1 REAL ESTATE AGENCY 2 BEFORE THE REAL ESTATE COMMISSIONER 3 4 In the Matter of the Escrow Agent License of 5 FIRST AMERICAN TITLE COMPANY OF 6 STIPULATED FINAL ORDER 7 **OREGON** 8 9 10 The Oregon Real Estate Agency (OREA) and First American Title Company of Oregon 11 (First American) do hereby agree and stipulate to the following: 12 FINDINGS OF FACT 13 14 CONCLUSIONS OF LAW 15 1. At all times mentioned herein, First American was licensed as an escrow agent in 16 1.1 17 Oregon. 18 1.2 During an investigation of a separate matter OREA investigator Meghan Lewis 19 (Lewis) discovered documents which indicated that First American failed to notice conflicting compensation demands received from principal broker, William Walson (Walson) and principal 20 21 broker, Dieter Wehner (Wehner) prior to close of escrow file # 7121-2028037. 22 1.3 Wehner had a listing agreement with Andrew M. Duncan and Katherine M. 23 Cheval (Duncan and Cheval). Walson submitted an offer on behalf Vincent and Sandra 24 Homer (Homers) to Wehner on January 15, 2013. At the time Walson submitted the offer he 25 printed out a copy of the MLS record on the subject property which showed the selling office 26 compensation to be 2% of the sales price or \$8,160.00. 27 For the investigation, Walson provided OREA a MLS listing audit for the subject 28 property. The listing audit shows on January 17, 2013 at 5:43 pm the selling office 29 compensation reduced from 2% to 1% or \$4,080.00. 30 ///

1 of 4 – Stipulated Final Order- First American Title Company of Oregon

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- 1.5 Duncan and Cheval accepted counter offer number three from the Homers on January 21, 2013.
- 1.6 On April 18, 2013, Wehner submitted a Notice of Real Estate Compensation form to a First American branch office located at 807 Main Street, Dallas, OR 97338. The compensation form listed Wehner as the listing principal broker and Walson as the selling broker. The compensation instructions for escrow were "At closing \$4080 to Heritage NW Realty Group and \$4080 to iHomes."
- 1.7 On April 19, 2013, Walson submitted a Selling Broker Compensation Form to First American. The compensation listed was \$8,160 or 2% of sale price. The instructions read, "IN THE EVENT THAT ESCROW RECEIVES COMMISSION DISBURSEMENT REQUESTS FROM THE LISTING AND SELLING PRINCIPAL BROKERS FOR DIFFERENT SUMS, ESCROW IS REQUESTED TO NOTIFY THE UNDERSIGN IMMEDIATELY."
- 1.8 Walson and Wehner each received compensation checks for \$4,080.00. Walson notified First American that he should have received compensation of \$8,160.00. Vice President and Willamette Valley Area Manager, Stacy Collins determined that First American should have identified the discrepancy in the compensation forms. First American issued a check to Walson for \$4,080.00 on August 22, 2013.
- 1.9 Senior Escrow Officer, Kami Anderson (Anderson) at First American told Lewis that she did not notice a discrepancy between the two compensation forms from Walson and Wehner. She misinterpreted the total of \$8,160.00 to indicate two payments for each \$4,080.00 and when she compared the number totals on the forms she considered the demands equal.

Violation: By disbursing compensation from conflicting compensation agreements First American violated OAR 696.535(c) as it incorporates OAR 863-050-0052 which states, if there is a dispute among or between real estate brokers who are sole practitioners or principal real estate brokers regarding who is entitled to the moneys or other property agreed to as compensation in a written compensation agreement, and the escrow agent is holding such moneys or other property pursuant to ORS 696.582(1)(a), the escrow agent must hold the moneys or other property until the escrow agent receives a written agreement between the brokers or a final order from a court directing the escrow agent to disburse the moneys or other property.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by OREA and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between OREA and First American. I further understand that if First American does not agree with this stipulation First American has the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. First American freely and voluntarily waives its rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

First American hereby agrees and stipulates to the above findings of fact and conclusions of law and understands that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an amended notice of intent may be issued in this matter. I understand that, in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real Estate News Journal.

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ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.585 and based upon the
violation(s) set forth above, First American pay a civil penalty in the sum of \$1,000.00, said
penalty to be paid to the General Fund of the State Treasury by paying the same to the OREA.

	ay a civil penalty in the sum of \$1,000.00, said State Treasury by paying the same to the ORE
IT IS SO STIPULATED:	IT IS SO ORDERED:
ByALAN BRICKLEY Legal Counsel Date	GENE BENTLEY Real Estate Commissioner Date 9.23./4
	Date of service: 9-24-2014