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

12 In the Matter of:) ESCROW LICENSE NO.: 963-2665
13)
14 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
15)
16 Complainant,)
17)
18 v.)
19 FIVE STAR ESCROW,)
20 Respondent.)

21 This Consent Order (Consent Order) is entered between the Commissioner of Business
22 Oversight (Commissioner) and Five Star Escrow (collectively, the Parties), and is made with respect
23 to the following facts:

24 **I.**

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
28 under 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. Five Star Escrow is an escrow agent licensed by the Commissioner, pursuant to the
4 Escrow Law.

5 C. Five Star Escrow has its primary place of business at 4719 Viewridge Avenue, Suite
6 220, San Diego, California 92123.

7 D. Brett Ward is the President of Five Star Escrow, and as such, is authorized to enter
8 into this Consent Order on behalf of Five Star Escrow.

9 E. On October 17, 2017, Five Star Escrow received an email (October 17, 2017 email)
10 regarding escrow number 7479-TC from someone claiming to be the seller of the property located in
11 Corona, California.

12 F. The October 17, 2017 email provided new disbursement instructions, directing Five
13 Star Escrow to wire the seller's proceeds to a business account at Wells Fargo Bank (WFB).

14 G. On October 20, 2017, Five Star Escrow attempted to verify the new wire instructions,
15 but was unable to contact the actual seller. The same day, someone impersonating the seller
16 contacted Five Star Escrow and verified the new wire instructions and WFB account number in the
17 October 17, 2017 email.

18 H. On October 24, 2017, Five Star Escrow wired \$294,459.10, the seller's proceeds,
19 from the trust account at Silvergate Bank to the WFB account identified in the October 17, 2017
20 email.

21 I. On October 26, 2017, Five Star Escrow discovered they had made an unauthorized
22 disbursement after speaking to the seller, who stated that he did not send the October 17, 2017 email
23 and the WFB account number was not his bank account. That same day, Five Star Escrow notified
24 Silvergate Bank, WFB and the Federal Bureau of Investigation (FBI) about the incident.

25 J. On October 26, 2017, the FBI informed Five Star Escrow that they had tracked and
26 frozen \$150,000.00 of the funds Five Star Escrow had disbursed. The FBI also informed Five Star
27 Escrow that an additional \$100,000.00 of the funds had been tracked in a bank account in Tokyo.

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1 K. On October 27, 2017, Five Star Escrow received \$259,858.38 from Silvergate Bank.
2 These funds were immediately wired to the seller.

3 L. On November 16, 2017, Five Star Escrow transferred \$34,600.72 from its general
4 account to the trust account. On November 17, 2017, \$34,600.72 was wired to the seller.

5 M. On November 17, 2017, Five Star Escrow notified the Department about the
6 unauthorized disbursement of trust funds and the return of money to the seller.

7 N. Based upon the foregoing, the Commissioner finds that Five Star Escrow failed to
8 immediately report the unauthorized disbursement of trust funds to the Commissioner in violation of
9 Financial Code section 17414, subdivision (c).

10 O. The Commissioner finds that this Consent Order is appropriate, in the public interest,
11 and consistent with the purposes fairly intended by the policies and provisions of the Escrow Law.

12 **II.**

13 **Terms and Conditions**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner, finding
15 that Five Star Escrow violated Financial Code section 17414, subdivision (c), as set forth above in
16 paragraphs E through N, in a manner that avoids the expense of a hearing and other possible court
17 proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
18 policies, and provisions of the applicable law under the Escrow Law.

19 2. Order to Discontinue Violations. Pursuant to Financial Code sections 17602 and
20 17604, Five Star Escrow is hereby ordered to immediately discontinue violations of the Escrow Law,
21 set forth herein.

22 3. Final Order to Discontinue. Five Star Escrow hereby agrees that the Order to
23 Discontinue Violations as described above in paragraph 2 is deemed a final order.

24 4. Penalties. Five Star Escrow is hereby ordered to pay an administrative penalty in the
25 amount of \$2,500.00 for violations of Financial Code section 17414, subdivision (c). The above
26 penalty shall be paid within 5 days from the Effective Date of this Consent Order, as defined in
27 paragraph 26 (Effective Date). The penalty payment shall be made in the form of a cashier's check
28 or Automated Clearing House deposit to the "Department of Business Oversight," and transmitted to

1 the attention of: Accounting - Litigation, at the Department of Business Oversight, located at 1515 K
2 Street, Suite 200, Sacramento, California 95814. Notice of payment shall be sent concurrently to
3 Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov.

4 5. Waiver of Hearing Rights. Five Star Escrow acknowledges the Commissioner is
5 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
6 charges contained in this Consent Order. Five Star Escrow hereby waives the right to any hearings,
7 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the
8 Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure,
9 or any other provision of law. Five Star Escrow further expressly waives any requirement for the
10 filing of any pleading pursuant to Government Code section 11415.60, subdivision (b). By waiving
11 such rights, Five Star Escrow effectively consents to this Consent Order and Order to Discontinue
12 Violations becoming final.

13 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
14 Consent Order is intended to constitute a full, final, and complete resolution of the violations
15 described herein and that no further proceedings or actions will be brought by the Commissioner in
16 connection with these matters, except under the Escrow Law or any other provision of law,
17 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

18 7. Failure to Comply with Consent Order. Five Star Escrow agrees that if it fails to
19 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
20 available remedies it may invoke under the Escrow Law, summarily suspend/revoke the Escrow Law
21 licenses of Five Star Escrow until Five Star Escrow is in compliance. Five Star Escrow waives any
22 notice and hearing rights to contest such summary suspension/revocation which may be afforded
23 under the Escrow Law, the California Administrative Procedure Act, the California Code of Civil
24 Procedure, or any other provision of law in connection therewith.

25 8. Information Willfully Withheld. This Consent Order may be revoked, and the
26 Commissioner may pursue any and all remedies available under the law against Five Star Escrow if
27 the Commissioner discovers that Five Star Escrow knowingly or willfully withheld information used
28 for and relied upon in this Consent Order.

1 9. Future Actions by Commissioner. If Five Star Escrow fails to comply with any term
2 of the Consent Order, the Commissioner may institute proceedings for any and all violations
3 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
4 future actions against Five Star Escrow, or any of its partners, owners, officers, shareholders,
5 directors, employees or successors for any and all unknown violations of the Escrow Law.

6 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
7 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
8 administrative, civil or criminal brought by that agency against Five Star Escrow or any other person
9 based upon any of the activities alleged in this matter or otherwise.

10 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
11 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
12 the provisions hereof.

13 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
14 interest.

15 13. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
16 Consent Order it has relied solely on the statements set forth herein and the advice of its own
17 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
18 Order it has placed no reliance on any statement, representation, or promise of any other party, or
19 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
20 person or entity to make any statement, representation or disclosure of anything whatsoever. The
21 Parties have included this clause: (1) to preclude any claim that any party was in any way
22 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
23 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

24 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
26 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
27 provision.

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

7 16. No Presumption Against Drafting Party. Each party acknowledges that it has had the
8 opportunity to draft, review and edit the language of this Consent Order. Accordingly, the Parties
9 intend that no presumption for or against the drafting party will apply in construing any part of this
10 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
11 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
12 language of a contract should be interpreted most strongly against the party who caused the
13 uncertainty to exist.

14 17. Counterparts. This Consent Order may be executed in one or more separate
15 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
16 together constitute a single document.

17 18. Effect Upon Future Proceedings. If Five Star Escrow applies for any license, permit,
18 or qualification under the Commissioner’s current or future jurisdiction, or is the subject of any
19 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall
20 be admitted for the purpose of such application(s) or enforcement proceeding(s).

21 19. Third Party Actions. This Consent Order does not create any private rights or
22 remedies against Five Star Escrow, create any liability for Five Star Escrow, create any contractual
23 third-party beneficiaries, or limit defenses of Five Star Escrow for any person or entity not a party to
24 this Consent Order.

25 20. Governing Law. This Consent Order will be governed by and construed in
26 accordance with California law.

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27. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

MANUEL P. ALVAREZ
Commissioner of Business Oversight

Dated: 6/6/19

By _____
Mary Ann Smith
Deputy Commissioner

FIVE STAR ESCROW

Dated: 6/6/19

By _____
Brett Ward
President of Five Star Escrow

APPROVED AS TO FORM AND CONTENT:

Grant C. Keary, Esq.
LEE & KEARY
Counsel for Five Star Escrow