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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

12	In the Matter of:	)	OAH CASE NO.: 2021030410
)	
13	THE COMMISSIONER OF FINANCIAL	)	ESCROW LICENSE NO.: 96DBO-41814
14	PROTECTION AND INNOVATION,)	
		)	SETTLEMENT AGREEMENT
15	Complainant,)	
		)	PHC/MSC Date: June 25, 2021
16	v.	)	PHC/MSC Time: 10:00 a.m.
17		)	Location: 402 West Broadway
		)	Suite 600
18		)	San Diego, CA 92101
19	FUTURA ESCROW, INC. and)	
	SCOTT CAMERON SMITH,)	
20		)	Hearing Date: August 24-27, 2021
	Respondents.	)	Hearing Time: 10:00 a.m.
21)	Location: 402 West Broadway
22)	Suite 600
)	San Diego, CA 92101
23)	
24)	Judge: Adam Berg

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1 This Settlement Agreement is entered into between the Commissioner of Financial
2 Protection and Innovation (Commissioner) and Respondents Futura Escrow, Inc. (Futura) and Scott
3 Cameron Smith (Smith) (collectively Respondents), and is made with respect to the following
4 facts:

5 **I.**

6 **Recitals**

7 A. The Department of Financial Protection and Innovation (Department), through the
8 Commissioner, has jurisdiction over the licensing and regulations of persons and entities engaged
9 in the business of an escrow agent pursuant to the California Escrow Law (Escrow Law) (Fin.
10 Code § 17000 et seq.)

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

14 C. Smith is Futura’s president, owner, and registered agent.

15 D. On August 3, 2020, Respondents were personally served by the Commissioner with
16 the Notice of Intention to Issue Order Revoking Escrow Agent License and Order Barring Scott
17 Cameron Smith from Any Position of Employment, Management, or Control of Any Escrow Agent
18 Pursuant to Financial Code section 17423; Accusation and accompanying documents dated July 27,
19 2020 (Accusation). In the Accusation, the Commissioner alleged that Respondents committed the
20 violations of the Escrow Law described in Paragraphs i through xii below (Accusation Allegations):

- 21 i. Financial Code section 17210 for not meeting liquid and tangible
22 requirements,
- 23 ii. Financial Code section 17200.8 for operating without an approved manager,
- 24 iii. Financial Code section 17202 for cancellation of surety bond,
- 25 iv. Financial Code section 17404 for failing to maintain books and records,
- 26 v. Financial Code section 17414 for participation in fraudulent transactions, not
27 reporting trust fund shortage and embezzlement timely, unauthorized fees,
- 28 vi. Financial Code section 17406 for failing to submit annual reports,

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- vii. Financial Code section 17408 for failing to respond to the Commissioner’s demands,
- viii. California Code of Regulations, title 10, section 1737.3 for not retaining records,
- ix. California Code of Regulations, title 10, section 1738.2 for not following written escrow instructions,
- x. California Code of Regulations, title 10, section 1732.2 for not maintaining bank reconciliation,
- xi. California Code of Regulations, title 10, section 1738 for unauthorized disbursements, and
- xii. California Code of Regulations, title 10, section 1738.1 which prohibits debit balances.

E. On August 12, 2020, Respondents timely submitted a Notice of Defense to the Commissioner requesting an administrative hearing on the Accusation Allegations.

F. It is the intention of Futura and Smith and the Commissioner (collectively Parties) to resolve the Accusation Allegations without the necessity of a hearing.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions contained herein, the Parties agree as follows:

II.

Terms and Conditions

1. Purpose. This Settlement Agreement resolves the Accusation Allegations in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the Escrow Law.

2. Revocation Order. Futura hereby agrees to the issuance by the Commissioner of an order revoking Futura’s escrow agent license.

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1 3. Suspension Order – Smith. Smith hereby agrees to the issuance by the Commissioner
2 of an order suspending Smith from any from any position of employment, management, or control of
3 an escrow agent for a period of one year from the effective date of this Settlement Agreement.

4 4. Future Activity – Smith. Smith additionally agrees that upon the completion of the
5 suspension described in Paragraph 3 above he shall not undertake any position as an escrow
6 manager, corporate officer, director, trustee or stockholder, or act in any such capacity, and/or apply
7 for any such position, with any escrow agent licensed by the Commissioner or seek licensure with
8 the Commissioner. In the event he applies for any such license with the Department, such
9 application shall be deemed automatically denied. In connection with any such automatic denial,
10 Smith would waive his right to any reconsideration, appeal or other rights which may be afforded
11 under the Escrow Law, the Administrative Procedure Act (APA) (Govt. Code, § 11370 et seq.), the
12 Code of Civil Procedure (Code of Civ. Pro., § 1 et seq.), or any other provision of law in connection
13 with these matters.

14 5. Failure to Comply – Smith. Smith further agrees that if the Commissioner finds that
15 Smith has violated any of the provisions of Paragraph 4 above, the Commissioner may immediately
16 issue an Order barring him from any position of employment, management or control of any escrow
17 agent and the Accusation Allegations shall be deemed to have been admitted.

18 6. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
19 ready, willing, and able to proceed with the administrative enforcement action described above in
20 Paragraph D. Respondents hereby waive their rights to a hearing, and to any reconsideration, appeal
21 or other right to review which may be afforded by the Escrow Law, the California Administrative
22 Procedure Act, the California Code of Civil Procedure, or any provisions of law in connection
23 herewith, including any suspension or bar order issued pursuant to Paragraphs 3 through 5 above. By
24 waiving such rights, Respondents effectively consent to this Settlement Agreement becoming final.

25 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
26 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
27 Accusation Allegations, and that no further proceedings or actions will be brought by the
28 Commissioner in connection with the Accusation Allegations under the Escrow Law or any other

1 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
2 Settlement Agreement.

3 8. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
4 be revoked, and the Commissioner may pursue any and all remedies available under the law against
5 Respondent(s), if the Commissioner discovers that Respondent(s) knowingly or willfully withheld
6 information used for and relied upon in this Settlement Agreement.

7 9. Future Actions by Commissioner. If Respondent(s) fail to comply with any terms of
8 this Settlement Agreement, the Commissioner may institute proceedings for any and all violations
9 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
10 any future actions against Respondent(s) for any and all unknown violations of the Escrow Law.

11 10. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
12 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
13 any administrative, civil or criminal prosecutions brought by that agency against Respondents or any
14 other person based upon any of the activities alleged in this matter or otherwise.

15 11. Headings. The headings to the paragraphs of this Settlement Agreement are for
16 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
17 the provisions hereof.

18 12. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
19 successors in interest.

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

1 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
2 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
3 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
4 any other provision. No waiver of either party of any breach of, or of compliance with, any condition
5 or provision of this Settlement Agreement by the party will be considered a waiver of any other
6 condition or provision or of the same condition or provision at another time.

7 15. Full Integration. This Settlement is the final written expression and the complete and
8 exclusive statement of all the agreements, conditions, promises, representations, and covenants
9 between the Parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions
11 between and among the Parties, their respective representatives, and any other person or entity, with
12 respect to the subject matter covered hereby.

13 16. Governing Law. This Settlement Agreement will be governed by and construed in
14 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
15 and hereby irrevocably waives, the fullest extent permitted by law, the defense of any inconvenient
16 forum to the maintenance of such action or proceeding in such court.

17 17. Counterparts. This Settlement Agreement may be executed in one or more separate
18 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
19 together constitute a single document.

20 18. Effect Upon Future Proceedings. If Respondents are the subject of any future action
21 by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be
22 admitted for the purpose of such action.

23 19. Third Parties. This Settlement Agreement does not create or give rise to any private
24 rights or remedies against Respondents, create any liability for Respondents, or limit the defenses of
25 Respondents for any person or entity not party to this Settlement Agreement.

26 20. Voluntary Agreement. Respondents enter into this Settlement Agreement voluntarily
27 and without coercion and acknowledge that no promises, threats, or assurances have been made by
28 the Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties

1 each represent and acknowledge that he, or she or it is executing this Settlement Agreement
2 completely voluntarily and without any duress or undue influence of any kind from any source.

3 21. Notice. Any notice/report required under this Settlement Agreement shall be
4 addressed as follows:

5 To Respondents: Scott Cameron Smith
6 Futura Escrow, Inc.
7 8070 La Jolla Shores Drive, Suite 517
8 La Jolla, CA 92037
smith@futuraescrow.com

9 To the Commissioner: Vanessa T. Lu, Counsel
10 Enforcement Division
11 Department of Financial Protection and Innovation
12 1455 Frazee Road, Suite 315
San Diego, CA 92108
Vanessa.Lu@dfpi.ca.gov

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14 22. Signatures. A fax or electronic mail signature shall be deemed the same as an
15 original signature.

16 23. Public Record. Respondents acknowledge that this Settlement Agreement is and will
17 be a matter of public record.

18 24. Effective Date. This Settlement Agreement shall become final and effective when
19 signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondents’ agent,
20 Scott Cameron Smith, at smith@futuraescrow.com.

21 25. Authority to Sign. Each signatory hereto covenants that he or she possesses all
22 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
23 obligations set forth herein.

24 Date: May 7, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

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26 By _____
27 MARY ANN SMITH
28 Deputy Commissioner
Enforcement Division

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Dated: May 6, 2021

FUTURA ESCROW, INC.

By _____
SCOTT CAMERON SMITH
President

Dated: May 6, 2021

SCOTT CAMERON SMITH

By _____
SCOTT CAMERON SMITH
As an individual

