PRESTON DuFAUCHARD
California Corporations Commissioner
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. NEWPORT BEACH ESCROW CORP. and DAMIAN ROBERT KUTZNER, Respondents.	OAH NO. L-2007010669 File No.: 963-2077 SETTLEMENT AGREEMENT TRIAL DATE: May 15 & 16, 2007 ASSIGNED TO:

This Settlement Agreement is entered into between Newport Beach Escrow Corp. ("Newport") and Damian Robert Kutzner ("Kutzner"), on the one hand, and the California Corporations Commissioner ("Commissioner"), on the other hand, and is made with respect to the following facts:

RECITALS

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

B. Newport is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California (California Financial Code § 17000 et seq.). Newport has its principal

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place of business located at 660 Newport Center Drive, Suite 250, Newport Beach, California 92660.

C. Kutzner is, and was at all times relevant herein, the owner and president of Newport.

D. On December 12 and 15, 2006, respectively, Newport and Kutzner were personally served by the Commissioner with a Notice of Intention to Issue Order to Revoke Escrow Agent's License and To Issue an Order Pursuant to Section 17423 (Bar from Employment, Management or Control of an Escrow Agent), Accusation and accompanying documents dated December 11, 2006 ("Accusation"). Newport and Kutzner have filed Notices of Defense with the Commissioner and a two-day hearing before the Office of Administrative Hearings is scheduled to commence on May 15, 2007.

E. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

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

TERMS AND CONDITIONS

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

2. Newport and Kutzner hereby stipulate to the facts contained in the Accusation. The stipulations of fact by Newport and Kutzner herein are solely for the limited purposes of these proceedings and any future proceeding(s) that may be initiated by or brought before the Commissioner against Newport and/or Kutzner. It is the intent and understanding between the parties that this Settlement Agreement, and particularly the stipulations of fact by Newport and Kutzner herein, shall not be binding or admissible against Newport and/or Kutzner in any action(s) brought against Newport and/or Kutzner by any individual or entity other than the Commissioner.

3. Newport hereby agrees to the issuance by the Commissioner of an order revoking Newport's escrow agent's license. The revocation shall become effective sixty (60) days from the date of execution of this Settlement Agreement to allow Newport to complete and/or transfer any pending escrows, and properly close out the trust account(s). A copy of the revocation order is attached and incorporated as Exhibit A.

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4. Newport acknowledges its right to an administrative hearing under Financial Code section 17608 in connection with the revocation described in paragraph 3 above, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection with these matters.

5. Kutzner hereby agrees to the issuance by the Commissioner of an order barring Kutzner from any position of employment of any escrow agent for a period of ten (10) years. The bar order shall not become effective until sixty (60) days after the date of execution of this Settlement Agreement to allow Kutzner to facilitate, as necessary, the completion and/or transfer of any escrow transactions pending at Newport as contemplated by paragraph 3 above. Kutzner acknowledges and understands that his agreement to be barred for a definitive period of time constitutes a waiver of California Government Code section 11522, which provides for the opportunity to apply for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. A copy of the bar order is attached and incorporated as Exhibit B.

6. Kutzner acknowledges his right to an administrative hearing under Financial Code section 17423 in connection with the bar described in paragraph 5 above and hereby waives his right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection with this matter herein.

7. The parties hereby acknowledge and agree that this Settlement Agreement is intended to constitute a full, final and complete resolution of this matter, including any further action that could be initiated by the Commissioner for failure to file the December 31, 2005 annual audit report. The parties further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against Newport and/or Kutzner based upon any of the activities alleged in this matter or otherwise.

8. The Commissioner shall cause this Settlement Agreement to be filed with the Office

of Administrative Hearings immediately upon its execution by all parties hereto.

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

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

11. 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.

12. 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.

13. This Settlement Agreement may be executed in one or more counterparts, each of

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which shall be an original but all of which, together, shall be deemed to constitute a single document.

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

Dated: _____5/1/07_____

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
ALAN S. WEINGER
Lead Corporations Counsel

Dated: ___4/30/07_____

NEWPORT BEACH ESCROW CORP.

By_____
DAMIAN ROBERT KUTZNER, President

Dated: _____4/30/07_____

By_____
DAMIAN ROBERT KUTZNER, an individual

APPROVED AS TO FORM:

LOEB & LOEB LLP

By_____
MICHAEL L. MALLOW, ESQ. for NEWPORT BEACH ESCROW CORP. and DAMIAN ROBERT KUTZNER

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
JUDY L. HARTLEY
Senior Corporations Counsel

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