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7

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

11 In the Matter of the Accusation of ) FILE NO. 963-2004  
12 THE CALIFORNIA COMMISSIONER OF ) ACCUSATION  
13 BUSINESS OVERSIGHT, )  
14 Complainant, )  
15 v. )  
16 AFFORDABLE ESCROW, INC., )  
17 Respondent. )  
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1 The Complainant is informed and believes, and based upon such information and belief,  
2 alleges and charges Respondent as follows:

3 **I.**

4 **INTRODUCTION**

5 Respondent Affordable Escrow, Inc. (“Affordable”) is an escrow agent licensed by the  
6 California Commissioner of Business Oversight (“Commissioner”) under the Escrow Law of the  
7 State of California (Fin. Code, § 17000 et seq.)<sup>1</sup> (“Escrow Law”). Yalile Herrera (“Herrera”) is  
8 Affordable’s owner and president.

9 The Commissioner seeks to suspend Affordable from taking any new escrow business for a  
10 period of one week on the basis of the following violations of the Escrow Law.

11 **II.**

12 **VIOLATIONS OF ESCROW LAW**

13 On or about June 11, 2012, the Department of Business Oversight, formerly Department of  
14 Corporations (“Department”), received Affordable’s fiscal year-end February 29, 2012 annual audit  
15 report (“annual report”) from its certified public accountant. Affordable’s CPA expressed an  
16 unqualified opinion in support of the report.

17 On or about July 11, 2012, Corporations Examiner Christy Kouch (“examiner”) reviewed  
18 Affordable’s annual report but noted an unusually high messenger fees reported under the licensee’s  
19 operating expenses. Affordable paid courier fees totaling \$121,681.00 which represented  
20 approximately 36.68% of Affordable’s total operating expenses for the year (typically, the majority  
21 of an escrow company’s operating expenses relates to salaries and rent, not courier fees). The  
22 examiner reported the findings to her supervisor.

23 On or about September 10, 2012, the Commissioner commenced a regulatory examination at  
24 Affordable’s business. The examiner reviewed the general account financial statements and general  
25 ledgers for the months of September 30, 2011 to August 31, 2012. On the basis of her review, the  
26 examiner determined that all messenger fees were paid to AG Carrier Services, Inc. (“AG Carrier”).

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28 <sup>1</sup> All further statutory references are to the Financial Code, unless otherwise indicated.

1 The examiner proceeded to review all invoices billed by AG Carrier to Affordable for the period  
2 September 30, 2011 to August 31, 2012. Each month, Affordable made four to five payments to AG  
3 Carrier, totaling approximately \$10,000.

4 The examiner interviewed Herrera to determine why Affordable was paying what appeared to  
5 be excessive courier fees. Herrera told the examiner that she had hired AG Carrier for many years to  
6 deliver documents and boxes for escrow clients. She also stated that she was aware AG Carrier's fees  
7 were higher than other couriers but Herrera was willing to pay the fees because the company  
8 provided superior services. Herrera denied there was any affiliation between Affordable and AG  
9 Carrier.

10 After reviewing the invoices, the examiner noticed that some contained detailed charges,  
11 while others did not. The examiner separated the AG Carrier invoices into two categories, itemized  
12 invoices that had delivery detail, and "fictitious" invoices that had no delivery detail. Again, the  
13 examiner approached Herrera to enquire about the differences between the two sets of AG Carrier  
14 invoices. Herrera could not explain why some of the invoices lacked delivery detail other than to say  
15 that those invoices represented "contract pricing." Shortly thereafter, Herrera admitted to the  
16 examiner that she had a personal relationship with AG Carrier's owner, Andrew Gonzales  
17 ("Gonzales"), and that he was her "boyfriend." Herrera also confirmed that the detailed invoices were  
18 true invoices, while the invoices lacking delivery detail were fictitious invoices prepared for  
19 bookkeeping purposes only. Herrera told the examiner that she had paid high income taxes in the past  
20 and, in order to achieve tax savings, she inflated messenger expenses by preparing fake invoices and  
21 transferring money to Gonzales. Herrera claimed to have engaged in this activity since at least 2008.

22 The examiner proceeded to review Affordable's escrow files to determine if the licensee had  
23 inflated its clients' courier fees. Based on a spot review of selected escrow files, the examiner  
24 concluded that the fees charged to the escrow principals were legitimate.

25 After having conducted her detailed review, the examiner identified itemized invoices totaling  
26 \$21,770 and "fictitious" or "contract pricing" invoices in the amount of \$105,267.25. During the exit  
27 interview with the licensee, the examiner warned Herrera to stop inflating messenger fee expenses  
28 and she agreed to discontinue the practice.

1 On or about December 11, 2013, the examiner reviewed Affordable's most recent annual  
2 report for fiscal year-end February 28, 2013. The messenger service fees still appeared unusually  
3 high. The total messenger fee expenses listed on the annual report amounted to \$154,129 or  
4 approximately 34.78% of Affordable's total operating expenses of \$443,114. Affordable's CPA firm  
5 did not disclose any comment in the annual report concerning the messenger fees.

6 At the request of the Deputy Commissioner, on or about February 11, 2014, the examiner  
7 returned to Affordable's offices to perform a follow-up examination of the licensee's general account  
8 books and records. Based on her review, the examiner identified average monthly messenger  
9 payments of \$11,434.23 or 29.89% of the business' total operating expenses.

10 When confronted with the examiner's findings during the second exam, Herrera reported that  
11 the inflated messenger fees issue had been corrected. She claimed that the messenger fees Affordable  
12 paid in 2013 were lower than the prior year's messenger fee expenses. According to Herrera, her  
13 CPA, accountant, and attorney all advised her that because she is Affordable's owner, she can pay  
14 whomever she wants to pay and any amount she wants to pay for messenger fee services.

### 15 III.

### 16 LAW

17 Section 17400 provides:

18 The commissioner may from time to time make, amend, and rescind the  
19 rules, forms, and orders that are necessary to carry out the provisions of  
20 this division, and define any terms, whether or not used in this division,  
21 insofar as the definitions are not inconsistent with the provisions of this  
22 division. For the purpose of rules and forms, the commissioner may,  
23 among other things, classify persons and matters within the  
24 commissioner's jurisdiction and may prescribe different requirements  
25 for different classes. The commissioner may, in the commissioner's  
26 discretion, waive any requirement of any rule or form in situations  
27 where in his or her opinion the requirement is not necessary in the  
28 public interest or for the protection of the public.

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Section 17414 provides in relevant 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:

...

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

Section 17404 provides:

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

California Code of Regulations, title 10, section 1732 (“CCR”) provides:

An escrow agent shall maintain its books, records and accounts in accordance with generally accepted accounting principles and good business practice.

**IV.**

**COMMISSIONER’S AUTHORITY TO SUSPEND LICENSEE**

Section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order . . . suspend for a period not exceeding 12 months . . . any escrow agent . . . if the commissioner finds . . . the following:

(1) That the . . . suspension . . . is in the public interest and that the 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.

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**V.**

**CONCLUSION**

The Commissioner finds that, by reason of the foregoing, Affordable has violated sections 17400, 17404, 17414, and CCR section 1732 of the Escrow Law.

WHEREFORE, IT IS PRAYED that the escrow agent’s license of Affordable Escrow, Inc. be suspended for a period of one week during which time it shall not accept any new escrow business but may continue to process open escrows under section 17609.

Dated: September 15, 2014  
Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
Blaine A. Noblett  
Senior Corporations Counsel  
Enforcement Division