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California Corporations Commissioner
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6 Attorneys for Complainant

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

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11 In the Matter of the Accusation of THE) File No.: 963-2210
CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) ACCUSATION
13)
Complainant,)
14)
15 vs.)
16 ALEJANDRO MARTINEZ aka ALEX)
MARTINEZ,)
17)
18 Respondent.)

19 The Complainant is informed and believes, and based upon such information and belief,
20 alleges and charges Respondent as follows:

21 I

22 Prime West Escrow, Inc. ("Prime West") is an escrow agent licensed by the California
23 Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow Law of the
24 State of California (California Financial Code Section 17000 et seq.). Prime West had its principal
25 place of business located at 8650 Sunset Boulevard, Los Angeles, California and a branch office at
26 12711 Ventura Boulevard, Suite 290, Studio City, California.

27 Respondent Alejandro Martinez also known as Alex Martinez ("Martinez") was at all times
28 relevant herein, the president and a shareholder of Prime West and the escrow manager and an

1 escrow officer at the main office of Prime West.

2 II

3 On or about March 27, 2009, the Commissioner, by and through his staff, commenced a
4 special examination of the books and records of Prime West. The special examination was
5 commenced after the Department of Corporations (“Department”) received information from the
6 company that it may have a trust account shortage. The special examination, which is ongoing,
7 revealed that Martinez had made unauthorized disbursements of trust funds and/or escrow fees to
8 himself or on behalf of himself by way of his company Martinez Escrow Consulting, Inc. (“MEC”)
9 and otherwise or to his domestic partner, Chris Ewen (“Ewen”), or on his behalf, totaling at least
10 \$1,155,728.50 in violation of Financial Code section 17414(a)(1) and California Code of
11 Regulations, title 10, sections 1738 and 1738.2. The disbursements were unauthorized as there were
12 no instructions in escrow authorizing the disbursements. In numerous cases, the disbursements were
13 unauthorized because they were made against non-existent funds thereby requiring trust funds on
14 deposit in other unrelated escrows to cover the disbursements and/or the disbursements were wholly
15 unrelated to the escrow.

16 Of the \$1,155,728.50 embezzled by Martinez, \$72,325.35 was escrow fees due Prime West
17 from specific escrow transactions and the remaining \$1,083,403.20 were trust funds due escrow
18 parties or on behalf of escrow parties. The unauthorized disbursements resulted in numerous
19 ongoing debit balances in violation of California Code of Regulations, title 10, section 1738.1 and a
20 trust account shortage of at least \$1,083,403.20.¹

21 The unauthorized disbursements of trust funds are described as follows:

22 **1. Escrow Number 01-002721-GR – Closed 5/11/07**

23 A. On or about March 26, 2007, Martinez made an unauthorized disbursement of trust
24 funds to Ewen in the amount of \$34,500.00 via trust check number 77938 in violation of Financial
25 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

26 B. On or about May 11, 2007, Martinez made an unauthorized disbursement of trust
27

28 ¹ Unless otherwise noted, the unauthorized disbursements resulted in a debit balance to the affected escrow and shortages to the trust account.

1 funds to Fidelity National Title Company on behalf of Ewen in the amount of \$295,000.00 via wire
2 transfer in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title
3 10, sections 1738 and 1738.2

4 C. On or about May 17, 2007, Martinez made an unauthorized disbursement of trust
5 funds to Ewen in the amount of \$726.70 via trust check number 78622 in violation of Financial Code
6 section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

7 D. On or about May 24, 2007, Martinez made an unauthorized disbursement of trust
8 funds to Ewen in the amount of \$20,642.11 via trust check number 78798 in violation of Financial
9 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

10 E. On or about June 6, 2007, Martinez made an unauthorized disbursement of trust funds
11 to Fidelity National Title Company on behalf of Ewen in the amount of \$20,642.11 via wire in
12 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
13 sections 1738 and 1738.2.

14 F. While Ewen was the seller in this escrow, the disbursements described in paragraphs
15 A, C and D above should not have been disbursed to Ewen as the funds were necessary to be
16 forwarded to the title company in order to pay off existing liens and provide a clear title to the buyer.
17 The unauthorized disbursements in paragraphs A, C and D above did not cause a shortage as the
18 unauthorized disbursements described in paragraphs B and E cured the shortages these
19 disbursements had caused, but in doing so created further shortages.

20 G. The disbursements described in paragraphs B and E above were used to cover funds
21 necessary to complete the short sale on Ewen's property located at 9530 Cedarbrook Drive, Beverly
22 Hills, which was the subject of the escrow.

23 **2. Escrow Number 01-003081-AM – Closed 2/20/08**

24 A. On or about January 2, 2008, Martinez made an unauthorized disbursement of trust
25 funds to Thomas E. Madigan as trustee of the Madigan Revocable Trust of 2002 in the amount of
26 \$138,133.31 via the purchase of a cashier's check in violation of Financial Code section 17414(a)(1)
27 and California Code of Regulations, title 10, sections 1738 and 1738.2.

28 B. On or about March 17, 2008, Martinez made two unauthorized disbursements of trust

1 funds to Countrywide in the amount of \$25, 014.41 and \$12,838.52 via the purchase of cashier's
2 checks in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title
3 10, sections 1738 and 1738.2.

4 C. The purpose of the disbursements described in paragraphs A and B above is unknown
5 except that the recipients were lenders being paid off in the Ewen short sale that was the subject of
6 Escrow Number 01-002721-GR described in item 1 above, and were also the lenders on other real
7 property owned by Ewen.

8 **4. Escrow Number 01-003221-AM – Canceled**

9 On or about June 13, 2008, Martinez made an unauthorized disbursement of trust
10 funds to the Mitch Keenan-Mexico Earnest Money Account on behalf of himself in the amount of
11 \$5,000.00 via wire transfer in violation of Financial Code section 17414(a)(1) and California Code
12 of Regulations, title 10, sections 1738 and 1738.2.

13 **5. Escrow Number 01-002988-AM – Closed 11/27/07**

14 On or about June 13, 2008, Martinez wrongfully transferred to Escrow Number 01-
15 003221-AM via trust check number 82434, the sum of \$5,000.00 that was being held in Escrow
16 Number 01-002988-AM to cover the shortage he caused in Escrow Number 01-003221-AM
17 described in Item 4 above in violation of Financial Code section 17414(a)(1) and California Code of
18 Regulations, title 10, sections 1738 and 1738.2.

19 **6. Escrow Number 01-002930-AM – Canceled**

20 On or about June 16, 2008, Martinez made an unauthorized disbursement of trust
21 funds to the Mitch Keenan-Mexico Earnest Money Account on behalf of himself in the amount of
22 \$20,000.00 via wire transfer in violation of Financial Code section 17414(a)(1) and California Code
23 of Regulations, title 10, sections 1738 and 1738.2.

24 **7. Escrow Number 01-003257-AM – Closed 9/25/08**

25 On or about October 9, 2008, Martinez wrongfully transferred to Escrow Number 01-
26 002930-AM via trust check number 83525, the sum of \$20,000.00 from Escrow Number 01-002988-
27 AM to cover the shortage he caused in Escrow Number 01-002930-AM described in Item 6 above in
28 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,

1 sections 1738 and 1738.2.

2 **8. Escrow Number 01-003251-AM – Closed 8/19/08**

3 On or about August 13, 2008, Martinez made an unauthorized disbursement of trust
4 funds to the Mitch Keenan-Mexico Earnest Money Account on behalf of himself in the amount of
5 \$225,000.00 via wire transfer in violation of Financial Code section 17414(a)(1) and California
6 Code of Regulations, title 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez
7 represented seller proceeds.

8 **9. No Known Escrow**

9 On or about March 18, 2009, Martinez made an unauthorized disbursement of trust
10 funds to himself in the amount of \$25,000.00 via wire transfer in violation of Financial Code section
11 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

12 **10. Escrow Number 01-003330-AM – Closed 3/17/09**

13 On or about March 23, 2009, Martinez made an unauthorized disbursement of trust
14 funds to himself through the A. Martinez Living Trust in the amount of \$25,000.00 via wire transfer
15 in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
16 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented borrower proceeds.

17 **11. Disbursements to MEC**

18 Commencing on or about September 7, 2007 and continuing through at least February 24,
19 2009, Martinez made at least one-hundred and twenty-six (126) unauthorized disbursements of trust
20 funds to himself through MEC totaling \$436,425.61 in violation of Financial Code section
21 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

22 The unauthorized disbursements resulted in numerous debit balances in violation of
23 California Code of Regulations, title 10, section 1738.1 and a trust account shortage of at least
24 \$364,100.26. The sum of \$72,325.35 of these unauthorized disbursements were escrow fees due
25 Prime West, and thus did not result in a shortage to the trust account. A chart describing each of the
26 one hundred and twenty-six (126) unauthorized disbursements is attached and incorporated herein as
27 Exhibit A.

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1 The special examination further revealed that Martinez, with respect to the canceled escrows
2 described below, prepared false escrow instructions transferring the buyer’s and/or seller’s rights and
3 funds to himself, and then executed escrow instructions authorizing release of the buyer’s and/or
4 seller’s deposit/funds to himself.

5 The following are examples of unauthorized disbursements to MEC:

6 **A. Escrow Number 01-003329-AM – Closed 9/30/08:**

7 1. On or about September 30, 2008, Martinez made an unauthorized
8 disbursement of trust funds to himself through MEC in the amount of \$1,500.00 via trust check
9 number 83478 in violation of Financial Code section 17414(a)(1) and California Code of
10 Regulations, title 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez represented
11 escrow fees due Prime West from this escrow.

12 2. On or about December 3, 2008, Martinez made an unauthorized disbursement
13 of trust funds to himself through MEC in the amount of \$19,334.02 via trust check number 84071 in
14 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
15 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented seller proceeds.

16 **B. Escrow Number 01-001911-PT - Canceled:**

17 On or about October 29, 2007, Martinez made an unauthorized disbursement of trust
18 funds to himself through MEC in the amount of \$10,920.00 via trust check number 80435 in
19 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
20 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented the buyer’s deposit.

21 **C. Escrow Number 01-002658-AM - Canceled:**

22 1. On or about September 18, 2007, Martinez made an unauthorized
23 disbursement of trust funds to himself through MEC in the amount of \$15,000.00 via trust check
24 number 80093 in violation of Financial Code section 17414(a)(1) and California Code of
25 Regulations, title 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez represented
26 part of the buyer’s deposit.

27 2. On or about September 28, 2007, Martinez made an unauthorized
28 disbursement of trust funds to himself via MEC in the amount of \$10,500.00 via trust check number

1 80210 in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title
2 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez represented the remainder of
3 the buyer's deposit.

4 **D. Escrow Number 01-003257-AM – Closed 9/25/08:**

5 1. On or about September 16, 2008, Martinez made an unauthorized
6 disbursement of trust funds to himself through MEC in the amount of \$1,500.00 via trust check
7 number 83782 in violation of Financial Code section 17414(a)(1) and California Code of
8 Regulations, title 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez represented
9 seller proceeds.

10 2. On or about September 25, 2008, Martinez made an unauthorized
11 disbursement of trust funds to himself via MEC in the amount of \$350.00 via trust check number
12 83394 in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title
13 10, sections 1738 and 1738.2. The trust funds disbursed to Martinez represented escrow fees due
14 Prime West from this escrow.

15 3. On or about October 9, 2008, Martinez made an unauthorized disbursement of
16 trust funds to himself via MEC in the amount of \$17,881.09 via trust check number 83518 in
17 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
18 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented seller proceeds.

19 4. On or about October 16, 2008, Martinez made an unauthorized disbursement
20 of trust funds to himself via MEC in the amount of \$25,000.00 via trust check number 83575 in
21 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
22 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented seller proceeds.

23 5. On or about October 30, 2008, Martinez made an unauthorized disbursement
24 of trust funds to himself via MEC in the amount of \$50,000.00 via trust check number 83775 in
25 violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10,
26 sections 1738 and 1738.2. The trust funds disbursed to Martinez represented seller proceeds.

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III

California Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, . . . bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the . . . bar 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.

IV

Complainant finds that, by reason of the foregoing, Respondent Martinez has violated Financial Code sections 17414(a)(1) and 17414(A)(2) and California Code of Regulations, title 10, sections 1738, 1738.1, and 1738.2 and it is in the best interests of the public to bar Respondent Martinez from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Alejandro Martinez aka Alex Martinez be barred from any position of employment, management or control of any escrow agent.

Dated: November 17, 2009
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel