

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
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
Telephone: (213) 576-7604 Fax: (213) 576-7181

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-2009091245
CORPORATIONS COMMISSIONER,)
12) File No.: 963-2287
13 Complainant,)
14 vs.) SETTLEMENT AGREEMENT
15 TOPLINE ESCROW SERVICE, INC.,) TRIAL DATE: January 26, 2010
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 563 South Brand Boulevard, San Fernando, California 91340. 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 August 24, 2009, Topline was personally served with a Notice of Intention to
4 Issue Order Revoking Escrow Agent’s License; Accusation and accompanying documents issued by
5 the Commissioner on August 17, 2009 (“Accusation”). Topline has filed a Notice of Defense with
6 the Commissioner. The matter is set for hearing on January 26, 2010.

7 E. Topline has now filed its audit report for October 31, 2008 (“2008 Audit Report”)
8 with the Commissioner, which the failure to timely file was the basis of the Accusation.

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

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

13 **TERMS AND CONDITIONS**

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

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

22 3. Topline hereby agrees to the immediate issuance by the Commissioner of an Order
23 suspending Topline’s escrow agent’s license for a period of one month to commence on February 1,
24 2010 and end on close of business, February 28, 2010. In connection with the suspension, Topline
25 shall file with the Commissioner at close of business on the business day immediately preceding the
26 date on which the suspension is to commence; January 29, 2010, a list of all open escrows with
27 escrow numbers and escrow party names along with a copy of the signed escrow instructions and
28 signed deposit receipt(s), if any, for the last opened escrow. For purposes of this Settlement

1 Agreement, open escrow shall mean an escrow wherein the parties to such escrow have already
2 entered into a binding agreement and monies and/or escrow instructions have been submitted to
3 Topline regarding the transaction. A copy of the suspension order is attached and incorporated as
4 Exhibit A.

5 4. Topline acknowledges its right to an administrative hearing under California
6 Financial Code section 17608 in connection with the suspension, and hereby waives its right to a
7 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
8 Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure,
9 or any other provision of law in connection with the suspension.

10 5. Topline further agrees that the Commissioner may summarily revoke the escrow
11 agent's license(s) of Topline if Topline fails to timely file its annual audit report required under
12 Financial Code section 17406 at any time during the period in which the next three annual audit
13 reports are due, commencing with the audit report for the fiscal year end October 31, 2009 due
14 February 15, 2010.

15 6. Topline hereby waives its right to a hearing, or to any reconsideration, appeal, or
16 other rights, which may be afforded pursuant to the Escrow Law, the California Administrative
17 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
18 with the summary revocation provided for in paragraph 5 above.

19 7. The parties hereby acknowledge and agree that this Settlement Agreement is intended
20 to constitute a full, final and complete resolution of the Accusation. The parties further acknowledge
21 and agree that nothing contained in this Settlement Agreement shall operate to limit the
22 Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution,
23 administrative, civil or criminal, brought by any such agency against Topline based upon any of the
24 activities alleged in these matters or otherwise.

25 8. The Commissioner shall cause this Settlement Agreement to be filed with the Office
26 of Administrative Hearings within five days of its execution by all parties hereto, but no later than
27 January 25, 2010.
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1 9. Each of the parties represents, warrants, and agrees that it has received independent
2 advice from its attorney(s) and/or representative(s) with respect to the advisability of executing this
3 Settlement Agreement.

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

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

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

27 13. This Settlement Agreement shall not become effective until signed and delivered by
28 all Parties.

