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2 Deputy Commissioner
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4 Corporations Counsel
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6 San Francisco, CA 94104
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FILED

2012 FEB 10 A 9:23

K. TORRE, CLERK OF THE SUPERIOR COURT

BY: _____
J. MYOVICH, DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA, BY AND THROUGH THE)
12 CALIFORNIA CORPORATIONS)
13 COMMISSIONER,)
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Case No. N11-1854
ORDER APPOINTING LIMITED RECEIVER
TO LIQUIDATE AND WIND UP TRUST
ACCOUNT AFFAIRS
Assigned To: Dept 17
Complex
The Honorable Barry P. Goode
Date: February 10, 2012
Time: 9:00
Dept: 17
No Trial Date
Action filed: November 30, 2011

The hearing on the Application for appointment of a limited receiver brought by petitioner, the California Corporations Commissioner came on for hearing on February 10, 2012 in Department 17, before the Honorable Judge Barry P. Goode Presiding. Kirk Wallace appeared for petitioner, the California Corporations Commissioner. Glen R. Olson appeared for Respondent Commercial Escrow Services, Inc., which has filed a notice of non-opposition subject to certain conditions to the appointment of the receiver.

FOR GOOD CAUSE APPEARING IT IS HEREBY ORDERED THAT:

The application for order appointing a limited receiver to liquidate and wind up trust account affairs of respondent Commercial Escrow Service. Inc, ("CES") is hereby granted as follows:

1 Peter A. Davidson is appointed as the receiver over the escrow trust funds of CES, including,
2 but not limited to, the trust funds currently in the possession of Peter A. Davidson in his capacity as
3 Conservator, any indemnity funds paid or to be paid by Escrow Agents' Fidelity Corporation, any
4 surety bond claims or funds, any insurance proceeds which may provide coverage for the shortage in
5 any escrow accounts of CES, the CES bank accounts at Bank of the West which contained the
6 following escrow funds at the time the accounts were seized by the Commissioner including 1) Trust
7 Account Number 1 which had a balance of \$5,343,956.73, and was designated for EAFC escrows; 2)
8 Trust Account Number 2 which contained funds totaling \$729.90, which was designated for Non-
9 EAFC escrows; 3) Savings Account Number 1 with a balance of \$26,394.33 which was designated
10 for EAFC escrows; 4) a savings account with \$40,000.00 which was designated for Non-EAFC
11 escrows; and 5) an account designated for incoming EFT accounts with a zero balance, as well as the
12 CD in the amount of \$50,000 deposited at the Union Bank as described above, and all bank and
13 escrow records of CES (the "trust property"), whether directly or indirectly, owned beneficially or
14 otherwise by, or in the possession, custody or control of CES, or to which CES has any right of
15 possession, custody or control, irrespective of whomsoever holds such trust property, in order to
16 obtain an adequate accounting of CES's trust property and trust liabilities; secure a marshaling of
17 such property; and to forthwith begin winding up and liquidating the trust property affairs of CES in
18 accord with the provisions of the California Escrow Law, and that this order further provides that:

19 (1) The receiver prior to entry upon the duties described herein, take an oath to faithfully
20 perform the duties of a receiver and to observe all of the instructions of this Court;

21 (2) The receiver is authorized, empowered and directed:

22 (a) To review, observe, discover and make notes regarding all the trust property of, or in
23 the possession of CES, wherever situated, including all trust accounts of CES in financial depository
24 institutions, and of any other trust property in which CES has an interest regardless by whom it may
25 be held on an ongoing basis pursuant to this Court's order;

26 (b) To undertake an independent review into the financial condition of the trust property
27 and escrow transactions of CES and render a report to the Court, with a copy to CES within 90 days
28 reflecting the existence and value of all trust property subject to the review, observation and/or

1 discovery by the receiver and of the extent of the trust liabilities, both those claimed by others to
2 exist and those which the receiver believes to be the legal trust obligations of CES, and any further
3 information the receiver believes may assist in an equitable disposition of this matter, and to include
4 in its report the receiver's opinion regarding the ability of CES to meet its trust obligations, and his
5 recommendation regarding the best method of distributing the trust property to the owners thereof;

6 (c) To retain and employ such attorney(s) to assist, advise and represent the receiver in
7 the performance of his duties and responsibilities as the Court may approve upon written application
8 of the receiver;

9 (d) To retain and employ LoBuglio & Sigman, CPA's, his accountants, and such other
10 persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in
11 the performance of his duties and responsibilities;

12 (e) To be the sole signator on all trust bank accounts of CES;

13 (f) To bring such proceedings as are necessary to enforce the provisions hereof,
14 including the issuance of subpoenas to compel testimony or production of documents;

15 (g) To bring such actions as are necessary to modify the provisions hereof;

16 (h) To make such payments and disbursements from the trust property so taken into
17 custody, control, and possession of the receiver or otherwise received by him, as may be necessary
18 and advisable in discharging his duties as receiver;

19 (i) To preserve trust property;

20 (j) To institute, prosecute, defend, compromise, intervene and become a party either in
21 his own name or in the name of CES to such suits, actions, or proceedings as may be necessary for
22 the protection, maintenance, recoupment or preservation of the trust property of CES and its escrow
23 parties, with prior court approval. The receiver will defend with the courts approval, or otherwise
24 respond to actions in which claimants assert competing claims as to escrow proceeds which were
25 still in CES trust accounts at the time the conservator took control of them and in which no
26 impropriety or wrongdoing by CES is alleged. However, the receiver shall have no duty or
27 obligation to defend CES or its officers, directors or employees from any of the civil actions
28 currently pending or which may be filed against them in the future, which seek damages based on

1 claims that CES released escrow funds improperly, including contrary to escrow instructions prior to
2 the conservator taking possession of the trust accounts of CES, as these claims do not seek recovery
3 of trust property currently in the CES escrow trust accounts, over which the limited receiver has
4 been appointed;

5 (k) To divert, take possession of and secure all mail of CES, in order to screen such mail
6 for mail relating to the trust property, returning non-trust property mail to CES, and to effect a
7 change in the rights to use any and all post office boxes and other mail collection facilities used by
8 CES. Non-trust property mail to be returned to CES shall be directed to the home address of
9 Antoinette Hardstone.

10 B. The receiver is hereby vested with, and is authorized, directed, and empowered to
11 exercise, all of the powers of CES's officers and directors or persons who exercise similar powers
12 and perform similar duties, with respect to the trust property, whose authority is hereby suspended;
13 and CES's officers, agents, employees, representatives, directors, successors in interest, attorneys in
14 fact and all persons acting in the concert or participating with them, are hereby divested of,
15 restrained and barred from exercising any of the powers herein vested in this receiver.

16 C. Any local, state or federal law enforcement and regulatory agency having jurisdiction
17 over matters relating to CES's business shall be entitled to review, without exception, all reports of
18 the receiver and all books, records, and files on CES in the possession of the receiver at any time
19 during normal business hours, and to make any abstract or copies of said documents as it desires.

20 D. CES and its respective officers, directors, agents, servants, employees, successors,
21 assigns, affiliates, and other persons or entities under their control and all persons or entities in active
22 concert or participation with them, and each of them, shall turn over to the receiver all records,
23 documentation, charts and/or descriptive material, which relate, directly or indirectly, to the trust
24 property of CES or otherwise belonging to its escrow parties, now held by CES or any of them.
25 However, the receiver shall make available to CES, within(20) business days of receipt of a written
26 request, copies of CES escrow files for inspection and copying at the expense of CES. The receiver
27 will maintain control over CES escrow files for as long as required to fulfill the terms of the
28 receivership and to comply with state regulations requiring retention of escrow documents and,

1 thereafter, CES may request return of the files.

2 E. This Court will retain jurisdiction of this action in order to implement and carry out
3 the terms of all orders and decrees that may be entered herein or to entertain any suitable application
4 or motion by Petitioner and/or receiver for additional relief or modification of any order made herein
5 within the jurisdiction of this Court.

6 F. During the pendency of this receivership, except by leave of court, all parties to
7 escrows held by CES and any other persons seeking relief of any kind, in law or in equity, from CES
8 relating to the trust property, and all others acting on behalf of any such escrow parties or other
9 persons including sheriffs, marshals, servants, agents and employees are restrained from:

- 10 (1) commencing, prosecuting, continuing or enforcing any suit or proceeding;
- 11 (2) executing or issuing or causing the execution or issuance of any court attachment,
12 subpoena, replevin, execution or other process for the purpose of impounding or taking possession of
13 or interfering with or creating or enforcing a lien upon any property owned or in the possession of
14 CES or its affiliates, or the receiver appointed herein, where ever situated;
- 15 (3) taking, retaining, retaking or attempting to retake possession of any trust property;
- 16 (4) withholding or diverting any trust property obligation;
- 17 (5) doing any act or other thing whatsoever to interfere with the possession of or
18 management by the receiver herein and of the trust property, controlled by or in the possession of
19 CES or to in any way interfere with said receiver or to interfere in any manner during the pendency
20 of this proceeding with the exclusive jurisdiction of this Court over the CES trust property.

21 G. At such time as the financial condition of the trust property has been ascertained by
22 the receiver, and at such time as the trust property has been marshaled and all trust liabilities have
23 been determined, the receiver shall file an application with the Court for disposition of such trust
24 property. The application shall propose in detail the winding up and the distribution of trust funds.
25 If necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining
26 such funds pending final distribution as are necessary to finance any pertinent litigation or the
27 remaining operation of the receivership.

28 H. The receiver shall be paid an hourly rate of \$475.00 for his services and shall be

1 entitled to reimbursement for usual and customary expenses, including out-of-pocket expenditures
2 on behalf of the receivership estate, which shall be paid from surety bond proceeds, if any, and then
3 if insufficient, from the trust funds, and that the State of California shall have no liability whatsoever
4 for any costs, fees and/or out-of-pocket expenses that may result from such receivership. The
5 receiver and any professional hired by him shall make application to this Court on a monthly basis
6 for payment of reasonable fees and expenses incurred by the receiver or such professional, and shall
7 be entitled to payment of said fees and expenses on account as hereinafter provided, including
8 payment of all reasonable fees and expenses incurred by the receiver in his capacity as conservator
9 or any professional rendering services during the conservatorship from the date of appointment as
10 conservator through to the date of appointment as receiver, and shall be entitled to payment of said
11 conservator fees and expenses on account as hereinafter provided. Copies of such applications to the
12 Court shall be promptly served on all attorneys of record for parties in this action, who shall have ten
13 (10) calendar days following the filing and service of such application to file any objections thereto
14 with the Court, and serve any such objections by facsimile and mail on the receiver. If no objections
15 are filed with the Court and served within the ten (10) calendar day period, the receiver shall
16 thereupon draw funds from the receivership estate sufficient to pay one-hundred percent (100%) of
17 out-of-pocket expenses and seventy-five percent (75%) of such fees, including all professional fees,
18 and other expenses such as in office copying and facsimile charges, without further order of the
19 Court. To the extent the fees and costs requested relate to the Conservator's or his professional's
20 fees and expenses, one-hundred percent (100%) of said fees and expenses shall be paid. If any
21 objections are filed, the receiver may draw funds from the receivership estate sufficient to pay any
22 amounts as to which there are no objections, and the Court will conduct a hearing on any objections
23 upon motion of the receiver or the objecting party. At such hearing, the compensation of the
24 receiver or other professional making application, as well as allowable disbursements and expenses,
25 will be determined by the Court, and the receiver will be directed to draw funds from the
26 receivership estate to pay one-hundred percent (100%) and seventy-five percent (75%), respectively,
27 of the amounts so determined by the Court. Notwithstanding such interim monthly payments of fees
28 and expenses, all fees and expenses shall be submitted to the Court for its approval by a properly

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noticed request for fees, stipulation of all parties or the receiver's Final Account and Report. Upon approval of the fees and expenses of the receiver or other professional, any hold back amounts still due and owing to the receiver or other professional shall be paid from the receivership estate.

I. ~~For an order that~~ The receiver shall not be required to file a bond with the Court in this matter.

IT IS SO ORDERED.

DATED: 02/10/2012

BARRY GOODE
BARRY P. GOODE
JUDGE OF THE SUPERIOR COURT

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 KIRK E. WALLACE (SBN 129953)
Corporations Counsel
4 One Sansome Street, Suite 600
5 San Francisco, CA 94104
6 Telephone: (415) 972-8546

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11	In the Matter of THE CALIFORNIA)	File No.: 963-5075
12	CORPORATIONS COMMISSIONER,)	
13	Complainant,)	ORDER APPOINTING PETER A.
14	vs.)	DAVIDSON AS CONSERVATOR
15	COMMERCIAL ESCROW SERVICES, INC.)	PURSUANT TO CALIFORNIA
16	Respondent.)	FINANCIAL CODE SECTION 17630
17)	
18)	

19 I, PRESTON DuFAUCHARD, California Corporations Commissioner, pursuant to Financial
20 Code section 17630, do hereby appoint Peter A. Davidson of the law firm of Erwin, Cohen & Jessup
21 LLP as Conservator of the trust account(s) and any indemnity funds paid or to be paid by Escrow
22 Agents' Fidelity Corporation and all bank and escrow records pertinent thereto of Commercial
23 Escrow Services, Inc. including, but not limited to, all Commercial Escrow Services, Inc. trust
24 account(s) on deposit with Bank of the West and Union Bank of California in the name of
25 Commercial Escrow Services, Inc., in order that he may take possession of the trust accounts and
26 records for the protection of the escrow agent, the customers of the escrow agent, and the public.

27 The Conservator, pursuant to Financial Code section 17630, shall have all the rights, powers,
28 and privileges of Commercial Escrow Services, Inc., its officers and directors, and shall have the

1 same powers and rights as the California Corporations Commissioner, while he is in possession of
2 the trust property of Commercial Escrow Services, Inc. These rights, powers and privileges shall
3 include all acts as are necessary or expedient to collect, conserve and protect the trust property of
4 Commercial Escrow Services, Inc., including (a) the collection, recovery and compromise of claims,
5 deeds, property and rights in favor of or belonging to Commercial Escrow Services, Inc. regarding
6 the subject trust account(s); (b) the execution of all deeds, conveyances, agreements, compliances
7 and instruments of every kind and nature in connection with the trust property of Commercial
8 Escrow Services, Inc.; (c) the employment of accountants and attorneys to the extent reasonably
9 necessary; and (d) with prior consent of the California Corporations Commissioner, the institution,
10 maintenance and defense of suits related to the affairs of the trust property of Commercial Escrow
11 Services, Inc., the filing of petitions or applications in court or elsewhere with respect to the trust
12 property of Commercial Escrow Services, Inc., for all purposes.

13 All expenses of the Conservatorship shall be paid out of the assets of Commercial Escrow
14 Services, Inc. and shall be a lien thereon which shall be prior to any other lien.

15 This Order is effective on the date hereof and may be amended or terminated upon further
16 order of the California Corporations Commissioner.

17 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

18 Dated: October 12, 2011
19 Los Angeles, CA

20 PRESTON DuFAUCHARD
21 California Corporations Commissioner

22 By _____
23 Alan S. Weinger
24 Deputy Commissioner

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26
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1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 KIRK E. WALLACE (SBN 129953)
Corporations Counsel
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5 San Francisco, CA 94104
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA) File No.: 963-5075
12 CORPORATIONS COMMISSIONER,)
13 Complainant,) **ORDER TO DISCONTINUE ESCROW**
14 vs.) **ACTIVITIES PURSUANT TO FINANCIAL**
15) **CODE SECTION 17415**
16 COMMERCIAL ESCROW SERVICES, INC.)
17 Respondent.)
18)

19 TO: COMMERCIAL ESCROW SERVICES, INC.
20 3478 Buskirk Avenue, Suite 242
21 Pleasant Hill, California 94523

22 BANK OF THE WEST
23 300 South Grand, 5th Floor
Los Angeles, California 90071

24 UNION BANK OF CALIFORNIA
25 1980 Saturn Street
26 Monterey Park, California 90755

27 THE CALIFORNIA CORPORATIONS COMMISSIONER FINDS THAT:

- 28 1. Commercial Escrow Services, Inc. (CES) is an escrow company licensed by the

1 California Corporation Commissioner pursuant to the California Escrow Law (Financial Code
2 sections 17000 et seq), that is located at 3478 Buskirk Avenue, Suite 242, Pleasant Hill, California.
3 Its president is Antoinette (Toni) Hardstone.

4 2. In or about August of 2011, it came to the attention of the California Department of
5 Corporations (DOC) that according to CES' annual reports filed with the DOC, that CES had an
6 escrow trust account shortage of \$195,750.00. A special examination of CES was commenced by
7 the DOC that verified the shortage. The DOC wrote a letter on August 4, 2011 to CES demanding
8 they correct the debit balance within 24 hours. Despite repeated requests by the DOC, CES failed to
9 remedy the \$195,750.00 shortage.

10 3. On or about October 3, 2011, CES president Hardstone sent an email to the DOC
11 claiming she would be making a deposit into the trust account on Friday October 7, 2011, which
12 would correct the entire \$195,750.00 shortage. The DOC requested from Hardstone that she send by
13 email written verification with supporting documentation of the deposit into the trust account on
14 October 7, 2011. On the afternoon of October 7, 2011, Hardstone emailed the DOC stating that she
15 had not made the deposit into the trust account as promised.

16 4. During the special examination by the DOC it was also discovered that CES had
17 failed to keep escrow funds that are covered by Escrow Agent's Fidelity Corporation (EAFC) in
18 separate trust accounts as required by Financial Code section 17409(b) and to maintain separate
19 ledgers as required by California Code of Regulations, title 10, section 1732. 2 and as a result had
20 commingled millions of dollars of funds from non-EAFC covered escrow transactions in the account
21 designated for EAFC escrows only.

22 5. The special examination by the DOC showed a liquid asset deficiency of \$17,425.85
23 in violation of Financial Code section 17210, that requires escrow agents to maintain liquid assets of
24 at least \$25,000 in excess of all current liabilities. The DOC wrote a letter to CES on August 23,
25 2011 giving CES 30 days to correct this shortage. CES has failed to provide evidence to the DOC
26 that they have corrected this liquid asset deficiency.

27 6. The special examination conducted by the DOC also established that CES failed to
28 keep and use in its business, books, accounts, and records in a manner which properly enabled the

1 commissioner to determine whether the escrow functions performed by such persons comply with
2 the provisions of the Escrow Law and related regulations as required by Financial Code Section
3 17404. This included a practice at CES of providing customers with escrow numbers to issue or
4 assign themselves resulting in over 400 ledgers for such escrow numbers being missing or
5 unassigned.

6 7. A review of CES’ records for escrow transactions on which complaints against CES
7 had been made showed that the written disbursement instructions were not properly maintained,
8 were conflicting or were clearly violated and that CES was in violation of Financial Code section
9 17414 (a). The 6 complaints against CES were all for improper and unauthorized disbursement of
10 funds and all claimed the complainant was promised some sort of loan or financing from a third
11 party company in exchange for the money they had placed in escrow with CES. The complaints all
12 claimed that the escrow funds were improperly released by CES to the third party company and no
13 financing or loan was provided.

14 Based upon the foregoing, CES is conducting escrow business in such an unsafe and
15 injurious manner as to render further operations hazardous to the public or to customers.

16 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING
17 THEREFORE, it is hereby ORDERED, under the provisions of section 17415 of the Financial Code,
18 that Commercial Escrow Services, Inc. and any person having in his or her possession any escrow
19 funds or trust funds immediately discontinue the receipt or disbursement of any escrow or joint
20 control money, documents or other property in its possession, custody or control.

21 This order is to remain in full force and effect until further order of the Commissioner.

22 Section 17415 of the Financial Code provides as follows:

23 (a) If the commissioner, as a result of any examination or from any
24 report made to him or her, shall find that any person subject to this
25 division is in an insolvent condition, is conducting escrow business in
26 such an unsafe or injurious manner as to render further operations
27 hazardous to the public or to customers, has failed to comply with
28 the provisions of Section 17212.1 or 17414.1, has permitted its tangible
net worth to be lower than the minimum required by law, has failed to
maintain its liquid assets in excess of current liabilities as set forth in
Section 17210, or has failed to comply with the bonding requirements

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of Chapter 2 (commencing with Section 17200) of this division, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on such person and on any other person having in his or her possession or control any escrowed funds, trust funds or other property deposited in escrow with said person, direct discontinuance of the disbursement of trust funds by the parties or any of them, the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. No person having in his or her possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner in whole or in part, the person is the subject of an order for relief in bankruptcy, or pursuant to Chapter 6 (commencing with Section 17621) of this division the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

This order is effective as of the date hereof.

Dated: October 12, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 KIRK E. WALLACE (SBN 129953)
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Telephone: (415) 972-8546
6 Attorneys for the Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of THE CALIFORNIA) File No.: 963-5075
CORPORATIONS COMMISSIONER,)
12) **NOTICE AND SUMMARY OF FINDINGS**
Complainant,) **PURSUANT TO CALIFORNIA**
13) **FINANCIAL CODE SECTION 17621**
14 vs.)
15 COMMERCIAL ESCROW SERVICES, INC.)
16 Respondent.)
17)
18)

19 TO: COMMERCIAL ESCROW SERVICES, INC.
20 3478 Buskirk Avenue, Suite 242
Pleasant Hill, California 94523

21 BANK OF THE WEST
22 300 South Grand, 5th Floor
23 Los Angeles, California 90071

24 UNION BANK OF CALIFORNIA
25 1980 Saturn Street
Monterey Park, California 90755

26 Please take notice that the California Corporations Commissioner finds:

- 27 1. Commercial Escrow Services, Inc. (CES) is an escrow company licensed by the
28 California Corporation Commissioner pursuant to the California Escrow Law (Financial Code

1 sections 17000 et seq), that is located at 3478 Buskirk Avenue, Suite 242, Pleasant Hill, California.
2 Its president is Antoinette (Toni) Hardstone.

3 2. In or about August of 2011, it came to the attention of the California Department of
4 Corporations (DOC) that according to CES' annual reports filed with the DOC, that CES had an
5 escrow trust account shortage of \$195,750.00. A special examination of CES was commenced by
6 the DOC that verified the shortage. The DOC wrote a letter on August 4, 2011 to CES demanding
7 they correct the debit balance within 24 hours. Despite repeated requests by the DOC, CES failed to
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13 October 7, 2011. On the afternoon of October 7, 2011, Hardstone emailed the DOC stating that she
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15 4. During the special examination by the DOC it was also discovered that CES had
16 failed to keep escrow funds that are covered by Escrow Agent's Fidelity Corporation (EAFC) in
17 separate trust accounts as required by Financial Code section 17409(b) and to maintain separate
18 ledgers as required by California Code of Regulations, title 10, section 1732. 2 and as a result had
19 commingled millions of dollars of funds from non-EAFC covered escrow transactions in the account
20 designated for EAFC escrows only.

21 5. The special examination by the DOC showed a liquid asset deficiency of \$17,425.85
22 in violation of Financial Code section 17210, that requires escrow agents to maintain liquid assets of
23 at least \$25,000 in excess of all current liabilities. The DOC wrote a letter to CES on August 23,
24 2011 giving CES 30 days to correct this shortage. CES has failed to provide evidence to the DOC
25 that they have corrected this liquid asset deficiency.

26 6. The special examination conducted by the DOC also established that CES failed to
27 keep and use in its business, books, accounts, and records in a manner which properly enabled the
28 Commissioner to determine whether the escrow functions performed by such persons comply with

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3 assign themselves resulting in over 400 ledgers for such escrow numbers being missing or
4 unassigned.

5 7. A review of CES' records for escrow transactions on which complaints against CES
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7 were conflicting or were clearly violated and that CES was in violation of Financial Code section
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9 funds and all claimed the complainant was promised some sort of loan or financing from a third
10 party company in exchange for the money they had placed in escrow with CES. The complaints all
11 claimed that the escrow funds were improperly released by CES to the third party company and no
12 financing or loan was provided.

13
14 8. Financial Code section 17621 provides in pertinent part:

15 Whenever it appears to the commissioner that any escrow agent subject
16 to this division:

17 ...

18 (b) Is conducting escrow business in an unsafe and unauthorized manner;

19 (c) Has violated its charter or any law of the State of California;

20 ...

21 the commissioner shall dispatch a written notice and summary of findings,
22 as referred to in Section 17415, to the principal officer of the escrow agent
23 involved or to its manager of record; and such escrow agent shall be afforded
24 a reasonable opportunity to comply or otherwise effect such remedy as the
25 commissioner may deem acceptable. However, should the escrow agent so
26 notified fail to comply within five days of receipt of the notice, or as soon as
27 it appears to the commissioner that no compliance is possible, or in the event
28 prompt delivery of the prescribed written notice is impossible, the commissioner
may forthwith take possession of the property and business of such escrow agent
and retain possession until such escrow agent resumes business or its affairs be
finally liquidated as provided in this chapter. The escrow agent, with the consent
of the commissioner, may resume business upon such conditions as the
commissioner may prescribe.

9. Based upon the foregoing, the Commissioner finds that Commercial Escrow Services,
Inc. has violated Financial Code sections 17603, 17210, 17404, and 17414 and California Code of

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Regulations, Title 10, sections 1738, 1738.1, and 1732.2 and is conducting escrow business in such an unsafe and unauthorized manner, that no compliance is possible.

Dated: October 12, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 KIRK E. WALLACE (SBN 129953)
Corporations Counsel
4 One Sansome Street, Suite 600
5 San Francisco, CA 94104
6 Telephone: (415) 972-8546
Attorneys for Complainant

7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of THE CALIFORNIA) File No.: 963-5075
CORPORATIONS COMMISSIONER,)
12) **DEMAND FOR AND ORDER TAKING**
Complainant,) **POSSESSION OF THE TRUST FUNDS**
13) **AND ESCROW RECORDS OF**
vs.) **COMMERCIAL ESCROW SERVICES,**
14) **INC., PURSUANT TO FINANCIAL CODE**
15 COMMERCIAL ESCROW SERVICES, INC.) **SECTION 17621**
16)
Respondent.)
17)
18)

19 TO: COMMERCIAL ESCROW SERVICES, INC.
3478 Buskirk Avenue, Suite 242
20 Pleasant Hill, California 94523

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22 BANK OF THE WEST
300 South Grand, 5th Floor
23 Los Angeles, California 90071

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25 UNION BANK OF CALIFORNIA
1980 Saturn Street
26 Monterey Park, California 90755

1 WHEREAS, Preston DuFauchard, the California Corporations Commissioner
2 ("Commissioner"), has found that Commercial Escrow Services, Inc. (CES), an escrow agent subject
3 to the Escrow Law (Fin. Code, § 17000 et seq.), is unable to remedy certain conditions set forth in
4 the Notice and Summary of Findings Pursuant to Financial Code section 17621 issued by the
5 Commissioner on October 12, 2011; and

6 WHEREAS, Respondent is conducting its escrow business in an unsafe, injurious and
7 unauthorized manner, so as to render further operations hazardous to the public or to customers in
8 that Respondent:

9 (a) has been unable to cure a trust account shortage of \$195,750.00 which has existed
10 since May of 2010, despite demands from the Commissioner to remedy it no later than August 4,
11 2011.

12 (b) failed to keep escrow funds that are covered by Escrow Agent's Fidelity Corporation
13 (EAFC) in separate trust accounts and commingled millions of dollars of funds from non-EAFC
14 covered escrow transactions in the same account and failed to keep separate ledgers for such
15 accounts in violation of Financial Code section 17409 (b) and California Code of Regulations, title
16 10, section 1732.2.

17 (c) has a liquid asset deficiency of \$17,425.85 in violation of Financial Code section
18 17210, that requires escrow agents to maintain liquid assets of at least \$25,000 in excess of all
19 current liabilities. CES failed to provide evidence that they have corrected this deficiency despite a
20 demand by the Department of Corporations (DOC) made on August 23, 2011 to do so within thirty
21 days from that date.

22 (d) failed to keep and use in its business, books, accounts, and records in a manner which
23 properly enabled the commissioner to determine whether the escrow functions performed by such
24 persons comply with the provision of the Escrow Law and related regulations as required by
25 Financial Code Section 17404. This included failure to maintain the required records and separate
26 ledgers for each escrow transaction and providing customers escrow numbers to issue or assign
27 themselves, resulting in over 400 ledgers for such escrow numbers being missing or unassigned.
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(e) failed to comply with Financial Code section 17414 (a) which prohibits an escrow agent from either knowingly or recklessly disbursing escrow funds that are not in accordance with escrow instructions or which aid or abets in any material way activity which constitutes theft or fraud in connection with any escrow transaction. This included distributing escrow funds in at least 6 instances where the escrow funds were released by CES either without the permission of the party depositing the escrow funds, contrary to escrow instructions or based on incomplete or improper escrow instructions maintained in the file.

NOW, GOOD CAUSE APPEARING, pursuant to Financial Code section 17621, the Commissioner, effective this date, hereby demands and takes possession of the trust accounts of Commercial Escrow Services, Inc. and any indemnity funds paid or to be paid by Escrow Agent's Fidelity Corporation, and all bank and escrow records pertinent thereto, and will retain possession thereof until the Commissioner appoints a conservator, or until its affairs are finally liquidated as provided for in Division 6, Chapter 6 of the Financial Code, or it resumes business with the consent and upon such conditions as the Commissioner may prescribe.

This Demand For and Order Taking Possession is effective as of the date hereof.

Dated: October 12, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner