

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
3 Deputy Commissioner
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4 Lead Corporations Counsel
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CALIFORNIA DEPARTMENT
9 OF CORPORATIONS

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF

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15 In the Matter of the ORDER of THE) OAH Case No.: 2008050051
16 CALIFORNIA CORPORATIONS)
COMMISSIONER,) File No.: 963-1930
17) **SETTLEMENT AGREEMENT**
18) Date: June 3, 2008
19) Time: 1:30
20 Complainant,) Location: OAH, Los Angeles, 6th Floor
21 v.) Assigned To: R. Dash
22)
ULTRA ESCROW, INC.,)
23
24 Respondent.

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1 This Settlement Agreement (“Agreement”) is entered into between Ultra Escrow Inc. (“Ultra
2 Escrow”) and the California Corporations commissioner (“Commissioner”) with respect to the
3 following facts:

4 **RECITALS**

5 A. Ultra Escrow is a corporation in good standing, duly formed and existing pursuant to the
6 laws of the State of California, and authorized to conduct business in the State of California.

7 B. Ultra Escrow is an escrow agent licensed by the Commissioner pursuant to the Escrow
8 Law of the State of California (California Financial Code, Section 17000, *et seq.*) Ultra Escrow
9 currently holds escrow agent’s license number 963-1930 with its principal place of business located
10 at 143 Yorba Street, Tustin, CA 92780.

11 C. Jeffery McIndoo (“McIndoo”) is Ultra Escrow’s president. McIndoo is authorized to
12 enter into this agreement on the part of Ultra Escrow.

13 D. On or about March 26, 2008, the Commissioner issued an Order Imposing Penalties
14 pursuant to the California Financial Code section 17408 (“Order”). This Order imposed penalties in
15 the amount of \$16,900 for Ultra Escrow’s failure to timely file its annual audit report for the fiscal
16 year ended April 30, 2007 as required by California Financial Code section 17406.

17 E. The Order was served on Ultra Escrow via certified mail, return receipt requested, at its
18 address of record on file with the Department on or about April 1, 2008. Ultra Escrow filed its
19 request for a hearing on the Commissioner’s Order with the Department on or about April 7, 2008.

20 F. The OAH set this matter for a hearing on June 3, 2008 at 1:30 PM. At the
21 commencement of the hearing, the parties determined to resolve this matter without proceeding with
22 the hearing and/or other litigation. The payment terms contained in this Agreement were entered
23 into the record of the hearing.

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

26 **TERMS AND CONDITIONS**

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

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

7 3. Ultra Escrow agrees to the following conditions:

8 (i) That the Order is hereby deemed a final order. Ultra Escrow acknowledges
9 penalties accruing pursuant to the Order for the untimely filing of its 2007
10 annual audit report totaled \$16,900. As full settlement of the Order, Ultra
11 Escrow agrees to pay the Commissioner the sum of \$11,000 in penalties,
12 which shall be paid in full within 10 days of the 6th of June, or by the close of
13 business on June 16, 2008. Ultra Escrow's payment shall be forwarded to the
14 attention of Kathleen Partin, Special Administrator with the Dept. of
15 Corporations.

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17 (ii) In the event that Ultra Escrow fails to make the payment of \$11,000 in a
18 timely manner then the Commissioner may summarily revoke the escrow
19 agent's license of Ultra Escrow, and Ultra Escrow waives any right to a
20 hearing on the matter of the summary revocation.

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22 4. The parties hereby acknowledge and agree that this Agreement is intended to
23 constitute a final and complete resolution of the matters set forth herein, including the allegations set
24 forth in Order, and constitutes the entire Agreement between the parties with respect thereto. This
25 Agreement supersedes any and all prior or contemporaneous agreements between the parties hereto.

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

3 6. Ultra Escrow acknowledges its right to an administrative hearing under California
4 Financial Code sections 17408 and 17608 in connection with the penalty, and hereby waives its right
5 to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to
6 the Escrow Law, the California Administrative Procedure Act, the California code of Civil
7 Procedure, or any other provision of law in connection with this matter. Each party hereto
8 acknowledges that the essential elements of this paragraph pertaining to waiver of Ultra Escrow's
9 rights were put on the record in the above captioned matter.

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

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

19 9. The waiver of any provision of this agreement shall not operate to waive any other
20 provisions set forth herein, and any waiver, amendment and/or change to the terms of this
21 Agreement must be in writing signed by the parties hereto.

22 10. Each signatory hereto represents and warrants that he/she possesses the necessary
23 capacity and authority to execute this Agreement and bind the parties hereto.

24 11. This Agreement may be executed in one or more counterparts, each of which shall be
25 an original but all of which, together, shall be deemed to constitute a single documents. A fax
26 signature shall be deemed the same as an original signature.

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Dated: June 18, 2008

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
Alan S. Weinger
Lead Corporations Counsel
California Department of Corporations

Dated: June 10, 2008

ULTRA ESCROW, INC.

By: _____
Jeffery McIndoo
President