

1 WAYNE STRUMPFER
Acting California Corporations Commissioner
2 ALAN S. WEINGER (CA BAR NO. 86717)
Acting Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Ste. 750
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6 Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation/Statement of) OAH CASE NO. L-2005100334
Issues of THE CALIFORNIA)
12 CORPORATIONS COMMISSIONER,) File No.: 963-1996
13)
Complainant,) SETTLEMENT AGREEMENT
14)
15 vs.)
16 VINEYARD ESCROW and TIMOTHY RORY)
DELANEY,)
17)
18 Respondents.)

19 This Settlement Agreement is entered into between Vineyard Escrow (“Vineyard”) and
20 Timothy Rory Delaney (“Delaney”), on the one hand, and the California Corporations
21 Commissioner ("Commissioner"), on the other hand, and is made with respect to the following facts:

22 **RECITALS**

23 A. Vineyard, a California corporation, currently holds escrow agent’s license number
24 963-1996 with a main office located at 27727 Jefferson Avenue, Temecula, California 92590 and a
25 branch office located at 3349 W. Florida Avenue, Hemet, California 92590. Vineyard has been
26 licensed by the Commissioner pursuant to the California Escrow Law since March 27, 2003.
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1 B. Delaney is, and was at all times relevant herein, the president, sole shareholder and a
2 director of Vineyard.

3 C. On October 3, 2005, Vineyard and Delaney were personally served with a Notice of
4 Intention to (1) Issue Order Revoking Escrow Agent’s Licenses; (2) to Issue Order Denying
5 Application for an Escrow Agent’s Branch License; and (3) to Issue Order Pursuant to California
6 Financial Code Section 17423 (Bar From Employment, Management or Control of Any Escrow
7 Agent), Accusation/Statement of Issues and accompanying documents issued by the Commissioner
8 on September 21, 2005 (“Accusation”). Vineyard and Delaney have filed Notices of Defense with
9 the Commissioner. A three-day hearing is currently scheduled to commence on March 27, 2006.

10 D. 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. Vineyard and Delaney admit the allegations contained in the Accusation. The
18 admissions of Vineyard and Delaney are solely for the limited purposes of these proceedings and
19 any future proceeding(s) that may be initiated by or brought before the Commissioner against
20 Vineyard and Delaney. It is the intent and understanding between the parties that this Settlement
21 Agreement, and particularly the admissions of Vineyard and Delaney herein, shall not be binding or
22 admissible against Vineyard and/or Delaney in any action(s) brought against Vineyard and/or
23 Delaney by third parties.

24 3. Delaney hereby agrees to the issuance by the Commissioner of an order barring
25 Delaney from any position of employment, management or control of any escrow agent for a period
26 of one year. The Bar Order shall become effective upon the completion and approval of the change
27 of ownership and control of Vineyard stock described in paragraph 9 below (hereinafter “change of
28 ownership and control”). A copy of the Bar Order is attached hereto as Exhibit A and incorporated

1 by reference.

2 4. Delaney acknowledges that while the Bar Order is in effect, the provisions of
3 California Financial Code section 17423 require, in addition to relinquishing his ownership in
4 Vineyard as provided for in paragraph 9 below, that he resign all positions of employment,
5 management and control of Vineyard, including officer, director, and managerial positions, and that
6 he will be prohibited from influencing or acting on behalf of Vineyard in any manner whatsoever, to
7 include signing on any Vineyard bank accounts, including trust and general bank accounts.

8 5. Delaney acknowledges his right to an administrative hearing under California
9 Financial Code section 17423 in connection with the bar and hereby waives his right to a hearing,
10 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow
11 Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
12 other provision of law in connection with the bar.

13 6. The Commissioner agrees to allow Vineyard to withdraw its application for an
14 escrow agent’s branch license for 29955 Technology Drive, Murrieta, California 92563; file No.
15 863-1461 (“application”), and Vineyard agrees to withdraw its application immediately upon
16 completion and approval of the change of ownership and control.

17 7. Vineyard agrees that it shall not apply for any further escrow agent’s branch licenses
18 until after a one-year period from the date Delaney has completed his bar. The Commissioner agrees
19 to consider any further escrow agent’s branch license application(s) from Vineyard in the normal and
20 ordinary course of business, provided that no further actions are commenced under and/or violations
21 of the Escrow Law have occurred. The provisions of this paragraph shall not apply in the event
22 Vineyard is sold and the new owner(s) and management are unrelated and/or unaffiliated with
23 Delaney in any manner.

24 8. The parties further agree that this Settlement Agreement shall have the effect of
25 dismissing that portion of the Notice of Intention relating to the revocation of Vineyard’s existing
26 escrow agent’s licenses. The dismissal shall become effective upon the completion and approval of
27 the change of ownership and control. This dismissal shall have no effect on the validity of
28 Vineyard’s admissions herein.

1 9. The parties hereby agree that Delaney shall relinquish his ownership in Vineyard by
2 placing his stock into an irrevocable trust ("the trust") in the form attached hereto as Exhibit B with
3 Michiko Shimbo as trustee. Delaney acknowledges that the trust constitutes a change of ownership
4 and control that must be approved by the Commissioner pursuant to California Financial Code
5 Section 17213 through the filing of an Application for Change of Ownership. Delaney agrees that
6 the change of ownership and control must be completed by May 31, 2006.

7 10. The Commissioner hereby agrees to process any Application for Change of
8 Ownership filed with the Commissioner pursuant to the contemplated transfer of stock described in
9 paragraph 9 above in an expeditious manner, which shall include prompt notice of any deficiency in
10 the completeness of the application or of any potential problems with the applicant(s). Delaney
11 agrees that in the event that the Commissioner abandons or denies the application(s) described in
12 paragraph 9 above, as provided by the Escrow Law, and the time set forth in paragraph 9 above has
13 passed, this Settlement Agreement shall become null and void and this entire matter shall be reset for
14 hearing.

15 11. The Commissioner agrees that, during the bar period, Michiko Shimbo, upon
16 completion by the Commissioner of her background check without incident, may serve as the
17 president and a director of Vineyard. The Commissioner does not object to Michiko Shimbo
18 occupying other corporate positions during the bar period.

19 12. The Commissioner shall cause this Settlement Agreement to be filed with the Office
20 of Administrative Hearings within five business days of its execution.

21 13. The parties hereby acknowledge and agree that this Settlement Agreement is intended
22 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and
23 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's
24 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,
25 civil or criminal, brought by any such agency against Vineyard and/or Delaney based upon any of
26 the activities alleged in this matter or otherwise.

27 14. Each of the parties represents, warrants, and agrees that it has received independent
28 advice from its attorney(s) and/or representatives with respect to the advisability of executing this

1 Settlement Agreement.

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

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

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

25 18. This Settlement Agreement may be executed in one or more counterparts, each of
26 which shall be an original but all of which, together, shall be deemed to constitute a single
27 document.

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

Dated: 03/24/06 WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
ALAN S. WEINGER
Acting Deputy Commissioner

Dated: _____ VINEYARD ESCROW

By _____
TIMOTHY RORY DELANEY, President

Dated: _____ By _____
TIMOTHY RORY DELANEY, an individual

APPROVED AS TO FORM AND CONTENT:

DAVIS & DAVIS

By _____
M. STEPHEN DAVIS, Attorneys for
VINEYARD ESCROW and TIMOTHY RORY DELANEY

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
JUDY L. HARTLEY
Senior Corporations Counsel

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER (CA BAR NO. 160080)
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Supervising Counsel
4 JUDY L. HARTLEY (CA BAR NO. 110628)
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation/Statement of) File No.: 963-1996
Issues of THE CALIFORNIA)
12 CORPORATIONS COMMISSIONER,) ORDER BARRING TIMOTHY RORY
13 Complainant,) DELANEY FROM ANY POSITION OF
14 vs.) EMPLOYMENT, MANAGEMENT OR
15) CONTROL OF ANY ESCROW AGENT
16 VINEYARD ESCROW and TIMOTHY RORY) PURSUANT TO CALIFORNIA FINANCIAL
DELANEY,) CODE SECTION 17423
17)
18 Respondents.)

19 Pursuant to the Settlement Agreement entered into between Vineyard Escrow (“Vineyard”) and Timothy Rory Delaney (“Delaney”), on the one hand, and the California Corporations Commissioner ("Commissioner"), on the other hand, on March 24, 2006, Timothy Rory Delaney is hereby barred from any position of employment, management or control of any escrow agent for a period of one year. This Order is effective as of the date hereof.

24 Pursuant to the terms of the Settlement Agreement, Delaney admits the following for purposes of this action and any future proceedings initiated by or brought before the California Corporations Commissioner only:

- 27 1. Vineyard is a California corporation and currently holds escrow agent’s license
28 number 963-1996 with a main office located at 27727 Jefferson Avenue, Temecula, California

1 92590, and a branch office located at 3349 W. Florida Avenue, Hemet, California 92590. Vineyard
2 has been licensed by the Commissioner pursuant to the California Escrow Law since March 27,
3 2003.

4 2. Delaney is, and was at all times relevant, the president, sole shareholder and a
5 director of Vineyard.

6 3. Fudosan, Inc. (“Fudosan”) is an affiliate of Vineyard and is licensed as a real estate
7 broker by the California Department of Real Estate. Delaney is the president of Fudosan.

8 4. On June 15, 2005, Vineyard filed its application for an escrow agent's branch license
9 to be located at 29955 Technology Drive, Murrieta, California 92563, File No. 863-1461, with the
10 Commissioner pursuant to the California Escrow Law, in particular, Financial Code Section
11 17213.5. Delaney verified the application as president of Vineyard. The application identified
12 Delaney as the president, sole shareholder and a director of Vineyard.

13 5. On February 8, 2005, the Commissioner commenced a regulatory examination of the
14 books and records of Vineyard. The regulatory examination revealed that trust funds in the amount
15 of \$1,887,794.64 had been deposited into the trust account of Fudosan, instead of the Vineyard trust
16 account in violation of California Financial Code section 17409 and California Code of Regulations,
17 title 10, section 1737(a). At least \$899,971.18 of the Vineyard trust funds wrongfully deposited into
18 the Fudosan account were allowed to remain in the Fudosan account for anywhere from one to
19 eleven months. During this time, certain of these trust funds were used for the operations of
20 Fudosan, Inc. The commingling of trust funds by Vineyard resulted in a trust account shortage and
21 numerous ongoing debit balances in violation of California Code of Regulations, title 10, section
22 1738.1. Vineyard corrected the trust account shortage caused by the unlawful deposits of trust
23 funds; however, it appears that trust funds from an affiliate were used to correct the trust fund
24 shortage of Vineyard. The commingling and misuse of trust funds was as follows:

25 A. Vineyard escrow number 03-3170

26 On August 13, 2003, receipt number 6349 was issued in the amount of \$32,508.91,
27 however, the funds were deposited into the trust account of Fudosan in violation of California
28 Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The

1 trust funds were not transferred to the trust account of Vineyard until January 23, 2004, causing a
2 shortage (debit balance) of \$32,508.91 in the trust account from August 13, 2003 until January 23,
3 2004.

4 B. Vineyard escrow number 03-3239

5 On August 22, 2003, receipt number 6392 was issued in the amount of \$250,374.74,
6 however, the funds were deposited into the trust account of Fudosan in violation of California
7 Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The
8 trust funds were not transferred to the trust account of Vineyard until January 23, 2004, causing a
9 further shortage of \$250,374.74 in the trust account from August 22, 2003 until January 23, 2004.

10 C. Vineyard escrow number 03-3254

11 On September 2, 2003, receipt number 6434 was issued in the amount of
12 \$147,492.87, however, the funds were deposited into the trust account of Fudosan in violation of
13 California Financial Code section 17409 and California Code of Regulations, title 10, section
14 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,
15 2003, causing a further shortage of \$147,492.87 in the trust account from September 2, 2003 until
16 October 23, 2003.

17 D. Vineyard escrow number 03-3228

18 On September 3, 2003, receipt numbers 6435 and 6436 were issued in the respective
19 amounts of \$56,298.61 and \$3,000.00, however, the funds were deposited into the trust account of
20 Fudosan in violation of California Financial Code section 17409 and California Code of Regulations,
21 title 10, section 1737(a). The trust funds were not transferred to the trust account of Vineyard until
22 October 23, 2003, causing a further shortage of \$59,298.61 in the trust account from September 3,
23 2003 until October 23, 2003.

24 E. Vineyard escrow number 03-3260

25 On September 19, 2003, receipt number 6505 was issued in the amount of
26 \$109,092.27, however, the funds were deposited into the trust account of Fudosan in violation of
27 California Financial Code section 17409 and California Code of Regulations, title 10, section
28 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,

1 2003, causing a further shortage of \$109,092.27 in the trust account from September 19, 2003 until
2 October 23, 2003.

3 F. Vineyard escrow number 03-3299

4 On October 30, 2003, receipt number 6639 was issued in the amount of \$161,031.06,
5 however, the funds were deposited into the trust account of Fudosan in violation of California
6 Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The
7 trust funds were not transferred to the trust account of Vineyard until October 21, 2004, causing a
8 further shortage of \$161,031.06 in the trust account from October 30, 2003 until October 21, 2004.

9 G. Vineyard escrow number 03-3338

10 On November 25, 2003, receipt number 6703 was issued in the amount of
11 \$140,172.72, however, the funds were deposited into the trust account of Fudosan in violation of
12 California Financial Code section 17409 and California Code of Regulations, title 10, section
13 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 21,
14 2004, causing a further shortage of \$140,172.72 in the trust account from October 30, 2003 until
15 October 21, 2004.

16 H. Misuse:

17 During the period of October 2003 through October 31, 2004 certain of the Vineyard
18 trust funds unlawfully deposited into the bank account of Fudosan had been used for the operations
19 of Fudosan in violation of California Financial Code section 17414(a)(1).

20 I. Commingling – Fudosan to Vineyard:

21 On at least 3 occasions, trust funds belonging to the Fudosan trust account were either
22 deposited and/or transferred into the Vineyard trust account in violation of California Financial Code
23 section 17411 as follows:

24 a. On September 25, 2003, a wire in the amount of \$266,404.62 designated for
25 Fudosan was deposited into the Vineyard trust account in violation of California Financial Code
26 section 17411. The Fudosan trust funds were not transferred to the trust account of Fudosan until
27 October 6, 2003.

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b. On November 14, 2003, the amount of \$10,000.00 was transferred from the Fudosan trust account to the Vineyard trust account in violation of California Financial Code section 17411. The Fudosan trust funds were not transferred back to the trust account of Fudosan until October 21, 2004.

c. On November 18, 2003, the amount of \$200,000.00 was transferred from the Fudosan trust account to the Vineyard trust account in violation of California Financial Code section 17411. The Fudosan trust funds were not transferred back to the trust account of Fudosan until October 21, 2004. A review of the bank account records of Vineyard disclosed that Vineyard had insufficient funds to meet its disbursements at the time the \$200,000.00 in Fudosan trust funds was transferred to the Vineyard trust account.

Dated: June 23, 2006
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Kathleen R. Partin
Special Administrator
California Escrow Law

1 WAYNE STRUMPFER
Acting California Corporations Commissioner
2 ALAN S. WEINGER (CA BAR NO. 86717)
Acting Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA
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11 In the Matter of the Accusation/Statement of) Case No.: 963-1996
Issues of THE CALIFORNIA)
12 CORPORATIONS COMMISSIONER,) ACCUSATION/STATEMENT OF ISSUES
13)
Complainant,)
14)
vs.)
15)
16 VINEYARD ESCROW and TIMOTHY RORY)
DELANEY,)
17)
18 Respondents.)

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

21 I

22 INTRODUCTION

23 The Commissioner’s proposed orders seek to revoke the escrow agent’s licenses of Vineyard
24 Escrow (“Vineyard”) pursuant to Section 17608 of the California Escrow Law (California Financial
25 Code §§ 17200 et. seq.), bar Timothy Rory Delaney (“Delaney”) pursuant to Section 17423 of the
26 California Escrow Law from any position of employment, management or control of any escrow
27 agent, and deny the issuance of an escrow agent’s branch license to Vineyard pursuant to Section
28 17209.3 of the California Escrow Law in that Vineyard and Delaney have committed numerous

1 violations of the California Escrow Law, which violations include commingling of trust funds and
2 escrow debit balances.

3 II

4 CURRENT ESCROW AGENT’S LICENSE

5 Vineyard, a California corporation, currently holds escrow agent’s license number 963-1996
6 with a main office located at 27727 Jefferson Avenue, Temecula, California 92590, and a branch
7 office located at 3349 W. Florida Avenue, Hemet, California 92590. Vineyard has been licensed by
8 the Commissioner pursuant to the California Escrow Law since on or about March 27, 2003.

9 Delaney is, and was at all times relevant herein, the president, sole shareholder and a director
10 of Vineyard.

11 Fudosan, Inc. (“Fudosan”) is an affiliate of Vineyard and is licensed as a real estate broker by
12 the California Department of Real Estate. Delaney is the president of Fudosan.

13 III

14 THE APPLICATION

15 On or June 15, 2005, Vineyard filed its application for an escrow agent's branch license to be
16 located at 29955 Technology Drive, Murrieta, California 92563 (File No. 863-1461 hereinafter
17 "application") with the Commissioner pursuant to the California Escrow Law, in particular,
18 Financial Code Section 17213.5. Delaney verified the application as president of Vineyard. The
19 application identified Delaney as the president, sole shareholder and a director of Vineyard.

20 IV

21 ESCROW LAW VIOLATIONS

22 On or about February 8, 2005, the Commissioner commenced a regulatory examination of
23 the books and records of Vineyard. The regulatory examination revealed that trust funds in the
24 amount of \$1,794,164.64 had been deposited into the trust account of Fudosan, instead of the
25 Vineyard trust account in violation of California Financial Code section 17409 and California Code
26 of Regulations, title 10, section 1737(a). At least \$899,971.18 of the Vineyard trust funds
27 wrongfully deposited into the Fudosan account were allowed to remain in the Fudosan account for
28 anywhere from one to eleven months. During this time, certain of these trust funds were used for the

1 operations of Fudosan, Inc. The commingling of trust funds is prohibited because of the serious risk
2 of misuse and loss. The commingling of trust funds by Vineyard resulted in a trust account shortage
3 and numerous ongoing debit balances in violation of California Code of Regulations, title 10, section
4 1738.1. Vineyard has corrected the trust account shortage caused by the unlawful deposits of trust
5 funds; however, it appears that trust funds from an affiliate were used to correct the trust fund
6 shortage of Vineyard.

7 A. Unlawful Deposits:

8 The unlawful deposits discovered during the regulatory examination of Vineyard, and not
9 immediately corrected are described as follows:

10 1. Vineyard escrow number 03-3170

11 On or about August 13, 2003, receipt number 6349 was issued in the amount of
12 \$32,508.91, however, the funds were deposited into the trust account of Fudosan in violation of
13 California Financial Code section 17409 and California Code of Regulations, title 10, section
14 1737(a). The trust funds were not transferred to the trust account of Vineyard until January 23,
15 2004, causing a shortage (debit balance) of \$32,508.91 in the trust account from August 13, 2003
16 until January 23, 2004.

17 2. Vineyard escrow number 03-3239

18 On or about August 22, 2003, receipt number 6392 was issued in the amount of
19 \$250,374.74, however, the funds were deposited into the trust account of Fudosan in violation of
20 California Financial Code section 17409 and California Code of Regulations, title 10, section
21 1737(a). The trust funds were not transferred to the trust account of Vineyard until January 23,
22 2004, causing a further shortage of \$250,374.74 in the trust account from August 22, 2003 until
23 January 23, 2004.

24 3. Vineyard escrow number 03-3254

25 On or about September 2, 2003, receipt number 6434 was issued in the amount of
26 \$147,492.87, however, the funds were deposited into the trust account of Fudosan in violation of
27 California Financial Code section 17409 and California Code of Regulations, title 10, section
28 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,

1 2003, causing a further shortage of \$147,492.87 in the trust account from September 2, 2003 until
2 October 23, 2003.

3 4. Vineyard escrow number 03-3228

4 a. On or about September 3, 2003, receipt number 6435 was issued in the amount of
5 \$56,298.61, however, the funds were deposited into the trust account of Fudosan in violation of
6 California Financial Code section 17409 and California Code of Regulations, title 10, section
7 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,
8 2003, causing a further shortage of \$56,298.61 in the trust account from September 3, 2003 until
9 October 23, 2003.

10 b. On or about September 3, 2003, receipt number 6436 was issued in the amount of
11 \$3,000.00, however, the funds were deposited into the trust account of Fudosan in violation of
12 California Financial Code section 17409 and California Code of Regulations, title 10, section
13 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,
14 2003, causing a further shortage of \$3,000.00 in the trust account from September 3, 2003 until
15 October 23, 2003.

16 5. Vineyard escrow number 03-3260

17 On or about September 19, 2003, receipt number 6505 was issued in the amount of
18 \$109,092.27, however, the funds were deposited into the trust account of Fudosan in violation of
19 California Financial Code section 17409 and California Code of Regulations, title 10, section
20 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,
21 2003, causing a further shortage of \$109,092.27 in the trust account from September 19, 2003 until
22 October 23, 2003.

23 6. Vineyard escrow number 03-3299

24 On or about October 30, 2003, receipt number 6639 was issued in the amount of
25 \$161,031.06, however, the funds were deposited into the trust account of Fudosan in violation of
26 California Financial Code section 17409 and California Code of Regulations, title 10, section
27 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 21,
28 2004, causing a further shortage of \$161,031.06 in the trust account from October 30, 2003 until

1 October 21, 2004.

2 7. Vineyard escrow number 03-3338

3 On or about November 25, 2003, receipt number 6703 was issued in the amount of
4 \$140,172.72, however, the funds were deposited into the trust account of Fudosan in violation of
5 California Financial Code section 17409 and California Code of Regulations, title 10, section
6 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 21,
7 2004, causing a further shortage of \$140,172.72 in the trust account from October 30, 2003 until
8 October 21, 2004.

9 B. Misuse of Trust Funds:

10 A review of the bank account records of Vineyard and Fudosan for the period of August 1,
11 2003 through October 31, 2004 disclosed that certain of the Vineyard trust funds unlawfully
12 deposited into the bank account of Fudosan had been used for the operations of Fudosan in violation
13 of California Financial Code section 17414(a)(1) from at least October 2003 through October 21,
14 2004.

15 C. Commingling – Fudosan to Vineyard:

16 The regulatory examination further disclosed that on at least 3 occasions, trust funds
17 belonging to the Fudosan trust account were either deposited and/or transferred into the Vineyard
18 trust account in violation of California Financial Code section 17411.

19 This further unlawful commingling discovered during the regulatory examination of
20 Vineyard is as follows:

21 1. On or about September 25, 2003, a wire in the amount of \$266,404.62 designated for
22 Fudosan was deposited into the Vineyard trust account in violation of California Financial Code
23 section 17411. The Fudosan trust funds were not transferred to the trust account of Fudosan until
24 October 6, 2003.

25 2. On or about November 14, 2003, the amount of \$10,000.00 was transferred from the
26 Fudosan trust account to the Vineyard trust account in violation of California Financial Code section
27 17411. The Fudosan trust funds were not transferred back to the trust account of Fudosan until
28 October 21, 2004.

1 and loan association in an account designated “trust” or “escrow” account.
2 No funds other than received as part of an escrow transaction shall be
3 deposited in such account or otherwise commingled with escrow money.

4 California Code of Regulations, title 10, section 1738.1 provides:

5 An escrow agent shall not withdraw, pay out, or transfer moneys from
6 any particular escrow account in excess of the amount to the credit of
7 such account at the time of such withdrawal, payment, or transfer.

8 VI

9 CONCLUSION

10 Complainant finds, by reason of the foregoing, that:

11 (1) Vineyard and Delaney have committed innumerable violations of the California
12 Escrow Law, including Sections 17409, 17411 and 17414(a)(1) of the California Financial Code and
13 Sections 1737(a) and 1738.1 of Title 10 of the California Code of Regulations;

14 (2) Vineyard and Delaney are incapable of operating an escrow business in compliance
15 with the California Escrow Law as demonstrated by Vineyard and Delaney’s continuous pattern of
16 violations; and

17 (3) It is in the best interests of the public to revoke the escrow agent’s licenses of
18 Vineyard, to deny Vineyard’s application for an escrow agent’s branch license, and to bar Delaney
19 from any position of employment, management or control of any escrow agent.

20 California Financial Code section 17209.3 provides in pertinent part:

21 The commissioner may refuse to issue any license being applied for
22 if upon his examination and investigation, and after appropriate notice
23 and hearing, he finds any of the following:

24 . . .

25 (f) The applicant or any officer, director, or incorporator of the
26 applicant has violated any provision of this division or the rules thereunder
27 or any similar regulatory scheme of a foreign jurisdiction.

28 California Financial Code section 17423 provides in pertinent part:

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

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of the following:

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

California Financial Code section 17608 provides in pertinent part:

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

. . .

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

THEREFORE, Complainant asserts that he is justified under California Financial Code sections 17209.3, 17423 and 17608 in revoking the escrow agent’s licenses of Vineyard, denying the issuance of an escrow agent’s branch license to Vineyard, and barring Delaney from any position of employment, management or control of any escrow agent.

WHEREFORE, the Commissioner prays that the escrow agent’s licenses of Vineyard be revoked, the application for an escrow agent's branch license filed by Vineyard on June 15, 2005 be denied, and Delaney be barred from any position of employment, management or control of any escrow agent.

Dated: September 21, 2005
Los Angeles, CA

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
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3 Department of Corporations
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5

6 Attorneys for Complainant

7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Accusation of THE) File No.: 963-1996
11 CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) ACCUSATION IN SUPPORT OF
13 Complainant,) REVOCATION OF CALIFORNIA ESCROW
14 vs.) AGENT’S LICENSE
15)
16 VINEYARD ESCROW,)
17 Respondent.)
18

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

21 I

22 Vineyard Escrow (“Respondent”) is an escrow agent licensed by the California Corporations
23 Commissioner ("Commissioner" or "Complainant") of the Department of Corporations
24 (“Department”) pursuant to the Escrow Law of the State of California (California Financial Code
25 Section 17000 *et seq.*).

26 II

27 The Commissioner received a letter from Respondent on May 27, 2010, informing that it
28 wished to surrender its California escrow agent’s license.

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report, a determination has been made by the commissioner that acceptance of the surrender is in the public interest, and tender of the license is accepted in writing by the commissioner.

Financial Code section 17602.5 provides in pertinent part as follows:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the date designated for the making of the reports, or within any extension of time granted by the commissioner, . . . such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

Financial Code section 17608 provides in pertinent part:

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

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

IV

Complainant finds that, by reason of the foregoing, Respondent Vineyard Escrow has violated Financial Code sections 17202 and 17600, and it is in the best interests of the public to revoke Respondent’s escrow agent’s license pursuant to Financial Code section 17608.

WHEREFORE, IT IS PRAYED that the California escrow agent’s license of Respondent Vineyard Escrow be revoked.

Dated: November 1, 2011
Los Angeles, CA

California Corporations Commissioner

By _____
ALAN S. WEINGER
Deputy Commissioner

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5 Attorneys for Complainant

7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of THE CALIFORNIA) File No.: 963-1996
CORPORATIONS COMMISSIONER,)
11 Complainant,) **ORDER REVOKING ESCROW AGENT’S**
12) **LICENSE**
13 v.)
14 VINEYARD ESCROW,)
15 Respondent.)
16)
17)

18 The California Corporations Commissioner (“Commissioner”) issued a Notice of Intention to
19 Issue Order Revoking Escrow Agent’s License and Accusation for the revocation of the escrow
20 agent’s license issued to Vineyard Escrow on November 1, 2011 (“Accusation”) pursuant to
21 Financial Code section 17608 of the California Escrow Law (“Escrow Law”) (Fin. Code, §§ 17000 et
22 seq.). The Accusation is incorporated herein by reference. The Commissioner has not received a
23 hearing request from the Respondent, and the time to request a hearing on the Accusation has now
24 expired.

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NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that the escrow agent's license issued to Vineyard Escrow is revoked. This order is effective as of the date hereof.

DATED: November 17, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Deputy Commissioner
Enforcement Division