

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (State Bar No. 265649)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) Escrow License No. 963-2272
)
12 THE COMMISSIONER OF BUSINESS) OAH Case No. 2015010699
)
13 OVERSIGHT OF THE STATE OF)
CALIFORNIA,) SETTLEMENT AGREEMENT
)
14 Complainant,)
)
15 v.)
)
16)
17 AMERICAN LIBERTY ESCROW, INC.;)
)
18 GILBERT PINO; and)
)
19 MIRTYS RODRIGUEZ,)
)
20 Respondents.)

21 This Settlement Agreement is entered into between Respondents American Liberty Escrow,
22 Inc., (“American”), Gilbert Pino (“Pino”) (collectively, “Respondents”), and Complainant the
23 Commissioner of Business Oversight (“Commissioner”), and is made with respect to the following
24 facts:

25 **RECITALS**

26 A. American is an escrow agent holding a license issued by the Commissioner pursuant
27 to the Escrow Law (Financial Code section 17000 et seq.). Its principal place of business is 555
28 Parkcenter Drive #100, Santa Ana, California 92705.

1 B. At all relevant times, Pino is the president and owner of American.

2 C. On or around December 19, 2014, the Commissioner issued to Respondents the
3 following: Notice of Intention to Issue Order Revoking Escrow Agent’s License; Notice of
4 Intention to Issue Order Pursuant to California Financial Code Section 17423 (Bar From
5 Employment, Management or Control of Any Escrow Agent); Accusation in Support of Revocation
6 of License and Order Barring From Employment, Management, or Control; Statement to
7 Respondent; blank Notice of Defense; and Government Code Sections 11507.5, 11507.6 and
8 11507.7 relating to discovery (“Accusation”).

9 D. On or around January 2, 2015, Respondents were served by the Commissioner with
10 the Accusation.

11 E. On or around January 7, 2015, Respondents timely filed Notices of Defense with the
12 Commissioner in the matters regarding the Accusation.

13 F. Currently a hearing at the Office of Administrative Hearings is scheduled to
14 commence on July 6, 2015 through July 10, 2015.

15 It is the intention and desire of the parties to resolve these matters without the necessity of a
16 hearing and/or other litigation.

17 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
18 forth herein, the parties agree as follows:

19 **TERMS AND CONDITIONS**

20 1. Purpose. This Settlement Agreement is entered into for the purpose of judicial
21 economy and expediency, and to avoid the expense of a hearing, and possible further court
22 proceedings.

23 2. No Admission. Respondents neither admit nor deny the allegations contained in the
24 Accusation.

25 3. Order Suspending. Pino hereby agrees to the issuance by the Commissioner of an
26 order suspending Pino from any position of employment by an escrow agent for a period of five
27 years. The suspension order shall become effective upon execution of this Settlement Agreement.
28 A copy of the suspension order is attached and incorporated herein as Exhibit A.

1 4. Order Revoking. American hereby agrees to the issuance by the Commissioner of
2 an order revoking escrow agent’s license. The revocation order shall become effective upon
3 execution of this Settlement Agreement. A copy of the order revoking is attached and incorporated
4 herein as Exhibit B.

5 5. Waiver of Hearing Rights. Respondents acknowledge their right to an
6 administrative hearing under Financial Code section 17423 in connection with the Accusation, the
7 order suspending, and order revoking, and hereby waive their right to a hearing, and to any
8 reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the
9 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law in
10 connection with this matter.

11 6. Duration of Suspension. The parties hereby agree that Pino, once he has completed
12 the suspension set forth in paragraph 3 above, shall not be prohibited from any position of
13 employment by an escrow agent by reason of the five-year suspension or the acts alleged in the
14 Accusation so long as Pino has complied with the requirements of the Escrow Law.

15 7. Full and Final Settlement. The parties hereby acknowledge and agree that this
16 Settlement Agreement is intended to constitute a full, final and complete resolution of the
17 Accusation and that no further proceedings or actions will be brought by the Commissioner in
18 connection with these matters either under the Escrow Law or any other provision of law, excepting
19 therefrom any proceeding or action if such proceeding or action is based upon facts not presently
20 known to the Commissioner or which were knowingly concealed from the Commissioner by
21 Respondents or is based upon failure to abide by any of the terms in this Settlement Agreement.

22 8. Commissioner’s Duties. The parties acknowledge and agree that nothing contained
23 in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist any other
24 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
25 brought by any such agency against Respondents or any other person based upon any of the
26 activities alleged in these matters or otherwise.

27 9. Binding. This Settlement Agreement is binding on all heirs, assigns and/or
28 successors in interest.

1 10. Future Actions by Commissioner. This Settlement Agreement may be revoked and
2 the Commissioner may pursue any and all remedies available under law against Respondents if the
3 Commissioner later discovers that Respondents knowingly or willfully withheld information used
4 and relied upon in this Settlement Agreement.

5 11. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
6 it has received independent advice from its attorney(s) and/or representatives with respect to the
7 advisability of executing this Settlement Agreement.

8 12. Full Integration. Each of the parties represents, warrants, and agrees that in
9 executing this Settlement Agreement it has relied solely on the statements set forth herein and the
10 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
11 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
12 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
13 failure of any party or any other person or entity to make any statement, representation or disclosure
14 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
15 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to
16 preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of
17 this Settlement Agreement.

18 13. Presumption from Drafting. In that the parties have had the opportunity to draft,
19 review and edit the language of this Settlement Agreement, no presumption for or against any party
20 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
21 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
22 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
23 of uncertainty, language of a contract should be interpreted most strongly against the party who
24 caused the uncertainty to exist.

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

28 15. Waiver, Modification, and Qualified Integration. The waiver of any provision of

1 this Settlement Agreement shall not operate to waive any other provision set forth herein, and any
2 waiver, amendment and/or change to the terms of this Settlement Agreement must be in writing and
3 signed by the parties.

4 16. Counterparts. The parties agree that this Settlement Agreement may be executed in
5 one or more separate counterparts, each of which when so executed, shall be deemed an original. A
6 fax signature shall be deemed the same as an original signature. Such counterparts shall together
7 constitute and be one and the same instrument.

8 17. Headings and Governing Law. The headings to the paragraphs of this Settlement
9 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
10 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
11 construed and enforced in accordance with and governed by California law.

12 18. Effective Date. This Settlement Agreement shall not become effective until signed
13 and delivered by all parties.

14 19. Notice. Any notice required under this Settlement Agreement shall be addressed as
15 follows:

16 To Respondents:

Rose Pothier, Esq.
Pothier & Associates
2122 North Broadway, Second Floor
Santa Ana, California 92706

Karel Rocha, Esq.
Prenovost, Normandin, Bergh & Dawe
2122 North Broadway, Second Floor
Santa Ana, California 92706

23 To the Commissioner:

Sophia C. Kim
Counsel, Enforcement Division
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

28 20. Authority to Execute. Each signator hereto covenants that he/she possesses all

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 6/8/15

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 6/5/15

AMERICAN LIBERTY ESCROW, INC.

By _____
GILBERT PINO
President and Owner

Dated: 6/5/15

By _____
GILBERT PINO
An Individual

APPROVED AS TO FORM:

Rose Pothier, Esq.
Pothier & Associates
Counsel for American Liberty Escrow, Inc. and Gilbert Pino

Karel Rocha, Esq.
Prenovost, Normandin, Bergh & Dawe
Counsel for American Liberty Escrow, Inc. and Gilbert Pino