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

11	In the Matter of:)	ESCROW LICENSE NO.: 963-0038
12	THE COMMISSIONER OF BUSINESS)	ACCUSATION IN SUPPORT OF ORDER
13	OVERSIGHT,)	REVOKING ESCROW AGENT’S LICENSE
14	Complainant,)	
15	v.)	
16	BUILDERS DISBURSEMENTS, INC.,)	
17	Respondent.)	
18)	
19)	

20
21 The Complainant, the Commissioner of Business Oversight (Commissioner) of the
22 Department of Business Oversight (Department), is informed and believes, and based upon such
23 information and belief, alleges and charges Builders Disbursements, Inc. (BDI) as follows:

24 **I.**
25 **Introduction**

26 1. BDI is a joint control agent licensed by the Commissioner pursuant to Section
27 17005.1 of the Escrow Law of the State of California, commencing at Fin. Code § 17000 *et seq.*
28 (Escrow Law).

1 2. On February 22, 2019 the Commissioner suspended BDI’s joint control agent’s
2 license for violations of the Escrow Law, as described further below. The order suspending BDI’s
3 joint control agent’s license remains in effect.

4 3. BDI’s principal place of business is located at 601 East Glenoaks Boulevard, Suite
5 101, Glendale, California 91207.

6 II.

7 **Failure to File Annual Audit Report in Violation of Financial Code Section 17406**

8 4. Financial Code section 17406, subdivision (a) requires all licensees under the
9 Escrow Law to file an annual audit report containing audited financial statements within 105 days
10 after the close of the calendar or the licensee’s fiscal year, as applicable.

11 5. On or around November 16, 2017, the Department notified BDI that its December
12 31, 2017 annual audit report (2017 Audit Report) must be received by the Department no later than
13 April 16, 2018, which is 105 days after the close of the fiscal year end, and that failure to file the
14 2017 Audit Report by the deadline would subject BDI to penalties pursuant to Financial Code
15 section 17408.

16 6. BDI failed to file its 2017 Audit Report by the deadline of April 16, 2018.

17 7. On or around April 24, 2018, the Department issued a 10 day-demand notifying BDI
18 that its 2017 Audit Report was not received and that if the Department does not receive it within 10
19 days from April 24, 2018, then pursuant to Financial Code section 17408, subdivision (b), BDI will
20 be assessed a penalty for \$100.00 per day for the first five days the annual audit report is overdue,
21 and thereafter, \$500.00 per day for each day the 2017 Audit Report is overdue until it is received as
22 required pursuant to Financial Code section 17406. BDI was further notified that failure to file the
23 2017 Audit Report may result in suspension or revocation of its escrow agent’s license pursuant to
24 Financial Code section 17602.5.

25 8. BDI failed to file its 2017 Audit Report by the 10 day-deadline of May 4, 2018.

26 9. On or around May 7, 2018, BDI’s Chief Financial Officer verbally stated that BDI
27 would file its 2017 Audit Report the following week, on or around May 14, 2018.

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1 10. Receiving no response from BDI, on or around June 12, 2018, the Department made
2 a further request to BDI for its 2017 Audit Report.

3 11. As of September 20, 2019, BDI had not filed its annual audit report.

4 **III.**

5 **Failure to File Special Report in Violation of Financial Code Section 17406**

6 12. Financial Code section 17406, subdivision (e) requires all licensees under the
7 Escrow Law to make other special reports as the Commissioner may require.

8 13. On or around July 28, 2017, the Department demanded that BDI provide within 30
9 days its financial statements for June 30, 2017, including the general account bank statement and
10 reconciliation, to determine BDI's compliance with Financial Code section 17210, which provides
11 that an escrow agent licensed on or after January 1, 1986 shall maintain at all times a tangible net
12 worth of \$50,000.00, including liquid assets of at least \$25,000.00 in excess of current liabilities.
13 BDI failed to respond by the deadline of on or around August 28, 2017.

14 14. On or around February 13, 2018, the Department issued a formal demand to BDI for
15 its financial statements for the periods ending on June 30, 2017, August 31, 2017, and January 31,
16 2018, within 10 days, or by no later than February 23, 2018, and that failure to provide the required
17 financial statements could result in the suspension of BDI's joint control license.

18 15. On or around February 13, 2018, BDI responded partially to the Department's
19 formal demand by providing its financial statements for the period ending on June 30, 2017, but
20 failing to submit its financial statements for the periods ending on August 31, 2017 and January 31,
21 2018.

22 16. On or around March 29, 2018, the Department issued a 10 day-demand for the
23 required August 31, 2017 and January 31, 2018 financial statements, notifying BDI that pursuant to
24 Financial Code section 17408, subdivision (b), it will be assessed a penalty of \$100.00 per day for
25 the first five days the reports are overdue, and thereafter, \$500.00 per day for each day the reports
26 are overdue.

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1 24. On February 22, 2019, the Commissioner, having found that BDI violated Financial
2 Code section 17406, subdivisions (a) and (e) of the Escrow Law, ordered BDI to pay to the
3 Commissioner as follows, pursuant to Financial Code section 17408: (1) for the 2017 Audit Report
4 demanded on or about April 24, 2018, a penalty accruing until the date of submission exceeding
5 221 days, of at least \$111,000.00; and (2) for BDI's financial statements, including the general
6 account bank statement and reconciliation, for the periods ending on August 31, 2017 and January
7 31, 2018, demanded by the extended deadline of on or about April 25, 2018, a penalty accruing
8 until the date of submission exceeding 220 days, of at least \$110,500.00, for a total sum of
9 \$221,500.00, plus an additional \$500.00 a day for each day after the date of this Order that each of
10 the foregoing is not filed (Penalty Order).

11 25. On or around March 1, 2019 the Department served BDI with the Suspension Order
12 and Penalty Order via certified mail at its principal place of business on file with the Department.

13 26. BDI did not request an administrative hearing to contest the Penalty Order.
14 Therefore, pursuant to Financial Code section 17408, subdivision (d), the Penalty Order is deemed a
15 final order of the Commissioner.

16 27. On or around March 7 and May 15, 2019, the Department's examiner visited BDI's
17 principal place of business and requested the 2017 Annual Report and financial statements,
18 including general account bank statements and reconciliations required under the Suspension Order
19 and Penalty Order. On or around May 24 and June 10, 2019, the Department notified BDI via
20 email that the Department had not yet received the foregoing records from BDI.

21 28. As of September 20, 2019, BDI had neither complied with the final Penalty Order
22 nor submitted the following records required under the Suspension Order: (i) its 2017 Audit Report
23 that was due on April 16, 2018; (ii) financial statements, including the general account bank
24 statement and reconciliation, for the periods ending on August 31, 2017 and January 31, 2018; and
25 (iii) financial statements, including the general account bank statement and reconciliation, for the
26 last four quarters immediately preceding the date of submission, including but not limited to March,
27 June, September, and December 2018.¹

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¹ On or around September 20, 2019, BDI provided to the Department's examiner assorted documents that included trust bank account reconciliations for December 31, 2016, a partial collection of trust bank account statements for July 2017

1 29. Therefore, BDI remains suspended pursuant to the Suspension Order for a period
2 now exceeding six months until it submits the records required therein.

3 **V.**

4 **Repeat Violation of Financial Code section 17406**

5 30. On or around April 15, 2019, BDI again violated Financial Code section 17406,
6 subdivision (a), which requires all licensees under the Escrow Law to file an annual audit report
7 containing audited financial statements within 105 days after the close of the calendar or the
8 licensee’s fiscal year, as applicable.

9 31. On or around April 24, 2019, the Department issued a 10 day-demand notifying BDI
10 that its 2018 annual audit report (2018 Audit Report) was not received by the deadline of April 15,
11 2019, and that if the Department does not receive it within 10 days from April 24, 2018, then
12 pursuant to Financial Code section 17408, subdivision (b), BDI will be assessed a penalty for
13 \$100.00 per day for the first five days the 2018 Audit Report is overdue, and thereafter, \$500.00 per
14 day for each day the 2018 Audit Report is overdue until it is received as required pursuant to
15 Financial Code section 17406. BDI was again notified that failure to file the 2018 Audit Report
16 may result in revocation of its escrow agent’s license pursuant to Financial Code section 17602.5.

17 32. BDI failed to file its 2018 Audit Report by the 10 day-deadline of May 4, 2019.

18 33. As of September 20, 2019, BDI has failed to file both its 2017 and 2018 Audit
19 Reports, in violation of Financial Code section 17406.

20 **VI.**

21 **2019 Regulatory Examination**

22 34. On or about August 5, 2019, the Commissioner commenced a regulatory
23 examination of the books and records of BDI pursuant to Financial Code section 17405 (2019
24 Regulatory Exam).

25 35. The 2019 Regulatory Exam disclosed that since at least December 31, 2016, BDI
26 failed to reconcile at least once each month the bank statements of its trust accounts with the escrow
27
28 through December 2017, a partial collection of operating bank account statements for July 2017 through December 2017,
and a general ledger that was posted up to June 30, 2017. BDI also provided operating bank account statements for June
2019 through August 2019, but without the general ledger, and a partial collection of trust bank account statements for
April 2019 through August 2019, but without the bank reconciliations.

1 ledger and escrow liability controlling account, in violation of Financial Code section 17404 and
2 California Code of Regulations, title 10, section 1732.2.

3 36. The 2019 Regulatory Exam further disclosed that since at least June 30, 2017, BDI
4 failed to establish and maintain currently its general ledger reflecting the assets, liabilities, capital,
5 income and expense of the business, in accordance with generally accepted accounting principles,
6 in violation of Financial Code section 17404 and California Code of Regulations, title 10, section
7 1732.3.

8 **VII.**
9 **Applicable Law**

10 37. Financial Code section 17406 provides in relevant part:

11 (a) Each licensee shall submit to the commissioner, at the licensee’s own
12 expense, an audit report containing audited financial statements covering
13 the calendar year or, if the licensee has an established fiscal year, then for
14 that fiscal year, within 105 days after the close of the calendar or fiscal
15 year, as applicable. At that time, each licensee shall also file additional
16 relevant information as the commissioner may require.

17 (b) Within 30 days after receipt of a request from the commissioner, a
18 licensee or other person subject to this division shall submit to the
19 commissioner, at the person’s own expense, an audit report containing
20 audited financial statements covering the 12 calendar months next
21 preceding the month of receipt of the request, or for another period as the
22 commissioner may require. Unless the public interest shall otherwise
23 require, the commissioner shall exempt a licensee from the provisions of
24 subdivision (a) in whole or in part if the licensee has complied with a
25 request pursuant to this subdivision as of a date within the calendar or
26 fiscal year for which the exemption is granted.

27 . . .
28 (d) The reports and financial statements referred to in subdivisions (a) and
(b) shall include at least a balance sheet and a statement of income for the
year ended on the balance sheet date together with other relevant
information as the commissioner may require. The reports and financial
statements referred to in subdivisions (a), (b), and (c) shall be prepared in
accordance with generally accepted accounting principles, and shall be
accompanied by a report, certificate, or opinion of, an independent
certified public accountant or independent public accountant. The audits
shall be conducted in accordance with generally accepted auditing
standards and the rules of the commissioner.

(e) A licensee shall make other special reports to the commissioner as the
commissioner may from time to time require

1 38. Financial Code section 17005.6 provides, “Except as provided for in Section 17004,
2 ‘escrow agent’ as used in this division includes joint control agents and Internet escrow agents.”

3 39. Financial Code section 17004 provides, “ ‘Escrow agent’ means any person engaged
4 in the business of receiving escrows for deposit or delivery.”

5 40. California Code of Regulations, title 10, section 1732.2 provides, in pertinent part:

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

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

9 (2) Escrow liability controlling account;

10 (3) Cash receipt and disbursement journal or a file containing copies of all
11 receipts and checks and/or check stubs of checks issued by the escrow
12 agent as a medium of posting to the records referred to in subsections (1)
13 and (2) in which case adding machine tapes of totals of receipts and
14 checks shall be retained.

15 The records referred to in subsections (1) and (2) shall be reconciled at
16 least once each month with the bank statements of the “trust” or “escrow”
17 account. The records referred to in subsection (1) shall be reconciled at
18 least once each week with the escrow liability controlling account referred
19 to in subsection (2)

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

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

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

26 (b) Cash receipt and disbursement journal.

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

29 42. Financial Code section 17404 provides:

30 Every person subject to this division shall keep and use in its business,
31 books, accounts, and records which will properly enable the commissioner
32 to determine whether the escrow functions performed by such person
33 comply with the provisions of this division and with all rules made by the
34 commissioner under this division.

35 43. Financial Code section 17408 provides, in pertinent part:

36 (b) The commissioner may impose, by order, a penalty on any person who
37 fails, within the time specified in any written demand of the
38 commissioner, (1) to make and file with the commissioner any report

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required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue . . .

(d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be deemed a final order of the commissioner, and the penalty shall be paid within five business days

44. 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.

VIII.
Prayer for Relief

45. The Commissioner finds that, by reason of the foregoing, Builders Disbursements, Inc. repeatedly violated Financial Code section 17406, violated Financial Code section 17404 and California Code of Regulations, title 10, sections 1732.2 and 1732.3, and as of at least September 20, 2019, failed to comply with the Commissioner’s final Penalty Order, and it is in the best interest of the public to revoke Builders Disbursements, Inc.’s joint control agent’s license pursuant to Financial Code section 17608.

WHEREFORE, IT IS PRAYED that:

The joint control agent’s license of Builders Disbursements, Inc. be revoked, pursuant to Financial Code section 17608.

Dated: September 26, 2019
Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
SOPHIA C. KIM
Senior Counsel
Enforcement Division