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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of: ) ESCROW LICENSE NO.: 963-2604

12 )  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )

14 Complainant, )

15 vs. )

16 )  
17 SAN DIEGUITO ESCROW, INC. )

18 Respondent. )  
19 )  
20 )

ACCUSATION IN SUPPORT OF  
ORDER SUSPENDING SAN DIEGUITO  
ESCROW, INC.'S ESCROW AGENT'S  
LICENSE

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

23 **I.**

24 **Introduction**

25 1. San Dieguito Escrow, Inc. (San Dieguito) is an escrow agent licensed by the  
26 Commissioner pursuant to the Escrow Law (Financial Code section 17000 et seq.), with its principal  
27 place of business at 519 Encinitas Blvd., Suite #108, Encinitas, CA 92024.  
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1 II.

2 **June 6, 2016 Examination**

3 2. On or about June 6, 2016, a regulatory examination of the books and records of San  
4 Dieguito was conducted by the Commissioner (June 2016 Exam). The regulatory examination  
5 disclosed that San Dieguito violated multiple provisions of the Escrow Law as detailed below:

6 **A. Unauthorized Disbursements of Trust Funds**

7 3. San Dieguito made unauthorized disbursements of trust funds in violation of  
8 Financial Code section 17414, subdivision (a)(1) and California Code of Regulations, title 10,  
9 sections 1738 and 1738.2, in at least 8 escrow transactions, an example of which is described below:

10 (a) On April 4, 2012, San Dieguito issued check #5535 in the amount of \$196.00 and  
11 check #5536 in the amount of \$30.00 to a third party in Escrow #11-1317. On December 17, 2013,  
12 San Dieguito cancelled check #s 5535 and 5536, which were still outstanding. On March 3, 2015,  
13 San Dieguito issued check #19027 in the amount of \$326.00 to its general account from the trust  
14 account in Escrow #11-1317. San Dieguito did not have written authorization from the principals of  
15 Escrow #11-1317 authorizing the disbursement of their funds into San Dieguito's general account.  
16 On February 23, 2017, San Dieguito replaced the misappropriated funds into the trust account upon  
17 request by the Commissioner.

18 **B. Debit Balances**

19 4. San Dieguito caused debit balances to exist in escrow accounts in violation of  
20 California Code of Regulations, title 10, section 1738.1 and 1741.2, in at least 19 escrow  
21 transactions, examples of which are described below:

22 (a) On May 22, 2015, San Dieguito disbursed \$10,000.00 to the buyer in Escrow #1174  
23 and failed to post it on the escrow ledger, causing a debit balance in the escrow file when all funds  
24 were disbursed on September 14, 2015. On November 1, 2016, San Dieguito replaced the funds  
25 upon request by the Commissioner.

26 (b) On August 4, 2014, San Dieguito issued check #17543 in the amount of \$4,662.00,  
27 check #17544 in the amount of \$4,662.00, and check #17545 in the amount of \$4,662.00 to the  
28 Franchise Tax Board in Escrow #14-2908. The checks cleared the bank on August 8, 2014.

1 However, San Dieguito cancelled these checks on the ledger on June 17, 2015 and on the same day,  
2 re-issued check #20080 in the amount of \$4,662.00, check #20081 in the amount of \$4,662.00, and  
3 check #20082 in the amount of \$4,662.00 to the Franchise Tax Board. After the second set of checks  
4 cleared, a debit balance of \$13,986.00 remained until September 9, 2016, when it was replaced upon  
5 request by the Commissioner.

6 **C. Failing to Reconcile Escrow Ledgers and General Ledger**

7 5. During the June 2016 Exam, the Commissioner reviewed San Dieguito's books and  
8 records. At the time of the regulatory examination, in June 2016, San Dieguito only produced a  
9 general ledger and bank reconciliation report as of December 31, 2015, even though the general  
10 ledger and bank reconciliation should have been performed on a monthly basis, in violation of  
11 California Code of Regulations, title 10, sections 1732.2 and 1732.3. Further, upon review of the  
12 general ledger and bank reconciliation report as of May 31, 2016, subsequently produced to the  
13 Commissioner, the reconciliation showed at least 37 adjustment items that were not corrected by San  
14 Dieguito within the month, in violation of California Code of Regulations, title 10, sections 1732.2  
15 and 1732.3.

16 **D. Failing to Preserve Escrow Documents for 753 Escrow Files**

17 6. During the regulatory examination, the Commissioner requested that San Dieguito  
18 produce escrow files, bank statements, and books for examination. San Dieguito failed to provide to  
19 the Commissioner approximately 753 escrow files that were closed within 5 years of the June 6,  
20 2016 examination date and should have been retained by San Dieguito and readily available to the  
21 Commissioner for its examination. San Dieguito stated to the Commissioner that they had digitally  
22 scanned the 753 escrow files onto a computer drive, which subsequently crashed and destroyed the  
23 physical copy of the escrow files without ensuring that there was a backup for the electronic copy of  
24 the files, in violation of California Code of Regulations, title 10, section 1737.3, which requires that  
25 all licensees preserve their escrow files, records, and books for at least 5 years after the close of  
26 escrow.

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**III.**

**Applicable Law**

7. Financial Code section 17414 provides in pertinent part:

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

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

8. Financial Code section 17608 provides in pertinent part:

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

...

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

9. California Code of Regulations, title 10, section 1732.1 provides:

All receipts and disbursements of moneys shall be posted in the escrow ledger as of the date of such receipts and disbursements, regardless of the date of posting.

10. California Code of Regulations, title 10, section 1732.2 provides:

(a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:

(1) Escrow ledger containing a separate ledger sheet for each escrow;

(2) Escrow liability controlling account;

(3) Cash receipt and disbursement journal or a file containing copies of all receipts and checks and/or check stubs of checks issued by the escrow agent as a medium of posting to the records

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referred to in subsections (1) and (2) in which case adding machine tapes of totals of receipts and checks shall be retained. The records referred to in subsections (1) and (2) shall be reconciled at least once each month with the bank statements of the "trust" or "escrow" account. The records referred to in subsection (1) shall be reconciled at least once each week with the escrow liability controlling account referred to in subsection (2).

11. California Code of Regulations, title 10, section 1732.3 provides:

An escrow agent shall establish and maintain currently the following books with reference to its general accounts:

(a) General ledger reflecting the assets, liabilities, capital, income and expense of the business, in accordance with generally accepted accounting principles;

(b) Cash receipt and disbursement journal.

The bank accounts contained in the general ledger shall be reconciled at least once each month with the bank statements of the general accounts.

12. California Code of Regulations, title 10, section 1737.3 provides in pertinent part:

(a) An escrow agent shall preserve for at least five years from the close of escrow:

(1) All bank statements of the "trust" or "escrow" account;

(2) All canceled checks drawn upon the "trust" or "escrow" account;

(3) Copies of bank deposit slips with reference to the "trust" or "escrow" account;

(4) All additional records reflecting banking transactions with reference to the "trust" or "escrow" account, including copies of all receipts for funds transferred from interest-bearing accounts into the "trust" or "escrow" account;

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(5) The Statement of Account;

(6) Escrow instructions and amendments thereto;

(7) All additional records pertinent to the escrow transaction.

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13. 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.

....

14. California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

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

16. California Code of Regulations, title 10, section 1741.2 provides:

A check shall not be drawn, executed or dated prior to the existence, in the particular escrow account against which it

1 is drawn, executed or dated, of a sufficient credit balance to  
2 cover said check.

3 **IV.**

4 **Prayer**

5 17. Based on the foregoing, the Commissioner finds that San Dieguito Escrow, Inc., has  
6 violated Financial Code section 17414 and California Code of Regulations, title 10, sections 1732.1,  
7 1732.2, 1732.3, 1737.3, 1738, 1738.1, 1738.2, and 1741.2.

8 18. The Commissioner further finds that based upon San Dieguito Escrow, Inc.'s  
9 numerous violations of the Escrow Law, it is in the best interests of the public to suspend San  
10 Dieguito Escrow, Inc.'s escrow agent's license for a period of up to 12 months pursuant to Financial  
11 Code section 17608.

12 WHEREFORE, IT IS PRAYED THAT:

13 San Dieguito Escrow, Inc.'s escrow agent license be suspended for a period of up to 12  
14 months.

15  
16 Dated: November 27, 2018  
17 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

18 By \_\_\_\_\_  
19 JOHNNY VUONG  
20 Senior Counsel  
21 Enforcement Division