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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) ESCROW LICENSE NO. 963-1100
)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION IN SUPPORT OF ORDERS:
OVERSIGHT,)
14) 1) REVOKING ESCROW AGENT LICENSE
Complainant,) OF THE ESCROW CHEQUE CORP.
15) PURSUANT TO FINANCIAL CODE SECTION
v.) 17608
16)
17 THE ESCROW CHEQUE CORP. and) 2) BARRING MARCIA J. BOUEY FROM ANY
MARCIA J. BOUEY,) POSITION OF EMPLOYMENT,
18) MANAGEMENT, OR CONTROL OF ANY
Respondents.) ESCROW AGENT PURSUANT TO
19) FINANCIAL CODE SECTION 17423
20)

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22 The Commissioner of Business Oversight (Commissioner) alleges and charges as follows:

23 I.
24 INTRODUCTION

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26 1. The Escrow Cheque Corp. (ECC) is an escrow agent licensed by the Commissioner
27 pursuant to the Escrow Law of the State of California as set forth in Financial Code section 17000 et
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ACCUSATION IN SUPPORT OF ORDERS: 1) REVOKING ESCROW AGENT LICENSE OF THE
ESCROW CHEQUE CORP. AND 2) BARRING MARCIA J. BOUEY

1 seq., and accompanying regulations in California Code of Regulations, title 10, section 1700 et seq.¹

2 2. ECC has its principal place of business located at 22900 Ventura Boulevard, Suite 360,
3 Woodland Hills, California 91364.

4 3. Marcia J. Bouey (Bouey) is, and was at all times relevant herein, the owner, president,
5 and escrow manager of ECC. Bouey is responsible for the management and control of ECC, and acts
6 by and through the company and its employees.

7 4. The Commissioner is authorized to administer and enforce the provisions of the Escrow
8 Law.

9 5. The Commissioner brings this action to: (1) revoke the escrow agent license of ECC
10 pursuant to section 17608; and (2) bar Bouey from any position of employment, management, or
11 control of any escrow agent pursuant to section 17423.

12 **II.**

13 **ESCROW LAW VIOLATIONS**

14 6. On June 2, 2016, the Department of Business Oversight (Department) examined the
15 books and records of ECC. During this examination, the Department detected several violations of the
16 Escrow Law including unlawful activities involving mismanagement of trust funds. The Department
17 communicated its findings to ECC in two examination letters dated February 21, 2017 and July 12,
18 2017. In some instances, the Department discovered violations that were detected during the previous
19 examination of ECC, and discussed in an examination letter dated July 2, 2012.

20 **Unauthorized Trust Fund Disbursements**

21 7. Section 17414, subdivision (a), provides that it is a violation for any person subject to
22 this division or any director, stockholder, trustee, officer, agent, or employee of that person to
23 knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in
24 accordance with the escrow instructions. Rule 1738.2 also requires an escrow agent to use documents
25 or other property deposited in escrow only in accordance with the written instructions of the principals
26 to the escrow transaction, or in accordance with sound escrow practice or court order.

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28 ¹ All further section and rule references are to the California Financial Code and title 10 of the
California Code of Regulations.

1 8. The Department's 2016 examination disclosed that dormant trust checks were cancelled
2 and reissued to pay an ECC escrow officer and bank fees without instructions from the escrow
3 principals, in violation of section 17414 and Rule 1738.2, as follows:

| 4 Dormant Check # | Escrow Number | Date | Amt. | Original Payee | Date Cancelled | Reissued Check # | Date reissued | Replacement Check Payee |
|----------------------|------------------|----------|-----------------|-------------------|-------------------|---------------------|------------------|----------------------------|
| 5 251225 | 41780 | 11/15/12 | \$33.90 | P.M. | 08/25/15 | 266389 | 08/26/15 | ECC's Escrow Officer |
| 6 242507 | 41609 | 02/08/12 | \$56.73 | P.D. | 10/19/15 | 266395 | 10/19/15 | ECC's Escrow Officer |
| 7 242218 | 45743 | 01/30/12 | \$32.86 | P.D. | 10/19/15 | 266397 | 10/19/15 | ECC's Escrow Officer |
| 8 251906 | 41778 | 11/12/12 | \$58.72 | P.D. | 10/19/15 | 266398 | 10/19/15 | ECC's Escrow Officer |
| 9 260254 | 64646 | 03/29/13 | \$55.00 | C.L | 01/20/16 | 266414 | 01/21/16 | ECC's Bank |
| 10 254608 | 41819 | 03/04/13 | \$15.00 | B.B. | 01/20/16 | 266413 | 01/21/16 | ECC's Bank |
| 11 239918 | 51325 | 10/12/11 | \$87.85 | M. | 01/20/16 | 266415 | 01/21/16 | ECC's Bank |
| 12 242466 | 51366 | 02/06/12 | \$25.00 | S.O.S. | 01/20/16 | 266407 | 01/21/16 | ECC's Bank |
| 13 243207 | 51392 | 03/05/12 | \$35.37 | S. | 01/20/16 | 266409 | 01/21/16 | ECC's Bank |
| 14 246040 | 51318 | 06/08/12 | \$5.00 | F.I. | 01/20/16 | 266411 | 01/21/16 | ECC's Bank |
| 15 248343 | 51390 | 08/30/12 | \$275.00 | Z. | 01/20/16 | 266412 | 01/21/16 | ECC's Bank |
| 16 Total: | | | \$680.43 | | | | | |

17 9. Reissuing checks from trust funds for personal or operational use is not a sound escrow
18 practice since the funds are held in trust for escrow principals. Disbursement of trust funds without
19 the principal's instruction and without sound practice is a recurring violation from the Department's
20 previous examination in 2012, as indicated in the examination letter dated July 2, 2012. In Bouey's
21 response to that letter dated July 20, 2012, Bouey assured the Department that this practice will not
22 happen again. Yet, for the seven reissued checks to ECC's Bank above, Bouey was a co-signer of
23 those checks.

24 **Mishandling of Trust Fund Monies**

25 10. In addition, ECC employees failed to follow or obtain escrow instructions in violation
26 of 1738.2 as follows:

27 A. In escrow number 3004, a returned item fee of \$40.00 was deducted from a buyer's
28 refund without written instructions to do so.

 B. In escrow number 42326, the escrow agent erroneously delivered checks to the

1 borrower, instead of the borrower’s creditors as required by the instructions. As a result, the borrower
 2 was charged late fees by three of the six creditors.

3 C. In escrow number 42638, trust checks to pay L.A.D.W.P. and P.S. were held in a file
 4 rather than being issued per the instructions.

5 D. In escrow number 42156, escrow fees of \$189.00 were taken by the escrow agent, in
 6 excess of the amount provided by the instructions.

7 **Misuse of Trust Funds**

8 11. Section 17411 prohibits a person from knowingly keeping or causing to be kept any
 9 funds or money in a trust account except actual trust funds which belong to clients of the escrow
 10 agent. The Department’s examination disclosed that ECC employees deposited personal funds into
 11 the trust account to pay for escrow-related expenses, or ECC employees were personally reimbursed
 12 from trust funds belonging to clients, in violation of section 17411. The following are examples:

| Escrow Number | Escrow Expense | Misuse of Funds |
|---------------|------------------------------|--|
| 42326 | Loan late fees and penalties | ECC Escrow officer deposited personal funds of \$262.24 into trust account (trust account receipt number 3904) for escrow expense. |
| 42294 | Home Warranty Plan | Trust funds of \$345.00 used to reimburse ECC escrow officer (trust check 19706) for escrow expense. |
| 42167 | FedEx Fees | Trust funds of \$163.12 used to reimburse ECC escrow officer (trust check 18347) for escrow expense. |
| 42188 | Home Owners Association Fees | Trust funds of \$325.00 used to reimburse ECC escrow officer (trust check 18010) for escrow expense. |
| 42530 | FedEx Fees | Trust funds of \$95.06 used to reimburse ECC escrow officer (trust check 22294) for escrow expense. |

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 25 12. In addition to disbursing trust funds for private use, ECC employees issued trust checks
 26 to pay for ECC operating expenses including bank wire fees in violation of section 17411. Examples
 27 include the following trust checks issued for operating expenses that should have been paid from
 28 ECC’s general account:

| Escrow Number | ECC Escrow Officer | Check# | Date | Amount | Payee | Purpose |
|---------------|--------------------|--------|----------|---------|------------|----------|
| 3028 | L.S. | 19867 | 11/25/15 | \$20.00 | ECC's Bank | Wire fee |
| 3037 | L.S. | 20127 | 12/07/15 | \$20.00 | ECC's Bank | Wire fee |
| 5033 | J.R. | 20183 | 12/09/15 | \$20.00 | ECC's Bank | Wire fee |
| 5035 | J.R. | 20463 | 12/31/15 | \$40.00 | ECC's Bank | Wire fee |
| 42153 | C.S. | 19883 | 12/01/15 | \$20.00 | ECC's Bank | Wire fee |
| 42360 | C.S. | 20302 | 12/18/15 | \$20.00 | ECC's Bank | Wire fee |
| 42422 | C.S. | 20208 | 12/09/15 | \$20.00 | ECC's Bank | Wire fee |
| 73673 | L.H. | 20175 | 12/09/15 | \$40.00 | ECC's Bank | Wire fee |
| 73677 | L.H. | 20151 | 12/08/15 | \$20.00 | ECC's Bank | Wire fee |
| 73681 | L.H. | 20122 | 12/04/15 | \$40.00 | ECC's Bank | Wire fee |

Trust Fund Shortages

13. Rule 1738.1 prohibits debit balances in the trust account by restricting an escrow agent from withdrawing, paying out, or transferring monies from the escrow account in excess of the amount to the credit of that account. The Department's 2016 examination disclosed the following debit balances, in violation of rule 1738.1:

| Escrow No. | From | To | Amount | Reason for Debit Balance |
|------------|----------|----------|---------|--|
| 42637 | 04/19/16 | 06/09/16 | \$44.00 | Debit balance due to disbursements against receipt issued for more than the actual funds received. |
| 42691 | 05/05/16 | 06/09/16 | \$0.03 | Debit balance due to clerical input error on the wire instructions to wire \$0.03 more than the amount of check reversal for the wire. |
| 45743 | 10/19/15 | 07/28/16 | \$4.00 | Debit balance due to reissuance of a dormant check in an amount that is \$4.00 more than the original amount. |
| 73115 | 03/10/16 | 07/28/16 | \$2.00 | Debit balance due to over-disbursement of buyer's refunds. |

14. Debit balances are a recurring violation from the Department's 2012 examination, as indicated in the Department's examination letter dated July 2, 2012. In Bouey's response to that letter

1 dated July 10, 2012, she stated, "This practice will not happen again."

2 **Inaccurate Account Statements**

3 15. Rule 1741.3 requires the escrow agent to render a statement of account to the principals
4 of the transaction, specifying all receipts and disbursements of escrow funds. The Department's 2016
5 examination disclosed escrow fees and charges were not correctly disclosed on the final statement of
6 account in violation of Rule 1741.3. As examples:

| 7 Esc. No. | Disclosed Amount | Disclosed As | Being Paid To/As | Actual Amount Paid |
|-------------------|-------------------------|---------------------|-------------------------|---------------------------|
| 8 64646 | \$525.00 | Escrow base fee | Escrow base fee | \$600.00 |
| 9 | \$85.00 | Doc Prep Fee | I.N. | \$150.00 |
| 10 | \$85.00 | Delivery fee | C. L. | \$55.00 |
| 11 | \$150.00 | Notary fee | B.B. | \$30.00 |
| 12 | \$45.00 | Wire fee | ECC's Bank | \$30.00 |
| | | | P.S. | \$25.00 |
| | \$890.00 | | Total | \$890.00 |
| 13 41819 | \$650.00 | Escrow base fee | Escrow base fee | \$685.00 |
| 14 | \$30.00 | Delivery fee | F.E. | \$30.00 |
| 15 | \$25.00 | Paperless solutions | P.S. | \$25.00 |
| 16 | \$100.00 | Notary fees | J.R. | \$100.00 |
| 17 | \$30.00 | Wire fee | ECC's Bank | \$30.00 |
| 18 | \$50.00 | E-Doc Printing fee | B.B. | \$15.00 |
| | \$885.00 | | Total | \$885.00 |

19 **Failure to Maintain and Balance Control and Ledger**

20 16. Rule 1732.2 requires an escrow agent to maintain currently an escrow ledger and
21 escrow liability controlling account, and requires the ledger and controlling account to be reconciled at
22 least once each week. ECC employees violated Rule 1732.2 because checks from 2014 were not
23 posted to the ledger until 2016; therefore, the ledger was not kept current. Furthermore, a ledger was
24 not prepared for Escrow # 42637, 42744, 42759, 42761, 73765 and 9018. Also, the trust account
25 ledger and controlling account (from 2014 to 2016) were not balanced on a weekly basis as required
26 by Rule 1732.2; thus, check adjustments were not identified and corrected for over two years.

27 17. Rule 1732.2 requires the escrow ledger and liability controlling accounts to be
28 reconciled at least once each month with the bank statements of the trust account. ECC employees

1 failed to identify bank reconciling items and failed to timely correct bank reconciling items. Examples
 2 of debit balances that were not identified in trust reconciliation reports (from 2014 to 2016) and not
 3 timely corrected until two years later include: Escrow # 41542 (debit balance of \$294.38); Escrow #
 4 51440 (debit balance of \$15.00); Escheat (debit balance of \$5,082.30); Escrow # 45743 (debit balance
 5 of \$4.00); and Escrow # 73115 (debit balance of \$7,816.68). In addition, reconciliation reports from
 6 June 2015 to May 2016 show that many reconciling items were not timely corrected within a month.
 7 Examples include the following reconciliation items and number of months taken to reconcile the
 8 ledger and liabilities control account:

| 9 10 11 | Recon item | First Disclosed in Recon report | Dropped from Recon report | Months late | Transaction Description |
|---------------|-----------------------|--|--------------------------------------|------------------------|---|
| 12 | \$45,289.00 | June 2015 | October 2015 | 2 | Deposit into the main trust account without receipt issued, in Escrow # 42180 |
| 13 | \$10.00 | July 2015 | March 2016 | 6 | Bank credit without corresponding receipt. |
| 14 | \$40.00 | July 2015 | July 2016 | 10 | This item was erroneously identified by the reconciliation report. It should not be a reconciling item. |
| 15 | \$0.01 | July 2015 | January 2016 | 4 | Receipt overstated amount wired at the bank in Escrow # 42144 by ECC officer. |
| 16 | \$0.01 | July 2015 | January 2016 | 4 | Receipt overstated amount wired at the bank in Escrow # 42200 by ECC officer. |
| 17 | \$75.00 | July 2015 | March 2016 | 6 | Trust check redeposited to bank for wire but the wire was not processed. |
| 18 | \$25.00 | September 2015 | January 2016 | 2 | Unidentified check on the bank statement, for Escrow # 2264 |

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23 18. Failure to timely correct reconciling items is a recurring violation from the
 24 Department’s 2012 examination. In response to that letter, Bouey again assured the Department that
 25 this violation would “not happen again.”

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27 **Failure to Maintain Current Authorized Signatories**

28 19. Rule 1737, subdivision (e), requires an escrow agent to maintain adequate controls in

1 connection with trust accounts. ECC employees violated this rule by not maintaining current bank
2 signature cards. In violation of Rule 1737, the following persons were not ECC employees but,
3 nevertheless, were authorized trust check signers on the ECC bank trust account: I.N., B.B., and S.S.

4 **Failure to Maintain Escrow Records**

5 20. Rule 1737.3 requires escrow records to be maintained for at least five years from the
6 close of escrow. ECC and its employees violated Rule 1737.3 by failing to provide escrow file 51325
7 for review, upon request. Additionally, invoices for payments to providers were not retained in the
8 escrow file, such as check number 254608 for \$15.00 (Escrow # 41819), check number 251225 for
9 \$33.90 (Escrow # 41780), and check number 242507 for \$56.73 (Escrow # 41609). Certain monthly
10 activity logs were also not provided to the examiner (e.g., January and July 2015 and March and May
11 2016).

12 **Untimely Deposit of Trust Funds**

13 21. Rule 1737 requires deposit of funds into a trust account no later than one day following
14 receipt of those funds. ECC and its employees violated Rule 1737 regarding Escrow # 42672 by
15 receiving \$9,766.34 on May 27, 2016, but failing to deposit this money until June 7, 2016.

16 **Additional Violations Since the Examination**

17 22. In Bouey's March 7, 2017 response to the Department's most recent exam letter dated
18 February 21, 2017, Bouey submitted a December 2016 trust bank reconciliation report. This report
19 disclosed several more violations of law:

20 A. From June 29, 2016 to February 22, 2017, there was a \$1.00 debit balance in the trust
21 account, in violation of Rule 1738.1. (Refer to trust reconciliation item #1 in Bouey's March 7, 2017
22 response.)

23 B. On June 16, 2016, the following escrow fee checks were deposited into the trust
24 account (instead of the general account) in violation of section 17411: check number 22861 for
25 \$382.00 (Escrow # 43156); check number 22871 for \$353.29 (Escrow # 42745); check number 22875
26 for \$200.00 (Escrow # 42747); and check number 22866 for \$650.00 (Escrow # 42700). Again, on
27 December 6, 2016, the following escrow fee checks were deposited into the trust account (rather than
28 general account): check number 25884 for \$331.31 (Escrow # 43272); check number 25873 for

1 \$360.00 (Escrow # 43100); check number 25877 for \$382.00 (Escrow # 43156); and check number
 2 25866 for \$640.00 (Escrow # 73844). Also, on June 22, 2016, a \$400.00 escrow fee check was
 3 deposited into the trust account for Escrow # 42764. (Refer to trust reconciling items 2 and 3 of
 4 Bouey’s March 7, 2017 response.)

5 C. In October 2016 and December 2016, there were five instances where incoming wire
 6 monies were not timely deposited within one day in violation of Rule 1737:

| Escrow No. | Bank Credit | Date of Credit | Receipt No. | Receipt Date | Days Late |
|------------|-------------|----------------|-------------|--------------|------------------|
| 43066 | \$200.00 | 10/06/16 | 5332 | 02/23/17 | 4 months 12 days |
| 43184 | \$81.60 | 12/28/16 | 5329 | 02/22/17 | 1 month 23 days |
| 43250 | \$962.40 | 12/28/16 | 5254 | 01/04/17 | 3 days |
| 43276 | \$1,085.38 | 12/28/16 | 5244 | 01/03/17 | 2 days |
| 43215 | \$2,161.90 | 12/30/16 | 5253 | 01/04/17 | 1 day |

13 (Refer to trust reconciling item #2 of Bouey’s March 7, 2017 response.)

14 D. In August, November, and December 2016, there were five instances in which there
 15 was a failure to reconcile bank fees in violation of Rule 1732.2:

| Escrow No. | Bank Debit Date | Debit Amt. | Bank Credit Date | Credit Amt. | Difference |
|------------|-----------------|--------------|------------------|--------------|------------|
| Unknown | 08/03/16 | \$529,144.94 | 08/03/16 | \$529,147.94 | (\$3.00) |
| | 08/22/16 | \$57,751.18 | 08/22/16 | \$57,706.18 | \$45.00 |
| | 08/02/16 | \$5,222.15 | 08/02/16 | \$5,219.15 | \$3.00 |
| | 12/28/16 | \$240,249.10 | 12/29/16 | \$240,247.10 | \$2.00 |
| | 11/01/16 | \$17,389.88 | 11/01/16 | \$17,384.88 | \$5.00 |

22 (Refer to trust reconciling items #5 and #6 of Bouey’s March 7, 2017 response.)

23 E. On August 1, 2016 a \$20.00 deposit consisting of escrow monies were made to the
 24 general account rather than the trust account for Escrow # 3057, in violation of section 17411. (Refer
 25 to trust reconciling item #7 of Bouey’s March 7, 2017 response.)

26 F. On December 30, 2016, trust funds in the amount of \$11,694.35 (receipt numbers 5235,
 27 5237, 5239, and 5241) were incorrectly calculated upon deposit as \$10,694.35. Therefore, there was a
 28 shortage of \$1,000.00 when all money was not deposited in the trust account, in violation of Rule

1 1737. See Escrow # 43254, 43274, 43279, and 73868. (Refer to trust reconciling item #7 of Bouey’s
2 March 7, 2017 response.)

3 23. Bouey’s March 7, 2017 response did not specify corrective action to prevent future
4 violations of law. Bouey admitted there was insufficient escrow management on her part, regarding
5 trust fund shortages, stating “I have always depended on individual employees to correct any and all
6 exceptions monthly.” She added, “I should have researched her work and not relied on what she told
7 me.”

8 **III.**
9 **REVOCATION AND BAR STATUTES**

10 24. Section 17608 provides in pertinent part:

11 The Commissioner may, after notice and a reasonable opportunity to be heard,
12 suspend or revoke any license if he finds that:

13 . . . (b) The licensee has violated any provision of this division. . . .

14 25. Section 17423 provides in pertinent part:

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

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

23 **IV.**
24 **CONCLUSION**

25 26. The above-described violations support revoking ECC’s license and barring Bouey
26 from the escrow industry. Several provisions of the Escrow Law were violated in connection with
27 mismanaging funds held in trust for escrow principals, including: sections 17411 and 17414, and
28 Rules 1738.1, 1738.2, 1732.2, 1737, 1737.3, and 1741.3.

29 27. It is in the public interest to bar Bouey since the violations are egregious, and recurring,
30 involving unauthorized disbursements of trust funds, commingling of trust funds, shortages of trust
31 funds, and mismanagement of trust fund records. As the owner and escrow manager of ECC, Bouey

1 committed or caused violations of law that she knew or should have known. In that capacity, she
2 failed to properly manage escrow operations, despite giving assurances to the Department that
3 violations would not happen again. Since 2012, Bouey did not take appropriate corrective action to
4 prevent violations involving trust funds. Moreover, when responding to the Department's most recent
5 examination, Bouey submitted documents evidencing additional violations of the Escrow Law.

6 28. Based upon the following, the Commissioner finds that grounds exist, and that it is in
7 the public interest, to enter orders: (1) revoking the escrow agent license of The Escrow Cheque Corp.
8 pursuant to Financial Code section 17608; and (2) barring Marcia J. Bouey from any position of
9 employment, management, or control of any escrow agent pursuant to Financial Code section 17423.
10 The Commissioner hereby notifies The Escrow Cheque Corp. and Marcia J. Bouey of her intention to
11 make these orders final.

12 **PRAYER**

13 WHEREFORE, good cause showing, the Commissioner prays for relief as follows:

- 14 1. For an order, pursuant to Financial Code section 17608, revoking the escrow agent
15 license of The Escrow Cheque Corp.; and,
- 16 2. For an order, pursuant to Financial Code section 17423, barring Marcia J. Bouey from
17 any position of employment, management, or control of any escrow agent.

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19 Dated: July 27, 2017
20 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

21
22 By _____
23 TIMOTHY L. Le BAS
24 Senior Counsel
25 Enforcement Division
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