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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 Accusation Against:
13
14 **THE COSMO FACTORY**
COSMETOLOGY ACADEMY; JAMES
15 **FISHER (OWNER)**
131 B Front Street
16 Santa Cruz, CA 95060
17 **Institution Code Number 98311708**
18 Respondent.

Case No. 1001841
OAH No. 2019040990
**STIPULATED SETTLEMENT AND
WITHDRAWAL OF ACCUSATION AND
ISSUANCE OF CITATION NUMBER
1920063**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Dr. Michael Marion, Jr. (Complainant) is the Chief of the Bureau for Private
24 Postsecondary Education (Bureau). He brought this action solely in his official capacity and is
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
26 Susana A. Gonzales, Deputy Attorney General.

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28 ///

1 CONTINGENCY

2 8. By signing the stipulation, the parties understand and agree that they may not
3 withdraw their agreement or seek to rescind the stipulation.

4 9. The parties understand and agree that Portable Document Format (PDF) and facsimile
5 copies of this Stipulated Settlement, including Portable Document Format (PDF) and facsimile
6 signatures thereto, shall have the same force and effect as the originals.

7 10. This Stipulated Settlement is intended by the parties to be an integrated writing
8 representing the complete, final, and exclusive embodiment of their agreement. It supersedes any
9 and all prior or contemporaneous agreements, understandings, discussions, negotiations, and
10 commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be
11 altered, amended, modified, supplemented, or otherwise changed except by a writing executed by
12 an authorized representative of each of the parties.

13 11. In consideration of the foregoing, the parties agree that the Bureau may, without
14 further notice or formal proceeding, issue and enter the following Order:

15 ORDER

16 12. Complainant shall withdraw the pending Accusation in Case No. 1001841 and, in
17 place of the Accusation, issue Citation Number 1920063 to Respondent pursuant to Business and
18 Professions Code section 129.5, Education Code section 94936, and California Code of
19 Regulations, title 5, section 75020, on the terms set forth below.

20 13. Respondent agrees to waive its right to appeal Citation Number 1920063 and request
21 an informal conference or administrative hearing.

22 14. Respondent agrees to pay the Bureau its cost recovery in the amount of nine thousand
23 nine-hundred and forty-nine dollars and ninety-nine cents (\$9,949.99), pursuant to Business and
24 Professions Code section 125.3. Respondent shall pay the \$9,949.99 in six equal monthly
25 payments, with the first payment due thirty (30) days from the issuance of Citation Number
26 1920063. Subsequent payments shall be made on or before the first day of the month following
27 Respondent's initial payment. Respondent must pay the cost recovery in full within six months of
28 the issuance of Citation Number 1920063.

1 15. Compliance with Citation Number 1920063 shall not constitute an admission of the
2 violations charged.

3 16. Failure to comply with this agreement and Citation Number 1920063 within the time
4 agreed upon will subject Respondent's approval to operate to further discipline.

5 17. Respondent agrees that Citation Number 1920063 will become final on the date on
6 which the Stipulated Settlement is signed by counsel for Complainant, and Respondent shall not
7 contest or appeal the Citation.

8 18. Respondent is hereby cited for violating the following sections of the Education Code
9 and Title 5 of the California Code of Regulations:

10 a. **Education Code section 94897.** Respondent engaged in prohibited business practices
11 by making untrue or misleading statements related to test scores, grades or records of grades,
12 attendance records, and records indicating student completion, in violation of Education Code
13 section 94897, subdivision (j). Respondent's conduct resulted in a falsified Enrollment
14 Agreement and attendance records in violation of Education Code section 94897, subdivision (k).
15 Respondent did not accurately define the term "approval" in its 2017 School Catalog, in that it did
16 not state clearly and conspicuously that approval to operate means compliance with state
17 standards, in violation of Education Code section 94897, subdivision (l). Respondent included
18 language in its 2017 School Catalog that could persuade a student not to report unlawful activity,
19 or complain to the Bureau, in violation of Education Code section 94897, subdivision (m).

20 **Order of Abatement:**

21 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
22 submit an updated School Catalog to the Bureau. The School Catalog should accurately define the
23 term "approval," and should not include language which could persuade a student to not report
24 unlawful activity or complain to the Bureau. The School Catalog must comply with Education
25 Code section 94909, and California Code of Regulations, title 5, section 71810.

26 b. **California Code of Regulations, title 5, section 71660.** Respondent advertised a
27 class on its website that is not approved by the Bureau, and for which it does not have an
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1 application on file with Bureau to add the unapproved program. Respondent also failed to notify
2 the Bureau within 30 days of adding a program related to an approved program.

3 **Order of Abatement:**

4 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
5 shall provide the Bureau with a list of all programs offered and approved by the Bureau, as well as
6 submit an application to the Bureau to add an unapproved program if Respondent wishes to add a
7 program.

8 c. **California Code of Regulations, title 5, section 76120, subdivision (a).** Respondent
9 did not accurately charge a student the Student Tuition Recovery Fund (STRF) assessment fee
10 when the student enrolled in 2012. The fee was \$2.50 per \$1,000 of total institutional charges
11 when the student enrolled in 2012. The student was charged \$17.25 for STRF fees, but should
12 have been charged \$30.00 based on total institutional charges of \$11,675.00.

13 **Order of Abatement:**

14 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
15 submit to the Bureau its policy or procedure for calculating STRF assessment fees in compliance
16 with California Code of Regulations, title 5, section 76120.

17 d. **Education Code section 94919, subdivision (a).** Respondent provided an inaccurate
18 refund calculation due to its miscalculation of attendance rates and a noncompliant refund policy.

19 e. **California Code of Regulations, title 5, section 71750.** Respondent violated the
20 refund requirements by providing a refund calculation that is inaccurate due to its miscalculation
21 of attendance rates and a non-compliant refund policy. The documents collected by the Bureau
22 regarding student N.H. indicate that Respondent used incorrect information regarding N.H.'s
23 attendance rate to calculate the refund. Respondent did not provide a pro rata refund because it
24 charged N.H. a withdrawal fee that was above and beyond the deposit or application fee. (Cal.
25 Code of Regs., tit. 5, § 71750, subds. (a)-(c).) Respondent's withdrawal log does not show the
26 dates of N.H.'s withdrawal on October 26, 2012, or April 5, 2013. (Cal. Code of Regs., tit. 5, §
27 71750, subd. (f).) N.H.'s file contains timecards demonstrating attendance between September 11,
28 2012 and October 26, 2012, and does not contain documentation reflecting N.H.'s withdrawal.

1 **Order of Abatement:**

2 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
3 submit a refund policy to the Bureau that complies with Education Code section 94919.

4 **f. California Code of Regulations, title 5, section 71770, subdivisions (a)(1), and (c).**

5 Respondent failed to collect documentation from students E.M., N.H., and S.K., establishing that
6 these students possessed a high school diploma or its equivalent, or otherwise successfully took
7 and passed the relevant examination as required under Education Code section 94904. (Cal. Code
8 of Regs., tit. 5, § 71770, subd. (a)(1).) In addition, Respondent's School Catalog does not contain
9 information regarding the policies and procedures related to accepting credit for prior experiential
10 training. (Cal. Code of Regs., tit. 5, § 71770, subd. (c).)

11 **Order of Abatement:**

12 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
13 submit proof to the Bureau that its School Catalog contains information regarding the policies and
14 procedures related to accepting credit for prior experiential training and that it is in compliance
15 with Education Code section 94909, and California Code of Regulations, title 5, section 71810.

16 **g. Education Code section 94912.** The files for students N.H., A.M., and S.K. did not
17 include proof that the required information was disclosed to the students and initialed and dated by
18 the students and the institution prior to executing their Enrollment Agreements.

19 **Order of Abatement:**

20 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
21 shall submit to the Bureau a policy or procedure for how Respondent will disclose required
22 information to students, and the policy or procedure for how students and the institution will initial
23 and date such information prior to executing their Enrollment Agreements.

24 **h. Education Code section 94909, subdivision (a); California Code of Regulations,**
25 **title 5, section 71810, subd. (b)(7).** Respondent's 2017 School Catalog failed to meet the
26 minimum requirements for a school catalog. Specifically, Respondent's 2017 School Catalog:
27 (1) does not contain the list of the requirements to be eligible sit for licensure in either of the
28 programs listed (Educ. Code, § 94909, subd. (a)(6)); (2) does not contain the qualifications of

1 current faculty (Educ. Code, § 94909, subd. (a)(7)); (3) contains a statement that Respondent
2 accepts credit based on challenge examinations but does not contain the information regarding
3 procedures or requirements for challenge examinations (Educ. Code, § 94909, subd. (a)(8)(A));
4 (4) does not include the schedule of total charges for a period of attendance (Educ. Code, § 94909,
5 subd. (a)(9)); and (5) does not include the required verbatim statement concerning the
6 transferability of credits, and is missing the required “the educational program” statement (Educ.
7 Code, § 94909, subd. (a)(15)). In addition, Respondent’s 2017 School Catalog does not contain
8 information regarding the policies and procedures related to accepting credit for prior experiential
9 learning. (Cal. Code of Regs., tit. 5, § 71810, subd. (b)(7).)

10 **Order of Abatement:**

11 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
12 submit proof to the Bureau that its School Catalog meets the minimum requirements of Education
13 Code section 94909 and California Code of Regulations, title 5, section 71810.

14 **i. California Code of Regulations, title 5, section 71720, subdivision (b)(2).**

15 Respondent was unable to provide proof that its faculty participated in continuing education.

16 **Order of Abatement:**

17 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
18 submit proof to the Bureau that each of its faculty members participates in continuing education.

19 **j. Education Code section 94900.5, subdivision (b).** Respondent was unable to

20 provide faculty files or the names, addresses, and records of the educational qualifications of each
21 member of its faculty during the Bureau’s on-site investigation on June 29, 2016.

22 **Order of Abatement:**

23 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
24 submit to the Bureau the names, addresses, and records of the educational qualifications of each
25 member of its faculty.

26 **k. Education Code section 94913; California Code of Regulations, title 5, section**

27 **74117.** As of March 8, 2017, Respondent’s website did not contain a link to the Bureau’s website,
28 nor links to its most recent annual report submitted to the Bureau, its catalog, or its most recent

1 School Performance Fact Sheet (SPFS). (Educ. Code, § 94913, subds. (a)(1)-(3) & (5).) In
2 addition, as of March 8, 2017, Respondent's website homepage did not contain clear and
3 conspicuous links to the information required under Education Code section 94913, subdivision
4 (a). (Cal. Code of Regs., tit. 5, § 74117.)

5 **Order of Abatement:**

6 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
7 submit proof to the Bureau that its website has been updated and is in compliance with Education
8 Code section 94913, and California Code of Regulations, title 5, section 74117.

9 l. **Education Code section 94900, subdivisions (b)(1), (2), and (3).** Respondent's files
10 for graduated and withdrawn students did not contain a transcript reflecting the certificate granted,
11 the date on which the certificate was granted, the courses and units on which the certificate was
12 based, or the grades earned by the students

13 **Order of Abatement:**

14 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
15 submit to the Bureau a policy or procedure in compliance with Education Code section 94900.

16 m. **California Code of Regulations, title 5, section 71920.** Respondent's student
17 records fail to comply with the Bureau's regulations. Student files did not contain: (1) proof of a
18 High School Diploma, GED, or ATB (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(A));
19 (2) records documenting hours of credit that have been accepted and applied by Respondent as
20 transfer credit (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(B)); (3) documentation for dates of
21 student N.H.'s leave of absence or attendance, making it impossible for the Bureau to determine
22 N.H.'s dates of attendance or leave or information regarding N.H.'s date of withdrawal (Cal. Code
23 Regs., tit. 5, § 71920, subd. (b)(4)); (4) a transcript showing the courses that were completed or
24 attempted and not completed (Cal. Code Regs., tit. 5, § 71920, subd. (b)(5)(A)); (5) financial aid
25 documentation for disbursements received by the institution (Cal. Code Regs., tit. 5, § 71920,
26 subd. (b)(8)); (6) a document showing the total amount of money received by or on behalf of
27 student N.H. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(9)); and (7) a document specifying the
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1 amount of refund, including the method of calculating the refund provided to student N.H. (Cal.
2 Code Regs., tit. 5, § 71920, subd. (b)(10)).

3 n. **California Code of Regulations, title 5, section 71930.** Respondent failed to
4 maintain the required records, such as documentation that faculty members were participating in
5 continuing education, and a second set of academic records when the first set is not stored in a
6 manner that is secure from loss or damage. Respondent was storing student files in cardboard
7 boxes throughout its administrative offices. Respondent was unable to provide SPFS backup
8 documentation or the 2014 Annual Report.

9 **Order of Abatement:**

10 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
11 shall submit to the Bureau its policy or procedure for maintaining compliance with California
12 Code of Regulations, title 5, section 71930.

13 o. **California Code of Regulations, title 5, section 74112, subdivision (h).**
14 Respondent's documentation provided to the Bureau in support of its 2013/2014 SPFS did not
15 include the address, phone number, email address, program start dates, place of employment and
16 position, salary, hours, and description of all attempts to contact each student. The documentation
17 also did not include the name, email address, phone number, and position or title of the
18 institution's representative who is primarily responsible for obtaining the students' completion,
19 placement, licensing, salary and wage data, the date the information was gathered, and copies of
20 notes, letters, or emails through which the information was requested and gathered.

21 p. **Education Code section 94929, subdivision (a).** Respondent did not accurately
22 report the completion rate for its programs on the 2013/2014 SPFS.

23 q. **Education Code section 94929.5, subdivision (a)(2).** Respondent did not accurately
24 report the license exam passage rate for its programs on the 2013/2014 SPFS.

25 **Order of Abatement:**

26 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
27 submit a policy or procedure to the Bureau of how it will maintain compliance with California
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1 Code of Regulations, title 5, section 74112, subdivision (h), and Education Code sections 94929
2 and 94929.5.

3 r. Education Code section 94934, subdivision (a); California Code of Regulations,
4 title 5, section 74110, subdivisions (b), (c). Respondent did not submit documentation, including
5 financial statements, for the 2015 Annual Report by the December 1 deadline.


6 **Order of Abatement:**

7 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent
8 submit to the Bureau its policy or procedure for maintaining compliance with California Code of
9 Regulations, title 5, section 74110, and Education Code section 94934.

10
11 ACCEPTANCE

12 I have carefully read and understand the Stipulated Settlement. I enter into this Stipulated
13 Settlement voluntarily, knowingly, and intelligently, and agree to be bound by its terms.

14
15 DATED: 9/5/19


16 THE COSMO FACTORY COSMETOLOGY
17 ACADEMY
18 JAMES FISHER, OWNER
19 Respondent

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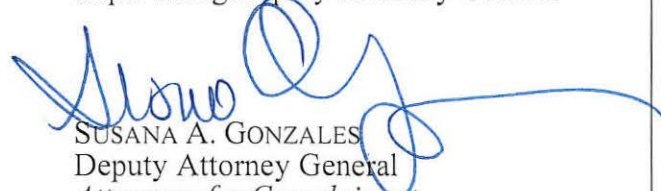
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ACCEPTANCE ON BEHALF OF COMPLAINANT

I have discussed the terms and conditions of the above Stipulated Settlement with Complainant or Complainant's designee and agree to the stipulation on Complainant's behalf.

DATED: 9/5/19

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General


SUSANA A. GONZALES
Deputy Attorney General
Attorneys for Complainant

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