

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy 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 CALIFORNIA) Case No.: 963-2096
CORPORATIONS COMMISSIONER,)
13)
14 Complainant,) STIPULATION TO DEMAND FOR AND
15 vs.) ORDER TAKING POSSESSION OF THE
16 WESTERN ESCROW SERVICES,) TRUST FUNDS AND ESCROW RECORDS
17) OF WESTERN ESCROW SERVICES
Respondent.) PURSUANT TO CALIFORNIA FINANCIAL
18) CODE SECTION 17621
19)

20 This Stipulation is entered into between Preston DuFauchard, California Corporations
21 Commissioner ("Commissioner") and Western Escrow Services ("Western Escrow") and is made
22 with respect to the following facts:

- 23 A. Western Escrow, a California corporation, is an escrow agent holding a valid and
24 unrevoked license issued by the Commissioner, pursuant to the Escrow Law of the State of
25 California (California Financial Code sections 17000).
26 B. On March 1, 2007, the Commissioner, by and through his staff, commenced a special
27 examination of the books and records of Western Escrow. The special examination was commenced
28 after the Department of Corporations ("Department") received information from Escrow Agent's

1 Fidelity Corporation (“EAFC”) that it had received a telephone call from the sole shareholder of
2 Western Escrow regarding a trust account shortage. The special examination revealed that the
3 escrow manager for Western Escrow had made at least one-hundred and seventy (170) unauthorized
4 disbursements of trust funds from the Western Escrow trust account to herself and/or her daughter,
5 also an employee of Western Escrow, totaling \$313,048.94 between March 21, 2005 and January 22,
6 2007 in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
7 sections 1738 and 1738.2. The special examination further revealed that Western Escrow’s manager
8 was altering Settlement Statements in violation of Financial Code section 17414(a)(1) to hide the
9 unauthorized disbursements. The unauthorized disbursements resulted in a trust account shortage
10 and numerous ongoing debit balances in violation of California Code of Regulations, title 10, section
11 1738.1. Western Escrow has been unable to cure the trust account shortage to date.

12 C. The special examination further revealed that Western Escrow had not reported its
13 escrow manager nor the escrow manager’s daughter, who was an employee of Western Escrow, to
14 the Commissioner in violation of Financial Code sections 17212.1, 17414.1 and 17419, and further
15 failed to monitor the activities of such unreported persons thereby resulting in such persons ability
16 to embezzle trust funds as described in paragraph 2 above.

17 D. Based upon the foregoing, the Commissioner finds that Western has violated
18 Financial Code sections 17212.1, 17414, subsection (a)(1) and (a)(2), 17414.1, and 17419, and
19 California Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2, is conducting escrow
20 business in an unsafe and unauthorized manner, that no compliance is possible, and that it is
21 necessary to issue a demand for and order taking possession of the trust funds and escrow records of
22 Western Escrow as authorized by Financial Code section 17621.

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

25 1. Western Escrow without admitting or denying any of the findings of the special
26 examination described in paragraphs B-D above voluntarily consents to the issuance by the
27 Commissioner of a Demand For and Order Taking Possession of the Trust Funds and Escrow
28 Records of Western Escrow Pursuant to California Financial Code Section 17621, a copy of which is

1 attached as Exhibit A and incorporated by reference.

2 2. Western Escrow acknowledges its right to appeal pursuant to Financial Code Section
3 17622 and hereby waives that right.

4 3. Western Escrow waives the issuance of a Notice and Summary of Findings pursuant
5 to Financial Code section 17621.

6 4. Each of the parties represents, warrants, and agrees that it has received independent
7 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
8 Stipulation.

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

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

24 7. In that the parties have had the opportunity to draft, review and edit the language of
25 this Stipulation, no presumption for or against any party arising out of drafting all or any part of this
26 Stipulation will be applied in any action relating to, connected, to, or involving this Stipulation.
27 Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor
28 or amended statute, providing that in cases of uncertainty, language of a contract should be

1 interpreted most strongly against the party who caused the uncertainty to exist.

2 8. This Stipulation may be executed in one or more counterparts, each of which shall be
3 an original but all of which, together, shall be deemed to constitute a single document.

4 9. Each signator hereto covenants that he/she possesses all necessary capacity and
5 authority to sign and enter into this Stipulation.

6 Dated: 11/5/07 PRESTON DuFAUCHARD
7 California Corporations Commissioner

8 By _____
9 ALAN S. WEINGER
10 Lead Corporations Counsel

11 Dated: _____ WESTERN ESCROW SERVICES

12 By _____
13 NICHOLAS ANTONIADES, President

14
15 APPROVED AS TO FORM:

16 LAW OFFICES OF GLENN M. FINCH

17 By _____
18 GLENN M. FINCH
19 Attorney for WESTERN ESCROW SERVICES

20
21 PRESTON DuFAUCHARD
22 California Corporations Commissioner

23
24 By _____
25 JUDY L. HARTLEY
26 Senior Corporations Counsel