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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of )  
13 )  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
15 ) ACCUSATION IN SUPPORT OF ORDER  
Complainant, ) SUSPENDING SULLIVAN GARRETT  
16 v. )  
17 SULLIVAN GARRETT )  
18 )  
Respondent. )  
19 )  
20 \_\_\_\_\_ )

21  
22 The Commissioner of Business Oversight (Commissioner) is informed and believes and based  
23 upon such information and belief, alleges and charges as follows:

24  
25 **I**  
26 **Introduction**

27 1. Sullivan Garrett (Garrett) was at all relevant times an escrow officer at New Era  
28 Escrow, Inc. (New Era) an escrow agent licensed by the Commissioner pursuant to the Escrow Law

1 of the State of California (Financial Code section 17000 et seq.), with its principal place of business  
2 at 509 North Sepulveda Boulevard, Suite 101, Manhattan Beach, CA 90266. At all relevant times,  
3 Garrett was also an escrow officer at California Investors Escrow Co. (CIEC), another escrow agent  
4 licensed by the Commissioner with its principal place of business at 7125 West Manchester Avenue,  
5 Los Angeles, CA 90045.

## 6 II

### 7 November 23, 2015 Examination—New Era Escrow

8 2. On or about November 23, 2015, the Commissioner conducted a special examination  
9 of New Era escrow files after receiving a letter from New Era indicating that it had terminated Garrett  
10 from employment after discovering that Garrett mishandled escrow files and caused trust fund losses  
11 that New Era was required to replace.

12 The special examination revealed that Garrett had mishandled escrow files in violation of the  
13 Escrow Law as more fully described below:

14 3. Escrow #004003-SG: In Escrow #004003-SG, the transaction was a short sale  
15 whereby the short sale lender had approved seller proceeds of \$85,032.93. However, Garrett failed to  
16 include \$12,264.66 in tax liens that was owed by the seller in the Estimated Hud-1 that was sent to  
17 the lender for approval. Rather than disclosing the omission to the parties, Garrett instead disbursed  
18 seller proceeds of \$73,986.83 from the trust account instead of the \$85,032.93 that was approved by  
19 the short sale lender, in violation of California Code of Regulations, title 10, section 1738.2.

20 4. Escrow #002615-SG: In Escrow #002615-SG, the transaction was a short sale  
21 whereby the short seller had approved closing costs charges that disallowed the charging of  
22 HOA/Management fees to the seller. Despite this instruction, Garrett charged \$1,299.68 in  
23 HOA/Management fees to the seller, in violation of California Code of Regulations, title 10, section  
24 1738.2. Additionally, a review of the escrow file also revealed that this file closed with a shortage of  
25 \$1,855.58, in violation of California Code of Regulations, title 10, section 1738.2. This shortage was  
26 subsequently replaced by New Era on October 29, 2015 upon a review of the file.

27 5. Escrow #004120-SG: In Escrow #004120-SG, the escrow instructions provided that  
28 the buyer shall pay the cost of a one year home warranty plan not to exceed \$420.00. Despite

1 receiving an invoice in the amount of \$420.00 from Fidelity, Garrett disbursed to Fidelity the  
2 remaining balance of trust funds in the amount of \$145.24, resulting in a shortage in Escrow  
3 # 004120-SG at closing, in violation of California Code of Regulations, title 10, section 1738.2. This  
4 shortage was subsequently replaced by New Era on September 28, 2015 upon review of the file.

5 6. Escrows #003539-SG & 003540-SG: In Escrow #003539-SG and Escrow #003540-  
6 SG, a business purchase agreement and joint escrow instructions were jointly executed by the  
7 principals in or about July 2014 regarding the selling and purchase of a business, the inventory and  
8 fixtures for the business and also the real estate in which the business was located, which required a  
9 separate real property purchase agreement. Instead, of processing both the purchase and sale of the  
10 business and real property simultaneously pursuant to the principals' written instructions, Garrett  
11 only processed and closed the escrow transaction as a purchase and sale of commercial real estate on  
12 October 3, 2014 and did not process the escrow for the purchase and sale of the business, in violation  
13 California Code of Regulations, title 10, section 1738.2.

14 7. Escrow #003773-SG: In Escrow #003773-SG, on or about May 4, 2015, Garrett made  
15 an unauthorized disbursement of trust funds in the amount of \$710.00 without any written  
16 instructions to do so, to a business that did not provide any services to a principal of Escrow #  
17 003773-SG, in violation of Financial Code section 17414 and California Code of Regulations, title  
18 10, sections 1738 and 1738.2.

19 8. Escrow #002840-SG: In Escrow #002840-SG, the escrow was closed on July 30,  
20 2013. However, the California Residential Purchase Agreement and Joint Escrow Instructions jointly  
21 executed by the principals in June 2013 indicated that the seller was to pay the Homeowner  
22 Association (HOA) fees. However, despite the written instructions dictating that the seller was to pay  
23 the HOA fees, Garrett closed Escrow #002840-SG without collecting the HOA fee from the seller,  
24 resulting in a shortage in Escrow #002840-SG at closing, in violation of California Code of  
25 Regulations, title 10, section 1738.2. The seller subsequently brought in \$290.00 to pay the HOA  
26 transfer fee on December 23, 2013 after the escrow had closed and Garrett disbursed the \$290.00 to  
27 the HOA on December 24, 2013.

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1           9.       Escrow #002850-SG: In Escrow #002850-SG, the file was closed on August 8, 2013.  
2 However, Garrett closed Escrow #002850-SG without having the seller bring in a deposit for \$500.00  
3 that was to be applied as a credit to the buyer for cabinets, resulting in a shortage in Escrow #002850-  
4 SG at closing, in violation of California Code of Regulations, title 10, section 1738.2. The seller  
5 subsequently deposited \$500.00 with New Era on September 6, 2013 after the escrow had closed for  
6 the credit to the buyer and Garrett disbursed the \$500.00 to the buyer on September 6, 2013.

7           10.       Escrow #003515-SG: In Escrow #003515-SG, the seller deposited a check in the  
8 amount of \$875.00 on or about December 5, 2014. On or about December 12, 2014, the title  
9 company issued an invoice to New Era for title charges, messenger fee, and deed recording in the  
10 amount of \$1,040.53. Garrett closed Escrow #003515-SG in December 31, 2014, without paying the  
11 invoice for the title company, resulting in a shortage in Escrow #003515-SG at closing, in violation  
12 of California Code of Regulations, title 10, section 1738.2. On or about February 4, 2016, the title  
13 company confirmed with New Era that their December 12, 2014 invoice was still outstanding. The  
14 seller only deposited \$875.00, thus New Era was required to cover the shortage due to the title  
15 company in the amount of \$165.53.

16           11.       Escrow #003260-SG: In Escrow #003260-SG, the file was closed on April 24, 2014.  
17 However, Garrett closed Escrow #003260-SG without having the buyer bring in a deposit for  
18 \$1,000.00 that was to be applied as a credit to the seller for “adjustment to window installation,”  
19 resulting in a shortage in Escrow #003260-SG at closing, in violation of California Code of  
20 Regulations, title 10, section 1738.2. The buyer subsequently deposited \$1,000.00 with New Era on  
21 May 23, 2104 after the escrow had closed and Garrett disbursed the \$1,000.00 to the seller on May  
22 28, 2014.

23           12.       Escrow #004338-SG: In Escrow #004338-SG, the transaction coordinator for the  
24 transaction submitted her invoices for transaction coordination fees to Garrett on July 17, 2015, in the  
25 amount of \$400.00 and \$325.00 respectively. Despite receiving the invoices, Garrett closed Escrow  
26 #004338-SG on August 28, 2015, without paying the transaction coordination fees, resulting in a  
27 shortage at closing in Escrow #004338-SG, in violation of California Code of Regulations, title 10,  
28 section 1738.2.

1 13. On or about September 4, 2015, New Era terminated Garrett's employment.

2 **III**

3 **November 3, 2016 Examination—CIEC**

4 14. On or about November 3, 2016, the Commissioner conducted a regulatory  
5 examination of CIEC. During the examination, the Commissioner's examiner reviewed CIEC's  
6 escrow files and found that Garrett made an unauthorized disbursement in the manner more fully  
7 described below:

8 15. In Escrow #14265-SG, on or about October 14, 2016, the buyer signed Amended  
9 Escrow Instructions (Amended Instructions) instructing CIES to disburse \$5,000.00 to Waymon  
10 Robertson (Robertson) as a finder's fee at the close of the escrow.

11 16. On or about October 14, 2016, Garrett issued check #63239 disbursing \$5,000.00 to  
12 Robertson. However, Escrow #14265-SG did not close until October 17, 2016; three days after  
13 Garrett disbursed the \$5,000.00 to Robertson. Garrett's unauthorized disbursement of \$5,000.00 to  
14 Robertson before the close of escrow is in violation of Financial Code section 17414 and California  
15 Code of Regulations, title 10, sections 1738 and 1738.2.

16 **IV**

17 **Applicable Law**

18 17. Financial Code section 17414 provides in pertinent part:

19 (a) It is a violation for any person subject to this division or any director,  
20 stockholder, trustee, officer, agent, or employee of any such person to do  
21 any of the following:

22 (1) Knowingly or recklessly disburse or cause the disbursement of escrow  
23 funds otherwise than in accordance with escrow instructions, or knowingly  
24 or recklessly to direct, participate in, or aid or abet in a material way, any  
25 activity which constitutes theft or fraud in connection with any escrow  
26 transaction.

27 18. Financial Code section 17423 provides in pertinent part:

28 (a) The commissioner may, after appropriate notice and opportunity  
for hearing, by order . . . suspend for a period not exceeding 12 months from  
any position of employment, management, or control any escrow agent, or  
any other person, if the commissioner finds either of the following:

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(1) That the . . . suspension is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

....

(b) Within 15 days from the date of a notice of intention to issue 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.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent’s possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

19. California Code of Regulations, title 10, section 1738 provides in pertinent part:

(a) All money deposited in such “trust” or “escrow” account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

....

20. California Code of Regulations, title 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction,

1 or if not otherwise directed by written or electronically executed  
2 instructions, in accordance with sound escrow practice, or pursuant to order  
3 of a court of competent jurisdiction.

4 **V**

5 **Prayer**

6 21. The Commissioner finds that by reason of the foregoing, Sullivan Garrett has violated  
7 Financial Code section 17414 and California Code of Regulations, title 10, sections 1738.1 and  
8 1738.2.

9 22. The Commissioner further finds that based upon Sullivan Garrett's numerous and  
10 repeated violations of the Escrow Law, it is in the best interests of the public to suspend Sullivan  
11 Garrett for a period of 12 months pursuant to Financial Code section 17423

12 WHEREFORE, IT IS PRAYED THAT Sullivan Garrett be suspended for a period of 12  
13 months.

14 Dated: August 16, 2017  
15 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

16 By \_\_\_\_\_  
17 JOHNNY VUONG  
18 Senior Counsel  
19 Enforcement Division  
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