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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA
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11 In the Matter of the Accusation of) CASE NO. 963-2596
12 THE CALIFORNIA COMMISSIONER OF)
13 BUSINESS OVERSIGHT,) **ACCUSATION**
14 Complainant,)
15 v.)
16 DIVERSITY ESCROW, INC.; DAVID Z.)
17 JIMENEZ, as an individual; DIANA LOPEZ, as)
18 an individual; and CHRISTINA ESPITIA, as an)
19 individual.)
20 Respondents.)
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1 The Complainant is informed and believes, and based upon such information and belief,
2 alleges and charges Respondents as follows:

3 **I.**

4 **INTRODUCTION**

5 The California Commissioner of Business Oversight ("Commissioner")¹ seeks to revoke the
6 escrow agent's license issued to Diversity Escrow, Inc. ("Diversity Escrow" or "Respondent") and to
7 bar David Z. Jimenez ("Jimenez"), Diana Lopez ("Lopez"), and Christina Espitia ("Espitia") from
8 any employment, management, or control of any escrow agent based upon their violations of the
9 Escrow Law, including having caused unauthorized disbursements of escrow trust funds in excess of \$1.8
10 million, as set forth more fully below.

11 **II.**

12 **FACTUAL BACKGROUND**

13 Diversity Escrow is an escrow agent licensed by the Commissioner pursuant to the Escrow
14 Law of the State of California (Fin. Code, § 17000 et seq.)² ("Escrow Law"). Respondent received its
15 escrow agent's license from the Commissioner on January 28, 2010.

16 Diversity Escrow is a suspended California corporation with its last known place of business
17 located at 17037 Chatsworth Street, Suite 101, Granada Hills, California.

18 Jimenez is Diversity Escrow's president, vice president, chief executive officer, chief
19 financial officer, treasurer, secretary, director, sole shareholder, and registered agent. Lopez,
20 Jimenez's daughter, is Diversity Escrow's undisclosed control person and putative owner. Espitia is
21 Diversity Escrow's manager and escrow officer.

22 L.D.T. Investments, Inc., doing business as L.D.T. Escrow Division a Non-Independent
23 Escrow Division ("L.D.T. Investments"), is a suspended California corporation, formerly located at
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25 ¹ Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the
26 Department of Business Oversight in accordance with the Governor's reorganization of state departments and agencies to
27 provided services more efficiently and effectively. Pursuant to the reorganization, the name of the Department of
28 Corporations was changed to Department of Business Oversight, headed by the Commissioner of Business Oversight.
(See Fin. Code, § 321, subd. (c).)

² All further statutory references are to the Financial Code, unless otherwise indicated.

1 17037 Chatsworth Street, Suite 206, Granada Hills, California. L.D.T. Investments held a California
2 Department of Real Estate (“Department of Real Estate”) broker’s license that was revoked by the
3 Department of Real Estate on or about October 6, 2011. Lopez is or was L.D.T. Investments’ owner
4 and president. On or about August 23, 2011, the Department of Real Estate issued an Order to Desist
5 and Refrain against L.D.T. Investments and Lopez pursuant to Business and Professions Code section
6 10086. That order is now final.

7 On or about October 31, 2011, both Lopez and L.D.T. Investments filed for Chapter 7
8 bankruptcy protection in the United States Bankruptcy Court for the Central District of California.

9 For the reasons discussed in more detail below in section III., the Commissioner determined
10 that Diversity Escrow was conducting its business in an unsafe and injurious manner, and on July 15,
11 2011, issued an Order to Discontinue Escrow Activities pursuant to Financial Code section 17415.

12 On or about July 19, 2011, in light of Diversity Escrow’s inability to cure the defects set forth
13 in her Order to Discontinue, the Commissioner issued a Demand For and Order Taking Possession of
14 the Trust Account and Escrow Records of Diversity Escrow Pursuant to Financial Code section
15 17621 and Order Appointing Conservator Pursuant to Financial Code section 17630. These orders
16 were necessary to offer any possible protection to the escrow customers of Diversity Escrow.
17 Thereafter, the Commissioner sought to have the conservatorship converted into a receivership, and
18 petitioned the court to appoint a receiver over the trust account and related records of Diversity
19 Escrow.

20 On or about April 13, 2012, the Honorable James C. Chalfant of the Los Angeles County
21 Superior Court granted the Commissioner’s petition and appointed Peter A. Davidson as the limited
22 receiver (“Receiver”) over Diversity Escrow.

23 As part of his duties the Receiver and his accountants reviewed certain Diversity Escrow files,
24 as well as reports and documentation assembled by the Commissioner and her staff. Based upon that
25 review, the Receiver prepared and filed a proof of loss claim with the Escrow Agent’s Fidelity
26 Corporation (“EAFC”), the statutory non-profit mutual benefit corporation and statutory fidelity
27 indemnitor for each licensed member escrow agent. Diversity Escrow, during the relevant period,
28 was a licensed escrow agent and EAFC member. After reviewing the proof of loss and

1 correspondence and negotiations with the Receiver, as well as the Receiver providing supplemental
2 documentation to EAFC, the EAFC agreed to settle the proof of loss claim and pay the Receiver \$1
3 million, the total amount of coverage under Diversity Escrow’s policy. The court approved the
4 Receiver’s settlement with the EAFC on July 18, 2013.

5 **III.**

6 **VIOLATIONS OF THE ESCROW LAW**

7 On or about January 28, 2011, Diversity Escrow’s bank, City National, notified the
8 Commissioner in writing that Diversity Escrow’s trust account was overdrawn as of January 26,
9 2011. In light of this information, and concerned about the status of the trust account, the
10 Commissioner, by and through her audit staff, commenced a special examination of the books and
11 records of Diversity Escrow at its licensed location.

12 The special examination disclosed, among other violations, a trust account shortage of at least
13 \$771,824.80, in violation of section 17414, subdivision (a)(1) and California Code of Regulations,
14 title 10, sections 1738.1 and 1738.2.³ Diversity Escrow had failed to use loan funds in accordance
15 with the parties’ written escrow instructions which caused debit balances and trust account shortages.
16 The Receiver later determined that the trust account shortage actually exceeded \$1,875,981.48, based
17 upon his review of the Diversity Escrow files, as well as reports and documentation assembled by the
18 Commissioner concerning the trust account and trust records.

19 In addition to the trust account shortage, the Commissioner’s special examination disclosed
20 other serious violations of the Escrow Law, by and through Jimenez, Lopez, and Espitia, including
21 issuing post-dated checks, failing to maintain books and records (preparation of daily banking and
22 trust reconciliations), causing overdrafts to occur in the trust account, causing trust account shortages,
23 failing to meet tangible net worth and liquidity requirements, falsifying escrow instructions,
24 falsifying escrow receipts, and failing to report Diversity Escrow’s owner and control person, Lopez,
25 to the Commissioner. These violations are documented in greater detail below as follows.

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28 ³ Hereinafter, “CCR.”

1 **A. Issuance of Post-Dated Checks**

2 Diversity Escrow issued two post-dated checks in the amounts of \$300,000 and \$5,000 in
3 violation of section 17400 and CCR 1738. Check number 1537 in the amount of \$300,000 and dated
4 January 27, 2011, was actually issued on January 25, 2011. Espitia told the examiner that she reset
5 her computer's clock, so that the date of the check was changed from January 25 to January 27. The
6 bank returned check number 1537, unpaid, on January 26, 2011, due to non-sufficient funds. Check
7 number 1538 in the amount of \$5,000 and dated January 27, 2011, was actually issued on January 25,
8 2011. Espitia also told the Commissioner's examiner that the checks in question were issued out of
9 sequence, blank and pre-signed by Jimenez in violation of CCR 1732. Moreover, check numbers
10 1537 and 1538 were disbursed early to the buyer in the escrow without written authorization from the
11 parties in violation of section 17414, subdivision (a)(1) and CCR 1732.

12 **B. Failure to Maintain Books and Records**

13 Respondent failed to prepare its daily banking and trust reconciliations in violation of section
14 17404 and CCR 1732.2. Diversity Escrow's last prepared daily banking report was on or about
15 February 2, 2011, and the last prepared trust banking reconciliation was in or about July 2010.

16 **C. Trust Account Overdraft**

17 Diversity Escrow caused an overdraft to occur in the trust account in the amount of
18 \$131,048.56 in violation of section 17414, subdivision (a)(1) and CCR sections 1738 and 1738.1.
19 Espitia issued receipt number 282, dated January 18, 2011, in the amount of \$230,000 without any
20 corresponding deposit at the bank. Thereafter, on or about January 18, 2011, Espitia made a wire
21 transfer in the amount of \$230,000 without any funds having been deposited into the escrow. The
22 wire transfer (disbursement) to the sellers was made without having received written authorization
23 from the parties to the escrow. As a result, a shortage occurred in the trust account in the amount of
24 \$230,000 from January 18, 2011 until February 24, 2011, thereby causing the trust account overdraft
25 at the bank in the amount of \$131,048.56.

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1 **D. Liquidity and Tangible Net Worth Deficiencies**

2 Pursuant to section 17210, all licensees under the Escrow law are required to maintain, at all
3 times, liquid assets in the amount of \$25,000 and a tangible net worth of at least \$50,000. The special
4 examination disclosed that as of January 31, 2011, Diversity Escrow had a liquid asset deficiency of
5 at least \$12,008.77 and a tangible net worth deficiency of at least \$19,354.71 in violation of section
6 17210.

7 **E. Falsification of Escrow Instructions**

8 Diversity Escrow falsified escrow instructions in violation of section 17414, subdivision
9 (a)(2). One set of escrow instructions contained in Respondent's escrow file number 10315-CE were
10 signed only by the seller, dated January 13, 2011, and stated that the escrow was to be an "all cash
11 transaction." A second set of escrow instructions, dated January 25, 2011, and signed only by the
12 buyer, failed to state that the escrow was to be an all-cash transaction.

13 **F. Unauthorized Disbursal of Trust Funds**

14 Diversity Escrow disbursed \$306,500 to L.D.T. Investments in escrow number 10346-CE
15 without any written authorization in violation of section 17414, subdivision (a)(1). According to the
16 seller in the escrow, he did not authorize and/or sign the amended escrow instructions contained in
17 the file authorizing the disbursal of funds to L.D.T. Investments.

18 **G. Trust Account Shortages**

19 1. Escrow Number 10334

20 Diversity Escrow caused a shortage to occur in the trust account from February 2, 2011 to
21 February 3, 2011, in violation of section 17414, subdivision (a)(1) and CCR sections 1738 and
22 1738.1. A review of escrow file number 10334 disclosed that Espitia issued receipt number 304 in the
23 amount of \$100,000 on February 2, 2011; however, the corresponding funds were not wired into
24 escrow number 10334 until February 3, 2011. Espitia issued receipt number 304 at least one day
25 before the funds were received in the escrow. Receipt number 304 showed that the funds were
26 received from L.D.T. Investments, the purported seller. Two days before the funds were wired into
27 the trust account, and a day before the receipt was issued, on February 1, 2011, Espitia, at Lopez'
28 direction, issued trust account check number 1539 to L.D.T. Investments in the amount of \$100,000.

1 Check number 1539 was cashed by L.D.T. Investments on February 2, 2011, thereby creating a trust
2 account shortage from February 2, 2011 to February 3, 2011.

3 2. Escrow Number 10259-CE

4 Diversity Escrow caused a shortage to occur in the trust account from November 24, 2010 to
5 November 30, 2010, in the amount of \$5,000 in violation of CCR 1738.1. On or about November 24,
6 2010, Espitia issued receipt number 246 in escrow number 10259-CE concerning L.D.T. Investments
7 deposit of \$5,000; however, there was no corresponding deposit made at the bank until November 30,
8 2010, six days after the receipt was issued. Although there were no funds deposited with the bank
9 Lopez directed Espitia to disburse \$5,000 on November 24, 2010, thereby creating a \$5,000 trust
10 account shortage until November 30, 2010.

11 3. Escrow Number 10257-CE

12 Diversity Escrow caused a shortage to occur in the trust account from January 5, 2011
13 through February 25, 2011, in the amount of \$120,000 in violation of section 17414, subdivision
14 (a)(1) and CCR sections 1738 and 1738.1. On or about January 5, 2011, Lopez directed Espitia to
15 disburse \$120,000 to L.D.T. Investments without any corresponding escrow. A wire confirmation
16 showed that Espitia had wired \$120,000 from Diversity Escrow's trust account to L.D.T Investments
17 on January 5, 2011. Later, Lopez determined that the funds should have been disbursed from escrow
18 file number 10257-CE.

19 4. Escrow Number 10203-CE

20 Diversity Escrow caused a shortage to occur in the trust account from November 16, 2010
21 through December 31, 2010 in the amount of \$52,000 in escrow file number 10203-CE, in addition to
22 other violations of the Escrow Law. A review of this file disclosed that there were five sales affiliated
23 with this one escrow file. All five escrows concerned different buyers and different properties.

24 a. On or about November 16, 2010, Lopez directed Espitia to disburse \$52,000 from
25 escrow number 10203-CE to the lender in the escrow without ever having received signed escrow
26 instructions from the buyer in violation of section 17414, subdivision (a)(1) and CCR sections 1738
27 and 1738.1. Thereafter, on or about December 30, 2010, L.D.T. Investments deposited \$52,000 into
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1 escrow number 10203-CE to cover the disbursement to the lender. Only the seller authorized the
2 disbursal of the funds, the buyer had failed to sign the escrow instructions.

3 b. On or about November 19, 2010, Lopez directed Espitia to disburse \$72,000 from
4 escrow number 10203-CE to the lender in the escrow without having received any signed escrow
5 instructions from the buyer in violation of section 17414, subdivision (a)(1) and CCR 1738.

6 c. On or about October 29, 2010, L.D.T. Investments deposited \$459,000 in to escrow
7 number 10203-CE. That same day, Lopez directed Espitia to disburse the \$459,000 to the lender
8 without any signed escrow instructions having been received from the buyer in violation of section
9 17414, subdivision (a)(1) and CCR 1738.

10 **H. Falsification of Escrow Records and Receipts**

11 In connection with the trust account shortages described above, Diversity Escrow, Espitia, and
12 Lopez falsified escrow records by creating false receipts during the period November 2010 to
13 February 2011 in violation of section 17414, subdivision (a)(2).

14 **I. Failure to Report Owner**

15 Diversity Escrow failed to report to the Commissioner that Lopez owned and operated the
16 escrow business in violation of sections 17209 and 17212.1 and CCR 1726. Jimenez explained in a
17 signed statement that it was his daughter, Lopez, who actually “[ran] the business.” Records also
18 indicate that Lopez was the authorized signatory on Diversity Escrow’s general and money market
19 bank accounts.

20 **IV.**

21 **COMMISSIONER’S AUTHORITY TO REVOKE LICENSE AND BAR INDIVIDUALS**

22 Code section 17608 provides in pertinent part:

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

25 (b) The licensee has violated any provision of this division or any rule
26 made by the commissioner under and within the authority of this
27 division.
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(c) Any fact or condition now exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

Code section 17423 provides in pertinent part:

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

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

V.

CONCLUSION

The Commissioner finds that, by reason of the foregoing, Diversity Escrow, Jimenez, Lopez, and Espitia have violated sections 17209, 17210, 17212.1, 17400, 17404, 17414 and CCR sections 1726, 1732, 1732.2, 1738, 1738.1, and 1738.2.

WHEREFORE, the Commissioner prays that David Z. Jimenez, Diana Lopez, and Christina Espitia be barred from any position of employment, management or control of any escrow agent and that the escrow agent’s license of Diversity Escrow, Inc. be revoked effective upon the termination of the receivership.

Dated: October 4, 2013
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Blaine A. Noblett
Senior Corporations Counsel
Enforcement Division