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7  
8 Attorneys for Complainant

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

11 In the Matter of: ) ESCROW LICENSE NO.: 963-1701  
12 )  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
14 Complainant, )  
15 v. )  
16 SINCERE ESCROW, ) CONSENT ORDER  
17 Respondent. )  
18 \_\_\_\_\_ )

19 This Consent Order is entered into between the Commissioner of Business Oversight  
20 (Commissioner) and Sincere Escrow (collectively, the Parties) and is made with respect to the  
21 following facts:

22 **I.**

23 **Recitals**

24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
25 entities licensed under the California Escrow Law (Escrow Law) (Fin. Code, § 17000 et seq.).

26 B. Sincere Escrow is an escrow agent licensed by the Commissioner, pursuant to the  
27 Escrow Law. Sincere Escrow has its primary place of business at 935 South San Gabriel Boulevard,  
28 San Gabriel, California 91776.

1 C. Margaret C. Chiu is the president of Sincere Escrow, and as such, is authorized to  
2 enter into this Consent Order on behalf of Sincere Escrow.

3 D. The Department conducted regulatory examinations of Sincere Escrow on May 2,  
4 2017 and November 5, 2019, which showed repeat violations of the Escrow Law.

5 E. Financial Code section 17411 prohibits any person from knowingly keeping or  
6 causing to be kept any funds in a trust account except actual trust funds which belong to clients of  
7 the escrow agent.

8 F. The 2017 examination revealed that Sincere Escrow had included funds in the escrow  
9 liability ledgers and trust account that did not represent escrow trust funds. Approximately six  
10 escrow files that were closed, but the earned fees totaling \$9,461.88 were released three to five years  
11 after the close of escrow. The fees were not transferred to the general account in a reasonable time  
12 after the close of escrow. Sincere Escrow failed to disburse the earned fees when the escrows were  
13 confirmed closed.

14 G. The 2019 examination revealed fourteen escrow files with long delays to disburse  
15 earned fees after the close of escrow. Earned fees totaling \$3,080.00 for closed escrows were kept in  
16 the trust account for four to ten years.

17 H. Financial Code section 17414, subdivision (a) prohibits unauthorized disbursements  
18 of escrow funds. Financial Code section 17421.5, subdivision (a) allows escrow agents to charge a  
19 hold open fee for administering an escrow that has been postponed for at least two months from the  
20 most recent closing date agreed upon by the parties or has cancelled if it meets the disclosure  
21 requirements. The law applies to written instructions made on or after January 1, 2008.

22 I. The 2017 examination revealed four escrow files that were charged a monthly hold  
23 open fee, in the total amount of \$5,822.05, which Sincere Escrow transferred to its escrow fee  
24 account about nine years later. Those four escrows were closed in 2007. Each dormant/closed  
25 escrow had a credit balance to pay escrow bills (insurance, termite, daily journal). Earned escrow  
26 fees were disbursed a few months after the close of escrow. The escrows contained credit balances  
27 for many years.

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1 J. Sincere Escrow failed to follow up with the vendors or the principals within a  
2 reasonable time to determine if the bills were paid or to obtain proper instructions to issue refunds to  
3 the principals. Instead, about nine years later, the credit balances were transferred to Sincere  
4 Escrow's escrow fee account. Sincere Escrow charged a monthly hold open fee of \$50.00 when it  
5 did not receive any invoice from the vendors to demand payments or instructions from the principals  
6 to refund the money. Sincere Escrow transferred a total amount of \$5,822.05 to its fee account about  
7 nine years later. Although, Sincere Escrow had obtained authorization (instructions to pay a hold  
8 open fee that were signed by the principals at time the escrow was opened) to charge a monthly hold  
9 open fee, those instructions were signed in 2007 before the law existed.

10 K. The 2019 examination revealed that Sincere Escrow disbursed unauthorized escrow  
11 fees from ten escrow files totaling \$20,722.98.

12 L. The Department reviewed about ten old escrow files that were closed in 1998, 2003,  
13 2005, 2007, 2009, 2011, and 2013. Those old escrow files contained two escrow ledgers. One ledger  
14 was printed from the old escrow program. The second ledger was printed from a new escrow  
15 program - RBJ - for activities posted after 2006. In 2018 and 2019, Sincere Escrow transferred credit  
16 balances from those dormant escrow files to its escrow fee account. Some of the credit balances  
17 were from cancelled or uncleared checks to the Franchise Tax Board.

18 M. California Code of Regulations, title 10, (CCR) section 1732 requires escrow agents  
19 to maintain their books, records, and accounts in accordance with generally accepted accounting  
20 principles and good business practice.

21 N. The 2017 examination revealed that Sincere Escrow failed to timely disburse credit  
22 balances and failed to periodically review credit balances to determine proper disbursement of the funds.  
23 For example, a buyer's refund in the amount of \$485.00 remained on the escrow ledger of an escrow  
24 that was closed on September 20, 2011, and was not disbursed until six years later, on September 13,  
25 2017.

26 O. The 2019 examination revealed two escrow files with credit balances that Sincere  
27 Escrow failed to disburse for over ten years. One escrow file that was closed in 2009 showed that the  
28 credit balance of \$6.00 has yet to be disbursed.

1 P. The 2019 examination also disclosed two checks that were issued for large dollar  
2 amounts and were not cashed for more than six months. Sincere Escrow failed to review the old  
3 outstanding check list periodically to determine that all checks were clearing. The outstanding  
4 checks were for \$6,475.00 and \$5,440.00. These were repeat violations that were noted during the  
5 2007 and 2010 examinations.

6 Q. Sincere Escrow failed to escheat unclaimed funds to the California State Controller's  
7 Office within the period provided by Code of Civil Procedure section 1520, subdivision (a) of the  
8 Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

9 R. The 2017 examination showed the last time Sincere Escrow issued an escheat report  
10 was on June 17, 2015. No funds due for escheat were reported after 2015, and Sincere Escrow failed  
11 to review and disburse the older ledger balances and the stale date checks. The 2019 examination  
12 revealed old ledger balances from 2008 that had not been researched or escheated to the State  
13 Controller's Office. These were repeat violations that were noted during the 2010 and 2013  
14 examinations.

15 S. CCR section 1737.3 requires escrow agents to preserve their records for at least five  
16 years from the close of escrow.

17 T. The 2017 and 2019 examinations revealed several escrow files that were not made  
18 available for inspection. These escrows still had credit balances at the time of the examinations.  
19 Sincere Escrow could not locate those files. These were repeat violations that were noted during the  
20 2013 examination.

21 U. CCR section 1741.3 requires escrow agents to render to each principal to the escrow  
22 transaction a statement of his or her account in writing upon completion of an escrow transaction.

23 V. The 2017 and 2019 examinations revealed final closing statements that failed to  
24 disclose the notary charges properly. In at least one escrow file, the notary fee was paid to an  
25 employee. However, the final closing statement described the notary fee to the employee as "Title –  
26 Notary Fee" without disclosing who performed the notary service. The Department also found two  
27 escrow files where the notary fees were paid to an employee. However, the final closing statements  
28 described the notary fees to the employee as "Title – Notary Fee" without disclosing who performed

1 the notary service. These were repeat violations that were noted during the 2013 examination.

2 W. Based upon the foregoing, the Commissioner finds that Sincere Escrow violated the  
3 Escrow Law, including, violating Financial Code section 17411 by keeping fees in the trust account  
4 for many years; CCR section 1738 and Financial Code section 17421.5 for improperly charging hold  
5 open fees; Financial Code section 17414 for unauthorized disbursement of fees; CCR section 1732  
6 for failing to timely disburse credit balances, and failing to review and disburse large and old  
7 outstanding checks; CCR section 1737.3 for failing to retain escrow records; CCR section 1741.3 for  
8 failing to properly prepare the statement of accounts; and Civil Code section 1500 et seq. for failing  
9 to timely escheat funds to the State Controller’s Office.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
11 forth herein, the Parties agree as follows:

12 **II.**

13 **Terms and Conditions**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth  
15 in paragraphs A through W, above, in a manner that avoids the expense of a hearing and other  
16 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
17 purposes, and provisions of the Escrow Law.

18 2. Final Order to Discontinue Violations. Pursuant to Financial Code sections 17603  
19 and 17604, Sincere Escrow is hereby ordered to immediately discontinue violations of the Escrow  
20 Law, set forth herein. This Order to Discontinue Violations is final and effective from the Effective  
21 Date of this Consent Order, as defined in paragraph 25 (Effective Date).

22 3. Payment of Costs. Pursuant to Financial Code section 17601, Sincere Escrow is  
23 hereby ordered to pay \$10,000.00 in costs. The above penalty shall be paid in two equal installments,  
24 and shall be due on the following dates:

- 25 i. \$5,000.00 is due on August 31, 2020; and
- 26 ii. \$5,000.00 is due on September 30, 2020.

27 The payments shall be made in the form of a cashier’s check or Automated Clearing House deposit  
28 to the “Department of Business Oversight,” and transmitted to the attention of: Accounting -

1 Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite 200,  
2 Sacramento, California 95814. Notice of payment shall be sent concurrently to Afsaneh Eghbaldari,  
3 Counsel, Enforcement Division, by email at: [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov). In the event the payment  
4 due date falls on a weekend or holiday, the payment shall be due the next business day.

5       4.     Suspension Order. Sincere Escrow agrees that under Financial Code section 17608,  
6 its escrow agent’s license will be suspended for a period of twenty consecutive business days,  
7 excluding holidays, as follows: beginning August 10, 2020, and continuing day-to-day until the close  
8 of business on the twentieth business day (the Suspension Period). If the Suspension Period would  
9 end on a Saturday, Sunday, or state holiday, the Suspension Period continues to run until close of  
10 business on the next day that is not a Saturday, Sunday, or state holiday. During the Suspension  
11 Period, Sincere Escrow shall not accept any new escrow business, but may continue to process  
12 existing and open escrows, in accordance with Financial Code section 17609. It is further ordered  
13 that Sincere Escrow shall file with the Commissioner at the close of business on August 7, 2020, a  
14 list of all open escrows with escrow numbers and escrow party names along with a copy of the  
15 signed escrow instructions and signed deposit receipts, if any, for the last opened escrow. “Open  
16 escrow” shall mean an escrow wherein the parties to such escrow have already entered into a binding  
17 agreement and monies and/or escrow instructions have been submitted to Sincere Escrow regarding  
18 the transaction. The list of all open escrow shall be sent to Afsaneh Eghbaldari, Counsel,  
19 Enforcement Division, by email at: [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov).

20       5.     Escrow Education. Within 60 days of the Effective Date of this Consent Order,  
21 Margaret C. Chiu and all persons in charge of Sincere Escrow’s management or operation are hereby  
22 ordered to attend eight hours of in-person compliance training in the area of the Escrow Law  
23 compliance (Training), offered by Escrow Law specialist instructor(s). The instructor(s) and general  
24 format of this Training must be approved by the Commissioner. Within 65 days of the Effective  
25 Date of this Consent Order, Sincere Escrow shall submit proof of compliance to: Afsaneh  
26 Eghbaldari, Counsel, Enforcement Division, by email at: [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov).

27       6.     Waiver of Hearing Rights. Sincere Escrow acknowledges the Commissioner is ready,  
28 willing, and able to proceed with the filing of an administrative enforcement action on the charges

1 contained in this Consent Order. Sincere Escrow hereby waives the right to any hearings, and to any  
2 reconsideration, appeal, or other right to review which may be afforded pursuant to the Escrow Law,  
3 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
4 provision of law. Sincere Escrow further expressly waives any requirement for the filing of any  
5 enforcement action or pleading pursuant to Government Code section 11415.60, subdivision (b). By  
6 waiving such rights, Sincere Escrow effectively consents to this Consent Order and the Order to  
7 Discontinue Violations becoming final.

8       7.     Full and Final Settlement. The Parties hereby acknowledge and agree that this  
9 Consent Order is intended to constitute a full, final, and complete resolution of the violations and  
10 Order to Discontinue Violations as identified herein. No further proceedings or actions will be  
11 brought by the Commissioner in connection with these matters under the Escrow Law, or any other  
12 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this  
13 Consent Order.

14       8.     Failure to Comply with Consent Order. Sincere Escrow agrees that if it fails to  
15 comply with any terms of this Consent Order or the Order to Discontinue Violations, the  
16 Commissioner may, summarily suspend/revoke any of Sincere Escrow's license(s) and/or deny any  
17 pending license applications of Sincere Escrow and/or its respective affiliates, successors, and  
18 assigns, by whatever names they might be known, in addition to all other available remedies it may  
19 invoke under the Escrow Law. Sincere Escrow waives any notice and hearing rights to contest such  
20 summary suspensions, revocation or denial which may be afforded under the Escrow Law, the  
21 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
22 provision of law in connection therewith.

23       9.     Information Willfully Withheld. The Consent Order may be revoked, and the  
24 Commissioner may pursue any and all remedies available under the law against Sincere Escrow if  
25 the Commissioner discovers that Sincere Escrow knowingly or willfully withheld or misrepresented  
26 information used for and relied upon in this Consent Order.

27       10.    Future Actions by Commissioner. If Sincere Escrow fails to comply with any terms of  
28 the Consent Order or violates the Order to Discontinue Violations, it agrees that the facts in this

1 Consent Order and Order to Discontinue Violations are admitted for the purpose of proving a  
2 violation of this Consent Order and Order to Discontinue Violations. Sincere Escrow further agrees  
3 that the Commissioner may institute proceedings for any and all violations otherwise unresolved  
4 under this Consent Order. The Commissioner reserves the right to bring any future actions against  
5 Sincere Escrow, or any of their partners, owners, officers, shareholders, directors, employees, or  
6 successors for any and all unknown violations of the Escrow Law.

7 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
8 ability to assist a government agency (whether city, county, state, or federal) with any  
9 administrative, civil or criminal action brought by that agency against Sincere Escrow or any other  
10 person based upon any of the activities alleged in this matter or otherwise.

11 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that  
12 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to  
13 the advisability of executing the Consent Order.

14 13. Headings. The headings to the paragraphs of this Consent Order are inserted for  
15 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
16 the provisions hereof.

17 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
18 interest.

19 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
20 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
21 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
22 Order it has placed no reliance on any statement, representation, or promise of any other party, or  
23 any other person or entity not expressly set forth herein, or upon the failure of any party or any other  
24 person or entity to make any statement, representation or disclosure of anything whatsoever. The  
25 Parties have included this clause: (1) to preclude any claim that any party was in any way  
26 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
27 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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1           16.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
2 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.  
3 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
4 provision. No waiver by either party of any breach of, or of compliance with, any condition or  
5 provision of this Consent Order by the other party will be considered a waiver of any other condition  
6 or provision or of the same condition or provision at another time.

7           17.    Full Integration. This Consent Order is the final written expression and the complete  
8 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
9 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
10 contemporaneous agreements, negotiations, representations, understandings, and discussions  
11 between and among the parties, their respective representatives, and any other person or entity, with  
12 respect to the subject matter covered hereby.

13           18.    Governing Law. This Consent Order will be governed by and construed in  
14 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
15 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
16 forum to the maintenance of such action or proceeding in such court.

17           19.    Counterparts. This Consent Order may be executed in one or more separate  
18 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
19 together constitute a single document.

20           20.    Effect Upon Future Proceedings. If Sincere Escrow applies for any license, permit or  
21 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future  
22 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
23 admitted for the purpose of such application(s) or enforcement proceeding(s).

24           21.    Voluntary Agreement. Sincere Escrow enters into this Consent Order voluntarily and  
25 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
26 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent  
27 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and  
28 without any duress or undue influence of any kind from any source.

1           22.    Notice. Any notices required under the Consent Order shall be provided to each party  
2 at the following addresses:

3                   If to Respondent:                 Margaret C. Chiu, President  
4   Sincere Escrow  
5   935 South San Gabriel Boulevard  
6   San Gabriel, California 91776

7                   If to the Commissioner:         Afsaneh Eghbaldari, Counsel  
8   Department of Business Oversight  
9   1350 Front Street, Room 2034  
10   San Diego, California 92101

11           23.    Signatures. A fax or electronic mail signature shall be deemed the same as an original  
12 signature.

13           24.    Public Record. Sincere Escrow hereby acknowledges that this Consent Order is and  
14 will be a matter of public record.

15           25.    Effective Date. This Consent Order shall become final and effective when signed by  
16 all parties and delivered by the Commissioner’s counsel via e-mail to Sincere Escrow’s counsel,  
17 Karel Rocha, at KRocha@pnbd.com.

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1           26.    Authority to Sign. Each signatory hereto covenants that he or she possesses all  
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
3 obligations set forth herein.

4 Dated: August 5, 2020

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

5  
6 By: \_\_\_\_\_  
7 MARY ANN SMITH  
8 Deputy Commissioner

9 Dated: August 5, 2020

SINCERE ESCROW

10  
11 By: \_\_\_\_\_  
12 MARGARET C. CHIU  
13 President of Sincere Escrow

14 APPROVED AS TO FORM:

15 \_\_\_\_\_  
16 Karel Rocha, Principal Partner  
17 PRENOVOST, NORMANDIN, DAWE & ROCHA, A.P.C.  
18 Counsel for Sincere Escrow  
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