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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

13 In the Matter of: ) ESCROW LICENSE NO.: 963-2637  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, ) CONSENT ORDER  
15 )  
16 Complainant, )  
17 v. )  
18 FIRST GATEWAY ESCROW CO., INC., )  
19 )  
20 Respondent. )  
21 \_\_\_\_\_ )

22 Complainant, the Commissioner of Business Oversight (Commissioner), and Respondent,  
23 First Gateway Escrow Co., Inc. (First Gateway) (hereafter the Parties), enter this Consent Order  
24 (Order) based on the following facts:

25 **Recitals**

26 A. The Commissioner as the chief officer of the Department of Business Oversight  
27 (Department) has jurisdiction over the licensing and regulation of persons and entities licensed under  
28 the California Escrow Law (Escrow Law) (Fin. Code, § 17000 et seq.) and the regulations

1 promulgated under title 10 of the California Code of Regulations (Cal. Code Regs., tit. 10, § 1700 et  
2 seq.).

3 B. First Gateway is an escrow agent licensed by the Commissioner, pursuant to the  
4 Escrow Law.

5 C. First Gateway has its primary place of business at 4725 Mercury Street, Suite 202, San  
6 Diego, California 92111.

7 D. Lisa Pham is the President of First Gateway, and as such, is authorized to enter into  
8 this Order on behalf of First Gateway.

9 E. On December 16, 2016, the Department commenced a regulatory examination of First  
10 Gateway's books and records (regulatory examination).

11 F. On March 24, 2017, prior to the closing of the regulatory examination, First Gateway  
12 notified the Department that Stephanie C. Kalulu (Kalulu), a former escrow officer, had made  
13 unauthorized disbursements causing a trust fund shortage.

14 G. The Department's examiner returned to First Gateway to investigate the  
15 embezzlement and discovered that from 2015 to 2016, Kalulu had made unauthorized disbursements  
16 from First Gateway's trust account in the amount of \$41,717.24 during her employment at First  
17 Gateway. First Gateway's trust account was also short by another \$17,404.66 due to Kalulu's  
18 mistakes.

19 H. First Gateway discovered the unauthorized disbursements and trust account shortage  
20 in December 2016, and a representative of First Gateway filed a police report with the San Diego  
21 Police Department on December 27, 2016.

22 I. First Gateway reported the embezzlement and trust account shortage to the  
23 Department, 3 months after the discovery, on March 24, 2017.

24 J. The Commissioner finds First Gateway violated Financial Code section 17414,  
25 subdivision (c) for failing to immediately report the abstraction or misappropriation in writing to the  
26 Commissioner.

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1 K. During the regulatory examination, the Department requested First Gateway to  
2 provide general account reconciliations and financial statements from September 30, 2016 to  
3 November 30, 2016.

4 L. On May 24, 2017, First Gateway informed the examiner that First Gateway would not  
5 provide all of the requested general account records since those records were prepared every quarter,  
6 not every month. First Gateway further stated that the balance sheet was prepared only once a year.

7 M. The Commissioner finds First Gateway violated California Code of Regulations, title  
8 10, section 1732.3 for failing to prepare general account bank reconciliations and the general ledger  
9 monthly.

10 N. The Department also discovered that Leon Pham and Johnny Pham, who were not  
11 employed at First Gateway, were check signers on First Gateway's trust and general accounts.

12 O. The Commissioner finds First Gateway violated California Code of Regulations, title  
13 10, section 1726 for allowing individuals not employed by First Gateway as check signers on the trust  
14 and general accounts.

15 P. The Commissioner finds that this Order is necessary, in the public interest and  
16 consistent with the purposes, policies, and provisions of the Escrow Law.

17 **Terms**

18 1. Order to Discontinue Violations. Pursuant to Financial Code sections 17602 and  
19 17604, First Gateway is hereby ordered to immediately discontinue violations of the Escrow Law,  
20 set forth above.

21 2. Finality of Order. First Gateway hereby agrees to comply with this Order, and further,  
22 stipulates that the Order to Discontinue Violations is hereby deemed a final and enforceable order  
23 issued pursuant to the Commissioner's authority under Financial Code sections 17602 and 17604.

24 3. Remedy for Breach. First Gateway agrees that its failure to comply with the Order to  
25 Discontinue Violations, set forth in Paragraphs 1 and 2 above, shall result in the immediate  
26 revocation of First Gateway's escrow agent license.

27 4. Waiver of Hearing Rights. First Gateway acknowledges and understands its right to  
28 an administrative hearing under the Escrow Law in connection with the orders and remedies specified

1 herein and hereby waives its right to a hearing, and to any reconsideration, appeal, or other right  
2 which may be afforded under the Escrow Law and to judicial review of this matter pursuant to Code  
3 of Civil Procedure section 1094.5 with respect to the issuance of this Order.

4 5. Future Actions by the Commissioner. The Commissioner reserves the right to bring  
5 any future action(s) against First Gateway or any of its partners, owners, officers, directors,  
6 shareholders, employees, or successors for all unknown or future violations of the Escrow Law. This  
7 Order shall not serve to exculpate First Gateway or any of its partners, owners, officers, directors,  
8 shareholders, employees, or successors from liability for all unknown or future violations of the  
9 Escrow Law.

10 6. Binding. This Order is binding on all heirs, assigns, and/or successors in interest.

11 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this Order  
12 is intended to constitute a full, final, and complete resolution of the violations of the Escrow Law,  
13 occurring from 2015 to 2017, identified in Paragraphs F through O above (hereafter, Released  
14 Matters). Notwithstanding this paragraph, the Commissioner may commence a proceeding or action  
15 based upon any violation which First Gateway knowingly concealed from the Commissioner. The  
16 Parties further acknowledge and agree that nothing contained in this Order shall operate to limit the  
17 Commissioner's ability to assist any other agency (city, county, state or federal) with any  
18 prosecution; administrative, civil or criminal, brought by any such agency against First Gateway,  
19 based on any of the activities alleged in these matters or otherwise.

20 8. Independent Legal Advice. Each of the Parties represents and warrants that they have  
21 received independent advice from their attorneys and/or other representatives with respect to the  
22 advisability of executing this Order.

23 9. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
24 Order, they have placed no reliance on any statement, representation, or promise of any other party,  
25 or any person or entity not expressly set forth herein, or upon the failure of any party or any other  
26 person or entity to make any statement, representation, or disclosure of anything whatsoever. The  
27 Parties have included this clause: (1) to preclude any claim that any party was in any way  
28 fraudulently induced to execute this Order; and (2) to preclude the introduction of parol evidence to

1 vary, interpret, supplement, or contradict the terms of this Order.

2 10. Full Integration. This Order is the final written expression and the complete and  
3 exclusive statement of all stipulations, agreements, conditions, promises, representations, and  
4 covenants between the Parties with respect to the matter hereof, and supersedes all prior or  
5 contemporaneous agreements, discussions, negotiations, representations, and understandings between  
6 and among the Parties, their respective representatives, and any other person or entity, with respect to  
7 the subject matter covered in this Order.

8 11. No Presumption from Drafting. In that the Parties have had the opportunity to draft,  
9 review and edit the language of this Order, no presumption for or against any party arising out of  
10 drafting all or any part of this Order will be applied in any action relating to, connected to, or  
11 involving this Order. Accordingly, the Parties waive the benefit of Civil Code section 1654 and any  
12 successor or amended statute, providing that in cases of uncertainty, language of a contract should be  
13 interpreted most strongly against the party who caused the uncertainty to exist.

14 12. Waiver or Modification. The waiver of any provision of this Order shall not operate  
15 to waive any other provision set forth herein, and any waiver, amendment and/or change to the terms  
16 of this Consent Order must be in writing and signed by the Parties. No amendment, change or  
17 modification of this Order shall be valid or binding to any extent unless it is in writing and signed by  
18 all the Parties affected by it.

19 13. Headings and Governing Law. The headings of the paragraphs of this Order are  
20 inserted for conveniences only and will not be deemed a part hereof or affect the construction or  
21 interpretation of the provisions hereof. This Order shall be construed and enforced in accordance with  
22 and governed by California law.

23 14. Effective Date. This Order shall not become effective until signed by all parties and  
24 delivered by the Commissioner's counsel by email to First Gateway's president, Lisa Pham at  
25 lisapham@fgescrow.com.

26 15. Counterparts. This Order may be executed in any number of counterparts by the  
27 Parties, and when each party has signed and delivered at least one such counterpart to the other party,  
28 each counterpart shall be deemed an original, and taken together shall constitute one and the same

1 Order.

2 16. Public Record. First Gateway acknowledges that this Order is a public record.

3 17. Information Willfully Withheld. This Order may be revoked, and the Commissioner  
4 may pursue all remedies available under the law against First Gateway if the Commissioner later  
5 finds out that First Gateway knowingly or willfully withheld information used and relied upon in this  
6 Order.

7 18. Settlement Authority. Each signatory hereto covenants that he/she possesses all  
8 necessary capacity and authority to sign and enter into this Order.

9 19. Voluntary Agreement. First Gateway enters into this Order voluntarily and without  
10 coercion and acknowledges that no promises, threats, or assurances have been made by the  
11 Commissioner or any officer, or agent thereof, about this Order.

12 20. Signatures. This Order may be executed by facsimile or scanned signature, and any  
13 such facsimile or scanned signature by any party hereto shall be deemed to be an original signature  
14 and shall be binding on such party to the same extent as if such facsimile or scanned signature was an  
15 original signature.

16 Dated: August 1, 2018

JAN LYNN OWEN  
Commissioner of Business Oversight

18 By \_\_\_\_\_  
19 Mary Ann Smith  
20 Deputy Commissioner  
21 Enforcement Division

22 Dated: July 30, 2018

FIRST GATEWAY ESCROW CO., INC.

24 By \_\_\_\_\_  
25 Lisa Pham, President  
26 First Gateway Escrow Co., Inc.

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