

1 the Department of Financial Protection and Innovation (Department) brings this action pursuant to
2 Financial Code section 17608.

3 2. The Commissioner is authorized to administer and enforce the provisions of the
4 California Escrow Law (Escrow Law) (Fin. Code § 17000 et seq.).¹

5 3. The Commissioner seeks to revoke the escrow agent license issued to Rialto Escrow
6 Company (Rialto Escrow or Respondent) based upon its violations of the Escrow Law, including
7 failure to file the annual audit report for the period ending December 31, 2021, failure to allow
8 inspection of books and records, failure to respond to the Commissioner’s written demands for books
9 and records, and failure to file the required reports by the Commissioner.

10 4. Rialto Escrow is an Escrow agent licensed by the Commissioner under the Escrow
11 Law with its place of business located at 141 West Rialto Avenue, Rialto, California. Respondent
12 received its escrow agent license from the Commissioner on December 18, 1979. Rialto Escrow’s
13 license is currently classified as inactive.

14 5. Kenneth Everhart (Everhart) is the President of Rialto Escrow.

15 **II.**

16 **Violations of the Escrow Law**

17 **A. Failure to File the Annual Audit Report for Fiscal Year 2021**

18 6. Pursuant to Financial Code section 17406, all licensees under the Escrow Law are
19 required to file an annual audit report containing audited financial statements within 105 days after
20 the close of their fiscal year. Respondent’s fiscal year-end is December 31. Rialto Escrow failed to
21 submit its annual audit report for the fiscal year 2021, in violation of Section 17602.5.

22 7. Notices regarding the requirement to file the annual audit report were sent to Rialto
23 Escrow as follows:

24 a. On November 19, 2021, the Department issued a bulletin to Rialto Escrow via
25 GovDelivery.com, sending it to Rialto Escrow’s designated email address on file with the
26 Department. The bulletin served as a reminder that the company’s annual audit report for the fiscal
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28 ¹ All further statutory references are to the Financial Code, unless otherwise indicated.

1 year ending December 31, 2021, was due on April 15, 2022 – 105 days after the close of the fiscal
 2 year, as required by Financial Code Section 17406. The bulletin also cautioned that failure to submit
 3 the report by the April 15, 2022 deadline would subject the company to penalties under Financial
 4 Code Section 17408. A delivery report generated by GovDelivery.com on November 19, 2021,
 5 confirmed that the notification was successfully delivered and received by Rialto Escrow on the same
 6 day.

7 b. On June 1, 2022, the Department issued a written demand to Rialto Escrow, sent to its
 8 designated email address with delivery tracking, requiring the filing of its December 31, 2021, annual
 9 report within ten days. The demand letter also warned Rialto Escrow of potential penalties, including
 10 license suspension or revocation, for failing to file the required report within the specified timeframe.
 11 Outlook delivery tracking confirmed that the email and demand letter were received by Rialto
 12 Escrow. Additionally, after the demand letter was sent, a Department examiner spoke with Everhart
 13 by phone to confirm receipt of the letter.

14 c. On September 23, 2022, a Department examiner followed up with Everhart via email
 15 and phone. During the conversation, Everhart stated that he intended to surrender his escrow agent
 16 license. The examiner informed Everhart that surrendering the license after the due date for the 2021
 17 annual report would not exempt him from the obligation to file the report.

18 9. Given Rialto Escrow’s failure to file the required annual audit report, it has incurred
 19 fines totaling \$401,000.00. These fines were calculated from the expiration date of the 10-day
 20 demand letter through August 2024, as shown below.

Date	Number of Days	Fines per Day	Fine Amount
6/13/22 – 6/17/22	5	\$100.00	\$500.00
6/18/22 – 8/26/24	801	\$500.00	\$400,500.00

25 **B. Failure to provide the required books and records for the 2021 Regulatory Examination**

26 10. On July 6, 2021, the Department commenced a remote regulatory examination. A
 27 notice of examination letter, along with an attached “Items Needed for the Examination” list, was
 28 emailed to Rialto Escrow’s designated email address. The first page of the list, containing items 1

1 through 11, was due immediately upon receipt, while the second page, with items 12 through 23, was
2 due within two weeks. The examiner in charge spoke with Everhart by phone and informed him she
3 would email a OneDrive shared folder link for uploading the requested documents. During the
4 examination, the examiner requested the necessary items to complete the review. However, Rialto
5 Escrow consistently failed to provide all the required documentation, as detailed below, in violation
6 of Sections 17405 for failing to allow inspection of Rialto Escrow’s books and records, and 17408 for
7 failing to respond to the Commissioner’s written demands for books and records.

8 11. On July 21, 2021, the examiner emailed Everhart to inquire about an escrow file
9 labeled “Bank Fraud” which showed a balance of \$23,390.10 on the July 31, 2020 escrow trial
10 balance. Everhart did not respond. Due to the lack of response, the examiner selected the “Bank
11 Fraud” file for review as part of her audit procedures, along with two old outstanding checks. On July
12 27, 2021, the examiner sent a follow-up email to Rialto Escrow regarding item numbers 4 and 9 from
13 the “Items Needed for the Examination” list. Additionally, she included a document request for the
14 “Bank Fraud file as item 1 and the two outstanding checks as item 2. On August 4, 2021, Everhart
15 responded, explaining that the “Bank Fraud” file was created due to fraudulent ACH charges against
16 his trust account. He stated that he had replaced the funds and recovered some of the losses through
17 credits from the fraudulent charges, which were received into the file.

18 12. On November 8, 2021, the examiner sent a follow-up email to Everhart outlining the
19 missing items on the second page of the “Items Needed for the Examination” list. The email included
20 a detailed summary of the missing items and attached the full list for reference. On November 9,
21 2021, the examiner followed up with Everhart via email, specifically requesting the escrow ledger for
22 the bank fraud file as part of the document requirements. Additional follow-up emails were sent on
23 November 18, 2021 and November 29, 2021, regarding the outstanding items. Despite these efforts,
24 Everhart did not respond.

25 13. On November 30, 2021, Everhart uploaded five PDF files in the OneDrive shared
26 folder, corresponding to item numbers 12, 15, 16, 17, and 19 from the “Items Needed for the
27 Examination” list. However, some of the submitted items were incomplete and did not align with the
28 specific information requested by the examiner. Notably, Everhart still failed to provide item 19, the

1 Financial Statements as of June 30, 2021. He also failed to submit item numbers 14, 15, 18, 20, and
2 22 from the required list.

3 14. Follow-ups were sent via email on April 14, May 12, 2022, regarding the missing
4 items from the “Items Needed for the Examination” list and the examiner’s document request. The
5 examiner also followed up by phone on June 28 and December 21, 2022. Despite these repeated
6 attempts, no response was received.

7 15. On December 22, 2022, the Commissioner through her staff, issued a demand letter
8 for the missing items. As of today, not all requested items have been provided.

9 16. On August 10, 2023, the Commissioner, through her staff, issued a follow-up demand
10 letter seeking information that had not been provided in response to the original demand letter dated
11 December 22, 2022.

12 17. On August 29, 2023, the Department’s examiner contacted Everhart via email and
13 phone to discuss the follow-up letter sent on August 10, 2023. Everhart indicated he had not received
14 the letter. During the call, the examiner re-sent the letter to Rialto Escrow’s designated and public
15 email addresses, receiving delivery confirmation receipts for both. Everhart reported ongoing issues
16 accessing his designated email account, so the examiner also sent the letter to Everhart’s personal
17 email address, which he confirmed receiving. To assist further, the examiner provided samples of the
18 escrow ledger, status reports, and month-end reports to help Everhart properly identify the requested
19 items.

20 18. On November 20, 2024, the Commissioner, through her staff, sent another follow-up
21 letter to Rialto Escrow, requesting items numbered 1 through 9 as outlined in the August 10, 2023,
22 follow-up demand letter.

23 **C. License Surrender and Failure to Provide the Closing Audit**

24 19. On December 13, 2022, the Department received a written request from Rialto Escrow
25 to surrender its license.

26 20. On December 14, 2022, following receipt of the surrender request, the Commissioner,
27 through her staff, emailed Everhart a letter outlining the instructions for completing the licensing
28 surrender process in accordance with the requirements of Section 17600(b). Specifically, the licensee

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(d) The reports and financial statements referred to in subdivisions (a) and (b) shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date together with other relevant information as the commissioner may require. The reports and financial statements referred to in subdivisions (a), (b), and (c) shall be prepared in accordance with generally accepted accounting principles, and shall be accompanied by a report, certificate, or opinion of, an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules of the commissioner.

(e) A licensee shall make other special reports to the commissioner as the commissioner may from time to time require.

(f) For good cause and upon written request, the commissioner may extend the time for compliance with subdivisions (a) and (b).

(g) A licensee shall, when requested by the commissioner, submit its unaudited financial statements, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income and expense as of the date and for the period specified by the commissioner. The commissioner may require the submission of these reports on a monthly or other periodic basis.

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(i) The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of its rejection and the cause of the rejection. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiency and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all rejected filings.

(j) The commissioner may make rules specifying the form and content of the reports and financial statements referred to in this section, and may require that those reports and financial statements be verified by the licensee in the manner as he or she may prescribe.

(k) Upon completion of the reports and financial statements referred to in subdivisions (a), (b), and (c), the independent accountant shall submit to the commissioner complete copies of the reports and

1 financial statements at the same time that copies of the reports and
2 financial statements are submitted to the licensee.

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4 25. Financial Code section 17408, subdivisions (b)-(e), provides as follows:

5 (b) The commissioner may impose, by order, a penalty on any
6 person who fails, within the time specified in any written demand of the
7 commissioner, (1) to make and file with the commissioner any report
8 required by law or requested by the commissioner, or (2) to furnish any
9 material information required by the commissioner to be included in
10 the report. The amount of the penalty may not exceed one hundred
11 dollars (\$100) for each day for the first five days the report or
12 information is overdue, and thereafter may not exceed five hundred
13 dollars (\$500) for each day the report or information is overdue.

14 (c) If, after an order has been made under subdivision (b), a request
15 for hearing is filed in writing within 30 days of the date of service of
16 the order by the person to whom the order was directed, a hearing shall
17 be held in accordance with the Administrative Procedure Act, Chapter
18 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
19 of the Government Code, and the commissioner shall have all the
20 powers granted under that chapter.

21 (d) If the person fails to file a written request for a hearing within
22 30 days of the date of service of the order, the order imposing the
23 penalty shall be deemed a final order of the commissioner, and the
24 penalty shall be paid within five business days.

25 (e) If a hearing is requested, the penalty shall be paid within five
26 business days after the effective date of any decision in the case
27 ordering payment to be made.

28 26. Financial Code section 17600 provides:

(a) An escrow agent's license remains in effect until surrendered,
revoked, or suspended.

(b) A licensee that ceases to engage in the business regulated by this
division and desires to no longer be licensed shall notify the
commissioner in writing and, at that time, tender the license and all
other indicia of licensure to the commissioner. Within 105 days of the
written notice to the commissioner, the licensee shall submit to the
commissioner, at its own expense, a closing audit report as of the date
the license is tendered to the commissioner for surrender, or for another
period as the commissioner may specify, to be performed by an
independent certified public accountant. The closing audit shall
include, but not be limited to, information required by the
commissioner, a bank reconciliation of the trust account, and a verified

1 statement from a certified public accountant confirming lawful
2 disbursement of funds. A license is not surrendered until the
3 commissioner has reviewed and accepted the closing audit report, a
4 determination has been made by the commissioner that acceptance of
the surrender is in the public interest, and tender of the license is
accepted in writing by the commissioner.

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6 20. Financial Code section 17602.5 provides as follows:
7 If any licensed escrow agent fails to make any reports required by law
8 or by the commissioner within ten (10) days from the day designated
9 for the making of the reports, or within any extension of time granted
by the commissioner, or fails to include therein any matter required by
law or by the commissioner, such failure shall constitute grounds for
the suspension or revocation of the license held by such escrow agent.

10 21. Financial Code section 17608 provides in pertinent part as follows:
11 The commissioner may, after notice and a reasonable opportunity to be
12 heard, suspend or revoke any license if he finds that:

- 13 (a) The licensee has failed to maintain in effect a bond required
under the provisions of this division.
- 14 (b) The licensee has violated any provision of this division or any
15 rule made by the commissioner under and within the authority of this
division.

16 **IV.**

17 **PRAYER FOR ORDER IMPOSING PENALTIES PURSUANT TO**
18 **FINANCIAL CODE SECTION 17408**

19 22. The Commissioner finds that, by reason of the foregoing, Rialto Escrow Company has
20 failed to file its annual audit report for its fiscal year ended December 31, 2021, as required under
21 Financial Code section 17406, which is ground for the imposition of penalties under Financial Code
22 section 17408.

23 NOW THEREFORE the Commissioner having found that Rialto Escrow Company failed to
24 file its annual audit report for its fiscal year ended December 31, 2021, as required by Financial Code
25 section 17406, it is hereby ordered, pursuant to Financial Code section 17408, that Rialto Escrow
26 Company pay the Commissioner the sum of \$401,000.00.

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V.

**PRAYER FOR ORDER REVOKING RIALTO ESCROW COMPANY’S ESCROW
AGENT LICENCE PURSUANT TO FINANCIAL CODE SECTIONS 17602.5 AND 17608**

23. The Commissioner finds that, by reason of the foregoing, Rialto Escrow Company has violated Financial Code section 17406 which constitutes grounds for the revocation of its escrow agent’s license under sections 17602.5 and 17608 of the Escrow Law.

WHEREFORE, IT IS PRAYED under sections 17602.5 and 17608 of the Escrow Law, that the escrow agent’s license of Impact Escrow, Inc. be revoked.

Dated: December 20, 2024
Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
MARLOU de LUNA
Senior Counsel
Enforcement Division