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

11 In the Matter of:	)	Escrow License No.: 963-0108
	)	OAH No. 2015050769
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT,	)	AMENDED ACCUSATION IN SUPPORT OF
	)	ORDERS:
14 Complainant,)	
	)	1) BARRING LOYANN LOUFAY
15 v.	)	RICHARDS FROM ANY POSITION
	)	OF EMPLOYMENT, MANAGEMENT,
16 EXECUTIVE ESCROW COMPANY,	)	OR CONTROL OF ANY ESCROW
17 LOYANN LOUFAY RICHARDS, as an	)	AGENT PURSUANT TO FINANCIAL
18 individual, and DAMON LEROY KUNTZ, as	)	CODE SECTION 17423
19 an individual,)	
	)	2) REVOKING ESCROW AGENT'S
20 Respondents.	)	LICENSE PURSUANT TO
	)	FINANCIAL CODE SECTION 17608
)	
	)	3) SUSPENDING DAMON LEROY
	)	KUNTZ FROM ANY POSITION OF
)	EMPLOYMENT, MANAGEMENT, OR
)	CONTROL OF ANY ESCROW
)	AGENT PURSUANT TO FINANCIAL
)	CODE SECTION 17423

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27 The Complainant, the Commissioner of Business Oversight (Commissioner), files this
28 Amended Accusation to plead additional facts, as primarily set forth in Paragraphs C and D of

1 Section III below, that were discovered subsequent to the issuance of the Accusation dated April 13,
2 2015, which seeks to: (1) bar Loyann Loufay Richards (Richards) from any position of employment,
3 management, or control of any escrow agent pursuant to Financial Code section 17423 (Bar Order);
4 and, (2) revoke the Escrow Agent’s license of Executive Escrow Company pursuant to Financial
5 Code section 17608 (Revocation Order). Further, based on the additional facts pleaded below, the
6 Commissioner finds cause to suspend Damon Leroy Kuntz (Kuntz) from any position of
7 employment, management, or control of an escrow agent pursuant to Financial Code section 17423
8 (Suspension Order). In support of the above-referenced Bar, Revocation, and Suspension Orders, the
9 Commissioner alleges and charges as follows:

10 **I.**

11 **INTRODUCTION**

- 12 1. Executive Escrow Company is an escrow agent first licensed on July 16, 1958 by the
13 Commissioner pursuant to the Escrow Law of the State of California (Fin. Code, § 17000 et seq.).
- 14 2. Executive Escrow Company is an active California corporation with its principal place of
15 business located at 115 South El Camino Real, San Clemente, California 92672.
- 16 3. One Equity Concept, Inc. (One Equity Concept) is an active Nevada corporation formed in
17 September 2010, with its registered agent for service of process located at 800 North Rainbow
18 Boulevard, Suite 208, Las Vegas, Nevada 89107.
- 19 4. On January 15, 2015, Executive Escrow Company filed a Summary of Personnel form with
20 the Commissioner for the fiscal year ending September 30, 2014 (SOP) reporting that Richards is the
21 “Manager/Escrow Officer,” president, director, and sole stockholder of Executive Escrow Company.
- 22 5. At all relevant times, Richards was also the president, secretary, and registered agent for
23 service of process of One Equity Concept.
- 24 6. The SOP filed by Executive Escrow Company reports that Kuntz, Richards’ brother, is a
25 “Temp/Consultant” working for the escrow agent.
- 26 7. The SOP reports that Kathleen J. Moltoni (Moltoni) is an “Escrow Assistant” of Executive
27 Escrow Company. Moltoni is also a California commissioned notary public.

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1 II.

2 STATEMENT OF FACTS

3 8. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are required to
4 maintain, at all times, a tangible net worth of at least \$50,000.00, including liquid assets of at least
5 \$25,000.00 in excess of current liabilities.

6 9. The September 30, 2011 annual report submitted to the Commissioner by Executive Escrow
7 Company disclosed that the licensee failed to satisfy the liquid asset and tangible net worth
8 requirements of section 17210 the Escrow Law. After receiving the 2011 annual report, the
9 Commissioner contacted Executive Escrow Company and asked for assurance that the licensee would
10 bring its accounts into compliance with the financial requirements of section 17210.

11 10. On March 20, 2012, having not received a satisfactory response from Executive Escrow
12 Company, the Commissioner sent a letter asking the licensee to file monthly financial statements for
13 the months of February, March and April. The letter further informed Executive Escrow Company
14 that the Commissioner would take regulatory action, including suspension of its escrow license, if
15 there was not sufficient progress in correcting the matter.

16 11. On May 31, 2012, the Commissioner sent a regulatory letter to Executive Escrow Company
17 informing that review of the licensee's financial statement for April 30, 2012 disclosed a tangible net
18 worth deficiency of \$27,003.90. Executive Escrow Company was asked to provide proof of
19 correction of the deficiency within 30 days.

20 12. Due to Executive Escrow Company's failure to adequately respond to the Commissioner's
21 May 31, 2012 letter, the Commissioner sent another letter on December 11, 2012. This letter
22 demanded that Executive Escrow Company provide proof of correction of the liquid asset and
23 tangible net worth deficiencies within 10 days.

24 13. On December 4, 2012, a regulatory examination was commenced wherein it was confirmed
25 that Executive Escrow Company was still not in compliance with section 17210. A regulatory
26 examination letter reporting the findings of the examination, and demanding proof of correction of
27 the tangible net worth deficiencies, was mailed to the licensee on January 18, 2013.
28

1 14. On March 11, 2013, the Commissioner sent Executive Escrow Company a letter informing
2 that the liquid asset calculation reflected in the licensee's annual report for the period ending
3 September 30, 2012 did not comply with Financial Code section 17202.1. Making adjustments to the
4 licensee's November 30, 2012 financial statement, the Commissioner calculated a net liquid asset
5 deficiency of \$19,662.60 and a tangible net worth deficiency of \$164,554.28. Executive Escrow
6 Company was given 30 days to provide proof of correction.

7 15. On July 11, 2013, the Commissioner sent a letter to Executive Escrow Company informing
8 that review of the licensee's general ledger of February 28, 2013 disclosed a net liquid asset
9 deficiency of \$19,014.62 and a tangible net worth deficiency of \$69,879.96. The letter again
10 demanded proof of correction within 30 days and advised:

11 The Department has been in communication with you regarding the capital deficiencies of
12 your company since your annual report of September 30, 2011. The Department has been
13 patient in the handling of this matter as your replies have indicated an improving business.
14 These important issues of required capitalization must be addressed with corrective action. . .
15 Failure to cure the deficiencies will result in the suspension of your escrow license, which
16 would prohibit you from accepting new escrows.

17 16. On May 13, 2014, the Commissioner sent a letter via certified mail to Executive Escrow
18 Company informing that its annual report for the period ending on September 30, 2013 still disclosed
19 a net liquid asset deficiency of \$21,381.62 and a tangible net worth deficiency of \$95,883.05, which
20 was confirmed during a regulatory examination review of the licensee's financial statement as of
21 March 31, 2013. The licensee was again given 30 days to provide proof of correction to the
22 Commissioner.

23 17. On July 21, 2014, the Commissioner's examiner left a telephone message for Richards
24 informing that a response to the Commissioner's May 13, 2014 letter was needed.

25 18. On July 23, 2013, the Commissioner's examiner spoke to Richards, who claimed she had not
26 received the Commissioner's letter dated May 13, 2014. The examiner, therefore, emailed a copy of
27 the May 13, 2014 letter to Richards and requested her immediate attention.
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1 19. On August 4, 2014, the Commissioner’s examiner emailed Richards, again asking for a
2 response to the Commissioner’s May 13, 2014 letter. Richards provided no response to the
3 Commissioner’s inquiry.

4 20. On September 24, 2014, the Commissioner issued to Executive Escrow Company an Order to
5 Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (Order to Discontinue
6 Escrow Activities). The Order to Discontinue Escrow Activities cited Executive Escrow Company’s
7 ongoing violation of section 17210, which requires all licensees under the Escrow Law to maintain, at
8 all times, a tangible net worth of at least \$50,000.00, including liquid assets of at least \$25,000.00 in
9 excess of current liabilities.

10 21. The Order to Discontinue Escrow Activities issued to Executive Escrow Company via
11 certified mail on September 26, 2014 stated:

12 NOW, BASED UPON THE FOREGING, AND GOOD CAUSE APPEARING
13 THEREFORE, it is hereby ORDERED, under the provisions of Financial Code section
14 17415, that Executive Escrow Company immediately discontinue acceptance of any new
15 escrow or joint control business, and of money, documents or other property in connection
16 therewith. . . This order is to remain in full force and effect until further order of the
17 Commissioner.

18 22. The cover letter that was mailed to Executive Escrow Company with the Order to Discontinue
19 Escrow Activities further clarified:

20 This Order directs Executive Escrow Company to immediately discontinue acceptance of any
21 new escrow or joint control business, and of money, documents or other property in
22 connection therewith. The Order goes into effect as soon as you receive it until further
23 written order of this Department.

24 23. On October 10, 2014, the Commissioner issued to Executive Escrow Company an Amended
25 Order to Discontinue Escrow Activities Pursuant to Financial Code Section 17415 (Amended Order
26 to Discontinue Escrow Activities), which was sent by certified mail to the licensee’s address of
27 record on October 14, 2014.

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1 24. The Amended Order to Discontinue Escrow Activities was mailed to the licensee's address of
2 record with a cover letter stating:

3 This Amended Order has only been issued for the sole purpose of correcting erroneous
4 amounts stated in Paragraph D of the original Order. Please note that the original Order
5 directing Executive Escrow Company to immediately discontinue acceptance of any new
6 escrow or joint control business, and of money, documents or other property in connection
7 therewith, remains in full effect.

8 25. On October 16, 2014, Moltoni signed for certified receipt of the Amended Order to
9 Discontinue Escrow Activities.

10 26. The same day that the Amended Order to Discontinue Escrow Activities was delivered to
11 Executive Escrow Company, Richards sent an email to the Commissioner's examiner informing that
12 she had been told by a client that she could not open new escrows. Richards' email asserted that
13 Executive Escrow Company was in the process of preparing financial statements in response to the
14 Commissioner's longstanding demand.

15 27. Also on October 16, 2014, Richards spoke with the Commissioner's counsel and verbally
16 acknowledged receipt of the Amended Order to Discontinue Escrow Activities.

17 28. On Friday, October 17, 2014, Richards sent an email to the Commissioner's examiner stating:
18 "I need to know when the Cease and Desist Order has been lifted, so that we can go back to work!"

19 29. On Monday, October 20, 2014, the Commissioner's counsel left a voice message with
20 Richards, informing the Commissioner needed certain documentation to verify compliance with the
21 Escrow Law before the Amended Order to Discontinue Escrow Activities could be set aside.

22 30. On October 29, 2014, the Commissioner's examiner returned to Executive Escrow
23 Company's licensed location to conduct a follow-up examination. The Commissioner's examiner
24 reviewed the daily banking reports and accounting records and discovered that Executive Escrow
25 Company had opened seven new escrows after October 16, 2014, which was the date that the licensee
26 had signed for certified receipt of the Amended Order to Discontinue Escrow Activities. The
27 Commissioner's examiner also found receipts for monetary transactions in three separate files. The
28 opening of these seven new escrow accounts and three monetary transactions were commenced
between October 20, 2014 and October 24, 2014.

1 31. On or about November 3, 2014, pursuant to the Commissioner’s demand, Executive Escrow
2 Company provided bank statements and a balance sheet for the month ending September 30, 2014.
3 The statements showed liquid assets that included money market funds of \$75,000.00, which had
4 been deposited to the licensee’s general account on September 26, 2014 to satisfy the liquid asset
5 requirements as of September 30, 2014.

6 32. On or about November 4, 2014, also pursuant to the Commissioner’s demand, Executive
7 Escrow Company provided bank statements and a balance sheet for the month ending October 31,
8 2014. The October statements showed that \$74,000.00 of the \$75,000.00 in money market funds
9 were withdrawn from the general account on October 3, 2014 and then redeposited to the general
10 account on October 22, 2014, so that the month-end statement would not reflect a deficiency in liquid
11 assets.

12 33. On November 5, 2014, the Commissioner issued an order setting aside the Amended Order to
13 Discontinue Escrow Activities after Executive Escrow Company provided ostensible evidence that it
14 had a tangible net worth of at least \$50,000.00, including liquid assets of at least \$25,000.00 in excess
15 of current liabilities, in compliance with section 17210.

16 34. Nearly a year later, on October 27, 2015, the Commissioner conducted an examination of
17 Executive Escrow Company to investigate ethical misconduct alleged in consumer complaints that
18 had been confidentially filed with the Department.

19 35. The examiner’s review of several escrow files obtained during the October 27, 2015
20 examination substantiated consumer allegations that Richards, as the sole owner of Executive Escrow
21 Company, and Kuntz, as an employee of the escrow agent, engaged in a pattern and practice of
22 failing to disclose to parties of sales transactions that the escrow agent was a principal to the
23 transaction and/or affiliated with a principal to the transaction.

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III.

VIOLATIONS OF THE ESCROW LAW

A. Willful Violation of the Commissioner’s Order to Discontinue Escrow Activities

36. Financial Code section 17415 provides:

(a) If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division is in an insolvent condition, is conducting escrow business in such an unsafe or injurious manner as to render further operations hazardous to the public or to customers, has failed to comply with the provisions of Section 17212.1 or 17414.1, has permitted its tangible net worth to be lower than the minimum required by law, has failed to maintain its liquid assets in excess of current liabilities as set forth in Section 17210, or has failed to comply with the bonding requirements of Chapter 2 (commencing with Section 17200) of this division, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on such person and on any other person having in his or her possession or control any escrowed funds, trust funds or other property deposited in escrow with said person, direct discontinuance of the disbursement of trust funds by the parties or any of them, the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. No person having in his or her possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner in whole or in part, the person is the subject of an order for relief in bankruptcy, or pursuant to Chapter 6 (commencing with Section 17621) of this division the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

37. The original Order to Discontinue Escrow Activities was issued to Executive Escrow Company on September 24, 2014, and mailed certified to the licensee’s address of record on September 26, 2014.

38. The Amended Order to Discontinue Escrow Activities was issued to Executive Escrow Company on October 10, 2014, and the licensee signed for certified receipt on October 16, 2014.

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1 39. On October 16, 2014, Richards verbally acknowledged to the Commissioner’s counsel that
 2 she had received the Amended Order to Discontinue Escrow Activities.

3 40. In the email that Richards sent to the Commissioner’s examiner on October 17, 2014, she
 4 expressly confirmed receipt of the Amended Order to Discontinue Escrow Activities and
 5 acknowledged that the licensee was not authorized to accept any new escrow or joint control
 6 business, money, documents or other property in connection with a new escrow until further order of
 7 the Commissioner.

8 41. During the October 29, 2014 examination of Executive Escrow Company’s books and
 9 records, the Commissioner’s examiner discovered that Executive Escrow Company had opened at
 10 least seven new escrows after Richards acknowledged receiving the Amended Order to Discontinue
 11 Escrow Activities on October 16, 2014.

12 42. The Commissioner’s examiner found that four to five days after receiving the Amended Order
 13 to Discontinue Escrow Activities, Executive Escrow Company opened the following new escrow
 14 accounts:

<u>Escrow Opened in Violation of Order</u>	<u>Escrow Account Number</u>	<u>Date Opened</u>	<u>Activity</u>
1	025912-DK	October 20, 2014	Receipt #63197 for \$30,000.00 issued on October 23, 2014
2	025913-DK	October 20, 2014	Receipt #1730 for \$11,250.00 issued on October 21, 2014
3	025914-DK	October 21, 2014	
4	025915-DK	October 21, 2014	Receipt #63196 for \$600.00 issued on October 21, 2014; Receipt #63198 for \$25.00 issued on October 24, 2014
5	025916-DK	October 21, 2014	
6	025917-DK	October 21, 2014	
7	025918-DK	October 21, 2014	

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1 43. The Commissioner’s examiner noted that the licensee’s escrow log used the initials “D.K.” to
2 indicate that the opening of all seven escrows was attributed to Kuntz.

3 44. The foregoing shows that by opening at least seven new escrow accounts and issuing receipts
4 in three monetary transactions after indisputably receiving the Commissioner’s Amended Order to
5 Discontinue Escrow Activities, Executive Escrow Company and Richards knowingly disregarded the
6 Commissioner’s order in violation of section 17415.

7 45. Even if Richards were to claim that Kuntz actually was the escrow officer who opened new
8 escrow accounts while the order was in effect and that she was unaware of such actions, such a claim
9 would support a finding that Richards failed to properly supervise the conduct of the licensed
10 business, which poses unreasonable risk of harm to the public interest.

11 B. Knowing Misrepresentation to the Commissioner

12 46. Financial Code section 17414, subdivision (a)(2), provides:

13 (a) It is a violation for any person subject to this division or any
14 director, stockholder, trustee, officer, agent, or employee of any such
15 person to do any of the following:

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

20 47. The above facts show that Richards violated section 17414, subdivision (a)(2), by knowingly
21 making a misstatement in writing in escrow books, accounts, reports, and/or statements when she
22 manipulated the balance of the licensee’s general account in an effort to make the liquid assets
23 reported in the September 2014 and October 2014 month-end statements appear to be in compliance
24 with section 17210, which requires all licensees to maintain, at all times, a tangible net worth of at
25 least \$50,000.00, including liquid assets of at least \$25,000.00 in excess of current liabilities.

26 48. The bank statements reviewed by the Commissioner’s examiner disclose that Richards
27 deposited \$75,000.00 into the licensee’s general account on September 26, 2014, only to withdraw
28 the funds on October 3, 2014.

1 49. Again on October 22, 2014, Richards redeposited the funds into the general account for the
2 purpose of showing a statutorily sufficient balance for the month-end statement.

3 50. Manipulating bank account funds in the foregoing manner fails to satisfy the requirement of
4 section 17210 that the licensee meet financial net worth minimums “at all times,” not just at month’s
5 end.

6 51. Richards’ conduct of manipulating the licensee’s bank account balance, on two separate
7 occasions near month’s end, shows a deliberate scheme to create the superficial appearance of
8 compliance with the minimum financial requirements of section 17210.

9 52. The foregoing evidence supports a finding that Richards knowingly made a misstatement of a
10 material fact in writing in escrow accounts and statements pertaining to escrow affairs in violation of
11 section 17414, subdivision (a)(2).

12 C. Refusing the Commissioner’s Examiner Access to Escrow Records

13 53. Financial Code section 17405 provides in relevant part:

14 (a) The business, accounts and records of every person performing as an escrow agent,
15 whether required to be licensed under this division or not, are subject to inspection and
16 examination by the commissioner at any time without prior notice. . . .

17 (b) Any person subject to this division shall, upon request, exhibit and allow inspection and
18 copying of any books and records by the commissioner or his or her authorized representative.

19 54. On October 27, 2015, the Commissioner’s examiner presented at the licensed office location
20 of Executive Escrow Company and informed Richards that he was there to inspect and examine the
21 books and records of the licensee under the authority of Financial Code section 17405.

22 55. However, the Commissioner’s examiner was able to inspect and copy only seven escrow files
23 before Richards instructed the examiner to leave the licensee’s premises, citing vague privacy
24 concerns related to the Commissioner’s pending enforcement action.

25 56. The Commissioner finds that Executive Escrow Company, as a licensee under the Escrow
26 Law, is required to grant the Commissioner access to its escrow accounts and records “at any time
27 without prior notice.” There is no provision in the Escrow Law exempting a licensee from
28 compliance with the examination requirements due to the Commissioner taking administrative action

1 to enforce said law.

2 57. Based on the foregoing, the Commissioner finds that Executive Escrow Company and
 3 Richards violated section 17405 of the Escrow Law by willfully refusing to grant the Commissioner’s
 4 examiner access to the books and records of the licensee’s escrow business on October 27, 2015.

5 D. Failing to Act Without Partiality in Escrow Transactions; Advise Parties of Affiliation in
 6 Writing

7 58. The examiner’s review of all seven of the escrow files that he was able to copy before the
 8 October 27, 2015 examination was unilaterally terminated by the licensee disclosed that Executive
 9 Escrow Company, Richards, and Kuntz violated section 1740.1 of title 10 of the California Code of
 10 Regulations by failing to “act without partiality to any of the parties in an escrow transaction.”

11 59. California Code of Regulations, title 10, section 1740.1 states:

12 An escrow agent shall act without partiality to any of the parties to an escrow transaction. If
 13 an escrow agent or a person or company related to or affiliated with the escrow agent is a
 14 principal to the escrow transaction or is acting or has acted as broker or salesman in relation to
 15 the escrow transaction, the escrow agent shall advise in writing all parties to the escrow
 16 transaction of such relationship or affiliation before being employed as escrow agent in
 17 connection with such transaction. Such advice shall be on the face of the escrow instructions
 18 in not less than eight (8) point bold type. . . .

17 60. Each of the seven escrow files, as listed below, showed that the parties to the various escrow
 18 transactions had utilized Executive Escrow Company as the escrow agent. And, in each file, the
 19 initials “D.K.” indicated that Kuntz acted as the escrow officer for a transaction that identified the
 20 seller as “One Equity Concept, Inc.”

<u>Escrow File</u> <u>Lacking</u> <u>Disclosure</u>	<u>Escrow</u> <u>Account</u>	<u>Date of Closing</u>	<u>Seller</u>
1	025392-DK	September 28, 2012	Calle Fortuna 34941 Trust, UDT 6/7/12, One Equity Concept, Inc. as Trustee
2	026036-DK	July 2, 2015	Foster Trust #11872, UDT 1/5/15, One Equity Concept, Inc. as Trustee
3	025940-DK	January 13, 2015	Buenos Aires Trust #543, One Equity Concept, Inc. as Trustee

4	026019-DK	June 11, 2015	Painter Trust #8626, UDT 10/14/14, One Equity Concept, Inc. as Trustee
5	025836-DK	August 8, 2014	Rowena Drive Trust #3392, UDT 6/20/13, One Equity Concept, Inc. as Trustee
6	025676-DK	October 4, 2013	West Marquita Trust #231-A, Secure Property Investments, Inc. as Trustee/One Equity Concept, Inc. as Trustee
7	025744-DK	February 14, 2014	112 Avenida Princesa Trust, VDT 5/21/13, One Equity Concept, Inc. as Trustee

61. In all seven files reviewed, the Commissioner’s examiner did not find any written advisement to the parties of the escrow transaction, in eight-point bold type or otherwise, that Richards, acting under declaration of trust, was either a principal to the escrow transaction or related to or affiliated with a principal to the transaction. In fact, all documents contained in the above-referenced files fail to disclose Richards’ full name, identifying the seller only as “L. Richards.”

62. For each of the above-listed transactions, Kuntz, acting on behalf of Executive Escrow Company and under the supervision of Richards, prepared multiple documents that the seller was required to complete, including the Seller’s Escrow Information Sheet, Certification of Non-Foreign Status by Individual Transferor, 1099 Certification, California Franchise Tax Board Form 593-C Real Estate Withholding Certificate, and Seller’s Commission Instructions. Kuntz knew that each of these documents was signed by his sister, “L. Richards” as officer for One Equity Concept. Moreover, in some transactions (such as Escrow Files #4 and #5 above), an employee of Executive Escrow Company, Moltoni, acting as notary public, verified the seller’s identity under the Great Seal of the State of California.

63. For all of the above transactions, Kuntz received written instructions from Richards for disbursing the proceeds of the sale, most of which provided for trust account checks payable to “L.

1 Richards” for “Document Signing Fees” and/or to Kuntz for various “Reimbursement of Advances.”

2 64. In connection with the escrow transactions pertaining to the Calle Fortuna and Avenida
3 Princesa properties (Escrow Files #1 and #7 above), Kuntz failed to disclose to all parties to the
4 transaction that Richards, as owner of the escrow agent, was affiliated with the listing agents, Valerie
5 Ventura (BRE# 01751319) and Kurtis Kingsolver (BRE# 00890232), respectively, in that they were
6 beneficiaries of the selling trust for which Richards served as trustee.
7

8 65. At the close of escrow for the Avenida Princesa transaction, the trust beneficiary and listing
9 agent, Kingsolver, sent a message to Kuntz stating, “Thanks again and glad to be out of this one.”
10 However, the Commissioner’s examiner found no written disclosure in the escrow file advising all
11 parties to the escrow transaction that Richards, the sole owner of the escrow agent, was acting as a
12 trustee for the benefit Kingsolver, who was the seller and listing agent – a material fact that may have
13 affected a party’s decision to utilize the services of Executive Escrow Company.
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15 66. Based on the foregoing, the Commissioner is of the opinion that Executive Escrow Company,
16 Richards, and Kuntz violated section 1740.1 by failing to act without partiality to any of the parties to
17 an escrow transaction.
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19 67. Further, the Commissioner is of the opinion that an affiliation between the escrow agent and a
20 principal to a transaction, especially an escrow agent acting as a trustee for the benefit of the seller
21 and/or listing agent, is a material fact that Executive Escrow Company, Richards, and Kuntz
22 knowingly or recklessly misstated or omitted to state orally or in writing in escrow documents, in
23 violation of section 17414, subdivision (a)(2).
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IV.

ESCROW BAR, SUSPENSION, AND REVOCATION STATUTES

68. Financial Code section 17423, subdivision (a)(1), provides:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or 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 censure, suspension, or bar 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.

69. Financial Code section 17608, subdivision (b), 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.

V.

CONCLUSION

70. Pursuant to Financial Code section 17423, subdivision (a)(1), the Commissioner finds, by reason of the foregoing, that the Bar Order is in the public interest and that Loyann Loufay Richards has committed or caused a violation of sections 1740.1, 17210, 17405, and 17414, subdivision (a)(2) of the Escrow Law and of the Commissioner’s Order to Discontinue Escrow Activities, which violations were either known or should have been known by the person committing or causing them or have caused material damage to the escrow agent or to the public.

71. Pursuant to Financial Code section 17608, subdivision (b), the Commissioner further finds, by reason of the foregoing, that by and through the actions of Loyann Loufay Richards and Damon Leroy Kuntz, Executive Escrow Company has violated sections 1740.1, 17210, 17405, and 17414, subdivision (a)(2) of the Escrow Law and the Commissioner’s Order to Discontinue Escrow

1 Activities, each violation alone being grounds to issue the Revocation Order to Executive Escrow
2 Company.

3 72. Further, pursuant to Financial Code section 17423, subdivision (a)(1), the Commissioner
4 finds, by reason of the foregoing, that the Suspension Order is in the public interest and that Damon
5 Leroy Kuntz has committed or caused a violation of sections 1740.1 and 17414, subdivision (a)(2) of
6 the Escrow Law, which violations were either known or should have been known by the person
7 committing or causing them or have caused material damage to the escrow agent or to the public.

8 WHEREFORE, IT IS PRAYED that:

- 9 (1) Loyann Loufay Richards be barred from any position of employment, management, or
10 control of any escrow agent pursuant to Financial Code section 17423, subdivision (a)(1);
- 11 (2) The escrow agent’s license issued to Executive Escrow Company be revoked pursuant to
12 Financial Code section 17608, subdivision (b); and,
- 13 (3) Damon Leroy Kuntz be suspended from any position of employment, management, or
14 control of any escrow agent pursuant to Financial Code section 17423, subdivision (a)(1),
15 for a period of 12 months.

16 DATED: January 13, 2016
17 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

19 By _____
20 Miranda LeKander
21 Senior Counsel
22 Enforcement Division