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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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John A. Clarke, Executive Officer/Clerk
BY R. Juliano, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE STATE OF) Case No. BS136179
12 CALIFORNIA, BY AND THROUGH THE)
13 CALIFORNIA CORPORATIONS) PETITION FOR LIMITED RECEIVER
14 COMMISSIONER,)
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Petitioner,
vs.
A.C.T. ESCROW, INC., a California
Corporation,
Respondent.

20 Petitioner, the People of the State of California, by and through the California Corporations
21 Commissioner ("Commissioner" or "Petitioner"), administers the provisions of the California
22 Escrow Law (Financial Code § 17000 et seq.), and the regulations issued pursuant thereto (Title 10,
23 California Code of Regulations, Chapter 3, Subchapter 9, Sections 1700 et seq.), which regulate the
24 business and activities of independent escrow agents.

25 The Petitioner having issued an Order Taking Possession of the Trust Funds and Escrow
26 Records of A.C.T. Escrow, Inc. pursuant to Financial Code section 17621, respectfully states:

27 1. On or about July 11, 2006, Petitioner issued an escrow agent's license pursuant to the
28 California Escrow Law to A.C.T. Escrow, Inc. ("ACT"), a California corporation. Pursuant to that

1 license, Petitioner authorized ACT to engage in business as an escrow agent within the State of
2 California. The license is currently valid and unrevoked. ACT's principal place of business was
3 located at 42231 6th Street W., Suite 205, Lancaster, California 93534.

4 2. On or about July 28, 2010, Petitioner issued a branch license to ACT authorizing
5 ACT to engage as an escrow agent at an additional location, which was located at 2155 East Garvey
6 North, Suite B-10, West Covina, California 91791.

7 3. Fernando Moreno III ("Moreno") is, and at all times relevant herein was, the
8 president, a shareholder, a director, and the escrow manager of ACT's main office in Lancaster.

9 4. Adolfo B. Vega ("Vega") and Charles Evans ("Evans"), are, and were at all times
10 relevant herein, shareholders, officers, and directors of ACT.

11 5. Daniel and Linda Arena (the "Arenas") are, and were at all times relevant herein,
12 shareholders of ACT.

13 6. At all times relevant herein, Vilma M. Escobar ("Escobar") was an escrow officer for
14 ACT at its West Covina office, and had previously worked as an escrow officer for ACT at its main
15 office in Lancaster.

16 7. On or about November 17, 2011, a special examination of the books and records of
17 ACT was commenced by Petitioner, by and through his staff, after the Department of Corporations
18 ("Department") received information from Moreno, on or about November 16, 2011, that Escobar
19 had admitted embezzling \$92,000.00 in trust funds.

20 8. The special examination revealed that commencing on dates unknown, but at least
21 since March 2010, and continuing through at least June 2011, ACT, by and through Escobar, made
22 unauthorized disbursements of escrow trust funds to herself, her friend, Jose Alonso, and/or
23 otherwise in violation of Financial Code section 17414, subdivision (a)(1) and California Code of
24 Regulations, title 10, sections 1738 and 1738.2.

25 9. The special examination further revealed that a shortage of at least \$400,129.98
26 existed in the trust accounts of ACT as of November 16, 2011 in violation of California Code of
27 Regulations, title 10, section 1738.1. Escobar and Alonso returned \$30,000.00 thereby reducing the
28 trust account shortage to \$370,129.98.

1 10. The special examination also revealed that the books and records had not been
2 maintained at the West Covina branch since in or about February 2011 in violation of Financial
3 Code section 17404 and California Code of Regulations, title 10, section 1732.2.

4 11. On or about November 16, 2011, Petitioner made demand upon ACT to immediately
5 open a new trust account at both offices in which all further escrow funds received by ACT would be
6 deposited so that new escrow trust funds could remain separate from the trust funds affected by the
7 shortage. On or about November 18, 2011, ACT opened a new trust account for the West Covina
8 branch. On or about November 22, 2011, after further demand, ACT finally opened a new trust
9 account for the Lancaster main office. However, further examination revealed that ACT never made
10 use of the new trust accounts and continued to deposit new escrow funds received from customers
11 into the old trust accounts.

12 12. Petitioner has demanded that ACT cure the trust account shortage described in
13 paragraph 9 above, however, ACT has failed to cure the shortage and continues in its failure to cure
14 such shortage.

15 13. Petitioner determined that the manner in which ACT was conducting business was
16 unsafe and injurious, and on December 6, 2011, issued an Order to Discontinue Escrow Activities
17 Pursuant to Financial Code Section 17415 to ACT along with a Demand For and Order Taking
18 Possession of the Trust Account(s) and Escrow Records of ACT Pursuant to Financial Code Section
19 17621 and Order Appointing Peter A. Davidson as Conservator pursuant to Financial Code section
20 17630. These orders were necessary to offer any possible protection to the escrow customers of
21 ACT.

22 14. Pursuant to the Order Appointing Conservator, Peter A. Davidson of the Law Firm of
23 Ervin Cohen & Jessup LLP ("Conservator") took possession of the trust accounts and escrow records
24 of ACT on December 7, 2011.

25 15. Pursuant to Financial Code section 17622, ACT had ten (10) days after the taking to
26 apply to the superior court for an order to enjoin further proceedings by Petitioner. The ten days
27 provided by Financial Code section 17622 has expired, and there has been no action commenced by
28 ACT to contest the actions of Petitioner described in paragraph 13 above.

1 16. Immediately upon appointment, the Conservator commenced an extensive review of
2 the books and records of ACT. The review was complicated by the lack of books and records at the
3 West Covina branch. An initial trust account reconciliation prepared by the Conservator's
4 accountants showed a trust account shortage of \$364,312.43 as of December 6, 2011 after taking into
5 account the \$30,000.00 discussed in paragraph 9 above.

6 17. The Conservator filed a claim with the company that issued the surety bond to ACT
7 and the surety has tendered the full amount of the bond, \$30,000.00, to the Conservator. However,
8 the expenses of the conservatorship already far exceed the amount recovered under this surety bond.

9 18. ACT has at least one certificate of deposit account at East West Bank (account no.
10 **_****1767, which account currently contains funds totaling \$26,233.91.

11 19. It was determined that a partial distribution was necessary to assist in the closure of
12 the pending escrows. It was further determined that a 70% distribution could be made to those
13 persons whose funds were deposited into the main office trust account subsequent to November 16,
14 2011 without jeopardizing the administration of the remainder of the estate. Accordingly, on or
15 about January 25, 2012, the Conservator began making a 70% distribution to certain trust funds
16 claimants.

17 20. While the Conservator has filed a Proof of Loss Claim with Escrow Agent's Fidelity
18 Corporation, the fidelity insurer for the independent escrow industry, there remains much additional
19 work that needs to be accomplished before this matter can be concluded, including dealing with and
20 possibly negotiating with Escrow Agent's Fidelity Corporation concerning the Proof of Loss,
21 settling or possibly litigating the Proof of Loss, reviewing escrow files to determine to whom the
22 funds are owed, disbursing any recovered funds, and making arrangements for the maintenance of
23 the escrow files for the required statutory period.

24 21. On review of ACT's books and records and assets, Petitioner has concluded that it
25 would be futile to proceed further under a conservatorship as insufficient assets exist from which to
26 pursue the avenues necessary to bring this matter to a conclusion, and thereby make the trust fund
27 claimants as whole as possible.
28

1 22. Petitioner believes that a receivership is the only feasible manner in which to pursue
2 the avenues necessary to bring this matter to a conclusion given that insufficient ACT assets exist
3 from which to otherwise pursue the necessary avenues.

4 23. Pursuant to Financial Code section 17636, the Petitioner is authorized to petition the
5 superior court for the appointment of a receiver to wind up the affairs of a licensee after having taken
6 possession of the licensee.

7 24. The Petitioner submits that the appointment of a limited receiver by this Court over
8 ACT is necessary to properly wind up the trust account affairs of ACT and to provide the greatest
9 protection possible to the customers of ACT. The Petitioner submits that a situation exists wherein
10 irreparable harm will be suffered by the public unless and until a receiver is appointed to wind up the
11 trust account affairs of ACT.

12 Wherefore, the Petitioner prays:

13 A. This Court issue an order naming Peter A. Davidson as the receiver over the escrow
14 trust funds of ACT, including, but not limited to, the trust funds currently in the possession of Peter
15 A. Davidson in his capacity as Conservator, any indemnity funds that may be paid by Escrow
16 Agent’s Fidelity Corporation, the surety bond proceeds currently in the possession of the
17 Conservator, any other insurance proceeds concerning the theft, the funds in the East West Bank
18 account referred to in paragraph 18 above, and all bank and escrow records of ACT (the “trust
19 property”), whether directly or indirectly, owned beneficially or otherwise by, or in the possession,
20 custody or control of ACT, Moreno, Vega, Evans, or the Arenas, or to which ACT has any right of
21 possession, custody or control, irrespective of whomsoever holds such property, in order to obtain an
22 adequate accounting of ACT’s trust property and trust liabilities; secure a marshaling of such
23 property; and to forthwith begin winding up and liquidating the trust property affairs of ACT in
24 accord with the provisions of the California Escrow Law, and for said order appointing such receiver
25 to further provide that:

26 (1) The receiver prior to entry upon the duties described herein, take an oath to faithfully
27 perform the duties of a receiver and to observe all of the instructions of this Court;

28 (2) The receiver is authorized, empowered and directed:

1 (a) To review, observe, discover and make notes regarding all the trust property of, or in
2 the possession of ACT, wherever situated, including all trust accounts of ACT in financial depository
3 institutions, and of any other trust property in which ACT has an interest regardless by whom it may
4 be held on an ongoing basis pursuant to this Court's order;

5 (b) To undertake an independent review into the financial condition of the trust property
6 and escrow transactions of ACT and render a report within 90 days reflecting the existence and value
7 of all trust property subject to the review, observation and/or discovery by the receiver and of the
8 extent of the trust liabilities, both those claimed by others to exist and those which the receiver
9 believes to be the legal trust obligations of ACT, and any further information the receiver believes
10 may assist in an equitable disposition of this matter, and to include in its report the receiver's opinion
11 regarding the ability of ACT to meet its trust obligations, and his recommendation regarding the best
12 method of distributing the trust property to the owners thereof;

13 (c) To file within 30 days of his qualification and appointment hereunder, a preliminary
14 inventory of all trust property of which he shall then have reviewed, observed and/or discovered
15 pursuant to this Court's order. Additionally, the receiver is to file one or more supplemental
16 inventories when and if he shall subsequently come into knowledge of additional items appropriate
17 to said inventory;

18 (d) To retain and employ such attorney(s) to assist, advise and represent the receiver in
19 the performance of his duties and responsibilities as the Court may approve upon written application
20 of the receiver;

21 (e) To retain and employ LoBuglio & Sigman, CPA's, his accountants, and such other
22 persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in
23 the performance of his duties and responsibilities;

24 (f) To be the sole signator on all trust bank accounts of ACT;

25 (g) To bring such proceedings as are necessary to enforce the provisions hereof;

26 (h) To bring such actions as are necessary to modify the provisions hereof;

27 (i) To make such payments and disbursements from the trust property so taken into
28 custody, control, and possession of the receiver or otherwise received by him, as may be necessary

1 and advisable in discharging his duties as receiver;

2 (j) To preserve trust property;

3 (k) To institute, prosecute, defend, compromise, intervene and become a party either in
4 his own name or in the name of ACT to such suits, actions, or proceedings as may be necessary for
5 the protection, maintenance, recoupment or preservation of the trust property of ACT and its escrow
6 parties, with prior court approval; and

7 (l) To divert, take possession of and secure all mail of ACT, in order to screen such mail
8 for mail relating to the trust property, returning non-trust property mail to Moreno, and to effect a
9 change in the rights to use any and all post office boxes and other mail collection facilities used by
10 ACT.

11 B. The receiver is hereby vested with, and is authorized, directed, and empowered to
12 exercise, all of the powers of ACT's officers and directors or persons who exercise similar powers
13 and perform similar duties, with respect to the trust property, whose authority is hereby suspended;
14 and ACT's officers, agents, employees, representatives, directors, successors in interest, attorneys in
15 fact and all persons acting in the concert or participating with them, are hereby divested of,
16 restrained and barred from exercising any of the powers herein vested in this receiver.

17 C. Any local, state or federal law enforcement and regulatory agency having jurisdiction
18 over matters relating to ACT's business shall be entitled to review, without exception, all reports of
19 the receiver and all books, records, and files on ACT in the possession of the receiver at any time
20 during normal business hours, and to make any abstract or copies of said documents as it desires.

21 D. ACT and its respective officers, directors, agents, servants, employees, successors,
22 assigns, affiliates, and other persons or entities under their control and all persons or entities in active
23 concert or participation with them, and each of them, shall turn over to the receiver all records,
24 documentation, charts and/or descriptive material, which relate, directly or indirectly, to the trust
25 property of ACT or otherwise belonging to its escrow parties, now held by ACT or any of them.

26 E. This Court will retain jurisdiction of this action in order to implement and carry out
27 the terms of all orders and decrees that may be entered herein or to entertain any suitable application
28 or motion by Petitioner and/or receiver for additional relief or modification of any order made herein

1 within the jurisdiction of this Court.

2 F. During the pendency of this receivership, except by leave of court, all parties to
3 escrows held by ACT and any other persons seeking relief of any kind, in law or in equity, from
4 ACT relating to the trust property, and all others acting on behalf of any such escrow parties or other
5 persons including sheriffs, marshals, servants, agents and employees are restrained from:

6 (1) commencing, prosecuting, continuing or enforcing any suit or proceeding;

7 (2) executing or issuing or causing the execution or issuance of any court attachment,
8 subpoena, replevin, execution or other process for the purpose of impounding or taking possession of
9 or interfering with or creating or enforcing a lien upon any property owned or in the possession of
10 ACT or its affiliates, or the receiver appointed herein, where ever situated;

11 (3) taking, retaining, retaking or attempting to retake possession of any trust property;

12 (4) withholding or diverting any trust property obligation;

13 (5) doing any act or other thing whatsoever to interfere with the possession of or
14 management by the receiver herein and of the trust property, controlled by or in the possession of
15 ACT or to in any way interfere with said receiver or to interfere in any manner during the pendency
16 of this proceeding with the exclusive jurisdiction of this Court over the ACT trust property.

17 G. At such time as the financial condition of the trust property has been ascertained by
18 the receiver, and at such time as the trust property has been marshaled and all trust liabilities have
19 been determined, the receiver shall file an application with the Court for disposition of such trust
20 property. The application shall propose in detail the winding up and the distribution of trust funds.
21 If necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining
22 such funds pending final distribution as are necessary to finance any pertinent litigation or the
23 remaining operation of the receivership.

24 H. The receiver shall be paid an hourly rate of \$475.00 for his services and shall be
25 entitled to reimbursement for usual and customary expenses, including out of pocket expenditures on
26 behalf of the receivership estate, which shall be paid from surety bond proceeds, if any, and then if
27 insufficient, from the trust funds, and that the State of California shall have no liability whatsoever
28 for any costs, fees and/or out pocket expenses that may result from such receivership. The receiver

1 and any professional hired by him shall make application to this Court on a monthly basis for
2 payment of reasonable fees and expenses incurred by the receiver or such professional, and shall be
3 entitled to payment of said fees and expenses on account as hereinafter provided, including payment
4 of all reasonable fees and expenses incurred by the receiver in his capacity as conservator or any
5 professional rendering services during the conservatorship from the date of appointment as
6 conservator through to the date of appointment as receiver, and shall be entitled to payment of said
7 conservator fees and expenses on account as hereinafter provided. Copies of such applications to the
8 Court shall be promptly served on all attorneys of record for parties in this action, who shall have ten
9 (10) calendar days following the filing and service of such application to file any objections thereto
10 with the Court, and serve any such objections by facsimile and mail on the receiver. If no objections
11 are filed with the Court and served within the ten (10) calendar day period, the receiver shall
12 thereupon draw funds from the receivership estate sufficient to pay one-hundred percent (100%) of
13 out-of-pocket expenses and seventy-five percent (75%) of such fees, including all professional fees,
14 and other expenses such as in office copying and facsimile charges, without further order of the
15 Court. To the extent the fees and costs requested relate to the Conservator's or his professional's
16 fees and expenses, one-hundred percent (100%) of said fees and expenses shall be paid. If any
17 objections are filed, the receiver may draw funds from the receivership estate sufficient to pay any
18 amounts as to which there are no objections, and the Court will conduct a hearing on any objections
19 upon motion of the receiver or the objecting party. At such hearing, the compensation of the
20 receiver or other professional making application, as well as allowable disbursements and expenses,
21 will be determined by the Court, and the receiver will be directed to draw funds from the
22 receivership estate to pay one-hundred percent (100%) and seventy-five percent (75%), respectively,
23 of the amounts so determined by the Court. Notwithstanding such interim monthly payments of fees
24 and expenses, all fees and expenses shall be submitted to the Court for its approval by a properly
25 noticed request for fees, stipulation of all parties or the receiver's Final Account and Report. Upon
26 approval of the fees and expenses of the receiver or other professional, any hold back amounts still
27 due and owing to the receiver or other professional shall be paid from the receivership estate.
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I. For an order that the receiver shall not be required to file a bond with the Court in this matter.

Dated: February 24, 2012
Los Angeles, California

JAN LYNN OWEN
California Corporations Commissioner

By _____
Judy L. Hartley
Attorney for Petitioner
California Corporations Commissioner