Street, Room 2034
6 San Diego, California 92101
Telephone: (619) 645-3166
7 Facsimile: (619) 525-4045
8 Attorneys for Complainant

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

11	In the Matter of THE CALIFORNIA)	OAH: 2008070353
12	CORPORATIONS COMMISSIONER,)	File No. 963-2047
13)	
14	Complainant,)	SETTLEMENT AGREEMENT
15	vs.)	
16)	
17	MDA ESCROW SOLUTIONS OF)	
18	CALIFORNIA, INC., formerly known as)	Date: September 9, 2008
19	TRANS UNION ESCROW SOLUTIONS OF)	Time: 9:00 a.m.
20	CALIFORNIA, INC.)	Place: 320 West Fourth St., Suite 630
21	Respondent.)	Los Angeles, CA 90013
22)	

23 This Settlement Agreement (“Agreement”) is entered into by and between the Complainant,
24 the California Corporations Commissioner (“Commissioner” or “Complainant”), and Respondent,
25 MDA Escrow Solutions of California, Inc. formerly known as Trans Union Escrow Solutions of
26 California, Inc. (“Respondent”) and is made with respect to the following facts:

27 **RECITALS**

28 A. Respondent 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.

1 B. Respondent currently holds escrow agent’s license number 963-2047 with its place of
2 business located at 333 South Anita Drive, 10th Floor, Orange, California, 92868.

3 C. Subsequent to the filing of the administrative actions described in paragraph F below,
4 Trans Union Escrow Solutions of California, Inc. formally changed its name to MDA Escrow
5 Solutions of California, Inc. with the California Secretary of State. Respondent filed its escrow
6 agent’s license amendment with the California Department of Corporations (“Department”), which
7 license amendment was approved on August 25, 2008 to reflect the new name, MDA Escrow
8 Solutions of California, Inc.

9 D. Michael F. Dealy is the president of Respondent and is authorized to enter into this
10 Agreement on behalf of Respondent.

11 E. Respondent failed to timely file its 2006 and 2007 Audit Reports with the
12 Commissioner, in violation of Financial Code section 17406. The 2006 Audit Report was due on
13 April 15, 2007. The 2007 Audit Report was due on April 15, 2008. The Audit Reports are now filed
14 with the Commissioner.

15 F. On June 6, 2008, the Commissioner issued a Notice of Intention to Issue Order Revoking
16 Escrow Agent’s License, Accusation, and accompanying documents (“Accusation”). On June 6,
17 2008, the Commissioner also issued an Order Imposing Penalties Pursuant to Financial Code section
18 17408 (“Penalty Order”) against Respondent. The administrative penalty accrued for the untimely
19 filing of Respondent’s audited reports totaled \$42,300.00, reflecting a penalty of \$100.00 per day for
20 the combined 423 days the reports were late.

21 G. Respondent timely filed its Notices of Defense with the Commissioner and the matters
22 are currently set for a hearing on September 9, 2008.

23 H. It is the intention and desire of the Parties to resolve these matters without the necessity
24 of a hearing and or other litigation.

25 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
26 forth herein, the Parties agree as follows:
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TERMS AND CONDITIONS

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2 1. **Purpose.** The purpose of this Agreement is for judicial economy and expediency, and to
3 avoid the expense of a hearing, and possible further court proceedings.

4 2. **Admissions.** Respondent hereby admits the allegations contained in the Penalty Order,
5 the Accusation and the facts in the Recital, solely for the limited purposes of this Agreement and any
6 future proceeding(s) that may be initiated by or brought before the Commissioner against
7 Respondent. It is the intent and understanding between the Parties that this Agreement, and
8 particularly the admissions of Respondent herein, shall not be binding or admissible against
9 Respondent in any action(s) by third parties.

10 3. **Suspension.** Respondent hereby agrees to the Suspension period of ten (10) days to be
11 served in two (5) five consecutive day periods. The first suspension shall commence on Monday
12 September 8, 2008 and continue through Friday September 12, 2008. The second suspension shall
13 commence on Monday September 15, 2008 and continue through Friday September 19, 2008.
14 Respondent is precluded from opening any new escrows during the time periods that its escrow
15 agent’s license is suspended. Respondent is not precluded from processing existing open escrows
16 during the Suspension periods. For the purpose of this Agreement, “open escrow” shall mean an
17 escrow wherein the parties to such escrow have already entered into a binding agreement and monies
18 and/or escrow instructions have been submitted to Respondent regarding the transaction. In
19 connection with the suspension, Respondent shall file with the Commissioner, attention Kathleen
20 Partin via facsimile and U.S. Mail, at close of business (5:00 p.m. PST), the day immediately
21 preceding the date on which the suspension is to commence a list of all open escrows with escrow
22 numbers and escrow party names along with a copy of the signed escrow instructions and/or signed
23 deposit receipt(s) for the last open escrow. A copy of the Suspension Order is attached and
24 incorporated as Exhibit A.

25 4. **Penalty.** As a full and final resolution of the Penalty Order, Respondent hereby agrees to
26 pay to the Commissioner the amount of \$25,000.00. The penalty payment amount of \$25000.00
27 shall be delivered to the Department within five business days from the date this Agreement is
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1 signed and executed by the Parties. The \$25,000.00 in penalties shall be payable to the Department
2 and delivered to the Department’s San Diego Office to the attention of Afsaneh Eghbaldari.

3 **5. Waiver of Hearing Rights.** Respondent acknowledges its right to an administrative
4 hearing under the provisions of the Financial Code sections 17608 and 17408 in connection with the
5 suspension and Penalty Order and hereby waives its right to a hearing, and to any reconsideration,
6 appeal, or other right to review which may be afforded pursuant to the Escrow Law, the California
7 Administrative Procedure Act (“APA”), the California Code of Civil Procedure, or any other
8 provision of law, and by waiving such rights, consents to this Agreement becoming final.

9 **6. Failure to Comply with the Agreement.** Respondent acknowledges and agrees that its
10 failure to comply with the terms of this Agreement will be a breach of this Agreement and shall
11 result in an automatic revocation of its escrow agent’s license. Respondent waives any notice and
12 hearing rights to contest such revocation.

13 **7. Settlement Agreement Coverage.** The Parties hereby acknowledge and agree that this
14 Agreement is intended to constitute a full, final and complete resolution of the Accusation and
15 Penalty Order only. The Parties further acknowledge and agree that nothing contained in this
16 Agreement shall operate to limit the Commissioner's ability to assist any other agencies with any
17 prosecution, administrative, civil or criminal, brought by any such agency against Respondent based
18 upon any of the activities alleged in this matter or otherwise.

19 **8. Filing with the Office of Administrative Hearings.** The Commissioner shall cause this
20 Agreement to be filed with the Office of Administrative Hearings within five days of its execution
21 by all Parties hereto.

22 **9. Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that it
23 has received or been advised to seek independent legal advice from his or her attorneys with respect
24 to the advisability of executing this Agreement.

25 **10. Reliance.** Each of the Parties represents, warrants, and agrees that in executing this
26 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
27 and has placed no reliance on any statement, representation, or promise of any other party, or any
28 other person or entity not expressly set forth herein, or upon the failure of any party or any other

1 person or entity to make any statement, representation or disclosure of anything whatsoever. The
2 Parties have included this clause: (1) to preclude any claim that any party was in any way
3 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
4 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

5 **11. Full Integration.** This Agreement, including the attached Suspension Order and Penalty
6 Order, is the final written expression and the complete and exclusive statement of all the agreements,
7 conditions, promises, representations, and covenants between the Parties with respect to the subject
8 matter hereof, and supercedes all prior or contemporaneous agreements, negotiations,
9 representations, understandings, and discussions between and among the Parties, their respective
10 representatives, and any other person or entity with respect to the subject matters covered hereby.

11 **12. No Presumption From Drafting.** In that the Parties have had the opportunity to draft,
12 review and edit the language of this Agreement, no presumption for or against any party arising out
13 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to,
14 or involving this Agreement. Accordingly, the Parties waive the benefit of California Civil Code
15 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
16 of a contract should be interpreted most strongly against the party who caused the uncertainty to
17 exist.

18 **13. Effective Date.** This Agreement shall not become effective until signed by all Parties
19 and delivered by all Parties.

20 **14. Counterparts.** This Agreement may be executed in one or more counterparts, each of
21 which shall be an original but all of which, together, shall be deemed to constitute a single
22 document.

23 **15. Modifications and Qualified Integration.** No amendment, change or modification of
24 this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
25 Parties affected by it.

26 **16. Headings and Governing Law.** The headings to the paragraphs of this Agreement are
27 inserted for convenience only and will not be deemed a part hereof or affect the construction or
28 interpretation of the provisions hereof.

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17. **Authority For Settlement.** Each signator hereto warrants and represents that he or she possesses all necessary capacity and the authority to sign and execute this Agreement.

18. **Notices.** Any notices required under the Agreement shall be provided to each party at the following addresses:

If to Respondent to: Rose Pothier, Esq., Pothier and Associates
2122 N. Broadway, Santa Ana, CA 92706

If to the Commissioner to: Afsaneh Eghbaldari, Esq., Corporations Counsel
California Department of Corporations
1350 Front St, Room 2034. San Diego, CA 92101

19. **Voluntary Agreement.** The Parties each represent and acknowledge that he, she or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

PRESTON DuFAUCHARD
California Corporations Commissioner

Dated: _____

By _____
Alan S. Weinger
Acting Deputy Commissioner

MDA ESCROW SOLUTIONS OF CALIFORNIA, INC.
formerly known as TRANS UNION ESCROW SOLUTIONS
OF CALIFORNIA, INC.

Dated: _____

By _____
Michael F. Dealy, President

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Approved as to Form:

By _____
Rose Pothier, Esq., attorneys for
MDA ESCROW SOLUTIONS OF CALIFORNIA,
INC. formerly known as TRANS UNION
ESCROW SOLUTIONS OF CALIFORNIA, INC.

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Afsaneh Eghbaldari, Esq.
Corporations Counsel