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10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:)
14) FILE NO.: 9632025
15 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
16)
17 Complainant,) ACCUSATION
18 v.)
19)
20 C. GULL ESCROW, INC.,)
21 Respondent.)
22)

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

25 **I.**
26 **Introduction**

27 1. The Commissioner of Financial Protection and Innovation (Commissioner or
28 Complainant).

1 seeks to revoke the escrow agent’s license issued to C. Gull Escrow, Inc. (CGE or Respondent) based
2 upon its violations of the California Escrow Law (Fin. Code, §§ 17000 et seq.) (Escrow Law), as set
3 forth below.

4 **II.**

5 **Factual Background**

6 2. CGE, a California corporation, is an escrow agent licensed by the Commissioner
7 under the Escrow Law with its place of business located at 12514 South Street, Cerritos, California.
8 Respondent received its escrow agent license from the Commissioner on December 16, 2003.

9 3. Frank J. Lynch IV (Lynch) is CGE’s president and chief financial officer.

10 4. On March 14, 2022, CGE submitted a surrender license application. The
11 Commissioner, through her staff, contacted CGE, by phone and email, to request additional
12 information, including the required closing audit required under Financial Code section 17600 (b). To
13 date, the Respondent has not complied with the Commissioner’s demand.

14 **II.**

15 **Violations of the Escrow Law**

16 **A. Failure to File December 31, 2019 and 2020 Audit Reports**

17 5. Pursuant to Financial Code section 17406, all licensees under the Escrow Law are
18 required to file an annual audit report containing audited financial statements (annual audit report)
19 within 105 days after the close of their fiscal year. CGE’s fiscal year-end is December 31. CGE was
20 late 151 days in filing its 2019 annual audit report and 21 days late in filing its 2020 annual report.

21 December 2019 Annual Audit Report

22 6. CGE was required to file its annual audit report for the fiscal year ended December 31,
23 2019 (2019 annual audit report) on or before April 14, 2020. However, despite a 90-day extension,
24 CGE’s 2019 audit report was late 151 days from the date of the extension .

25 7. On April 30, 2020, the Complainant received a letter dated April 10, 2020 from Lynch
26 by email requesting a 90-day extension to file its 2019 annual audit report. In light of the Covid-19
27 health crisis, the Complainant granted CGE an extension to June 15, 2020. The Complainant also
28 warned CGE that it may be subject to penalty under Financial Code section 17408 if it fails to file the

1 2019 annual audit report by the extension date of June 15. In addition, CGE was also forewarned that
 2 its escrow agent license may be revoke or suspended pursuant to Financial Code section 17602.5 if it
 3 fails to file its 2019 annual audit report by the extension date. The Complainant did not receive
 4 CGE’s 2019 audit report on June 15.

5 8. On June 23, 2020, the Commissioner, through her staff, issued a written demand (2019
 6 written demand) to CGE to file its 2019 audit report within 10 dates from the date of the demand.
 7 Again, the Commissioner warned CGE of the potential penalty assessment and suspension or
 8 revocation of its escrow agent’s license for its failure to file the required 2019 annual audit report.
 9 The 2019 written demand was emailed to CGE’s designated email address.

10 9. On June 26, 2020, the Complainant received a second request for extension from
 11 Lynch to submit CGE’s 2019 annual audit report to August 15, 2020. The Complainant denied
 12 Respondent’s request on July 1, 2020 and the same date, Lynch acknowledged receipt of the
 13 Complainant’s response denying CGE’s request for a second extension.

14 10. On December 4, 2020, the Complainant received CGE’s 2019 annual audit report, 151
 15 days late from the extended date of June 15, 2020.

16 Penalty for failing to file the annual audit report on time

17 11. The Commissioner is authorized to impose a penalty under Financial Code section
 18 17408 for CGE’s failure to file its 2019 annual audit report. As of December 4, 2020, the accrued
 19 penalty for the late filing of the 2019 annual audit report amounts to \$73,500.00, calculated as
 20 follows:

Date	Number of Days	Fines per Day	Fine Amount
7/6/20 – 7/10/20	5	\$100.00	\$500.00
7/11/20 – 12/3/20	146	\$500.00	\$73,000.00

25 December 2020 Annual Audit Report

26 12. CGE’s 2020 annual audit report (2020 annual audit report) was due on April 15, 2021.
 27 In light of the company’s failure to file its 2020 annual audit report, the Complainant issued a written
 28 demand on May 24 2021 to CGE requiring CGE to file the report by June 3, 2021. The

1 Complainant’s demand stated in part, “[i]f the Department does not receive your annual report within
 2 ten (10) days from the date of this letter, your company will be assessed a penalty for \$100 per day
 3 for the first five days the report is overdue, and thereafter, \$500 per day for each day the report is
 4 overdue pursuant to California Financial Code section 17408.” The written demand was sent by email
 5 to CGE’s designated email address, and Lynch confirmed receipt of the demand on May 25, 2021
 6 and indicated that the 2020 annual audit report would be delivered shortly.

7 13. The 2020 annual audit report was received on June 25, 2021, 21 days late from the
 8 expiration of the 10-day written demand. Pursuant to Financial Code section 17408, the
 9 Commissioner may impose a penalty for CGE’s failure to file its 2019 annual audit report. As of June
 10 25, 2021, CGE has accrued a penalty of \$8,500.00 for the late filing of its 2019 annual audit report,
 11 calculated as follows:

Date	Number of Days	Fines per Day	Fine Amount
6/4/21 – 6/8/21	5	\$100.00	\$500.00
6/9/21 – 6/24/21	16	\$500.00	\$8,000.00

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 14
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 16 **B. Failure to Maintain at All Times the Required Liquid Assets and Tangible Net Worth**

17 14. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are
 18 required to maintain at all times a tangible net worth of \$50,000.00, including liquid assets of at least
 19 \$25,000.00 in excess of current liabilities.

20 **Liquid Asset and Tangible Net Worth, 2019 Annual Audit Report**

21 15. CGE’s 2019 annual audit report disclosed liquid asset deficiency of \$70,267.00 and
 22 tangible net worth deficiency of \$61,848.00.

23 16. On December 8, 2020, the Complainant notified CGE, in writing, to correct its liquid
 24 asset and tangible net worth deficiencies noted in the company’s December 2019 annual audit report
 25 within 30 days. The Complainant also required CGE to provide the company’s November 2020
 26 financial statements and a bank letter to substantiate the amount of the Certificate Deposit (CD)
 27 reflected on the December 2019 audited financial statements. Moreover, the Complainant also
 28 warned CGE of the potential suspension or revocation of CGE’s escrow license if it failed to provide

1 proof of correction. A copy of the bank letter confirming the balance of the CD was provided by
2 CGE's accountant on January 8, 2021. In addition, CGE provided a letter indicating CGE had
3 corrected the liquid asset deficiency as of December 31, 2020 and the 2020 reconciliation was to be
4 completed by January 13, 2021. However, the November 2020 financial statements were not
5 provided. The Complainant again asked for the November 2020 financial statements from CGE on
6 December 8, 2020. CGE was required to provide said statements within a week. CGE failed to
7 provide the November 2020 financial statements by the due date.

8 17. On January 18, 2021, Lynch informed the Complainant, by email, that he was meeting
9 his accountant to complete CGE's 2020 accounting records. The following day, January 19, 2021, the
10 Complainant, by email, requested Lynch provide 1) proof of cash infusion to correct the liquid asset
11 and tangible net worth deficiencies noted in the 2019 annual audit report and 2) CGE's November
12 2020 financial statements.

13 18. On January 25, 2021, Lynch responded to the Complainant that he was unable to have
14 his accountant complete the company's 2020 accounting records, but Lynch indicated that there were
15 two cash infusions into CGE. The first cash receipt came from All California Brokerage Inc. (ACBI),
16 CGE's sole shareholder, for \$20,000, deposited on March 20, 2020, and the second infusion was a
17 loan of \$23,000.00 under the Paycheck Protection Program (PPP) received in May 2020. Lynch also
18 provided CGE's February and May 2020 general account bank statements to demonstrate the cash
19 receipts. However, notwithstanding this receipt of funds, the liquid asset requirement of \$25,000.00
20 and tangible net worth of \$50,000.00 in excess of current liabilities were still deficient. The general
21 account bank balance as of May 29, 2020 was only \$37,730.60.

22 19. On January 26, 2021, the Complainant issued a written demand to CGE informing the
23 company that the deposits of \$20,000.00 and \$23,000.00 were insufficient to correct the liquid asset
24 and tangible net worth deficiencies noted in the 2019 annual report. The Complainant again requested
25 proof of sufficient deposits and the company's November 2020 financial statements be provided no
26 later than February 5, 2021. The Complainant also warned CGE of the potential penalty assessment
27 and suspension or revocation of its escrow license if CGE fails to provide the requested items no
28 later than February 5, 2021. In its written response, CGE stated that an additional \$5,000.00 was

1 received from ACBI and the intercompany receivable of \$134,000.00 from ABCI had been converted
 2 to a 5-year note. CGE also provided the April 2020 general account bank statement to show the
 3 \$5,000.00 deposit. However, the \$5,000.00 deposit made in April 2020 was already reflected in the
 4 May 2020 bank account balance of \$37,730.60 previously provided. Thus, the net worth and liquid
 5 asset deficiencies have not been corrected.

6 20. On February 8, 2021, the Complainant responded to CGE stating that the May 2020
 7 cash balance of \$37,730.60 was less than the sum of all three deposits of \$20,000.00, \$23,000.00, and
 8 \$5,000.00. It appeared that up to May 31, 2020, CGE was operating at a loss. The Complainant again
 9 demanded the November 2020 financial statements. In response, CGE provided only a balance sheet
 10 that showed “All Dates” and the November 30, 2020 general account bank statement, which showed
 11 a cash balance of \$21,980.02. However, it is uncertain whether the balance sheet date of the “All
 12 Dates” balance sheet was November 30, 2020, the balance sheet requested by the Complainant or
 13 February 8, 2021, the date the balance sheet was run and provided.

14 21. Based on the January 31, 2021 balance sheet provided, C. Gull Escrow still had liquid
 15 asset and tangible net worth deficiencies, calculated as follows:

16 January 31, 2021 Balance Sheet

Liquid Assets	\$ 27,987.21	Gross Tangible Assets	\$ 51,359.04
Current Liabilities	<u>\$ 35,514.43</u>	Total Liabilities	<u>\$ 58,514.43</u>
Net Liquid Assets	(\$ 7,527.22)	Tangible Net Worth	(\$ 7,155.39)
Requirement	<u>\$ 25,000.00</u>	Requirement	<u>\$ 50,000.00</u>
Deficiency	<u>(\$ 32,527.22)</u>	Deficiency	<u>(\$ 57,155.39)</u>

21 **C. Failure to File Financial Statements in Accordance with Generally Accepted Accounting**

22 **Principles**

23 22. Pursuant to Financial Code section 17406, all reports and financial statements referred
 24 to in section 17406 shall be prepared in accordance with Generally Accepted Accounting Principles
 25 (GAAP).

26 November and December 2020 balance sheet were not prepared according to GAAP

27 23. The Commissioner, through her staff, reviewed the “All Dates” balance sheet and
 28 determined that the balance sheet was not prepared in accordance with Generally Accepted

1 Accounting Principles (GAAP), Accounting Standards Codification (ASC) 305. The Commissioner
2 found the following on CGE’s balance sheet: the cash balance on the “All Dates” balance sheet was
3 questionable, as the November 30, 2020 bank account balance was \$21,980.02, and yet the cash
4 balance reflected on the balance sheet was \$22,945.83, which was higher than the cash balance in the
5 bank. Also, the balance sheet reflected a cash adjustment of \$4,750.00; an uncategorized asset of
6 \$1,344.51; accumulative deficit of \$516,492.06; and a net income of \$480,939.06. Moreover, the “All
7 Dates” balance sheet showed that CGE still had a tangible net worth deficiency of \$21,247.66. The
8 Complainant informed CGE that the balance sheet provided was not acceptable and advised CGE to
9 seek help from an accountant or a certified public accountant and demanded CGE’s November 2020
10 income statement.

11 24. On March 5, 2021, CGE provided a revised November 2020 balance sheet and the
12 “November 2020” Profit and Loss (P&L) statement. CGE also submitted the December 2020 balance
13 sheet, P&L statement, and general account bank statement. However, the general account bank
14 reconciliations for both November and December 2020 were not provided. The November and
15 December 2020 balance sheet provided by CGE were in fact the general ledger details. It appears that
16 the “financial statements” were again not prepared according to GAAP. The improper classifications
17 of some of the items to the cash account in both November and December 2020 balance sheet
18 included the following: a cash adjustment of \$4,750.00, and an adjustment of \$504.38 to “Christine’s
19 Pay”; the tangible asset in the December 2020 “balance sheet” also included an uncategorized asset
20 of negative \$155.49; and the retained earnings had been adjusted to a negative \$22,596.02, but this
21 amount was still off from the retained earnings amount of \$22,018.00 reported in CGE’s December
22 31, 2019 annual audit report.

23 2020 and 2021 P&L Statements

24 25. CGE provided two P&L statements: P&L for January through December 2020 and the
25 other one for January 1 to March 5, 2021 with the file name “Profit and Loss as of 11-30-20”. It
26 appears the wrong accounting period was prepared for the November 2020 P&L statement. The P&L
27 statement for January through December 2020 revealed a net loss of \$14,346.84, but it was uncertain
28 whether the company’s expenses had been properly recorded and accrued. The P&L statement for

1 January 1 to March 5, 2021 reflected a net loss of \$15,861.09.

2 November and December 2020 Balance Sheets

3 26. After reviewing the November and December 2020 balance sheets, the Complainant
4 informed CGE that CGE’s “financial statements” contained many errors and were not acceptable.
5 The Complainant requested the latest financial statements for January 2021, to be provided by March
6 22, 2021. Again, CGE was warned that failure to provide proof of correction of the liquid asset and
7 tangible net worth deficiencies noted would subject CGE to administrative action. CGE informed the
8 Complainant on March 12, 2021 that its accountant was unable to complete the reconciliation due to
9 “technical and timing issues.”

10 27. Based on the November and December 2020 balance sheets or general ledger details
11 provided, it appears that CGE was still operating at a loss and had liquid asset and tangible net worth
12 deficiencies as follows:

13 November 30, 2020 Balance Sheet

Liquid Assets	\$ 33,495.37	Gross Tangible Assets	\$ 56,867.20
Current Liabilities	\$ 32,664.58	Total Liabilities	\$ 55,664.58
Net Liquid Assets	\$ 830.79	Tangible Net Worth	\$ 1,202.62
Requirement	\$ 25,000.00	Requirement	\$ 50,000.00
Deficiency	<u>(\$ 24,169.21)</u>	Deficiency	<u>(\$ 48,797.38)</u>

18 December 31, 2020 Balance Sheet

Liquid Assets	\$ 52,897.99	Gross Tangible Assets	\$ 76,269.82
Current Liabilities	\$ 31,708.51	Total Liabilities	\$ 54,708.51
Net Liquid Assets	\$ 21,189.48	Tangible Net Worth	\$ 21,561.31
Requirement	\$ 25,000.00	Requirement	\$ 50,000.00
Deficiency	<u>(\$ 3,810.52)</u>	Deficiency	<u>(\$ 28,438.69)</u>

23 28. By March 17, 2021, the required financial statements for November and December
24 2020 still had not been revised, but CGE provided: 1) the balance sheet dated January 31, 2021.
25 While the cash balance shown on the balance sheet was \$2,987.21, the registered cash balance was
26 \$4,737.20 according to the January 31, 2021 general account bank reconciliation prepared by CGE’s
27 accountant on March 16, 2021; 2) January 31, 2021 general account bank statement and
28 reconciliation; 3) a partial on-line general account bank statement for March 2021; and 4) P&L

1 statement covering the accounting period of January and February 2021. It appears that the wrong
2 accounting period was prepared for the January 2021 P&L statement.

3 29. The Complainant determined that the January 31, 2021 financial statements submitted
4 on March 17, 2021 were again not prepared in accordance with GAAP.

5 30. CGE has failed to provide proper financial statements to enable the Complainant to
6 make accurate assessment of the company’s financial condition.

7 31. On March 18, 2022, the Complainant made another request via email for the proper
8 financial statements prepared in accordance with GAAP for November 2020 through January 2021.
9 However, to date, all the unaudited “financial statements” provided to the Complainant were either
10 general ledgers or have not been properly prepared in accordance with GAAP.

11 **III.**

12 **Applicable Law**

13 32. Financial Code section 17210, subdivision (a), provides as follows:

14 (a) An escrow agent licensed on or after January 1, 1986, shall
15 maintain at all times a tangible net worth of fifty thousand dollars
16 (\$50,000), including liquid assets of at least twenty-five thousand
dollars (\$25,000) in excess of current liabilities.

17 33. Financial Code section 17406 provides in pertinent part as follows:

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

23 ...

24 (d) The reports and financial statements referred to in subdivisions
25 (a) and (b) shall include at least a balance sheet and a statement of
26 income for the year ended on the balance sheet date together with other
27 relevant information as the commissioner may require. The reports and
28 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

1 independent certified public accountant or independent public
2 accountant. The audits shall be conducted in accordance with generally
3 accepted auditing standards and the rules of the commissioner.

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

6 (f) For good cause and upon written request, the commissioner
7 may extend the time for compliance with subdivisions (a) and (b).

8 (g) A licensee shall, when requested by the commissioner, submit
9 its unaudited financial statements, prepared in accordance with
10 generally accepted accounting principles and consisting of at least a
11 balance sheet and statement of income and expense as of the date and
12 for the period specified by the commissioner. The commissioner may
13 require the submission of these reports on a monthly or other periodic
14 basis.

15 ...
16 (i) The commissioner may reject any financial statement, report,
17 certificate, or opinion by notifying the licensee or other person required
18 to make the filing of its rejection and the cause of the rejection. Within
19 30 days after the receipt of the notice, the licensee or other person shall
20 correct the deficiency and the failure so to do shall be deemed a
21 violation of this division. The commissioner shall retain a copy of all
22 rejected filings.

23 (j) The commissioner may make rules specifying the form and
24 content of the reports and financial statements referred to in this
25 section, and may require that those reports and financial statements be
26 verified by the licensee in the manner as he or she may prescribe.

27 (k) Upon completion of the reports and financial statements
28 referred to in subdivisions (a), (b), and (c), the independent accountant
shall submit to the commissioner complete copies of the reports and
financial statements at the same time that copies of the reports and
financial statements are submitted to the licensee.

34. Financial Code section 17408, subdivisions (b)-(e), provides as follows:

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

1 information is overdue, and thereafter may not exceed five hundred
2 dollars (\$500) for each day the report or information is overdue.

3 (c) If, after an order has been made under subdivision (b), a request
4 for hearing is filed in writing within 30 days of the date of service of
5 the order by the person to whom the order was directed, a hearing shall
6 be held in accordance with the Administrative Procedure Act, Chapter
7 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
8 of the Government Code, and the commissioner shall have all the
9 powers granted under that chapter.

10 (d) If the person fails to file a written request for a hearing within
11 30 days of the date of service of the order, the order imposing the
12 penalty shall be deemed a final order of the commissioner, and the
13 penalty shall be paid within five business days.

14 (e) If a hearing is requested, the penalty shall be paid within five
15 business days after the effective date of any decision in the case
16 ordering payment to be made.

17 35. Financial Code section 17602.5 provides as follows:

18 If any licensed escrow agent fails to make any reports required by law
19 or by the commissioner within ten (10) days from the day designated
20 for the making of the reports, or within any extension of time granted
21 by the commissioner, or fails to include therein any matter required by
22 law or by the commissioner, such failure shall constitute grounds for
23 the suspension or revocation of the license held by such escrow agent.

24 36. Financial Code section 17608 provides in pertinent part as follows:

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

27 (a) The licensee has failed to maintain in effect a bond required
28 under the provisions of this division.

(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.

IV.

**PRAYER FOR ORDER IMPOSING PENALTIES PURSUANT TO
FINANCIAL CODE SECTION 17408**

37. The Commissioner finds that, by reason of the foregoing, C. Gull Escrow, Inc. has
failed to file its annual audit report timely for its fiscal years ended December 31, 2019 and 2020, as
was required under Financial Code section 17406, which is ground for the imposition of penalties

1 under Financial Code section 17408.

2 NOW THEREFORE the Commissioner having found that C. Gull Escrow, Inc. failed to
3 timely file its annual audit report for its fiscal years ended December 31, 2019 and 2020, as required
4 by Financial Code section 17406, it is hereby ordered, pursuant to Financial Code section 17408, that
5 C. Gull Escrow, pay the Commissioner the sum of \$81,500.00.

6 V.

7 **PRAYER FOR ORDER REVOKING C. GULL ESCROW, INC.’S ESCROW**
8 **AGENT’S LICENCE PURSUANT TO FINANCIAL CODE SECTION 17608**

9 The Commissioner finds that, by reason of the foregoing, C. Gull Escrow, Inc. has violated
10 Financial Codes sections 17210 and 17406 which constitutes grounds for the revocation of its escrow
11 agent’s license under sections 17602.5 and 17608 of the Escrow Law.

12 WHEREFORE, IT IS PRAYED under sections 17602.5 and 17608 of the Escrow Law, that
13 the escrow agent’s license of C. Gull Escrow, Inc. be revoked.

14 Dated: July 15, 2022
15 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

16
17 By _____
18 MARLOU de LUNA
19 Senior Counsel
20 Enforcement Division
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