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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Statement of Issues  
Against:  
13  
14 **AMERICAN LIBERTY UNIVERSITY,**  
**A California Corporation**  
15  
16 **Application for Approval to Operate an**  
**Institution Non-Accredited**  
17  
18 Respondent.

Case No. 1002965  
OAH Case No. 2018110412  
**FIRST AMENDED**  
**STATEMENT OF ISSUES**

19 Complainant alleges:

20 **PARTIES.**

21 1. Dr. Michael Marion, Jr. (Complainant) brings this First Amended Statement of Issues  
22 solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education,  
23 Department of Consumer Affairs.  
24 2. On or about October 2, 2001, the Bureau for Private Postsecondary and Vocational  
25 Education (BPPVE) received an Application for Approval to Operate an Institution Non-  
26 Accredited from Respondent American Liberty University, a California corporation (Respondent).  
27 On or about September 28, 2001, Kevin Soltani certified under penalty of perjury to the  
28 truthfulness of all statements, answers, and representations in the application.

1 3. The BPPVE sunsetted on July 1, 2007. On October 11, 2009, the Bureau for Private  
2 Postsecondary Education Act of 2009 (SB 48 and hereinafter, "the Act") was signed into law.  
3 The Act, which became operative on January 1, 2010, established the Bureau for Private  
4 Postsecondary Education (hereinafter "Bureau"). On or about August 2, 2017, the Bureau denied  
5 the application.

#### 6 JURISDICTION.

7 4. This First Amended Statement of Issues is brought before the Director of the  
8 Department of Consumer Affairs (Director) for the Bureau under the authority of the following  
9 laws. All section references are to the California Education Code unless otherwise indicated.

10 5. Section 94885 provides:

11 (a) The bureau shall adopt by regulation minimum operating standards for an  
12 institution that shall reasonably ensure that all of the following occur:

13 (1) The content of each educational program can achieve its stated objective.

14 (2) The institution maintains specific written standards for student admissions for  
15 each educational program and those standards are related to the particular  
16 educational program.

17 (3) The facilities, instructional equipment, and materials are sufficient to enable  
18 students to achieve the educational program's goals.

19 (5) The directors, administrators, and faculty are properly qualified.

20 (9) The institution is maintained and operated in compliance with this chapter and  
21 all other applicable ordinances and laws.

22 (b) Except as provided in Section 94885.1, an institution offering a degree must  
23 satisfy one of the following requirements:

24 (1) Accreditation by an accrediting agency recognized by the United States  
25 Department of Education, with the scope of that accreditation covering the offering  
26 of at least one degree program by the institution.

27 (2) An accreditation plan, approved by the bureau, for the institution to become  
28 fully accredited within five years of the bureau's issuance of a provisional approval  
to operate to the institution. The provisional approval to operate to an unaccredited  
degree-offering institution shall be in compliance with Section 94885.5.

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1 6. Section 94886 provides:

2 Except as exempted in Article 4 (commencing with Section 94874) or in  
3 compliance with the transition provisions in Article 2 (commencing with Section  
4 94802), a person shall not open, conduct, or do business as a private postsecondary  
5 educational institution in this state without obtaining an approval to operate under  
6 this chapter.

7 7. Section 94887 provides:

8 An approval to operate shall be granted only after an applicant has presented  
9 sufficient evidence to the bureau, and the bureau has independently verified the  
10 information provided by the applicant through site visits or other methods deemed  
11 appropriate by the bureau, that the applicant has the capacity to satisfy the  
12 minimum operating standards. The bureau shall deny an application for an  
13 approval to operate if the application does not satisfy those standards.

### 14 STATUTORY PROVISIONS

15 8. Section 94809 states in part:

16 (a) An institution that had an application for an approval to operate pending with  
17 the former Bureau for Private Postsecondary and Vocational Education on June 30,  
18 2007, may continue to operate until a decision is made in regard to the institution  
19 regarding the application for approval to operate, but shall comply with, and is  
20 subject to, this chapter.

21 (b) An institution that did not have a valid approval to operate issued by, and did  
22 not have an application for approval to operate pending with, the former Bureau for  
23 Private Postsecondary and Vocational Education on June 30, 2007, that began  
24 operations between July 1, 2007, and January 1, 2010, and filed an application to  
25 operate by August 2, 2010, may continue to operate unless a denial of approval to  
26 operate has been issued and has become final, but shall comply with, and is subject  
27 to, this chapter.

28 (d)(1) An institution that is denied an approval to operate pursuant to subdivision  
29 (a) or (b) may file an appeal pursuant to the procedures established in Section  
30 94888.

(2) An institution that has filed an appeal pursuant to paragraph (1) may continue  
to operate during the appeal process but must disclose in a written statement  
approved by the bureau, to all current and prospective students, that the  
institution's application for approval to operate was denied by the bureau because  
the bureau determined the application did not satisfy the requirements to operate in  
California, that the institution is appealing the bureau's decision, and that the loss  
of the appeal may result in the institution's closure.

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1 9. Section 94817.5 provides:

2 'Approved to operate' or 'approved' means that an institution has received  
3 authorization pursuant to this chapter to offer to the public and to provide  
4 postsecondary educational programs.

5 10. Section 94828 provides:

6 'Curriculum' means an organized set of courses or modules of instruction that are  
7 prerequisites to an award of a degree or diploma.

8 11. Section 94837 provides:

9 'Educational program' means a planned sequence composed of a single course or  
10 module, or set of related courses or modules, that provides education, training,  
11 skills, or experience, or a combination of these.

12 12. Section 94841 provides:

13 'Faculty' means the instructional staff of an institution, whether these persons are  
14 employees or independent contractors.

15 13. Section 94846 provides:

16 'Instruction' means an institution's specific, formal arrangements in which its  
17 faculty present a part of the curriculum.

18 14. Section 94885.1 provides:

19 (a) An institution that is not accredited by an accrediting agency recognized by the  
20 United States Department of Education and offering at least one degree program,  
21 and that has obtained an approval to operate from the bureau on or before January  
22 1, 2015, shall be required to satisfy at least one of the following no later than July  
23 1, 2015:

24 (1) Accreditation by an accrediting agency recognized by the United States  
25 Department of Education, with the scope of that accreditation covering the offering  
26 of at least one degree program by the institution.

27 (2) Compliance with subdivision (b).

28 (b) The bureau shall identify institutions that are subject to subdivision (a) and  
notify those institutions by February 1, 2015, of the accreditation requirements  
pursuant to this section and that the institution is required to provide the following  
information to the bureau if the institution plans to continue to offer a degree  
program after July 1, 2015:

(1) An accreditation plan that, at a minimum, identifies an accrediting agency  
recognized by the United States Department of Education from which the  
institution will seek accreditation, with the scope of that accreditation covering the  
offering of at least one degree program, and outlines the process by which the  
institution will achieve accreditation candidacy or pre-accreditation by July 1,

2017, and full accreditation by July 1, 2020.

(2) Evidence of having achieved accreditation candidacy or pre-accreditation by July 1, 2017.

(3) Evidence of having obtained full accreditation by July 1, 2020.

(4) Any additional documentation the bureau deems necessary.

(e) Any institution that fails to comply with the requirements of this section by the dates provided, as required, shall have its approval to operate automatically suspended on the applicable date. The bureau shall issue an order suspending the institution and that suspension shall not be lifted until the institution complies with the requirements of this section. A suspended institution shall not enroll new students in any of its degree programs, and shall execute a teach-out plan for its enrolled students.

(g) This section shall remain in effect until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

15. Section 94932 provides:

The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.

### REGULATORY PROVISIONS

16. California Code of Regulations, title 5, Section 71700 (Regulation 71700) provides:

The Bureau may request that an institution document compliance with the standards set forth in the Act and this Division to obtain and maintain an approval to operate.

17. California Code of Regulations, title 5, Section 71710 (Regulation 71710) provides:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

(a) those subject areas that are necessary for a student to achieve the educational objectives of the educational program in which the student is enrolled;

(b) subject areas and courses or modules that are presented in a logically organized manner or sequence to student;

1 (c) course or module materials that are designed or organized by duly qualified  
2 faculty. For each course or module, each student shall be provided by with a  
3 syllabus or course outline that contains:

4 (1) a short, descriptive title of the educational program;

5 (2) a statement of educational objectives;

6 (3) length of the educational program;

7 (4) sequence and frequency of lessons or class sessions;

8 (5) complete citations of textbooks and other required written materials;

9 (6) sequential and detailed outline of subject matter to be addressed or a list  
10 of skills to be learned and how those skills are to be measured;

11 (7) instructional mode or methods.

12 (d) if degree granting, require research of an appropriate degree that utilizes a  
13 library and other learning resources;

14 (e) specific learning outcomes tied to the sequence of the presentation of the  
15 material to measure the students' learning of the material; and

16 (f) evaluation by duly qualified faculty of those learning outcomes.

17 18. California Code of Regulations, title 5, section 71715 (Regulation 71715),  
18 subdivisions (a) and (b) provide:

19 (a) Instruction shall be the central focus of the resources and services of the  
20 institution.

21 (b) The institution shall document that the instruction offered leads to the  
22 achievement of the learning objectives of each course.

23 19. California Code of Regulations, title 5, section 71720 (Regulation 71720) provides:

24 (a) An Educational Program Leading to a Degree.

25 (4) The faculty shall have sufficient expertise to support the institution's awarding  
26 of a degree identifying a specialty or major field of emphasis, demonstrated by, at a  
27 minimum:

28 (A) That the person possesses one of the following:

1. a degree from: an institution approved by the Bureau or previously  
approved by a predecessor agency of the Bureau; or an accredited institution  
in the United States or Canada; or other state approved institution that  
documents that the institution at which the faculty member earned his or her  
degree is equivalent to an institution that is approved by the Bureau; or an

1 institution outside the United States or Canada and in addition provides a  
2 comprehensive evaluation of the degree performed by a foreign credential  
evaluation service that is a member of the National Association of Credential  
Evaluation Services (NACES).

3 2. a credential generally recognized in the field of instruction.

4 (B) The degree, professional license, or credential possessed by the person  
5 shall be at least equivalent to the level of instruction being taught or  
evaluated;

6 ....  
7 (9) The institution shall maintain records documenting that each faculty member is  
8 duly qualified and was qualified to perform the duties to which the faculty member  
9 was assigned, including providing instruction, evaluating learning outcomes,  
10 evaluating graduate dissertations, theses, and student projects, and participating on  
doctoral committees.

11 20. California Code of Regulations, title 5, section 71850 (Regulation 71850) provides in  
12 part:

13 Graduation requirements for an undergraduate degree program shall meet  
14 minimum credit requirements and shall include provisions for general education  
15 appropriate to the level and type of degree. The institution shall specify the  
distribution of general education credit requirements by subject area for each  
undergraduate degree program.

16 (a) A Bachelor's degree may be awarded to a student whom the institution can  
17 document has achieved sequential learning equivalent in general education and  
18 equivalent in depth of achievement in a designated major field to that acquired in  
19 four years of study beyond high school, as measured by a minimum of 120  
semester credits or its equivalent. At least 25 percent of the credit requirements for  
a Bachelor's degree shall be in general education.

20 ....  
21 21. California Code of Regulations, title 5, sections 71865 (Regulation 71865) provides  
22 in part:

23 (a) A Master's degree may only be awarded to a student who demonstrates at least  
24 the achievement of learning in a designated major field that is equivalent in depth  
25 to that normally acquired in a minimum of 30 semester credits or its equivalent or  
one year of study beyond the Bachelor's degree.

26 ...  
27 (c) (1) A Doctor of Philosophy degree (Ph.D.) is a research-oriented degree  
28 requiring a minimum of three years of full-time graduate education or the  
equivalent in part-time study. Such a doctoral program shall include substantial  
instruction in both theory and research at an advanced level in a designated field

1 and specialty, and may only be awarded to a student who has completed a program  
2 of study that includes research methodology and demonstrated learning  
3 achievement through original research directly attributable to the student. Each  
4 educational program leading to a Doctor of Philosophy degree shall involve  
5 preparation for scholarship and systematic inquiry.

6 (2) (A) Each Doctor of Philosophy program shall include a minimum of  
7 two formal evaluations of the student by a doctoral committee. The doctoral  
8 committee shall be composed of at least three members of the institution's own  
9 faculty who meet the qualifications in subdivision (c)(3).

10 (B) The first evaluation shall consider the student's qualifications,  
11 including the student's knowledge, skills, and conceptual framework, for  
12 undertaking rigorous inquiry into the student's designated field.

13 (C) The second evaluation shall consider the design procedures and  
14 products of a formal original inquiry proposed and completed by the student.

15 (3) The faculty members who serve on each student's doctoral examining  
16 committee shall meet the following qualifications:

17 (A) Each member shall have earned a Doctoral degree from: an  
18 institution that is approved by the Bureau or previously approved by a  
19 predecessor agency of the Bureau; or an accredited institution in the United  
20 States or Canada; or other state approved institution that documents that the  
21 institution at which the faculty member earned his or her degree is equivalent  
22 to an institution that is approved by the Bureau; or an institution outside the  
23 United States or Canada and in addition provides a comprehensive  
24 evaluation of the degree performed by a foreign credential evaluation service  
25 that is a member of the National Association of Credential Evaluation  
26 Services (NACES).

27 (B) The chair and the majority of the committee shall have earned  
28 degrees related to the student's field of investigation.

(C) A minimum of 50% of the faculty on the committee shall have  
degrees conferred by an institution accredited by an accrediting association  
recognized by the United States Department of Education or the American  
Bar Association, unless the accreditation does not exist.

(D) All of the faculty shall have three or more years of field or research  
experience related to their degrees obtained after they obtained their degrees.

(E) All of the faculty shall have been active in their field of scholarship  
or profession during the five year period preceding their participation on the  
committee.

(4) The formal evaluation procedures shall provide the committee as a whole  
with the opportunity to jointly examine the candidate.

(5) If the candidate is not physically present and the evaluation must take  
place by telephone or other means of electronic communication, one of the  
following shall apply:

(A) One faculty member on the student's doctoral committee from the  
main location (i.e., the state in which the program is licensed or otherwise



officially approved) must be present at the location where the doctoral student is examined.

(B) A proctor, selected and approved by the doctoral committee, shall sit as an observer with the student at the distant location and verify, under penalty of perjury under the laws of the State of California, the identity of the student and the facts that the student received no prompting by anyone and did not have access to unallowed materials during the evaluation process.

(6) If a project includes more than one student, the individual student's role and contributions shall be clearly identified and documented.

(7) The institution shall maintain a written record of the evaluations. This record shall include the names and signatures of all committee members who participated in the evaluations.

22. California Code of Regulations, title 5, sections 71930 (Regulation 71930) provides in part:

(a) An institution shall maintain all records required by the Act and this chapter. The records shall be maintained in this state.

....  
(e) All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations.

#### FACTS

23. On or about October 2, 2001, the Bureau for Private Postsecondary and Vocational Education (the former Bureau) received an Application for Approval to Operate an Institution Non-Accredited from Respondent. Respondent sought approval to offer degree programs in Business Administration and Alternative Medicine, including Ph.D. programs in Business Administration and Alternative Medicine; and a diploma program in Acupuncture.

24. On May 13, 2004, the former Bureau issued Respondent a temporary approval to operate. Respondent's temporary approval to operate was set to expire on December 31, 2006. That date passed without any action by the former Bureau. On, July 1, 2007, the former Bureau sunsetted. At the time the former Bureau sunsetted, Respondent's temporary approval to operate remained in effect, although Respondent had not obtained full approval.

25. Between July 1, 2007 until January 1, 2010, there was no regulatory body with oversight over private postsecondary educational institutions. Respondent continued to operate

1 during this time. On January 1, 2010, the Bureau for Private Postsecondary Education  
2 (hereinafter "Bureau") was established when the Private Secondary Education Act of 2009 (the  
3 Act) became effective.

4 26. Pursuant to the Act, an institution that had an application for an approval to operate  
5 pending with the former Bureau on June 30, 2007, may continue to operate until a decision is  
6 made regarding the institution's application for an approval to operate but is required to comply  
7 with the laws governing private postsecondary institutions. Therefore, Respondent was  
8 authorized to continue to operate pursuant to its temporary approval to operate and the Act  
9 pending a final decision on its application.

10 27. On September 17, 2014, Bureau staff conducted an informal visit to the school to  
11 determine whether Respondent should be granted full approval to operate. During the site visit,  
12 Bureau staff requested certain documents such as faculty member transcripts and contracts,  
13 curriculum and course syllabi for the following programs: Bachelor of Business Administration,  
14 Master of Business Administration; Ph.D. in Business Administration; and Diploma of  
15 Acupuncture. Respondent was unable to provide these documents during the informal visit. On  
16 September 20, 2014, Bureau staff requested Respondent provide these documents by October 1,  
17 2014. On October 3, 2014, the Bureau received Respondent's response to the Bureau's request  
18 for documents.

19 28. On January 1, 2015, degree granting institutions that had obtained an approval to  
20 operate on or before January 1, 2015, were required to achieve pre-accreditation or candidacy  
21 status by July 1, 2017 and full accreditation by July 1, 2020. On June 26, 2015, Respondent  
22 provided their initial accreditation plan to meet this requirement and selected the Accrediting  
23 Council for Independent Colleges and School (ACICS) as its accreditor.

24 29. On August 24, 2016, the Bureau requested additional documents in support of its  
25 application for a full approval to operate and requested certain corrections be made so that they  
26 could be reviewed by August 31, 2016, the date on which a site inspection had been scheduled.  
27 The inspection was cancelled by Bureau staff and re-scheduled to March 6, 2017.

28 ///

1           30. On March 6, 2017, Bureau inspectors conducted an announced compliance visit with  
2 a representative of the California Acupuncture Board. During the visit, student files, faculty files  
3 and the school's curriculum were reviewed. Violations were observed and a Notice to Comply  
4 was issued. When asked to sign and post the Notice to Comply, K.S. became agitated and refused  
5 to post the Notice to Comply. As K.S. became more agitated, he refused to provide copies of  
6 student and faculty files to the Bureau's investigators.

7           31. In or about May 2017, Respondent advised the Bureau that it changed its accreditor to  
8 Transnational Association of Christian Colleges and Schools (TRACS). By July 1, 2017,  
9 Respondent failed to meet the deadline for achieving pre-accreditation or candidacy status with an  
10 accreditor.

11           32. On July 21, 2017, the Bureau mailed an Order Suspending Approval to Operate  
12 Degree Granting Programs to Respondent with an effective date of July 26, 2017 because of its  
13 failure to achieving pre-accreditation or candidacy status by June 1, 2017.

14           33. On August 2, 2017, the Bureau issued Respondent a Notice of Denial of Application  
15 for Approval to Operate.

16           34. On August 28, 2017, the Bureau rescinded the Order of suspension pending a decision  
17 regarding Respondent's request for an extension of time to achieve accreditation candidacy or  
18 pre-accreditation. The Bureau denied Respondent's request for an extension because Respondent  
19 had not demonstrated strong progress in applying to an accrediting agency and suspended  
20 Respondent's degree granting programs effective September 2, 2017. On October 2, 2017,  
21 Respondent appealed the suspension order for its degree granting programs. An informal  
22 conference was held on January 12, 2018 and on March 30, 2018, the suspension order was  
23 upheld. As of September 5, 2018, Respondent continued to advertise the degree programs on its  
24 website.

25           35. On September 6, 2018, the Bureau issued a citation to Respondent for not suspending  
26 its degree programs. Respondent did not appeal the citation.

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1 during the Bureau's investigation on March 6, 2017 as set forth in paragraph 30 above and  
2 incorporated by this reference as though set forth in full herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Director of the Department of Consumer Affairs issue a  
6 decision:

- 7 1. Denying Respondent's Application for Approval to Operate an Institution Non-  
8 Accredited; and  
9 2. Taking such other and further action as deemed necessary and proper.

10  
11 DATED: April 12, 2019

Michael Marion, Jr.

12 DR. MICHAEL MARION, JR.  
13 Bureau Chief  
14 Bureau for Private Postsecondary Education  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

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