

1 ALAN S. WEINGER
Deputy Commissioner
2 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
3 Department of Corporations
320 West 4th Street, Ste. 750
4 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181
5 Attorneys for Complainant

6
7 BEFORE THE DEPARTMENT OF CORPORATIONS
8 OF THE STATE OF CALIFORNIA

9
10 In the Matter of the Accusation of THE) File No.: 963-2352
CALIFORNIA CORPORATIONS)
11 COMMISSIONER,) ACCUSATION
12)
Complainant,)
13)
14 vs.)
15 A.C.T. ESCROW, INC., FERNANDO)
MORENO III, and VILMA M. ESCOBAR,)
16)
17 Respondents.)

18 The Complainant is informed and believes, and based upon such information and belief,
19 alleges and charges Respondents as follows:

20 I

21 Respondent A.C.T. Escrow, Inc. ("ACT Escrow") is an escrow agent licensed by the
22 California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the Escrow
23 Law of the State of California (California Financial Code Section 17000 et seq.). ACT Escrow had
24 its principal place of business located at 42231 6th Street W., Suite 205, Lancaster, California 93534.
25 ACT Escrow also had a branch location situated at 2155 East Garvey Avenue North, Suite B-10,
26 West Covina, California 91791.

27 Respondent Fernando Moreno III ("Moreno") is, and was at all times relevant herein, the
28 president, a stockholder, and a director of ACT Escrow. Moreno was also the escrow manager at

1 ACT Escrow’s main office in Lancaster, California.

2 Respondent Vilma M. Escobar (“Escobar”) is, and was at all times relevant herein, an escrow
3 officer for ACT Escrow. Escobar initially worked for ACT Escrow at its Lancaster office, but more
4 recently worked at ACT Escrow’s West Covina location.

5 II

6 On or about November 16, 2011, the Commissioner received information from Moreno that
7 Escobar had admitted embezzling \$92,000.00 in trust funds in violation of Financial Code section
8 17414(a)(1). Based upon such information, on or about November 17, 2011, the Commissioner, by
9 and through staff, commenced a special examination of the books and records of ACT Escrow.

10 The special examination revealed that as of November 16, 2011, ACT Escrow had a trust
11 account shortage of at least \$400,129.98 at its main office and a trust account shortage of at least
12 \$97,676.21 at its branch office.

13 The special examination further revealed that the books and records had not been maintained
14 at the West Covina branch since in or about February 2011 in violation of Financial Code section
15 17404 and California Code of Regulations, title 10, section 1732.2.

16 On or about November 16, 2011, the Commissioner made demand upon ACT Escrow to
17 immediately open a new trust account at both offices in which all further escrow funds received by
18 ACT Escrow would be deposited so that new escrow trust funds could remain separate from the trust
19 funds affected by the shortage. On or about November 18, 2011, ACT Escrow opened a new trust
20 account for the West Covina branch. On or about November 22, 2011, after further demand, ACT
21 Escrow finally opened a new trust account for Lancaster main office. However, the special
22 examination revealed that ACT Escrow never made use of the new trust accounts and continued to
23 deposit new escrow funds into the old trust accounts.

24 On or about November 21, 2011, the Commissioner made written demand upon ACT Escrow
25 to cure the trust account shortage at the main office no later than November 22, 2011. ACT Escrow
26 failed to cure the trust account shortage at the main office except that ACT Escrow deposited
27 \$25,000.00 into the main office trust account from funds it obtained from Escobar along with a
28 further \$5,000.00 it obtained from Jose Alonso (“Alonso”), the person through which Escobar was

1 diverting the embezzled escrow funds.

2 III

3 ACT Escrow’s failure to cure the trust account shortage caused the Commissioner, on
4 December 6, 2011, to issue an Order To Discontinue Escrow Activities Pursuant to Financial Code
5 section 17415 against ACT Escrow along with a Demand For and Order Taking Possession of the
6 Trust Account(s) and Escrow Records of ACT Escrow Pursuant to Financial Code Section 17621
7 and an Order Appointing Peter A. Davidson as Conservator pursuant to Financial Code section
8 17630. These orders were necessary to offer any possible protection to the escrow customers of
9 ACT Escrow.

10 IV

11 The special examination of ACT Escrow has yet to be completed due to the lack of books
12 and records at the West Covina office and the extent of the lapping scheme (transfers of funds
13 between escrows) employed by Escobar to cover her unauthorized disbursements. However, the
14 special examination has initially disclosed that commencing on dates unknown, but at least since
15 March 2010 and continuing through at least June 2011, Escobar made unauthorized disbursements of
16 escrow trust funds to herself, her friend Jose Alonso (“Alonso”), and/or otherwise totaling at least
17 \$76,366.37 in violation of Financial Code section 17414, subdivision (a)(1) and California Code of
18 Regulations, title 10, sections 1738 and 1738.2. These unauthorized disbursements are part of the
19 trust account shortage described in Section II above. Escobar also falsified escrow records in an
20 attempt to cover up the unauthorized disbursements in violation of Financial Code section
21 17414(a)(2).

22 The unauthorized disbursements, lapping, and falsification of records disclosed initially by
23 the special examination are described as follows:

24 **LANCASTER ESCROW NUMBER 10-4140-VE**

25 1. On or about March 11, 2010, Escobar made an unauthorized disbursement of trust
26 funds from Lancaster escrow number 10-4140-VE to Alonso in the amount of \$1,000.00 in violation
27 of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738
28 and 1738.2. This unauthorized disbursement caused a debit balance (shortage) of \$1,000.00 to exist

1 in Lancaster escrow number 104140-VE in violation of California Code of Regulations, title 10,
2 section 1738.1.

3 **LANCASTER ESCROW NUMBER 10-4201-VE**

4 2. On or about August 12, 2010, Escobar made an unauthorized disbursement of trust
5 funds from Lancaster escrow number 10-4201-VE in the amount of \$1,000.00 in violation of
6 Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and
7 1738.2. This unauthorized disbursement from Lancaster escrow number 10-4201-VE was used to
8 pay what appears to be a disbursement authorized in Lancaster escrow number 10-4517-VE.
9 However, a review of the ledger for Lancaster escrow number 10-4517-VE disclosed that
10 insufficient funds existed in Lancaster escrow number 10-4517-VE to cover this disbursement.
11 Accordingly, a shortage of \$1,000.00 will exist in Lancaster escrow number 10-4517 once the
12 disbursement is posted to the correct escrow ledger.

13 **LANCASTER ESCROW NUMBER 10-4331-VE**

14 3. On or about June 17, 2010, Escobar made an unauthorized disbursement of trust
15 funds from Lancaster escrow number 11-4140-VE in the amount of \$578.31 in violation of Financial
16 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.
17 This unauthorized disbursement from Lancaster escrow number 10-4140-VE was used to pay what
18 appears to be a disbursement authorized in Lancaster escrow number 10-4331-VE. A review of the
19 ledger for Lancaster escrow number 10-4331-VE disclosed insufficient funds to cover this
20 disbursement. Accordingly, a shortage of \$578.31 in violation of California Code of Regulations,
21 title 10, section 1738.1 will exist in Lancaster escrow number 10-4331 once the disbursement is
22 posted to the correct escrow ledger

23 **LANCASTER ESCROW NUMBER 10-4511-VE**

24 4. On or about February 25, 2011, Escobar made an unauthorized disbursement of trust
25 funds from Lancaster escrow number 10-4511-VE to Alonso in the amount of \$6,350.37 in violation
26 of Financial Code section 17414, subdivision (a)(1) and California Code of Regulations, title 10,
27 sections 1738 and 1738.2.

1 **LANCASTER ESCROW NUMBER 10-4548-VE**

2 5. On or about October 4, 2010, Escobar made an unauthorized disbursement of trust
3 funds from Lancaster escrow number 10-4548-VE in the amount of \$2,000.00 in violation of
4 Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and
5 1738.2. This unauthorized disbursement from Lancaster escrow number 10-4548-VE was used to
6 pay what appears to be a disbursement authorized in Lancaster escrow number 10-4201-VE. A
7 review of the ledger for Lancaster escrow number 10-4201-VE disclosed insufficient funds to cover
8 this disbursement. Once disbursements are posted to the correct escrow ledger, which will include
9 re-posting a \$1,000.00 disbursement from Lancaster escrow number 10-4201-VE to Lancaster
10 escrow number 10-4517-VE (see item 2 above), a shortage of \$1,950.00 will exist in Lancaster
11 escrow number 10-4201-VE in violation of California Code of Regulations, title 10, section 1738.1.

12 **LANCASTER ESCROW NUMBER 10-4805-VE**

13 6. Commencing on or about November 18, 2010 and continuing through December 17,
14 2010, Escobar made six unauthorized disbursements of trust funds from Lancaster escrow number
15 10-4805-VE to Alonso totaling \$30,657.00 in violation of Financial Code section 17414, subdivision
16 (a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.

17 **LANCASTER ESCROW NUMBER 10-4843-VE:**

18 7. On or about May 25, 2011, Escobar violated Financial Code section 17414(a)(2)
19 when she prepared a false receipt stating that the sum of \$43,100.20 had been deposited into
20 Lancaster escrow number 10-4843-VE. A deposit of \$43,100.20 had been received by Act Escrow,
21 but it was for West Covina escrow number 11-0085-VE, and such funds had been deposited into the
22 West Covina trust account and a receipt issued for West Covina escrow number 11-0085-VE.

23 8. On or about May 25, May 27, and June 10, 2011, Escobar made unauthorized
24 disbursements of trust funds from Lancaster escrow number 10-4843-VE to Alonso in the respective
25 amounts of \$6,000.00, \$5,500.00, and \$7,000.00 in violation of Financial Code section 17414,
26 subdivision (a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. In that
27 there were no funds on deposit in Lancaster escrow number 10-4843-VE, these unauthorized
28 disbursements caused a shortage of \$18,500.00 to exist in Lancaster escrow number 10-4843-VE in

1 violation of California Code of Regulations, title 10, section 1738.1.

2 9. On or about May 26, 2011, Escobar made an unauthorized disbursement of trust
3 funds from Lancaster escrow number 10-4843-VE to the West Covina trust account in the amount of
4 \$10,000.00 in violation of Financial Code section 17414, subdivision (a)(1) and California Code of
5 Regulations, title 10, sections 1738 and 1738.2. In that there were no funds on deposit in Lancaster
6 escrow number 10-4843-VE, this unauthorized disbursement caused the shortage in Lancaster
7 escrow number 10-4843-VE to increase to \$28,500.00.

8 10. On or about May 31, 2011, Escobar made three unauthorized disbursements of trust
9 funds from Lancaster escrow number 10-4843-VE totaling \$9,375.00 in violation of Financial Code
10 section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. These
11 unauthorized disbursements from Lancaster escrow number 10-4843-VE were used to pay
12 disbursements authorized in West Covina escrow number 11-0074-VE. A review of the ledger for
13 West Covina escrow number 11-0074-VE disclosed sufficient funds to cover these disbursements.
14 Accordingly, no shortage appears to have been caused by these disbursements once the
15 disbursements are posted to the correct escrow ledger.

16 11. On or about June 2, 2011, Escobar made an unauthorized disbursement of trust funds
17 from Lancaster escrow number 10-4843-VE in the amount of \$3,000.00 in violation of Financial
18 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.
19 This unauthorized disbursement from Lancaster escrow number 10-4843-VE was used to pay what
20 appears to be an authorized refund of the buyers' deposit in West Covina escrow number 11-0060-
21 VE. Escobar failed to issue a receipt for the deposit into West Covina escrow number 11-0060-VE
22 in violation of Financial Code section 17414(a)(2) and California Code of Regulations, title 10,
23 section 1732.2. However, a review of the ledger for West Covina escrow number 11-0060-VE
24 discloses that no shortage was caused by this disbursement once the escrow ledger postings have
25 been corrected.

26 12. On or about June 9, 2011, Escobar made unauthorized disbursements of trust funds
27 from Lancaster escrow number 10-4843-VE totaling \$2,000.00 in violation of Financial Code
28 section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. These

1 unauthorized disbursements from Lancaster escrow number 10-4843-VE were used to pay what
2 appears to be an authorized refund of the buyers' deposit in Lancaster escrow number 10-4140-VE.
3 A review of the ledger for Lancaster escrow number 10-4140-VE disclosed insufficient funds to
4 cover the disbursements due to unauthorized disbursements in Lancaster escrow number 10-4140-
5 VE, which will cause a shortage of \$1,000.00 in Lancaster escrow number 10-4140-VE to exist in
6 violation of California Code of Regulations, title 10, section 1738.1 once the disbursements are
7 posted to the correct escrow ledger (see item 1 above).

8 13. On or about June 13, 2011, Escobar made two unauthorized disbursements of trust
9 funds from Lancaster escrow number 10-4843-VE totaling \$1,464.40 in violation of Financial Code
10 section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. These
11 unauthorized disbursements from Lancaster escrow number 10-4843-VE were used to pay what
12 appear to be disbursements authorized in West Covina escrow number 11-0077-VE. A review of the
13 ledger for West Covina escrow number 11-0077-VE disclosed sufficient funds to cover these
14 disbursements. Accordingly, no shortage appears to have been caused by these disbursements once
15 the disbursements are posted to the correct escrow ledger.

16 14. On or about June 17, 2011, Escobar made an unauthorized disbursement of trust
17 funds from Lancaster escrow number 10-4843-VE in the amount of \$1,000.00 in violation of
18 Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and
19 1738.2. This unauthorized disbursement from Lancaster escrow number 10-4843-VE appears to
20 have been used to refund an escrow deposit for an unknown escrow. From the information available
21 to date, it does not appear that this disbursement will cause a shortage once the disbursement is
22 posted to the correct escrow ledger.

23 15. On or about August 15, 2011, Escobar made an unauthorized disbursement of trust
24 funds from Lancaster escrow number 10-4843-VE to an account at Wells Fargo Dealer Services in
25 the amount of \$15,982.60 in violation of Financial Code section 17414, subdivision (a)(1) and
26 California Code of Regulations, title 10, sections 1738 and 1738.2. In that there were no funds on
27 deposit in Lancaster escrow number 10-4843-VE, this unauthorized disbursement caused a further
28 shortage of \$15,982.60 to exist in Lancaster escrow number 10-4843-VE in violation of California

1 Code of Regulations, title 10, section 1738.1, increasing the total shortage in this escrow to
2 \$44,482.60.

3 **LANCASTER ESCROW NUMBER 10-4866-VE**

4 16. On or about April 20, 2011, Escobar made an unauthorized disbursement of trust
5 funds from Lancaster escrow number 10-4866-VE in the amount of \$2,153.00 to Alonso in violation
6 of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738
7 and 1738.2.

8 17. On or about May 3, 2011, Escobar made an unauthorized disbursement of trust funds
9 from Lancaster escrow number 10-4866-VE in the amount of \$3,000.00 in violation of Financial
10 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.
11 This unauthorized disbursement from Lancaster escrow number 10-4866-VE was used to pay what
12 appears to be a disbursement authorized in Lancaster escrow number 10-4829-VE. A review of the
13 ledger for Lancaster escrow number 10-4829-VE disclosed insufficient funds to cover this
14 disbursement. Accordingly, a shortage of \$3,000.00 will exist in Lancaster escrow number 10-4829-
15 VE in violation of California Code of Regulations, title 10, section 1738.1 once the disbursement is
16 posted to the correct escrow ledger.

17 **WEST COVINA ESCROW NUMBER 11-0040-VE:**

18 18. On or about January 14, January 21, and February 11, 2011, Escobar made
19 unauthorized disbursements of trust funds from West Covina escrow number 11-0040-VE to Alonso
20 in the respective amounts of \$5,000.00, \$3,000.00, and \$3,706.00 in violation of Financial Code
21 section 17414, subdivision (a)(1) and California Code of Regulations, title 10, sections 1738 and
22 1738.2. These unauthorized disbursements caused a shortage of at least \$11,706.00 to exist in this
23 escrow in violation of California Code of Regulations, title 10, section 1738.1 because insufficient
24 funds existed to cover these disbursements once the false receipt described in paragraph 19 below is
25 reversed.

26 19. On or about January 27, 2011, Escobar violated Financial Code section 17414(a)(2)
27 when she prepared a false receipt stating that the sum of \$12,900.00 had been deposited into West
28 Covina escrow number 11-0040-VE. A deposit of \$12,900.00 had been received by Act Escrow, but

1 it was for West Covina escrow number 11-0046-VE, and such funds had been deposited into the
2 West Covina trust account and a receipt issued in West Covina escrow number 11-0046-VE.

3 20. On or about February 1, 2011, Escobar made two unauthorized disbursements of trust
4 funds from West Covina escrow number 11-0040-VE totaling \$1,194.00 in violation of Financial
5 Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2.
6 These unauthorized disbursements from West Covina escrow number 11-0040-VE were used to pay
7 what appear to be disbursements authorized in Lancaster escrow number 10-4548-VE. A review of
8 the ledger for Lancaster escrow number 10-4548-VE disclosed sufficient funds to cover these
9 disbursements. Accordingly, no shortage appears to have been caused by these disbursements once
10 the disbursements are posted to the correct escrow ledger, which would include re-posting a
11 \$2,000.00 disbursement from Lancaster escrow number 10-4548-VE to Lancaster escrow number
12 10-4201-VE (see item 5 above).

13 **WEST COVINA ESCROW NUMBER 11-0046-VE**

14 21. On or about April 6, 2011, Escobar made an unauthorized disbursement of trust funds
15 from West Covina escrow number 11-0046-VE in the amount of \$6,000.00 to Alonso in violation of
16 Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and
17 1738.2. This unauthorized disbursement caused a shortage of at least \$6,000.00 to exist in this
18 escrow in violation of California Code of Regulations, title 10, section 1738.1 because insufficient
19 funds existed to cover this disbursement once the false receipt described in paragraph 22 below is
20 reversed.

21 22. On or about April 12, 2011, Escobar violated Financial Code section 17414(a)(2)
22 when she prepared a false receipt stating that the sum of \$110,262.74 had been deposited into West
23 Covina escrow number 11-0046-VE. A deposit of \$110,262.74 had been received by Act Escrow,
24 but it was for Lancaster escrow number 10-4866-VE, and such funds had been deposited into the
25 West Covina trust account and a receipt issued in Lancaster escrow number 10-4866-VE.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V

California Financial Code section 17608 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.

California Financial 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 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.

VI

Complainant finds that, by reason of the foregoing, Respondents have violated California Financial Code sections 17404 and 17414, subsections (a)(1) and (a)(2), and California Code of Regulations, title 10, sections 1732.2, 1738, 1738.1 and 1738.2, and it is in the best interests of the public to revoke the escrow agent’s licenses of Respondent A.C.T. Escrow, Inc., to bar Respondent Fernando Moreno III from any position of management or control of any escrow agent, and to bar Respondent Vilma M. Escobar from any position of employment, management or control of any escrow agent.

WHEREFORE, IT IS PRAYED that Respondent Fernando Moreno III be barred from any position of management or control of any escrow agent, Respondent Vilma M. Escobar be barred from any position of employment, management or control of any escrow agent., and the escrow agent’s licenses of Respondent A.C.T. Escrow, Inc. be revoked to become effective upon the termination of the pending receivership of A.C.T. Escrow, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 14, 2012
Los Angeles, CA

JAN LYNN OWEN
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel