

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 VANESSA T. LU (State Bar No. 295217)
Counsel
4 Department of Business Oversight
1350 Front Street, Room 2034
5 San Diego, California 92101
Telephone: (619) 525-3727
6 Facsimile: (619) 525-4045

7
8 Attorneys for Complainant

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

11
12 In the Matter of:) ESCROW LICENSE NO.: 96DBO-41814
)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION TO (1) REVOKE THE
OVERSIGHT,) ESCROW AGENT LICENSE OF FUTURA
14) ESCROW, INC. and (2) BAR SCOTT
Complainant,) CAMERON SMITH FROM ANY POSITION
15) OF EMPLOYMENT, MANAGEMENT OR
v.) CONTROL OF ANY ESCROW AGENT
16)
17 FUTURA ESCROW, INC. and)
SCOTT CAMERON SMITH,)
18)
Respondents.)
19)
20)

21 The Commissioner of Business Oversight (Commissioner) is informed and believes, and
22 based upon such information and belief, alleges and charges the Respondents as follows:

23 **I.**
24 **Jurisdiction and Venue**

25 1. The Commissioner brings this action under the provisions of Financial Code sections
26 17423, 17608, 17602.5, and the rules and regulations promulgated under the California Escrow
27 Law (Fin. Code¹, § 17000 et seq.) (Escrow Law).

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¹ Unless otherwise indicated, all further statutory references are to the Financial Code.

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2. The Commissioner is authorized to administer and enforce the Escrow Law and the rules issued under title 10 of the California Code of Regulations (Cal. Code Regs., tit. 10) that regulate the business and activities of escrow agents.

3. The Commissioner now seeks to revoke the escrow agent license issued to Futura Escrow, Inc. (Futura) and to bar Scott Cameron Smith (Smith) from any employment, management or control of any escrow agent for violations of the Escrow Law, as set forth more fully below.

II.
Statement of Facts

4. Futura Escrow, Inc. (Futura) is an escrow agent licensed by the Commissioner under the Escrow Law since March 10, 2015. Futura has its principal place of business located at 8696-5 Villa La Jolla Drive, La Jolla, California 92037.

5. Scott Cameron Smith (Smith) is Futura’s president, owner, and registered agent.

6. Cindy Ella Chase (Chase) is an escrow officer and the Chief Operating Officer (COO) of Futura.

7. Ashley Denise Grant aka Ashley Denise Grant-Connelly (Grant) worked as an escrow officer with Futura from September 11, 2017 through November 29, 2017. On or around November 21, 2017, the Department received Grant’s Statement of Identity and Employment Application to become Futura’s proposed manager. On or around December 12, 2017, Futura notified the Department that Grant was terminated effective November 29, 2017.

8. On or around December 5, 2017, Chase discovered that her signature had been forged on six checks issued by Grant. Chase reported the forgery incident to California Bank & Trust (CBT) that same day. Chase also filed a report with the San Diego Police Department (SDPD) on or around December 6, 2017.

9. On or about December 7, 2017, the Commissioner, by and through staff, commenced a regulatory examination of Futura. The Corporations Examiner (examiner) met with Chase – no other employees were present. The examiner requested Futura’s trust records, general account books, and monthly reconciliations.

1 10. Chase told the examiner that Futura was in the process of changing its software from
2 SMS to Qualia and changing Futura's bank accounts from CBT to JP Morgan Chase Bank (JP
3 Morgan). Chase told the Department that the latest available reconciliation for SMS and CBT was
4 September 30, 2017 and that Futura opened a trust account with JP Morgan beginning of October
5 2017.

6 11. Liquid Asset Deficiency and Tangible Net Worth Deficiency

7 On or around May 23, 2018, the Department received Futura's 2017 annual report. Futura's
8 December 31, 2017 financial statements showed a liquid asset deficiency of \$96,431.00 and a
9 tangible net worth deficiency of \$106,204.00.

10 12. Failure to Reconcile Trust Accounts

11 On or around June 11, 2018, the examiner returned to Futura to complete the examination.
12 Futura and Smith failed to provide the Department its trust account bank reconciliations, books and
13 records for SMS and CBT from October 1, 2017 through December 31, 2017 in violation of Cal.
14 Code Regs., tit. 10, section 1732.2 and Financial Code section 17404.

15 13. Liquid Asset Deficiency and Tangible Net Worth Deficiency

16 At the licensee's office, the examiner reviewed the May 31, 2018 financial statements for
17 Futura. The May 31, 2018 financial statements showed a liquid asset deficiency of \$47,295.63 and a
18 tangible net worth deficiency of \$54,804.76.

19 14. Operating Without an Approved Escrow Manager

20 From Grant's termination on or around November 29, 2017 through 2018, Futura and Smith
21 were operating without an approved escrow manager in violation of Financial Code section 17200.8.

22 15. Failure to Immediately Report Trust Shortages and Embezzlement

23 Lucinda Gunter (Gunter) was Futura's former escrow manager and employed from February
24 22, 2016 to October 11, 2017. Gunter was a trust account check signer on Futura's trust accounts
25 ending in 6475 and 3106 with CBT. Grant was not an authorized check signer on any of Futura's
26 bank accounts. On or around June 11, 2018, Chase told the examiner that Grant forged both Gunter's
27 and her signature on multiple checks and caused unauthorized disbursements from Futura's trust
28 account. Futura and Smith failed to timely report the trust shortages and embezzlement to the

1 Commissioner in violation of Financial Code section 17414, subdivision (c) and Cal. Code Regs., tit.
2 10, section 1738.1.

3 16. Unauthorized Disbursement of Trust Account Funds – Escrow No. 17-7336-CG

4 On or around September 2017, CBT notified Futura that two different checks were issued
5 with the same check number – check number 21199. On or around September 21, 2017, check
6 number 21199, in the amount of \$5,011.00 was issued to Catherine Anderson (Anderson) from
7 Escrow No. 17-7336-CG. Check number 21199 cleared on or around September 28, 2017. CBT
8 credited the amount back to Futura’s trust account on or around September 29, 2017. The examiner
9 found no authorization in Escrow No. 17-7336-CG to disburse any funds to Anderson. Futura caused
10 the unauthorized disbursement of trust funds in violation of Financial Code section 17414,
11 subdivision (a)(1), and Cal. Code Regs., tit. 10, sections 1738 and 1738.2.

12 17. Unauthorized Disbursement of Trust Account Funds – Escrow No. 17-7337-CG

13 On or around October 19, 2017, check number 21256, in the amount of \$250.00 from Escrow
14 No. 17-7337-CG was issued to Grant. Check number 21256 cleared Futura’s trust account ending in
15 6475 with CBT on or around October 19, 2017. Check number 21256 was adjusted three times on
16 the SMS escrow ledger. The examiner discovered Futura did not maintain the seller’s signed escrow
17 instructions in violation of Cal. Code Regs., tit. 10, section 1737.2 and Financial Code section
18 17404. Futura also violated Financial Code section 17414, subdivision (a)(1) and Cal. Code Regs.,
19 tit. 10, sections 1738 and 1738.2 for disbursing the funds to Grant without proper authorization.
20 From October 19, 2017 to February 15, 2018, Futura caused Escrow No. 17-7337-CG to have a trust
21 shortage of \$250.00 in violation of Cal. Code Regs., tit. 10, section 1738.1.

22 18. Unauthorized Disbursement of Trust Account Funds – Escrow No. 17-7335-CG

23 a. On or around October 19, 2017, check number 21257, in the amount of
24 \$2,800.00 from Escrow No. 17-7335-CG was issued to SD BPO Consulting Ashley Grant. On or
25 around October 19, 2017, check number 21257 cleared Futura’s trust account ending in 6475 with
26 CBT. Futura violated Financial Code section 17414, subdivision (a)(1) and Cal. Code Regs., tit. 10,
27 sections 1738 and 1738.2 for disbursing the funds to SD BPO Consulting Ashley Grant without
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1 proper authorization. From October 19, 2017 to June 14, 2018, Futura caused Escrow No. 17-7335-
2 CG to have a trust shortage of \$2,800.00 in violation of Cal. Code Regs., tit. 10, section 1738.1.

3 b. On or around November 1, 2017, check number 21270, in the amount of
4 \$2,800.00 from Escrow No. 17-7335-CG was issued to CDI Geotechnical Consultants 2 LLC Ashley
5 Grant. On or around November 2, 2017, check number 21270 cleared Futura’s trust account ending
6 in 6475 with CBT. Futura violated Financial Code section 17414, subdivision (a)(1) and Cal. Code
7 Regs., tit. 10, sections 1738 and 1738.2 for disbursing the funds to CDI Geotechnical Consultants 2
8 LLC Ashley Grant without proper authorization. From November 1, 2017 to June 14, 2018, Futura
9 caused Escrow No. 17-7335-CG to have a trust shortage of \$2,800.00 in violation of Cal. Code
10 Regs., tit. 10, section 1738.1.

11 c. On or around November 6, 2017, check number 21271, in the amount of
12 \$3,500.00 from Escrow No. 17-7335-CG was issued to CDI Geotechnical Consultants 2 LLC Ashley
13 Grant. On or around November 6, 2017, check number 21271 cleared from Futura’s trust account
14 ending in 6475 with CBT. Futura violated Financial Code section 17414, subdivision (a)(1) and Cal.
15 Code Regs., tit. 10, sections 1738 and 1738.2 for disbursing the funds to CDI Geotechnical
16 Consultants 2 LLC Ashley Grant without proper authorization. From November 6, 2017 to June 14,
17 2018, Futura caused Escrow No. 17-7335-CG to have a trust shortage of \$3,500.00 in violation of
18 Cal. Code Regs., tit. 10, section 1738.1. The examiner also learned that Futura did not maintain the
19 signed escrow instructions for the buyer and seller in violation of Cal. Code Regs., tit. 10, section
20 1737.2 and Financial Code section 17404.

21 19. Unauthorized Disbursement of Trust Account Funds – Escrow No. 17-7316-CG

22 On or around October 23, 2017, check number 21258, in the amount of \$4,500.00 from
23 Escrow No. 17-7316-CG was issued to CDI Geotechnical Consultants 2 LLC Ashley Grant. On or
24 around October 23, 2017, check number 21258 cleared from Futura’s trust account ending in 6475
25 with CBT. Futura violated Financial Code section 17414, subdivision (a)(1) and Cal. Code Regs., tit.
26 10, sections 1738 and 1738.2 for disbursing the funds to CDI Geotechnical Consultants 2 LLC
27 Ashley Grant without proper authorization. From October 23, 2017 to June 14, 2018, Futura caused
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1 Escrow No. 17-7316-CG to have a trust shortage of \$4,500.00 in violation of Cal. Code Regs., tit.
2 10, section 1738.1.

3 20. Unauthorized Disbursement of Trust Account Funds – Escrow No. 17-7309-CG

4 On or around October 27, 2017, check number 21268, in the amount of \$2,800.00 was issued
5 to CDI Geotechnical Consultants 2 LLC Ashley Grant. On or around October 27, 2017, check
6 number 21268, cleared from Futura’s trust account ending in 6475 with CBT. From October 27,
7 2017 to June 14, 2018, Futura caused Escrow No. 17-7309-CG to have a trust shortage of \$2,800.00
8 in violation of Cal. Code Regs., tit. 10, section 1738.1. Futura violated Financial Code section
9 17414, subdivision (a)(1) and Cal. Code Regs., tit. 10, sections 1738 and 1738.2 for disbursing the
10 funds to CDI Geotechnical Consultants 2 LLC Ashley Grant without proper authorization. The
11 Buyer’s signed escrow instructions were not maintained in the escrow file in violation of Cal. Code
12 Regs., tit. 10, section 1737.2 and Financial Code section 17404.

13 21. Failure to Immediately Report Trust Shortages and Unauthorized Fees

14 When the examiner started Futura’s examination on or around December 7, 2017, Chase did
15 not report the embezzlement, forgery, or trust shortages to the Department. When the examiner
16 returned to Futura’s offices on or around June 11, 2018, Chase later admitted that she reported the
17 embezzlement, forgery, and trust shortages to CBT on or around December 5, 2017. Chase also told
18 the examiner that she filed a police report with the San Diego Police Department on or around
19 December 6, 2017. When the examiner asked Chase why she did not disclose the embezzlement,
20 forgery, or trust shortages to the Department back in December 2017, Chase stated she “did not
21 know what to do and this incident was new to her.” Thus, Chase and Futura failed to promptly notify
22 the Department regarding the embezzlement, forgery, and trust shortages in violation of Financial
23 Code section 17414, subdivision (c).

24 22. Futura and Smith failed to immediately report the trust shortages referenced in
25 paragraphs 15-21 to the Department in violation of Financial Code section 17414, subdivision (c).
26 On or around April 5, 2018, Futura and Smith deposited funds to replace the trust shortages, but
27 subsequently withdrew \$13,400.00 in fees without corresponding escrow numbers to substantiate
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1 these were in fact earned fees in violation of Financial Code section 17414 and Cal. Code Regs., tit.
2 10, sections 1738 and 1738.1. Futura an

3 d Smith deposited \$21,709.46 to the trust account on or around February 16, 2018, March 5,
4 2018, April 2, 2018, and May 15, 2018. Futura and Smith re-deposited \$16,400.00 to the trust
5 account on or around June 15, 2018 only after the Department instructed licensee to cure the trust
6 shortages.

7 23. Failure to Maintain Books and Records

8 Futura and Smith failed to maintain books and records as referenced in paragraphs 9-20 in
9 violation of Cal. Code Reg., tit. 10, section 1737.3 and Financial Code section 17404. Escrow agents
10 are required to maintain their books and records for a period of at least five years from the close of
11 escrow. Futura and Smith did not maintain their books and records for a period of at least five years
12 from the close of escrow.

13 24. Failure to Follow Written Escrow Instructions

14 Futura and Smith failed to follow written escrow instructions in violation of Cal. Code Regs.,
15 tit. 10, sections 1738 and 1738.2. As referenced above in paragraphs 15-20, Futura and Smith made
16 unauthorized disbursements in several escrow files and did not follow written escrow instructions.
17 Futura used the purchase agreement instead of the escrow instructions to disburse funds in Escrow
18 No. 17-7337-CG, Escrow No. 17-7335-CG, and Escrow No. 17-7309-CG.

19 **III.**

20 **Failure to Respond to Commissioner's Demands and Submit the Annual Audit Reports**

21 25. Paragraphs 1-24 are hereby realleged and incorporated herein by reference as if set
22 forth in their entirety.

23 26. On or around December 10, 2018, the Commissioner sent a notification through
24 GovDelivery.com to Futura's designated email address to remind licensee that its annual report for
25 the fiscal year ended December 31, 2018 is due April 15, 2019. Pursuant to Financial Code section
26 17406, Futura was required to file its annual audit report 105 days after the close of its fiscal year
27 end. The Commissioner's notification reminded Futura that its failure to file its annual audit report
28 by the due date would subject licensee to penalties under Financial Code section 17408.

1 27. On or around December 11, 2018, a delivery report generated from
2 Gov.Delivery.com showed that the Commissioner’s email notification was delivered to Futura’s
3 designated email address. Futura failed to file its December 2018 annual audit report with the
4 Commissioner by the due date of April 15, 2019 in violation of Financial Code section 17406.

5 28. On or around April 24, 2019, the Commissioner sent a written demand to Futura via
6 certified mail return receipt to its address on file. The demand letter informed Futura to submit its
7 December 2018 annual audit report to the Commissioner within 10 days or face potential penalties
8 and possible license suspension or revocation for failing to comply with Financial Code section
9 17406.

10 29. On or around May 3, 2019, the Commissioner sent a copy of its written demand letter
11 via email to Smith, Futura’s president and owner. Microsoft Outlook’s delivery tracking system
12 showed that the Commissioner’s email to Smith was delivered successfully.

13 30. On or around April 15, 2020, Futura and Smith failed to submit its 2018 and 2019
14 annual audit reports to the Commissioner in violation of under Financial Code sections 17406. To
15 date, Futura and Smith have refused to respond to the Commissioner’s demand in violation of
16 Financial Code section 17408. These are independent grounds to revoke Futura’s escrow license
17 under Financial Code sections 17602.5 and 17608 and to bar Smith pursuant to Financial Code
18 section 17423, subdivision (a).

19 **IV.**
20 **Liquidity Deficiencies**

21 31. Paragraphs 1-30 are hereby realleged and incorporated herein by reference as if set
22 forth in their entirety.

23 32. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are
24 required to maintain at all times, a tangible net worth of at least \$50,000.00 including liquid assets of
25 at least \$25,000.00 in excess of current liabilities. Futura repeatedly violated the liquid asset and
26 tangible net worth requirements as shown in its December 2016 and 2017 annual audit reports, 2017
27 regulatory examination, and failed to provide audited financial statements for 2018 and 2019. The
28 examiner noted that Futura did not meet the liquid and tangible requirements on November 30, 2017,

1 December 31, 2017, and May 31, 2018.

2 33. Futura's December 31, 2016 annual audit report showed a liquid asset deficiency of
3 \$58,094.00 and a tangible net worth deficiency of \$63,978.00. On or around July 13, 2017, the
4 Commissioner issued a letter notifying Smith of the liquid asset and tangible net worth deficiencies
5 found in Futura's December 31, 2016 annual audit report. The Commissioner's letter requested
6 Smith to provide proof that these liquidity and net worth deficiencies were cured.

7 34. On or around October 27, 2017, Smith provided Futura's September 2017 balance
8 sheet, but stated that licensee did not meet the financial requirements because a \$65,000.00 capital
9 contribution was incorrectly removed from the general account in September 2017. Smith provided
10 the October 2017 financial statements to show that Futura was in compliance with Financial Code
11 section 17210. But two months later – Futura again failed to meet its liquid asset and tangible net
12 worth requirements in its December 2017 annual audit report in violation of Financial Code section
13 17210.

14 35. On or around May 23, 2018, Futura's certified public accountant (CPA) submitted
15 licensee's December 31, 2017 annual audit report to the Commissioner. As of December 31, 2017,
16 the CPA noted that Futura did not meet the requirements of Financial Code section 17210 because it
17 had a liquid asset deficiency of \$96,431.00 and a tangible net worth deficiency of \$106,204.00. Note
18 6 of the December 31, 2017 annual audit report showed a stockholder made a total capital
19 contribution of \$68,260.00 during 2017, but this capital contribution did not correct the liquid asset
20 and tangible net worth deficiencies cited. The CPA also expressed ongoing concern in Note 7 that
21 Futura had incurred operating losses which resulted in an accumulated deficit of \$355,993.00 and
22 that the company's ability to continue to operate was dependent upon its ability to reach a
23 satisfactory level of profitable operations.

24 36. On or around June 20, 2018, the Commissioner issued a letter to Smith notifying him
25 of Futura's liquid asset and tangible net worth deficiencies; requested proof of correction; and the
26 company's June 2018 financial statements.

27 37. On or around July 20, 2018, Futura and Smith submitted its response and a corporate
28 resolution to the Commissioner via email. In the response letter, Smith indicated that he would make

1 a deposit of \$55,000.00 into Futura's general account and that a corporate resolution was made to
2 transfer Smith's stock ownership in Futura to David Epstein (Epstein), who was elected as Vice
3 President of Futura as of July 20, 2018. On or around July 30, 2018, Epstein stated Futura was
4 opening a new bank account at Chino Commercial Bank (CCB) and funds to correct the financial
5 deficiencies would be deposited once Futura received its bank account number.

6 38. On or around August 1, 2018, Smith sent Futura's June 2018 financial statements via
7 email to the Commissioner. The June 2018 financial statements showed that Futura continued to
8 have a liquid asset deficiency of \$41,923.20, a tangible net worth deficiency of \$49,432.22, and a
9 cash balance of only \$172.61. The June 2018 financial statements were not prepared in accordance
10 with Generally Accepted Accounting Principles (GAAP) but prepared on cash basis. Smith also did
11 not provide Futura's general account bank statement nor reconciliation for June 2018.

12 39. On or around August 16, 2018, Smith provided copies of an internet transfer of
13 \$55,000.00 and a deposit of \$5,194.46 to Futura's general bank account with CCB on or around
14 August 10, 2018. On or around August 21, 2018, the Commissioner emailed Smith and requested
15 Futura's July 2018 financial statements by August 31, 2018 and the August 2018 financial
16 statements by September 17, 2018. On or around August 25, 2018, Futura submitted its July 2018
17 financial statements and general account bank statement. The July 2018 financial statements were
18 not prepared in accordance with GAAP. The July 2018 financial statements also showed that Futura
19 continued to have a liquid asset deficiency of \$41,578.36, a tangible net worth deficiency of
20 \$49,087.49, and a general account cash balance of \$334.30.

21 40. Futura did not submit its August 2018 financial statements to the Commissioner by
22 the September 17, 2018 deadline. On or around November 13, 2018, Futura submitted its August
23 2018 financial statements, but continued to have a liquid asset deficiency of \$4,151.00 and a tangible
24 asset deficiency of \$11,660.00. Futura only provided its August 2018 bank statement for its general
25 account maintained at JP Morgan and never provided its general bank account statement with CCB.
26 The Commissioner was unable to verify the \$55,000.00 internet transfer claimed by Smith on or
27 around August 10, 2018.
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VI.
Applicable Law

46. Paragraphs 1-45 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

47. Financial Code section 17200.8 provides in pertinent part:

(a) Within the organization of each escrow agent corporation, either as an owner, officer, or employee, there shall be one or more persons possessing a minimum of five years of responsible escrow . . . at each branch. At least one such qualified person shall be stationed at . . . during the time the location is open for business.

48. Financial Code section 17202 provides in pertinent part:

(a) At the time of filing an application for an escrow license, the applicant shall deposit with the commissioner a bond satisfactory to the commissioner in the amount of at least twenty-five thousand dollars (\$25,000). Thereafter, a licensee shall maintain a bond satisfactory to the commissioner

49. Financial Code section 17210 provides in pertinent parts:

(b) An escrow agent licensed prior to January 1, 1986, shall maintain at all times a tangible net worth according to the following schedule:
...
(9) Fifty thousand dollars (\$50,000) as of July 1, 1993, and thereafter, including liquid assets of at least twenty-five thousand dollars (\$25,000) in excess of current liabilities.

50. Financial Code section 17404 provides:

Every person subject to this division shall keep and use in its business, books, accounts, and records which will properly enable the commissioner to determine whether the escrow functions performed by such person comply with the provisions of this division and with all rules made by the commissioner under this division.

51. Financial Code section 17406 provides in pertinent part:

(a) Each licensee shall submit to the commissioner, at the licensee’s own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall

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also file additional relevant information as the commissioner may require.

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52. Financial Code section 17408 provides in pertinent parts:

(a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of said person to be thoroughly examined.

(b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

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53. Financial Code section 17414 provides in pertinent parts:

(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omissions to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other documents pertaining to an escrow or escrow affairs

...

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. . . .

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54. Financial Code section 17423, provides in pertinent parts:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or 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 censure, suspension, or 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.

...

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust fluids shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

...

55. Financial Code section 17602.5 provides:

If any licensed escrow agent fails to make any report require by law or by the commissioner within ten (10) days from the day designated for the making of reports, or within any extension of time granted by the commissioner, . . . such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

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56. Financial Code section 17608 provides:
- The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:
- (a) The licensee has failed to maintain in effect a bond required under the provisions of this division.
 - (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.
 - (c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.
57. Cal. Code Regs., tit. 10, section 1732.2 provides in pertinent parts:
- (a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:
 - (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 agents as a medium of posting to the records referred in 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 a 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).
 - (b) An escrow agent engaged in the business of receiving escrows for deposit or delivery of the types of transactions specified in subdivision (c) of Section 17312 of the Financial Code and of the types of transactions not specified therein shall maintain separate books and separate trust accounts for each type of escrow business the same manner as provided in subsection (a).
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58. Cal. Code Regs., tit. 10, section 1737.3 provides in pertinent parts:
- (a) An escrow agent shall preserve for at least five years from the close of escrow:
 - (1) All bank statements of the “trust” or “escrow” account;
 - (2) All canceled checks drawn upon the “trust’ or “escrow” account;
 - (3) Copies of bank deposit slips with reference to the “trust” or “escrow” account;
 - (4) All additional records reflecting banking transactions with reference to the “trust” or “escrow” account, including copies of all receipts for funds transferred from interest-bearing accounts into the “trust” or “escrow” account;
 - (5) The Statement of Account;
 - (6) Escrow instructions and amendments thereto;
 - (7) All additional records pertinent to the escrow transaction.
- ...

59. Cal. Code Regs., tit. 10, section 1738 provides:
- (a) All money deposited in such “trust” or “escrow” account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.
 - (b) The escrow agent shall comply with, at a minimum, the following procedures for wire transfers (also known as “electronic fund transfers”):
 - (1) The instructions of the principals authorizing the wire transfer must contain, at a minimum, the amount of the funds to be wired transferred, the name of the financial institution, the account number and the account name receiving the funds.
 - (2) The escrow agent shall retain confirmation of the wire transfer from the financial institution that contains, at a minimum, the amount of the funds wire transferred and the account number and name of the

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account the funds were wire transferred to.

(3) If necessary, the escrow books shall be properly adjusted to reflect the wire transfer of funds from the escrow account.

(4) The escrow agent shall maintain a proper audit trail and adequate controls and safeguards funds disbursed by wire transfer.

60. Cal. Code Regs., tit. 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.

61. Cal. Code Regs., tit. 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction, or if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

VII.
Prayer

The Commissioner finds that, by reason of the foregoing, Futura Escrow, Inc. and Scott Cameron Smith violated Financial Code sections 17200.8, 17202, 17210, 17404, 17406, 17408, 17414, and Cal. Code Regs., tit. 10, sections 1732.2, 1737.3, 1738, 1738.1, and 1738.2. Pursuant to Financial Code section 17602.5 and 17608, it is in the best interest of the public to revoke the escrow agent license of Futura Escrow, Inc.

Complainant, also finds that, by reason of the foregoing, it is in the best interest of the public to bar Scott Cameron Smith from any position of employment, management, or control of any escrow agent pursuant to Financial Code section 17423, subdivision (a)(1).

WHEREFORE, IT IS PRAYED that under Financial Code sections 17602.5 and 17608, the

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1 escrow agent license of Futura Escrow, Inc. is revoked and that under Financial Code section 17423,
2 subdivision (a)(1), Scott Cameron Smith be barred from any position of employment, management,
3 control or any escrow agent.

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5 Dated: July 27, 2020
6 San Diego, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

7 By _____
8 Vanessa T. Lu
9 Counsel
10 Enforcement Division
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