

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
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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 CALIFORNIA) OAH No.: L-2008070283
CORPORATIONS COMMISSIONER,)
12) File No.: 963-2287
13 Complainant,)
14 vs.) SETTLEMENT AGREEMENT
15 TOPLINE ESCROW SERVICE, INC.,) TRIAL DATE: October 2, 2008
16 Respondent.) ASSIGNED TO:
17)
18)

19 This Settlement Agreement is entered into between Topline Escrow Service, Inc. (“Topline”)
20 and the California Corporations Commissioner ("Commissioner"), and is made with respect to the
21 following facts:

22 **RECITALS**

23 A. Topline is a corporation in good standing, duly formed and existing pursuant to the
24 laws of the State of California, and authorized to conduct business in the State of California.

25 B. Topline currently holds escrow agent’s license number 963-2287 with its principal
26 place of business located at 19520 Nordoff Street, Suite 16, Northridge, California 91324. Topline
27 has been licensed by the Commissioner pursuant to the California Escrow Law since November 8,
28 2005.

1 C. Kathy Garcia is the president and owner of Topline and is authorized to enter into this
2 Settlement Agreement on behalf of Topline.

3 D. On May 22, 2008, Topline was personally served with a Notice of Intention to Issue
4 Order Suspending Escrow Agent’s License; Accusation and accompanying documents issued by the
5 Commissioner on May 16, 2008 (“Suspension Action”). Topline was also personally served on May
6 22, 2008 with an Order Imposing Penalties Pursuant to California Financial Code Section 17408
7 issued by the Commissioner on May 19, 2008 (“Penalty Order”). Topline has filed Notices of
8 Defense with the Commissioner. The matters are set for hearing on October 2, 2008.

9 E. Topline has now filed its audit report for October 31, 2007 (“2007 Audit Report”)
10 with the Commissioner, which the failure to timely file was the basis of the Suspension Action and
11 Penalty Order.

12 It is the intention and desire of the parties to resolve these matters without the necessity of a
13 hearing and/or other litigation.

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

16 **TERMS AND CONDITIONS**

17 1. This Settlement Agreement is entered into for the purpose of judicial economy and
18 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

19 2. Topline hereby admits the allegations contained in the Suspension Action and Penalty
20 Order. Topline’s admissions herein are solely for the limited purposes of this proceeding and any
21 future proceeding that may be initiated by or brought before the Commissioner against Topline. It is
22 the intent and understanding between the parties that this Settlement Agreement, and particularly
23 Topline’s admissions herein, shall not be binding or admissible against Topline in any action(s)
24 brought against Topline by third parties.

25 3. Topline hereby agrees to the immediate issuance by the Commissioner of an Order
26 suspending Topline’s escrow agent’s license for a period of two weeks to be served in two one week
27 periods. The first suspension shall commence on _____, 2008 and end on _____, 2008
28 and the second suspension shall commence on _____, 2008 and end on _____,

1 2008. In connection with the suspension, Topline shall file with the Commissioner at close of
2 business the business day immediately preceding the date on which the suspensions are to
3 commence a list of all open escrows with escrow numbers and escrow party names along with a
4 copy of the signed escrow instructions and signed deposit receipt(s) for the last opened escrow. For
5 purposes of this Settlement Agreement, open escrow shall mean an escrow wherein the parties to
6 such escrow have already entered into a binding agreement and monies and/or escrow instructions
7 have been submitted to Topline regarding the transaction. A copy of the suspension order is
8 attached and incorporated as Exhibit A.

9 4. Topline agrees that the Penalty Order is hereby deemed a final order. Topline
10 acknowledges that the penalties accruing pursuant to the Penalty Order for the untimely filing of its
11 2007 Audit Report totaled \$10,800.00 as of June 3, 2008; the date when the 2007 Audit Report was
12 filed. As full settlement of the Penalty Order, Topline agrees to pay to the Commissioner the sum of
13 \$2,000.00 in penalties, which shall be paid in four equal installments of \$500.00. The first
14 installment is due within seven (7) days of the date of the execution of this Settlement Agreement
15 and the remaining installments are due monthly commencing thirty-seven (37) days after the date of
16 the execution of this Settlement Agreement until paid in full.

17 5. Topline acknowledges its right to an administrative hearing under California
18 Financial Code sections 17408 and 17608 in connection with the Penalty Order and Suspension
19 Action, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other rights
20 which may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act,
21 the California Code of Civil Procedure, or any other provision of law in connection with the Penalty
22 Order and Suspension Action.

23 6. Topline further agrees that its failure to timely remit any payment required under
24 paragraph 4 above shall cause the entire unpaid amount to become due and payable in full, and if
25 payment of the entire unpaid balance is not thereafter tendered to the Commissioner within five (5)
26 days after written notice of demand, the Commissioner may summarily suspend Topline's escrow
27 agent's license until such time as the unpaid balance of the penalties are paid in full. Topline hereby
28 waives any notice and/or hearing rights to contest such summary suspension, which may be afforded

1 under the Escrow Law, the California Administrative Procedure Act, the California Code of Civil
2 Procedure, or any other provision of law in connection therewith.

3 7. Topline acknowledges and agrees that the summary suspension provided for above in
4 paragraph 6 shall not be the exclusive remedy available to the Commissioner in pursuing any failure
5 to penalties, but may be sought and employed in addition to any other remedy available pursuant to
6 the Escrow Law.

7 8. The parties hereby acknowledge and agree that this Settlement Agreement is intended
8 to constitute a full, final and complete resolution of the Suspension Action and Penalty Order. The
9 parties further acknowledge and agree that nothing contained in this Settlement Agreement shall
10 operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with
11 any prosecution, administrative, civil or criminal, brought by any such agency against Topline based
12 upon any of the activities alleged in these matters or otherwise.

13 9. The Commissioner shall cause this Settlement Agreement to be filed with the Office
14 of Administrative Hearings within five days of its execution by all parties hereto, but no later than
15 September 30, 2008.

16 10. Each of the parties represents, warrants, and agrees that it has received independent
17 advice from its attorney(s) and/or representative(s) with respect to the advisability of executing this
18 Settlement Agreement.

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

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

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

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

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

Dated: October 8, 2008

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Acting Deputy Commissioner

Dated: _____

TOPLINE ESCROW SERVICE, INC.

By _____
KATHY GARCIA, President

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APPROVED AS TO FORM:
MORTON ALAN HAAS & CO.

By _____
MICHAEL C. HAAS, C.P.A., Representatives for
TOPLINE ESCROW SERVICE, INC.

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
JUDY L. HARTLEY
Senior Corporations Counsel