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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
12 COMMISSIONER OF CORPORATIONS,

13 Plaintiff,

14 vs.

15 WILSON REID OGG, an individual;
16 PATRICIA PEREZ; SANDRA BOOTH; and
DOES 1 through 10,

17 Defendants.
18

Case No.: [2002-040483](#)

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION**

(Financial Code §§ 17000, 17200, *et seq.*)

DATE: March , 2002

TIME:

DEPT:

TRIAL DATE: None set

19
20 TO ALL PARTIES AND COUNSEL:

21 YOU ARE HEREBY NOTIFIED that on the date and time and in the Department set
22 forth above, Demetrios A. Boutris, California Corporations Commissioner for the State of
23 California, acting in the name of the People of the State of California, will move the Court for
24 an Order of Preliminary Injunction barring defendants, Wilson Reid Ogg, Patricia Perez and
25 Sandra Booth, from acting as escrow agents, or operating an escrow company without
26 having complied with the terms and provisions of the Financial Code sections 17000 and
27 17200, *et seq.*

28 ///

1 The motion will be based on this Notice, the accompanying Memorandum of Points
2 and Authorities, supporting Declarations and other evidence, and such evidence as may be
3 submitted in Opposition to this motion or for consideration at the hearing of this matter.

4 The Order is necessary because defendants, Wilson Reid Ogg, Patricia Perez and
5 Sandra Booth, and each of them, have operated, and continue to operate as escrow agents
6 and conduct business as "Escrow Services" a company providing escrow services, in
7 violation of the provisions of the Financial Code.

8 Dated: January 31, 2003

9 DEMETRIOS A. BOUTRIS
10 California Corporations Commissioner

11
12 By: _____
13 JAMES K. OPENSHAW
14 Attorney for the People of the
15 State of California

16 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
17 **PRELIMINARY INJUNCTION BARRING DEFENDANTS FROM ACTING AS**
18 **UNLICENSED ESCROW AGENTS, OR OPERATING AN ESCROW COMPANY IN**
19 **VIOLATION OF THE PROVISIONS OF THE FINANCIAL CODE**

20 **A. STATEMENT OF FACTS.**

21 For at least the past ten years, defendants, Wilson Reid Ogg, Patricia Perez and
22 Sandra Booth, have operated in the business of providing escrow services to real estate
23 and other industries, without first having obtained a license from the Department of
24 Corporations. The company name is "Escrow Services," which defendant Ogg maintains is
25 "A Branch of Wilson Ogg Law Firm." (See attached Exhibit A, Certified copy of the Fictitious
26 Business Name Filing, Alameda County. The Court is permitted to take Judicial Notice of
27 this document pursuant to Evidence Code §452(c), and request is hereby made by plaintiff.)
28 Mr. Ogg has admitted that both Patricia Perez and Sandra Booth are his employees,
although both Perez and Booth have each represented that they are owners or operators of

1 a company named "Escrow Services." (See Exhibit B, letter from Ogg dated March 22,
2 2001.)

3 None of the defendants are licensed as escrow agents as required by Finance Code
4 sections 17000, *et seq.* (hereafter referred to as the "Escrow Law."). (See Exhibit C,
5 Certificate of No Records. The Court is permitted to take Judicial Notice of this document
6 pursuant to Evidence Code §452(c), and request is hereby made by plaintiff.) On or about
7 October 10, 2000, a complaint was lodged with the Department of Corporations alleging
8 impropriety by Patricia Perez, Sandra Booth and Escrow Services in the handling of an
9 escrow involving a property sales transaction. An investigation was initiated. (See
10 Declaration of James K. Openshaw, attached.)

11 On or about September 5, 2000, an informal request was forwarded by the
12 Department of Corporations to defendant Ogg, seeking evidence of his ability to conduct an
13 escrow business without the license as required by the Escrow Law. Ogg refused to
14 provide the requested information. Thereafter, the Department of Corporations issued a
15 Subpoena *Deuces Tecum* requesting information related to the escrow activity, which was
16 served on March 2, 2001 on defendants Ogg, Perez and Booth. Once again, defendants
17 refused to produce the information, although they did not file any formal motion or other
18 request for relief with the Court. (See Exhibit B, also Declaration of James K. Openshaw,
19 attached.)

20 Defendant Ogg asserts that he is an attorney licensed to practice in California and is,
21 therefore, exempt from the escrow laws. (See Exhibit B, letter from Ogg dated March 22,
22 2001 and Exhibit D, Ogg "Declaration" of status as an active member of the State Bar.)
23 However, the exemption for attorneys applies only when the attorney is acting as an escrow
24 agent in the course of a "bona fide client relationship with a principal in a real estate or
25 personal property transaction and who is not actively engaged in the business of an escrow
26 agent." (Financial Code §17006(a)(2).) In this case, as the attached Declarations of Mary
27 Cavicchi, Marla Guernsey and Jay Cooper confirm, none of the declarants who have utilized
28 the services of "Escrow Services," or the parties they represent in the transactions, is a

1 client of Ogg. Neither Marla Guernsey nor Mary Cavicchi have even met Ogg. The
2 “attorney” exemption simply does not apply.

3 Public records indicate that defendant Ogg is also a licensed real estate broker. As
4 such, he might qualify for an exemption from the Escrow Law, the real estate broker
5 exemption, like the attorney exemption, applies only to a licensed broker “while performing
6 acts in the course of or incidental to a real estate transaction in which the broker is an agent
7 or a party to the transaction and in which the broker is performing an act for which a real
8 estate license is required.” (Financial Code §17006(a)(4).) In this case, as the attached
9 declarations indicate, Mr. Ogg is not engaged as a real estate broker on the transactions for
10 which he is providing unlicensed escrow agent services. (Declarations, para. 4.)

11 Both Patricia Perez and Sandra Booth are involved in the offering of escrow agent
12 services from the business located at 39231 Liberty Street, Suite C-8, Fremont. (See
13 copies of their business cards, attached as Exhibit E.) Patricia Perez, in her “Declaration”
14 attached as Exhibit F, states that she does not run a company named “Escrow Services.”
15 However, Exhibit G, a copy of a lawsuit filed by Pat Perez, absolutely contradicts this. In the
16 “Complaint In Interpleader” (Exhibit G) filed in Alameda County Court, Case No. 00-089566,
17 Perez she represents that she is “an individual doing business as Escrow Services . . .” at
18 the Liberty Street address. (Exhibit G, 1:19-21.) Attached to the Complaint is a copy of a
19 check drawn on the account of “Escrow Services, A Branch of Wilson Ogg Law Firm Trust
20 Account” signed by “S. Booth” and “P. Perez.” Defendant Perez has also identified herself
21 as the “CEO” of a company named Escrow Services. (Exhibit H, letter from Perez on
22 Escrow Services letterhead dated July 24, 2000.)

23 In addition, defendant Booth is listed under the company named “Sandy Booth
24 Escrow Services” from the Liberty Street address. (See Exhibit I, hard copy of internet
25 “Google” search conducted on February 6, 2002.) Neither Booth nor Perez is a licensed
26 escrow agent, as required by the Escrow Law, section 17200. Neither of them is exempt
27 from licensing, either.

28

1 An Order for Preliminary Injunction should issue preventing defendants, and each of
2 them, from operating as escrow agents, or operating an escrow company, without first
3 complying with the provisions of the Escrow Law.

4 **B. LAW AND ARGUMENT.**

5 **1. A PRELIMINARY INJUNCTION SHOULD ISSUE BARRING DEFENDANTS**
6 **FROM OPERATING AN ESCROW COMPANY OR AS ESCROW AGENTS IN VIOLATION**
7 **PROVISIONS OF THE FINANCIAL CODE.**

8 **a. Injunctive Relief is Necessary and Appropriate.**

9 Code of Civil Procedure §525 states:

10 An injunction is a writ or order requiring a person to refrain from a particular
11 act. It may be granted by the court in which the action is brought, or by a
12 judge thereof; and when granted by a judge, it may be enforced as an order of
13 the court.

14 Code of Civil Procedure §526 states, in relevant part:

15 (a) An injunction may be granted in the following cases:

16 (1) When it appears by the complaint that the plaintiff is entitled to the relief
17 demanded, and the relief, or any part thereof, consists in restraining the
18 commission or continuance of the act complained of, either for a limited period
19 or perpetually.

20

21 (4) Where pecuniary compensation would not afford adequate relief.

22 The “act complained of” by plaintiff, the People of the State of California, is the
23 flagrant and continued violation of the Escrow Law by these defendants who refuse to obtain
24 a license. The documents generated by Escrow Services, an example of which is attached
25 as Exhibit J, indicate the service being provided by defendants is an escrow within the
26 definition in Financial Code §17003. Defendants who receive “escrows for deposit or
27 delivery” are acting as escrow agents as defined by Financial Code §17004. Financial Code
28 §17005.5 defines a person “subject to this division” requiring licensure as “any person
undertaking the performance of escrow agent services.” This section is all-inclusive, unless
a person meets a specifically defined exemption.

1 Financial Code §17607 permits the Commissioner to bring this action in the name of
 2 the People of the State of California to “enjoin the acts or practices or to enforce compliance
 3 with this law or any rule or order hereunder” Remedies may include an injunctive and
 4 equitable relief and “ancillary relief may be granted as appropriate.”

5 A preliminary injunction should be issued where the Court finds that the defendants
 6 should be “restrained from exercising the right claimed by them” and that there is a
 7 reasonable probability that the plaintiff will prevail on the merits. (*People v. Pacific Land*
 8 *Research Co.* (1977) 20 Cal. 3d 10, 21, *citing Continental Baking Co. v. Katz* (1968) 68
 9 Cal.2d 512, 526-529 [67 Cal.Rptr. 761, 439 P.2d 889].) In this case, the “right claimed” by
 10 defendants is the continued operation of a company providing escrow agent services. Since
 11 defendants have, however, failed and refused to obtain the proper license, they should be
 12 restrained from operating the business until such time as a license is obtained.

13 **b. Defendants Are Providing Escrow Agent Services Without Complying**
 14 **With The Licensing Provisions of the Escrow Law.**

15 An injunction is appropriate in this case because defendants are providing escrow
 16 agent services as defined by Financial Code §17004: “any person engaged in the business
 17 of receiving escrows for deposit or delivery,” and the defendants are not licensed as
 18 required. It is likely that without an injunction, defendants will continue to operate their
 19 escrow business without complying with the Escrow Law.

20 Financial Code § 17200 sets forth the escrow agent licensure requirement as follows:
 21 It shall be unlawful for any person to engage in business as an escrow agent
 22 within the State except by means of a corporation duly organized for that
 purpose licensed by the commissioner as an escrow agent.

23 In addition, Financial Code §17200 requires that an escrow agent must operate as a
 24 corporation and the corporation must be licensed by the Corporations Commissioner. The
 25 statutory scheme of the Escrow Law requires, in addition to operating as a corporation, the
 26 posting of a bond (§17202) a threshold “tangible net worth” (§17210), and yearly submission
 27 of “audit reports” which include audited financial statements (§17406).
 28

1 The Escrow Law also permits the Commissioner to issue an Order to discontinue
2 business in the interest of the public if the Commissioner finds a violation of any number of
3 the requirements for bonding, net worth, reporting or licensure. The Legislature intended for
4 the Escrow Law to provide a significant measure of regulation by the Commissioner for
5 those who operate escrow services companies. In this case, defendants have ignored the
6 legal requirements set forth in the Escrow Law and have deliberately refused to comply with
7 any of the provisions of that body of law.

8 For at least the past ten years, and ongoing and continuing as of the date of this
9 Motion, Wilson Reid Ogg, Patricia Perez and Sandra Booth, and each of them, individually
10 and under their various fictitious names, have engaged in the business of effecting escrow
11 transactions as an escrow agent in the State of California at the Liberty Street address.
12 They are operating an escrow company without first obtaining the appropriate license from
13 the Department of Corporations. Defendants were and are operating as either partners, co-
14 venturers, or in the context of an employer (Ogg) – employee (Perez/Booth) relationship, all
15 sharing the same address and business name. Regardless of the specific nature of the
16 relationship, defendants have engaged in escrow transactions without conducting
17 operations as a duly-licensed corporation and without securing from the Corporations
18 Commissioner a license authorizing their escrow agent activity. An injunction should issue
19 to halt the unlawful activities of defendants.

20 An injunction is appropriate at this point because defendant Ogg is manipulating his
21 law firm name and his relationship with Perez and Booth in an attempt to meet an
22 exemption from the Escrow Law. By representing that the fictitious business name, Escrow
23 Services, is “A Branch of Wilson Ogg Law Firm,” Ogg attempts to bring his otherwise
24 unlawful activities within the exception for an attorney as allowed by Financial Code
25 §17006(a)(2). However, without representing a party to the transaction as either an
26 attorney or a real estate broker, Ogg does not fall within an exemption. The attached
27 declarations demonstrate that the escrow service provided by defendants, particularly Ogg,
28 is not in conjunction with any attorney-client relationship with a party to the transaction.

1 Financial Code §17006.5 states “the burden of proving an exemption or an exception from a
2 definition is upon the person claiming it.”

3 As indicated in the attached Declarations from Marla Guernsey, Jay Cooper and
4 Mary Cavicchi, three individuals whose companies have used “Escrow Services” for
5 hundreds of escrow transactions during the past ten years, the escrow services provided by
6 Ogg and company are NOT in conjunction with a law practice, or as a real estate broker, but
7 as escrow agents. None of the defendants are licensed by the Department of Corporations
8 for that purpose.

9 Finally, since defendants are not licensed, they have not complied with any of the
10 provisions of the Escrow Law relating to bonding, net worth or the submission of regular
11 audit reports. In fact, defendants have blatantly refused to submit to the jurisdiction of the
12 Commissioner by refusing to cooperate in duly-authorized administrative examinations and
13 refusing to produce documents in response to a subpoena *duces tecum*. (See Exhibit B,
14 Ogg letter.)

15 C. CONCLUSION

16 Mr. Ogg should know better than to run a business requiring a license without
17 first obtaining the appropriate license. He purports to be an attorney licensed to practice in
18 the state. Certainly, he would not consider practicing law without the appropriate license
19 from the State Bar. He is also holds himself out as a licensed real estate broker. Likewise,
20 he would not perform services as a real estate broker without a license from the Department
21 of Real Estate. There is no exception, exemption, or other reason upon which the
22 defendants can rely to avoid the requirements of the Escrow Law.

23 In spite of the notice from the Commissioner that defendants are not operating in
24 conformity with the Escrow Law, defendants have refused to comply with their legal
25 obligation to operate in the required business form and with the appropriate license. They
26 will continue to operate in violation of the Escrow Law unless enjoined by the Court.
27
28

1 As a result, plaintiff is entitled to an Order of Preliminary Injunction stopping the illegal
2 conduct of defendants and preventing them from offering escrow services without being in
3 full compliance with the Escrow Law.

4 DATED: January 31, 2003

5 Respectfully submitted,
6 DEMETRIOS A. BOUTRIS
7 California Corporations Commissioner

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9 By: _____
10 JAMES K. OPENSHAW
11 Attorney for the People of the
12 State of California
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