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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. MONTE CARLO ESCROW, INC., Respondent.	ESCROW LICENSE NO.: 963-1955 STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO FINANCIAL CODE SECTION 17602 AND NOTICE OF INTENT TO MAKE ORDER FINAL

The Complainant, Commissioner of Business Oversight (Commissioner) alleges and charges the Respondent as follows:

I.
Introduction

1. The Respondent, Monte Carlo Escrow, Inc. (Monte Carlo) is an escrow agent licensed by the Commissioner on or around July 31, 2002, pursuant to the California Escrow Law (Fin. Code § 17000 *et seq*.) (Escrow Law) with a principal place of business located at 10803 Foothill Blvd., Suite 109, Rancho Cucamonga, California 91730.

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II.
Regulatory Examination

2. On or about July 12, 2016, the Commissioner commenced a regulatory examination of the books and records of Monte Carlo that disclosed multiple violations of the Escrow Law as described in further detail below:

a) On or around March 10, 2016, Monte Carlo received an initial earnest money deposit of $9,000.00 from the buyer in escrow number 12729-LM to be deposited into the trust account, issuing receipt no. 19365, but instead deposited it into its general account. Monte Carlo's trust account reconciliation reports as of March 31, April 30, May 31, and June 30, 2016, spanning a period of four months, highlighted this recurring bank exception, referencing receipt no. 19365, escrow number 12729, and $9,000.00. Yet, the trust funds remained in the general account until on or around July 21, 2016, in violation of Financial Code section 17409, subdivision (a).

b) On or around March 10, 2016, Monte Carlo deposited the following non-trust funds in the form of escrow fees totaling $8,604.50 into the trust account:

i. check no. 64531 in the amount of $2,075.00 for escrow number 12628-SL;
ii. check no. 64486 in the amount of $1,863.00 for escrow number 12593-MB;
iii. check no. 64501 in the amount of $2,235.00 for escrow number 12623-SL;
iv. check no. 64500 in the amount of $35.00 for escrow number 12623-SL; and
v. check no. 64523 in the amount of $2,297.50 for escrow number 12661-LM.

Monte Carlo bundled items (ii) – (v) into one deposit ticket to the trust account totaling $6,530.00, and item (i) in a separate deposit ticket to the trust account totaling $2,075.00 on March 10, 2016. Monte Carlo's trust account reconciliation reports as of March 31, April 30, May 31, and June 30, 2016, spanning a period of four months, referenced these deposits as a bank exception with the following description, "R#19365, E# 12729 ISSUED AS 9,000.00. DEPOSITS 3-10 WERE 2,075.00 + 6,530.50. DIFFERENCE IS 394.50." Yet, these non-trust funds remained in the trust account until *September 14, 2016*, or for a period of six months, in violation of Financial Code section 17411.

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c) On or around March 21, 2016, the parties to escrow number 12729-LM cancelled their pending transaction, so Monte Carlo returned the initial earnest money deposit of $9,000.00 back to the buyer by issuing a check for $9,000.00 from the trust account. Since the $9,000.00 initial earnest money deposit was never deposited to the trust account in the first place, this disbursement resulted in a $9,000.00 trust account shortage, in violation of California Code of Regulations, title 10, section 1738.1. The $9,000.00 shortage, offset by $8,604.50 in non-trust funds that were deposited into the trust account on March 10, 2016, in violation of Financial Code section 17411, appeared as a recurring debit balance in the amount of $394.50 in Monte Carlo's trust account reconciliation reports as of March 31, April 30, May 31, and June 30, 2016.

d) Beginning in or around March 2016 through July 2016, Monte Carlo failed to correct the $394.50 debit balance in its trust account even though each of its trust account reconciliation reports as of March 31, April 30, May 31, and June 30, 2016, spanning four months, disclosed the $394.50 debit balance as a bank exception with the following recurring description: "R#19365, E# 12729 ISSUED AS 9,000.00. DEPOSITS 3-10 WERE 2,075.00 + 6,530.50. DIFFERENCE IS 394.50," in violation of California Code of Regulations, title 10, section 1732.2.

e) On or around July 21, 2016, four months after depositing the $9,000.00 initial earnest money deposit from the buyer in escrow number 12729-LM into the general account rather than the trust account, in violation of Financial Code section 17409, subdivision (a), Monte Carlo replaced the funds by issuing a check for $9,000.00 from the general account to the trust account, but failed to issue or post a receipt in its escrow ledger even though its trust account reconciliation reports as of July 31 and August 31, 2016 disclosed this failure with the recurring description, "REMOTE DEPOSIT NOT RECORDED IN TRUST ACCOUNTING SYSTEM," in violation of California Code of Regulations, title 10, section 1732.1.

f) On or around March 22, 2016, Monte Carlo failed to advise all parties to escrow number 12768-SL in writing on the face of the escrow instructions that it was affiliated with the buyer in the escrow transaction, Trinity Redevelopment, Inc., before being employed as the escrow agent, in violation of California Code of Regulations, title 10, section 1740.1.

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g) On or around July 19, 2016, Monte Carlo received and deposited into its trust account a check for $81,874.39 from Trinity Redevelopment, Inc., an affiliate of Monte Carlo, as the buyer's closing funds for escrow number 12768-SL. The escrow closed on or around July 20, 2016, and Monte Carlo disbursed the $81,874.39 from the trust account on July 21, 2016. On or around July 28, 2016, the $81,874.39 check was returned for insufficient funds. On the same day, Monte Carlo deposited into its trust account a cashier's check for $82,307.72 on behalf of Trinity Redevelopment, Inc., but failed to issue or post a receipt in the escrow ledger until on or around August 25, 2016, nearly one month later, even though its trust account reconciliation report as of July 31, 2017 disclosed this failure with the following description, "REMOTE DEPOSIT NOT RECORDED IN TRUST ACCOUNTING SYSTEM," in violation of California Code of Regulations, title 10, section 1732.1.

III.
Applicable Law

3. Financial Code section 17409, subdivision (a) provides in pertinent part:

> (a) All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank, a state or federal savings bank, or a state or federal savings association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company insured by the Federal Deposit Insurance Corporation and approved to receive those moneys by the commissioner . . . Those funds, when deposited, are to be designated as "trust funds," "escrow accounts," or under some other appropriate name indicating that the funds are not the funds of the escrow agent . . . .

4. Financial Code section 17411 provides:

> No person shall knowingly keep or cause to be kept any funds or money in any bank or state or federal savings and loan association under the heading of "trust funds" or "escrow accounts" or any other name designating such funds or money as belonging to the clients of any escrow agency, except actual escrow or trust funds deposited with such agency.

5. California Code of Regulations, title 10, section 1732.1 provides:

> All receipts and disbursements of moneys shall be posted in the escrow ledger as of the date of such receipts and disbursements, regardless of the date of posting.

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6. California Code of Regulations, title 10, section 1732.2 provides in pertinent part:

> (a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:
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> (1) Escrow ledger containing a separate ledger sheet for each escrow;
> (2) Escrow liability controlling account;
> (3) Cash receipt and disbursement journal or a file containing copies of all receipts and checks and/or check stubs of checks issued by the escrow agent as a medium of posting to the records referred to in subsections (1) and (2) in which case adding machine tapes of totals of receipts and checks shall be retained. The records referred to in subsections (1) and (2) shall be reconciled at least once each month with the bank statements of the "trust" or "escrow" account. The records referred to in subsection (1) shall be reconciled at least once each week with the escrow liability controlling account referred to in subsection (2) . . . .

7. California Code of Regulations, title 10, section 1738.1 provides:

> An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

8. California Code of Regulations, title 10, section 1740.1 provides:

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

9. Financial Code section 17602 provides:

> If it appears to the commissioner that any licensed escrow agent has violated its articles of incorporation, or any law or rule binding upon it, the commissioner shall, by written order addressed to the agent direct the discontinuance of such violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 17604.

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10. Financial Code section 17604 provides:

> No order issued pursuant to Sections 17602 or 17603 may become final except after notice to any licensed escrow agent affected thereby of the intention of the commissioner to make such order final and of the reasons therefor and that upon receipt of a request the matter will be set down for hearing to commence within 15 business days after such receipt unless the licensed agent affected consents to a later date. If no hearing is requested within 30 days after the mailing of such notice and none is ordered by the commissioner, the order may become final without hearing and the licensed escrow agent shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted thereunder. If upon the hearing, it appears to the commissioner that the licensed agent is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensed escrow agent shall immediately discontinue the practices named in the order.

IV.
Conclusion

By reason of the foregoing, Monte Carlo Escrow, Inc. has violated Financial Code sections 17409, subdivision (a) and 17411, and California Code of Regulations, title 10, sections 1732.1, 1732.2, 1738.1, and 1740.1.

WHEREFORE, good cause showing, the Commissioner of Business Oversight is issuing an Order to Discontinue Violations and notifying Monte Carlo Escrow, Inc. of her intention to make the order final.

Dated: March 20, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By_____
Sophia C. Kim
Senior Counsel
Enforcement Division

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