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7  
8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
13 Against:

Case No. 1004060

14 **ADVANCED VOCATIONAL INSTITUTE;**  
15 **RASHAD M. SAID, 50% Owner**  
16 **1925 S. Winchester Blvd., Suite 205**  
17 **Campbell, CA 95008**

**FIRST AMENDED ACCUSATION**

18 **JOANNE WINTERBERG, 50% Owner**  
19 **1925 S. Winchester Blvd., Suite 205**  
20 **Campbell, CA 95008**

**Institution Code No. 65686922**

Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

24 1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official  
25 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of  
26 Consumer Affairs.

27 2. On or about July 29, 2011, the Bureau for Private Postsecondary Education (Bureau)  
28 issued an Approval to Operate a Non-Accredited Institution to Advanced Vocational Institute,

1 Institution Code Number 65686922. Advanced Vocational Institute (Respondent) is jointly and  
2 equally owned by two shareholders: Rashad M. Said, 50% Owner, Joanne Winterberg, 50%  
3 Owner. The Approval to Operate was in full force and effect at all times relevant to the charges  
4 brought herein, and was set to expire on July 28, 2016. Respondent timely filed an Application  
5 for Renewal of Approval to Operate an Institution Non-Accredited on or about July 27, 2016.  
6 The Bureau denied the application on or about December 5, 2018, and Respondent has appealed  
7 the denial, and requested a hearing. Pursuant to Respondent's Approval to Operate, Respondent  
8 was permitted to teach the following programs: Computerized Accounting/Bookkeeping,  
9 Customer Service, General Office, Medical Billing and Coding, and Medical Front Office.

### 10 **JURISDICTION**

11 3. This Accusation is brought before the Director of the Department of Consumer  
12 Affairs (Director) for the Bureau under the authority of the following laws. All section references  
13 are to the Education Code unless otherwise indicated.

14 4. Code section 94932 states:

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

24 5. Code section 94933 states:

25 The bureau shall provide an institution with the opportunity to remedy  
26 noncompliance, impose fines, place the institution on probation, or suspend or revoke  
27 the institution's approval to operate, in accordance with this article, as it deems  
28 appropriate based on the severity of an institution's violations of this chapter, and the  
harm caused to students.

6. Code section 94937 states, in pertinent part:

(a) As a consequence of an investigation, which may incorporate any materials  
obtained or produced in connection with a compliance inspection, and upon a finding  
that an institution has committed a violation, the bureau may place an institution on  
probation or may suspend or revoke an institution's approval to operate for:

...

1 (2) A material violation or repeated violations of this chapter or regulations  
2 adopted pursuant to this chapter that have resulted in harm to students. For  
3 purposes of this paragraph, “material violation” includes, but is not limited to,  
4 misrepresentation, fraud in the inducement of a contract, and false or misleading  
5 claims or advertising, upon which a student reasonably relied in executing an  
6 enrollment agreement and that resulted in harm to the student.

7 ...

8 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business  
9 and Professions Code.

10 ....

11 7. Section 118 of the Business and Professions Code provides, in pertinent part:

12 (b) The suspension, expiration, or forfeiture by operation of law of a license  
13 issued by a board in the department, or its suspension, forfeiture, or cancellation by  
14 order of the board or by order of a court of law, or its surrender without the written  
15 consent of the board, shall not, during any period in which it may be renewed,  
16 restored, reissued, or reinstated, deprive the board of its authority to institute or  
17 continue a disciplinary proceeding against the licensee upon any ground provided by  
18 law or to enter an order suspending or revoking the license or otherwise taking  
19 disciplinary action against the licensee on any such ground.

20 8. Section 477 of the Business and Professions Code states:

21 As used in this division:

22 (a) “Board” includes “bureau,” “commission,” “committee,” “department,”  
23 “division,” “examining committee,” “program,” and “agency.”

24 (b) “License” includes certificate, registration or other means to engage in a  
25 business or profession regulated by this code.

### 26 **STATUTORY PROVISIONS**

27 9. Section 94893 of the Code provides:

28 If an institution intends to make a substantive change to its approval to operate, the  
institution shall receive prior authorization from the bureau. Except as provided in  
subdivision (a) of Section 94896, if the institution makes the substantive change  
without prior bureau authorization, the institution’s approval to operate may be  
suspended or revoked.

10. Section 94894 of the Code provides, in pertinent part:

The following changes to an approval to operate are considered substantive changes  
and require prior authorization:

...  
...

(g) A significant change in the method of instructional delivery.

1 11. Section 94897 of the Code provides, in pertinent part:

2 An institution shall not do any of the following:

3 ...

4 (j) In any manner make an untrue or misleading change in, or untrue or misleading  
5 statement related to, a test score, grade or record of grades, attendance record, record  
6 indicating student completion, placement, employment, salaries, or financial  
information, including any of the following:

7 ...

8 (3) Any other record or document required by this chapter or by the bureau.

9 12. Section 94901 of the Code provides, in pertinent part:

10 (a) An institution's recruiters shall be employees.

11 ...

12 13. Section 94902 of the Code provides, in pertinent part:

13 (a) A student shall enroll solely by means of executing an enrollment agreement.  
14 The enrollment agreement shall be signed by the student and by an authorized  
employee of the institution.

15 (b) An enrollment agreement is not enforceable unless all of the following  
16 requirements are met:

17 (1) The student has received the institution's catalog and School  
Performance Fact Sheet prior to signing the enrollment agreement.

18 ...

19 (3) Prior to the execution of the enrollment agreement, the student and the  
20 institution have signed and dated the information required to be disclosed in the  
Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of  
21 Section 94910. Each of these items in the Student Performance Fact Sheet shall  
include a line for the student to initial and shall be initialed and dated by the student.

22 14. Section 94904 of the Code provides, in pertinent part:

23 (a) Except as provided in subdivision (c), before an ability-to-benefit student may  
24 execute an enrollment agreement, the institution shall have the student take an  
independently administered examination from the list of examinations prescribed by  
25 the United States Department of Education pursuant to Section 484(d) of the federal  
Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.). The student shall not  
26 enroll unless the student achieves a score, as specified by the United States  
Department of Education, demonstrating that the student may benefit from the  
27 education and training being offered.

28 (b) If the United States Department of Education does not have a list of relevant

1 examinations that pertain to the intended occupational training, the bureau may  
2 publish its own list of acceptable examinations and required passing scores.

3 ...

### 4 REGULATORY PROVISIONS

5 15. The California Code of Regulations (CCR), title 5, section 71600, provides, in  
6 pertinent part:

7 (a) An institution seeking to make a significant change in its method of  
8 instructional delivery shall complete the "Significant Change in Method of  
9 Instructional Delivery" form (INS rev. 2/10) to obtain prior authorization. For the  
10 purposes of this section a "significant change in instructional delivery" is any change  
11 that alters the way students interact with faculty or access significant equipment. The  
12 form shall be submitted to the Bureau along with the appropriate fee as provided in  
13 Section 94930.5(c) of the Code. For an institution approved under section 94885 of  
14 the Code, it shall be signed and dated by the signatory(ies) required by section 71380,  
15 and for an institution approved under section 94890 of the Code, it shall be signed  
16 and dated by the signatory(ies) required by section 71390, and each fact stated therein  
17 and each attachment thereto shall be declared to be true under penalty of perjury, in  
18 the following form:

19 "I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing and all attachments are true and correct.....

21 (Date) .....

22 (Signature)"

23 16. CCR, title 5, section 71770, provides, in pertinent part:

24 (a) The institution shall establish specific written standards for student admissions  
25 for each educational program. These standards shall be related to the particular  
26 educational program. An institution shall not admit any student who is obviously  
27 unqualified or who does not appear to have a reasonable prospect of completing the  
28 program. In addition to any specific standards for an educational program, the  
admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma  
program, shall possess a high school diploma or its equivalent, or otherwise  
successfully take and pass the relevant examination as required by section 94904 of  
the Code.

...  
23

24 17. CCR, title 5, section 71920, provides, in pertinent part:

25 (a) The institution shall maintain a file for each student who enrolls in the  
26 institution whether or not the student completes the educational service.

27 (b) In addition to the requirements of section 94900, the file shall contain all of the  
28 following pertinent student records:

(1) Written records and transcripts of any formal education or training,

1 testing, or experience that are relevant to the student's qualifications for admission to  
2 the institution or the institution's award of credit or acceptance of transfer credits  
3 including the following:

4 (A) Verification of high school completion or equivalency or other  
5 documentation establishing the student's ability to do college level work, such as  
6 successful completion of an ability-to-benefit test;

7 ...

8 (9) A document showing the total amount of money received from or on  
9 behalf of the student and the date or dates on which the money was received;

10 ...

11 18. CCR, title 5, section 71930, provides, in pertinent part:

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

14 ...

15 (c) A record is considered current for three years following a student's completion or  
16 withdrawal. A record may be stored on microfilm, microfiche, computer disk, or any  
17 other method of record storage only if all of the following apply:

18 ...

19 (2) For a record that is current, the institution maintains functioning devices that  
20 can immediately reproduce exact, legible printed copies of stored records. The  
21 devices shall be maintained in reasonably close proximity to the stored records at the  
22 institution's primary administrative location in California. For a record that is no  
23 longer current, the institution shall be able to reproduce exact, legible printed copies  
24 within two (2) business days.

25 (3) The institution has personnel scheduled to be present at all times during normal  
26 business hours who know how to operate the devices and can explain the operation of  
27 the devices to any person authorized by the Act to inspect and copy records; and

28 (4) Any person authorized by the Act or this chapter to inspect and copy records  
shall be given immediate access to the document reproduction devices for the purpose  
of inspecting and copying stored records and shall, upon request, reimburse the  
institution for the reasonable cost of using the institution's equipment and material to  
make copies at a rate not to exceed ten cents (\$ 0.10) per page.

...  
...  
...

(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.

...  
...  
...

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1 19. CCR, title 5, section 74110, provides, in pertinent part:

2 (a) The annual report required by Section 94934 of the Code shall include the  
3 information required by sections 94929.5 and 94934 for all educational programs  
4 offered in the prior calendar year, and all of the following for the prior calendar year:

5 ...

6 (5) Information regarding participation in other public funding programs, including  
7 the amount of funding received from each public funding source; for purposes of this  
8 section, public funding is any financial aid paid on behalf of students or directly to an  
9 institution from any public source, such as the Workforce Investment Act, any  
10 veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code  
11 of Federal Regulations or any other financial aid program that is intended to help  
12 students pay education-related expenses, including tuition, fees, room and board, and  
13 supplies for education; . . .

14 20. CCR, title 5, section 74112, provides, in pertinent part:

15 ...

16 (e) Reporting periods:

17 ...

18 (2) A Performance Fact Sheet shall be current and available not later than  
19 December 1st, and shall report data for the previous two calendar years based upon  
20 the "number of students who began the program," as defined in subdivision (d)(1) of  
21 this section and were scheduled to graduate in the reported year(s).

22 **COST RECOVERY**

23 21. Section 125.3 of the Business and Professions Code provides, in pertinent part, that  
24 the Bureau may request the administrative law judge to direct a licentiate found to have  
25 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable  
26 costs of the investigation and enforcement of the case, with failure of the licentiate to comply  
27 subjecting the license to not being renewed or reinstated. If a case settles, recovery of  
28 investigation costs may be included in a stipulated settlement.

**FACTUAL BACKGROUND**

29 22. On or about August 15, 2017, the Bureau received a complaint from Insurance  
30 Company of the West (ICW) regarding Respondent. ICW's investigator complained that  
31 Respondent had invoiced ICW for \$6,000.00 for a Supplemental Job Displacement Benefit

1 voucher for a student (Student RB) that had never enrolled with Respondent. Following receipt  
2 of this complaint, the Bureau opened an investigation.

3 23. During the course of the investigation, the Bureau's investigator conducted a site visit  
4 at Respondent on or about September 25, 2017, and met with 50%-owner Rashad M. Said (Said).  
5 The investigator requested documents, including student files, a current student roster, and  
6 Student RB's student file. The investigator requested random student files for students appearing  
7 on the current roster provided by Said. Said stated that his colleague, 50%-owner Joanne  
8 Winterberg (Winterberg), maintained several student files online, and that she was out of town.  
9 Said claimed he could not provide the investigator with copies of the 2013-2016 former student  
10 rosters, 2013-2016 Student Tuition Recovery Fund (STRF) substantiating reports, or faculty  
11 records requested by the investigator, due to Winterberg's absence. The 2016 Annual Report for  
12 Respondent inaccurately reported the Workforce Innovation and Opportunity Act (WIOA) funds  
13 received by the institution, and further inaccurately reported the number of students enrolled.

14 24. Two of the student files did not have a High School Diploma or Ability-to-Benefit  
15 documentation. At least four student files did not contain a document showing the total amount  
16 of money received from or on behalf of the student. At least three students were not provided  
17 with the appropriate School Performance Fact Sheet (SPFS) required to be provided prior to the  
18 execution of an enrollment agreement. Respondent further failed to maintain records of the  
19 courses, grades, or certificates concerning each student in the student files.

20 25. No students were present at Respondent during the September 25, 2017, site visit.  
21 Said stated that all students were enrolled in Skill Soft online training, and that 50%-owner  
22 Winterberg was the only instructor for Respondent. Respondent did not have Bureau approval to  
23 conduct distance learning or to offer courses via Skill Soft. At least three of the student files  
24 reviewed contained student agreements to study in Online Course forms.

25 26. Said further conceded at the September 25, 2017, investigator site visit that  
26 Respondent would receive student referrals from Workers Compensation (WC) counselors, and  
27 that Respondent would pay WC counselors fees for the referrals. The WC counselors were not  
28 Respondent's employees.



1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Enrollment Violations)**

3 27. Respondent has subjected its approval to operate to disciplinary action by not  
4 ensuring that students had high school diplomas and/or passed Ability-to-Benefit (ATB) tests  
5 prior to signing enrollment agreements, as required by Code sections 94902 and 94904, as set  
6 forth above in paragraphs 22-24, above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Student Records Violations)**

9 28. Respondent has subjected its approval to operate to disciplinary action under CCR,  
10 title 5, sections 71770(a)(1) and/or 71920(b)(1)(A) for failing to maintain student files with the  
11 required proof of high school diploma or equivalent, or ATB test results, as set forth in  
12 paragraphs 22-24, above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Student Records Violations)**

15 29. Respondent has subjected its approval to operate to disciplinary action under CCR,  
16 title 5, section 71920(b)(9) for failing to maintain student files that included a document showing  
17 the money received from, or on behalf of, the students, as set forth in paragraphs 22-24, above.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Student Records Violations)**

20 30. Respondent has subjected its approval to operate to disciplinary action under Code  
21 section 94902(b)(1)(3) and CCR, title 5, section 74112(e)(2), for failing to provide three students  
22 with current SPFS for the correct reporting period, as set forth in paragraphs 22-24, above.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Maintenance of School Records Violations)**

25 31. Respondent has subjected its approval to operate to disciplinary action under CCR,  
26 title 5, section 71930, for failing to provide Bureau staff with the 2013-2016 former student  
27 rosters, 2013-2016 Student Tuition Recovery Fund (STRF) substantiating reports, or faculty  
28 records requested by the investigator, as set forth in paragraphs 22-23, above.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unapproved Program & Distance Education)**

3 32. Respondent has subjected its approval to operate to disciplinary action under Code  
4 sections 94893 and 94894(g), and CCR, title 5, section 71600, for offering and teaching Skill  
5 Soft and distance education, when Respondent was not approved by the Bureau to offer Skill Soft  
6 or distance education, as set forth in paragraphs 22 and 25, above.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Prohibited Business Practices)**

9 33. Respondent has subjected its approval to operate to disciplinary action under Code  
10 section 94897(j)(3) and CCR, title 5, section 74110, for failing to accurately report the WIOA  
11 funds on its 2016 Annual Report, and for failing to accurately report the number of students  
12 enrolled on their 2016 Annual Report, as set forth in paragraph 23, above.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Recruiter Violations)**

15 34. Respondent has subjected its approval to operate to disciplinary action under Code  
16 section 94901, for obtaining student referrals from WC counselors, and paying WC counselors  
17 fees, as set forth in paragraph 26, above. An institution’s recruiters must be employees.

18 **PRAYER**

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

22 1. Revoking or suspending Approval to Operate Non-Accredited Institution Number  
23 65686922, issued to Advanced Vocational Institute, Rashad M. Said and Joanne Winterberg;

24 2. Ordering Respondents Rashad M. Said and Joanne Winterberg to pay the Bureau for  
25 Private Postsecondary Education the reasonable costs of the investigation and enforcement of this  
26 case, pursuant to Business and Professions Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

\_\_\_\_\_  
DR. MICHAEL MARION, JR.  
Chief  
Bureau for Private Postsecondary  
Education  
Department of Consumer Affairs  
State of California  
*Complainant*

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