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7 Attorneys for Complainant

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

11 In the Matter of: ) OAH CASE NO.: 2019080414  
12 )  
13 THE COMMISSIONER OF BUSINESS ) ESCROW LICENSE NO.: 963-2696  
OVERSIGHT, )  
14 ) SETTLEMENT AGREEMENT  
15 Complainant, )  
16 v. ) Hearing Date: January 7 – 9, 2020  
17 ) Hearing Time: 9:00 a.m.  
18 MODEL ESCROW, INC., ) Location: OAH - Los Angeles  
320 West 4th Street, Suite 630  
19 Respondent. ) Los Angeles, California 90013  
20 )  
21 )

22 This Settlement Agreement (the Settlement Agreement) is entered into between the  
23 Commissioner of Business Oversight, Manuel P. Alvarez, (Commissioner) and Model Escrow, Inc.  
24 (Model) and is made with respect to the following facts:

25 **I.**

26 **RECITALS**

27 A. The Commissioner has jurisdiction over the licensing and regulation of  
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1 persons and entities engaged in the business of receiving escrows for deposit or delivery under the  
2 Escrow Law (Fin. Code, § 17000 et seq.) (Escrow Law).

3 B. Model is a California corporation with its principal place of business located at 1211  
4 Center Court Drive, Suite 209, Covina, California.

5 C. Model is a licensed escrow agent holding escrow license number 963-2696.

6 D. Jin Zeng is Model’s owner and president and, as such, is authorized to enter into the  
7 Settlement Agreement on behalf of Model.

8 E. During the September 6, 2017 examination of Model’s business, the Commissioner  
9 determined the following (the Examination Findings):

10 i. During the period May 10, 2017 through September 5, 2017, Model staff made  
11 nine deposits of trust funds into the company’s general account totaling \$203,120.00, in violation of  
12 Financial Code section 17409.

13 ii. Model’s failure to properly reconcile its trust account and identify the  
14 erroneous deposits violated California Code of Regulations, title 10, section 1732.2, which requires  
15 licensees to reconcile the trust account on a monthly basis. The deposit errors the examiner identified  
16 were reflected in Model’s trust account bank reconciliations (as reconciling items) from about May  
17 2017 to February 2018, but the reconciliations were not completely corrected for up to nine months.  
18 In failing to properly reconcile the trust account, Model placed consumers at risk of a trust loss.

19 iii. In six escrow files, Model caused debit balances to occur in violation of  
20 California Code of Regulations, title 10, sections 1738.1 and 1741.2.

21 F. On the basis of the Commissioner’s determination Model violated the Escrow Law,  
22 as described in the Examination Findings above, on July 15, 2019 the Commissioner personally  
23 served Model’s owner and president with the Notice of Intention to Issue Order Suspending Escrow  
24 Agent’s License of Model Escrow, Inc., Accusation, and other supporting pleadings dated July 11,  
25 2019 (collectively, the Accusation).

26 G. Model timely filed its Notice of Defense under section 11506 of the Government Code  
27 for the purpose of requesting an administrative hearing on the allegations set forth in the Accusation.  
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1 The matter is currently set to begin a three-day trial before the Office of Administrative Hearings on  
2 January 7, 2020.

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

5 **II.**

6 **TERMS AND CONDITIONS**

7 1. Purpose. The Settlement Agreement resolves the issues before the Commissioner  
8 under the Examination Findings, set forth above, in a manner that avoids the expense of a hearing  
9 and other possible court proceedings, protects consumers, is in the public interest, and is consistent  
10 with the purposes, policies, and provisions of the Escrow Law.

11 2. Order to Discontinue Violations. Under Financial Code sections 17602 and 17604,  
12 Model agrees that it will immediately discontinue violations of Financial Code section 17409 and  
13 California Code of Regulations, title 10, sections 1732.2, 1738.1, and 1741.2, as set forth in the  
14 Accusation and Recitals above.

15 3. Suspension Order. Model agrees that under Financial Code section 17608, its escrow  
16 agent's license will be suspended for a period of 20 business days (the Suspension Order),  
17 beginning November 18, 2019, and continuing day-to-day until close of business on the twentieth  
18 business day (the Suspension Period). If the Suspension Period would end on a Saturday, Sunday,  
19 or state holiday, the Suspension Period continues to run until close of business on the next day that  
20 is not a Saturday, Sunday, or state holiday. During the Suspension Period Model shall not accept  
21 any new escrow business, but may continue to process existing and open escrows pursuant to  
22 Financial Code section 17609. It is further ordered that Model shall provide the Commissioner, to  
23 the attention of Blaine A. Noblett, Senior Counsel, by close of business on the first day of the  
24 Suspension Period, a list of all open escrows with escrow numbers and escrow party names along  
25 with a copy of the signed escrow instructions and signed deposit receipts, if any, for the last opened  
26 escrow. Open escrow shall mean an escrow wherein the parties to such escrow have already entered  
27 into a binding agreement and monies or escrow instructions have been submitted to Model  
28 regarding the transaction. A true and correct copy of the Suspension Order is attached and

1 incorporated herein as Exhibit A.

2 4. Final Orders. Model agrees that the Order to Discontinue Violations and the  
3 Suspension Order described in Paragraphs 2. and 3., above, are final orders.

4 5. Waiver of Hearing Rights. Model acknowledges that the Commissioner is ready,  
5 willing, and able to proceed with the administrative hearing to enforce the Accusation, Order to  
6 Discontinue Violations, and the Suspension Order and Model hereby waives its right to a hearing,  
7 and to any reconsideration, appeal, or other rights which may be afforded it under the Escrow Law,  
8 the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure  
9 (CCP) (Code Civ. Proc., § 1 et seq.), or any other provision of law; and by waiving such rights,  
10 Model effectively consents to the Settlement Agreement, Order to Discontinue Violations, and the  
11 Suspension Order becoming final.

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

18 7. Failure to Comply. Model agrees that, if the Commissioner contends that Model has  
19 failed to comply with the terms of the Settlement Agreement, Order to Discontinue Violations, or  
20 the Suspension Order, following 10 days' written notice from the Commissioner of Model's failure  
21 to comply with any term of the Settlement Agreement, Order to Discontinue Violations, or the  
22 Suspension Order, the Commissioner may, in addition to all other available remedies he may invoke  
23 under the Escrow Law, summarily suspend Model's escrow agent's license until it is in compliance.  
24 Upon 10 days' notice to Model, Model waives any further notice and hearing rights to contest such  
25 summary suspension that may be afforded under the Escrow Law, APA, CCP, or any other  
26 provision of law in connection therewith.

27 8. Information Willfully Withheld. The Settlement Agreement may be revoked, and the  
28 Commissioner may pursue any and all remedies under the Escrow Law against Model if the

1 Commissioner discovers Model knowingly or willfully withheld information from the  
2 Commissioner concerning the violations identified in the Accusation and Recitals above.

3 9. Future Actions by Commissioner. If Model fails to comply with any term of the  
4 Settlement Agreement, the Commissioner may institute proceedings for any and all violations  
5 otherwise resolved under the Settlement Agreement. The Commissioner reserves the right to bring  
6 any future actions against Model, or any of its partners, owners, officers, shareholders, directors,  
7 employees or successors for any and all unknown violations of the Escrow Law.

8 10. Assisting Other Agencies. The parties further acknowledge and agree that nothing in  
9 the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,  
10 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any  
11 such agency against Model or any other person based upon any of the activities alleged in this  
12 matter or otherwise.

13 11. Headings. The headings to the paragraphs of this Settlement Agreement are inserted  
14 for convenience only and will not be deemed a part hereof or affect the construction or  
15 interpretation of the provisions hereof.

16 12. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in  
17 interest.

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

28 14. Counterparts. The parties agree that the Settlement Agreement may be executed in

1 one or more separate counterparts, each of which shall be deemed an original when so executed.  
2 Such counterparts shall together constitute and be one and the same instrument.

3 15. Waiver, Modification, and Qualified Integration. No waiver, amendment, or  
4 modification of the Settlement Agreement shall be valid or binding to any extent unless it is in  
5 writing and signed by all the parties affected by it. The waiver of any provision of the Settlement  
6 Agreement shall not operate to waive any other provision.

7 16. Governing Law. The Settlement Agreement shall be construed and enforced in  
8 accordance with and governed by California law.

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

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

22 19. Effect Upon Future Proceedings. If Model applied for any license, permit or  
23 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future  
24 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof  
25 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

26 20. Voluntary Agreement. Model enters into the Settlement Agreement voluntarily and  
27 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
28 Commissioner, or any officer or agent thereof, about the Settlement Agreement. The parties each

1 represent and acknowledge that he, she or it is executing this Settlement Agreement completely  
2 voluntarily and without any duress or undue influence of any kind from any source.

3 21. Effective Date. The Settlement Agreement shall become final and effective when  
4 signed by all parties and delivered by the Commissioner’s agent via e-mail to Model’s counsel at  
5 mdavis@ddesq.com.

6 22. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
7 has received independent advice from its attorney(s) and/or representative(s) with respect to the  
8 advisability of executing this Settlement Agreement.

9 23. Notice. Any notices required under the Settlement Agreement shall be provided to  
10 each party at the following addresses:

11 If to Respondent to: Jin Zeng, Owner and President  
12 Model Escrow, Inc.  
13 1211 Center Court Drive, Suite 209  
Covina, California 91724

14 With copy to: Matthew S. Davis, Esq.  
15 Davis & Davis Law Group, APC  
16 1900 Avenue of the Stars, Suite 960  
Los Angeles, California 90067

17 If to the Commissioner to: Blaine A. Noblett, Senior Counsel  
18 Department of Business Oversight  
19 320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344

20 24. Public Record. Model acknowledges that the Settlement Agreement is a public  
21 record.

22 25. Signatures. This Settlement Agreement may be executed by facsimile or scanned  
23 signature, and any such facsimile or scanned signature by any party hereto shall be deemed to be an  
24 original signature and shall be binding on such party to the same extent as if such facsimile or  
25 scanned signature were an original signature.

26 26. Authority to Execute. Each signatory hereto covenants that he/she possesses all  
27 necessary capacity and authority to sign and enter into the Settlement Agreement.

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 11/7/19

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

MODEL ESCROW, INC.

Dated: 11/6/19

By \_\_\_\_\_  
JIN ZENG, Owner and President  
On behalf MODEL ESCROW, INC.

Approved as to Form

By \_\_\_\_\_  
Matthew S. Davis, Esq.  
Davis & Davis Law Group, APC  
Attorneys on behalf of Model Escrow, Inc.