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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)	ESCROW LICENSE NO.: 963-2604
)	OAH NO. 2019020372
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT,)	
14)	SETTLEMENT AGREEMENT
15 Complainant,)	
16 vs.)	MSC Date: August 2, 2019
17 SAN DIEGUITO ESCROW, INC.,)	MSC Time: 10:00 A.M.
18)	Trial Date: September 4-6, 2019
19 Respondent.)	Time: 9:00 A.M.
)	Location: 1350 Front Street, Suite 3005
)	San Diego, California

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21 This Settlement Agreement is entered into between the Commissioner of Business
22 Oversight (Commissioner) and Respondent San Dieguito Escrow, Inc. (San Dieguito), and is made
23 with respect to the following facts:

24 **I.**

25 **Recitals**

26 A. The Department of Business Oversight, through the Commissioner, has jurisdiction
27 over the licensing and regulation of persons and entities engaged in the business of escrow agents
28 pursuant to the Escrow Law (Financial Code, section 17000, et seq.) (Escrow Law).

1 B. San Dieguito Escrow, Inc. is a California corporation with its principal place of
2 business at 519 Encinitas Boulevard, Suite #108, Encinitas, California 92024.

3 C. Donia Ackad (Ackad) is the President of San Dieguito. Ackad is authorized to enter
4 into this Settlement Agreement on behalf of San Dieguito.

5 D. On or about June 6, 2016, the Commissioner conducted a regulatory examination of
6 the books and records of San Dieguito and made the following findings (Findings):

7 (i) San Dieguito made unauthorized disbursement of trust funds in violation of Financial
8 Code section 17414, subdivision (a)(1) and California Code of Regulations, title 10, sections 1738
9 and 1738.2;

10 (ii) San Dieguito caused debit balances to exist in escrow accounts in violation of
11 California Code of Regulations, title 10, section 1738.1 and 1741.2;

12 (iii) San Dieguito failed to perform the general ledger and bank reconciliation on a
13 monthly basis and failed to correct adjustment items within the month, in violation of California
14 Code of Regulations, title 10, sections 1732.2 and 1732.3; and

15 (iv) San Dieguito failed to maintain escrow files for at least 5 years after closing, in
16 violation of California Code of Regulations, title 10, section 1737.3.

17 E. On or about November 27, 2018, the Department issued a Notice of Intention to Issue
18 Order Suspending Escrow Agent’s License, Accusation in Support of Order Suspending San
19 Dieguito Escrow, Inc.’s Escrow Agent’s License and accompany documents (Accusation).

20 F. San Dieguito timely request a Notice of Defense regarding the Accusation and an
21 administrative hearing before the Office of Administrative Hearings, San Diego, is currently set to
22 commence on September 4-6, 2019.

23 G. It is the intention of San Dieguito and the Commissioner (the Parties) to resolve the
24 Findings without the necessity of a hearing.

25 H. The Commissioner finds this Settlement Agreement is appropriate, in the public
26 interest and consistent with the purposes fairly intended by the policy and provisions of the Escrow
27 Law.

28 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions

1 contained herein, the Parties agree as follows:

2 **II.**

3 **Terms and Conditions**

4 1. **Purpose.** This Settlement Agreement resolves the issues related to the
5 Commissioner's Findings set forth above, in a manner that avoids the expense of a hearing and other
6 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
7 purposes, policies, and provisions of the Escrow Law.

8 2. **Order to Discontinue Violations (Escrow).** San Dieguito agrees that pursuant to
9 Financial Code sections 17602 and 17604, San Dieguito will immediately discontinue violations of
10 Financial Code section 17414 and California Code of Regulations, title 10, sections 1732.2, 1732.3,
11 1737.3, 1738, 1738.1, 1738.2, and 1741.2.

12 3. **Suspension Order.** San Dieguito agrees to the issuance of an Order Suspending
13 Escrow Agent's License, attached as Exhibit A, suspending San Dieguito's escrow agent's license
14 for a period of two months, effective September 1, 2019.

15 4. **Penalties.** San Dieguito shall pay an administrative penalty to the Commissioner in
16 the amount of \$2,500.00. The penalty shall be due within 5 days of the effective date of the
17 Settlement Agreement and made payable in the form of a cashier's check or Automated Clearing
18 House deposit to the "Department of Business Oversight," and transmitted to the attention of
19 Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200,
20 Sacramento, California 95814. Notice of all payments shall be sent to Johnny O. Vuong, Senior
21 Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles,
22 California 90013-2344 or by e-mail at: Johnny.Vuong@dbo.ca.gov.

23 5. **Reconciliation Reports.** San Dieguito agrees to file reports with the Commissioner
24 covering the trust account reconciliation for the period of September 2019 – December 2019. The
25 reconciliation report should contain the reconciliation and the supporting documents, including but
26 not limited to: a.) list of deposits in transit; b.) list of outstanding checks; c.) bank statements; d.)
27 escrow trial balance; e.) supporting documents for each reconciling items (if applicable). The first
28 reconciliation report for the month of September 2019 will be due on October 15, 2019. The second

1 reconciliation report for the month of October 2019 will be due on November 15, 2019. The third
2 reconciliation report for the month of November 2019 will be due on December 15, 2019. The
3 fourth reconciliation report for the month of December 2019 will be due on January 15, 2020.

4 6. Waiver of Hearing Rights. San Dieguito acknowledges that the Commissioner is
5 ready, willing and able to proceed with the administrative enforcement action described above in
6 Paragraph E and San Dieguito hereby waives the right to a hearing, and to any reconsideration,
7 appeal, or other right to review which may be afforded pursuant to the Escrow Law; the California
8 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
9 law; and by waiving such rights, San Dieguito effectively consents to this Settlement Agreement
10 becoming final.

11 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
12 Settlement Agreement is intended to constitute a full, final, and complete resolution of the Findings
13 and Accusation, and that no further proceedings or actions will be brought by the Commissioner in
14 connection with these matters under the Escrow Law or any other provision of law, excepting
15 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

16 8. Failure to Comply with Settlement Agreement. San Dieguito agrees that if it fails to
17 comply with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
18 available remedies it may invoke under the Escrow Law, summarily suspend the escrow agent's
19 license of San Dieguito until San Dieguito is in compliance. San Dieguito waives any notice and
20 hearing rights to contest such summary suspensions which may be afforded under the Escrow Law,
21 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
22 provision of law in connection therewith.

23 9. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
24 be revoked, and the Commissioner may pursue any and all remedies available under law against San
25 Dieguito if the Commissioner discovers that San Dieguito knowingly or willfully withheld or
26 misrepresented information used for and relied upon in this Settlement Agreement.

27 10. Future Actions by Commissioner. If San Dieguito fails to comply with any terms of
28 the Settlement Agreement, the Commissioner may institute proceedings for any and all violations

1 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
2 any future actions against San Dieguito, or any of its partners, owners, officers, shareholders,
3 directors, employees or successors for any and all unknown violations of the Escrow Law.

4 11. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
5 Commissioner's ability to assist any other government agency (city, county, state, or federal) with
6 any prosecution, administrative, civil or criminal brought by that agency against Settlement
7 Agreement or any other person based upon any of the activities alleged in this matter or otherwise.

8 12. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
9 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
10 of the provisions hereof.

11 13. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
12 successors in interest.

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

22 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
23 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
24 parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
25 any other provision. No waiver by either party of any breach of, or of compliance with, any
26 condition or provision of this Settlement Agreement by the other party will be considered a waiver
27 of any other condition or provision or of the same condition or provision at another time.
28

1 16. Full Integration. This Settlement Agreement is the final written expression and the
2 complete and exclusive statement of all the agreements, conditions, promises, representations, and
3 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby.

7 17. Governing Law. This Settlement Agreement will be governed by and construed in
8 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
9 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
10 forum to the maintenance of such action or proceeding in such court.

11 18. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
12 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
13 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
14 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

15 19. Counterparts. This Settlement Agreement may be executed in one or more separate
16 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
17 together constitute a single document.

18 20. Voluntary Agreement. San Dieguito enters into this Settlement Agreement voluntarily
19 and without coercion and acknowledges that no promises, threats or assurances have been made by
20 the Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties
21 each represents and acknowledges that he, she or it is executing this Settlement Agreement
22 completely voluntarily and without any duress or undue influence of any kind from any source.

23 21. Notice. Any notice required under this Settlement Agreement is to be provided to
24 each party at the following addresses:

25 To San Dieguito: Karen Marble, Esq., RELAW APC, 699 Hampshire Road, Suite #215,
26 Westlake Village, California 91361; Karen@relawapc.com.

27 To the Commissioner: Johnny Vuong, Department of Business Oversight, 320 West 4th
28 Street, Suite #750, Los Angeles, California 90013; Johnny.Vuong@dbo.ca.gov.

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JOHNNY O. VUONG
Counsel for Commissioner of Business Oversight