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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) OAH NO. 2020080472
12 THE COMMISSIONER OF FINANCIAL) ESCROW LICENSE NO. 963-1053
13 PROTECTION AND INNOVATION,)
14 Complainant,) SETTLEMENT AGREEMENT
15 v.)
16 THE HERITAGE ESCROW COMPANY,)
17 Respondent.)
18)

19 The Commissioner of Financial Protection and Innovation (Commissioner) and Respondent,
20 The Heritage Escrow Company (HEC), enter into this Settlement Agreement (Settlement
21 Agreement) with respect to the following facts:

22 **I.**

23 **Recitals**

24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
25 entities licensed under the California Escrow Law (Escrow Law) (Fin. Code, § 17000 et seq.).

26 B. The Heritage Escrow Company (HEC) is a California corporation and an escrow
27 agent licensed by the Commissioner under license number 963-1053. HEC’s principal place of
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1 business is located at 2855 Michelle Drive, Suite 270, Irvine, California 92606. HEC maintains 10
2 branch locations in California.

3 C. HEC is wholly owned by Heritage Closing Services, Inc., a California corporation.
4 Heritage Closing Services, Inc. is wholly owned by First American Financial Corporation, a
5 Delaware corporation.

6 D. Kris Kartoizian is the current president of HEC.

7 E. On July 5, 2017, the Commissioner commenced a regulatory examination of the
8 books and records of HEC at its principal place of business at 2855 Michelle Drive, Suite 270,
9 Irvine, California 92606 (2017 Examination).

10 F. The 2017 Examination disclosed that HEC maintained a master trust account with US
11 Bank, account no. xxxx-19808 and separate trust bank accounts for each licensed branch location
12 with First American Trust Bank (FATB) with various account numbers.

13 G. The 2017 Examination further disclosed that HEC implemented a process, allegedly
14 in violation of Finance Code section 17409.1, wherein it would systematically transfer trust funds
15 electronically from each of its branch offices maintained at FATB into a single holding master trust
16 account maintained at its US Bank account no. xxxx-9808. Thereafter, HEC would transfer funds
17 electronically from its US Bank account no. xxxx-9808 back into the individual FATB trust branch
18 account as funds are required for HEC's daily disbursements.

19 H. Following several communications between HEC and the Commissioner's Examiner
20 (Examiner) regarding the 2017 Examination, on or about September 10, 2018, the Examiner
21 contacted HEC by email to ascertain if HEC had made changes to its bank account structure and
22 master trust account. HEC responded to the Examiner's email stating that HEC was still using the
23 same banking structures and had not changed its practice of sweeping escrow trust funds from its
24 holding trust account in FATB into its master trust account with US Bank account no. xxx-9808 and
25 vice versa.

26 I. Based on HEC's practice and failure to provide evidence demonstrating compliance
27 with Financial Code section 17409.1, on August 24, 2020, the Commissioner issued an Amended
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1 Accusation to suspend HEC’s Escrow Agent License, along with a Statement of Issues, and other
2 supporting pleadings (collectively, Amended Accusation).

3 J. HEC timely filed a Notice of Defense and request for hearing on the Amended
4 Accusation with the Commissioner on July 2, 2020, and the matter is currently set for a five-day
5 hearing on May 24-28, 2021, at 9:00 a.m., before the Office of Administrative Hearings, located at
6 320 West Fourth Street, Suite 600, Los Angeles, California 90013.

7 K. For the purposes of resolving the Amended Accusation without the expense and
8 uncertainty of further proceedings, HEC neither admits nor denies the factual findings in paragraphs
9 A through J above, agrees that at a hearing, the Commissioner could establish a prima facie factual
10 basis for each of the findings alleged in the Amended Accusation, for which HEC would have
11 defenses, and that those alleged findings could constitute cause for this action.

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

14 **II.**

15 **Terms and Conditions**

16 1. Purpose. This Settlement Agreement resolves the Amended Accusation allegations in
17 a manner that avoids the expense of a hearing and other possible court proceedings, protects
18 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
19 the Escrow Law.

20 2. Acknowledgment. HEC acknowledges that the Commissioner issued and served it
21 with the Amended Accusation in which the Commissioner alleged that HEC engaged in escrow
22 business improperly by repeatedly transferring escrow trust funds from HEC’s main trust accounts
23 into HEC’s master holding trust account held in a separate bank in violation of Financial Code
24 section 17409.1.

25 3. Order to Discontinue Violations. HEC hereby agrees that in accordance with
26 Financial Code sections 17602 and 17604, it has discontinued and will not resume the practices
27 underlying the alleged violations set forth in the Amended Accusation. This Order to Discontinue
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1 Violations is final and effective from the Effective Date of this Settlement Agreement, as defined in
2 paragraph 26 (Effective Date).

3 4. Administrative Cost. HEC shall pay an administrative cost of \$5,000.00 no later than
4 30 days after the effective date of this Settlement Agreement as defined in paragraph 25. The
5 administrative cost must be made payable in the form of a check to the Department of Financial
6 Protection and Innovation and transmitted to the attention of Accounting – Litigation, at the
7 Department of Financial Protection and Innovation and mailed to: Department of Financial
8 Protection and Innovation, ATTN: Accounting-Litigation 2101 Arena Boulevard Sacramento,
9 California 95834-2306 (DFPI). Notice of the payment must be concurrently sent to Uche Enenwali,
10 Senior Counsel, Department of Financial Protection and Innovation, 320 West Fourth Street, Suite
11 750, Los Angeles, California 90013.

12 5. Declaration of Policies and Procedures. HEC has submitted to the Commissioner a
13 declaration from an officer with personal knowledge of HEC’s policies and procedures that sets forth
14 all policies and procedures that have been implemented as of the date of this Order by HEC to ensure
15 compliance with it. The Commissioner has reviewed the declaration and deemed the policies and
16 procedures contained therein as satisfactory. HEC agrees to continue implementing those policies
17 and procedures in the future.

18 6. Waiver of Hearing Rights. HEC acknowledges the Commissioner is ready, willing,
19 and able to proceed with the filing of an administrative enforcement action on the charges contained
20 in this Accusation. HEC hereby waives the right to any hearings, and to any reconsideration, appeal,
21 or other right to review which may be afforded pursuant to the Escrow Law, the California
22 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
23 HEC further expressly waives any requirement for the filing of an enforcement action pursuant to
24 Government Code section 11415.60, subdivision (b). By waiving such rights, HEC effectively
25 consents to this Settlement Agreement becoming final.

26 7. Consideration. Except as otherwise set forth herein, in consideration of HEC’s
27 agreement to the issuance of an Order to Discontinue Violations, and payment of administrative
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1 costs as provided for in paragraphs 3 and 4 above, the Commissioner hereby agrees not to suspend
2 the Escrow Agent license(s) of HEC as a result of this action.

3 8. Failure to Comply. If in the future the Commissioner determines that HEC is
4 violating Financial Code section 17409.1 and in breach of this Settlement Agreement, the
5 Commissioner shall give written notice to HEC of such alleged violation and ten (10) days in which
6 to cure such violation. Upon receiving the notice of violation, HEC shall deposit the sum of
7 \$250,000.00 (the "Holding Fund") within five (5) business days into an account designated by the
8 DFPI in the written notice of alleged violation given to HEC. Notice of the deposit of the Holding
9 Fund must be concurrently sent to Uche Enenwali, Senior Counsel, Department of Financial
10 Protection and Innovation, 320 West Fourth Street, Suite 750, Los Angeles California 90013. Upon
11 receipt of HEC's written notice of cure, the DFPI shall promptly return the Holding Fund to HEC. If,
12 however, HEC does not timely cure the alleged violation and provide written notice of such cure to
13 the Commissioner, then the Holding Fund posted by HEC shall be forfeited to the Commissioner
14 within two (2) business days. The \$250,000.00 Holding Fund will be cumulative and in addition to
15 all other available remedies to the Commissioner under the Escrow Law for HEC's alleged violation,
16 including but not limited to, the Commissioner's right to seek suspension of HEC's Escrow Agent
17 license. HEC retains all its rights afforded under the Escrow Law, Government Code and any other
18 applicable state and federal law, including the rights to assert a defense and request a hearing in any
19 future enforcement proceedings brought against HEC by the Commissioner.

20 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
21 Settlement Agreement is intended to constitute a full, final, and complete resolution of the violations
22 described in the Amended Accusation, and that no further proceedings or actions will be brought by
23 the Commissioner in connection with these matters except under the Escrow Law, or any other
24 provision of law, to enforce compliance with the terms of this Settlement Agreement.

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

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

5 12. No Presumption Against Drafting Party. The Parties acknowledge that each has had
6 the opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly,
7 the Parties intend that no presumption for or against the drafting party will apply in construing any
8 part of this Settlement Agreement. The Parties waive the benefit of Civil Code section 1654 as
9 amended or corresponding provisions of any successor statute, which provide that in cases of
10 uncertainty, language of a contract should be interpreted most strongly against the party that caused
11 the uncertainty to exist.

12 13. Independent Legal Advice. The Parties represent, warrant, and agree that they have
13 received independent advice from their attorney(s) and/or representative(s) with respect to the
14 advisability of executing this Settlement Agreement.

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

18 15. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
19 successors in interest.

20 16. Reliance. The Parties represent, warrant, and agree that in executing this Settlement
21 Agreement they have relied solely on the statements set forth herein and the advice of their own
22 counsel. The Parties further represent, warrant, and agree that in executing this Settlement
23 Agreement they have placed no reliance on any statement, representation, or promise of any other
24 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
25 any other person or entity to make any statement, representation, or disclosure of anything
26 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
27 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
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1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
5 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
6 any other provision. No waiver by either party of any breach of, or of compliance with, any
7 condition or provision of this Agreement by the other party will be considered a waiver of any other
8 condition or provision or of the same condition or provision at another time.

9 18. Full Integration. This 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 19. Governing Law. This Settlement Agreement will be governed by and construed in
16 accordance with California law. The Parties hereto consent to the jurisdiction of California court,
17 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

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

22 21. Effect Upon Future Proceedings. If HEC applies 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 may, at the Commissioner's discretion, be admitted for the purpose of such application(s) or
26 enforcement proceeding(s).

27 22. Voluntary Agreement. HEC enters this Settlement Agreement voluntarily and without
28 coercion and acknowledges that no promises, threats, or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
2 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely
3 voluntarily and without any duress or undue influence of any kind from any source.

4 23. Notice. Any notice required under this Settlement Agreement shall be provided to
5 each party at the following addresses:

6 If to Respondent: Kris Kartoizian, President
7 The Heritage Escrow Company
8 2855 Michelle Drive, Suite 270
Irvine Californian 92606

9 If to the Commissioner: Uche Enenwali, Senior Counsel
10 Department of Financial Protection and Innovation
11 320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344 24.

12 24. Signatures. A fax or electronic mail signature shall be deemed the same as an original
13 signature.

14 25. Public Record. HEC hereby acknowledges that this Settlement Agreement is and will
15 be a matter of public record.

16 26. Effective Date. This Settlement Agreement shall become final and effective when
17 signed by all parties and delivered by the Commissioner's agent via e-mail to Ronald D. Kent, Esq.,
18 attorney for The Heritage Escrow Company, at ronald.kent@dentons.com.

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27. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

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

Dated: May 12, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

THE HERITAGE ESCROW COMPANY

Dated: May 12, 2021

By _____
KRIS KARTOZIAN
President

APPROVED AS TO FORM

RONALD D. KENT, ESQ.
DENTONS US LLP
Attorneys for Respondent