

1 XAVIER BECERRA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar No. 200659
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3435
6 Facsimile: (415) 703-5480
Attorneys for Complainant
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 Accusation Against:

Case No. 1004073

13 **HOLBERTON INC.**
14 **972 Mission Street – 1st Floor**
15 **San Francisco, CA 94103**

ACCUSATION

16 **Approval to Operate a Non-accredited**
17 **Institution, Code No. 47845455,**

Respondent.

18
19 **PARTIES**

20 1. Dr. Michael Marion, Jr. (Complainant) brings this accusation solely in his official
21 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of
22 Consumer Affairs.

23 2. On or about July 11, 2018, the Bureau issued an Approval to Operate a Non-
24 accredited Institution, Code No. 47845455, to Holberton Inc. (Respondent). This approval to
25 operate was in full force and effect at all times relevant to the charges brought in this accusation
26 and will expire on July 11, 2023, unless renewed.

27 **JURISDICTION**

28 3. This accusation is brought before the Director of the Department of Consumer

1 Affairs (Director) for the Bureau under the authority of the following laws. All section references
2 are to the Education Code unless otherwise indicated.

3 4. Business and Professions Code section 118, subdivision (b), states:

4 “The suspension, expiration, or forfeiture by operation of law of a license issued by a
5 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
6 order of a court of law, or its surrender without the written consent of the board, shall not, during
7 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
8 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
9 provided by law or to enter an order suspending or revoking the license or otherwise taking
10 disciplinary action against the licensee on any such ground.”

11 5. Section 94875 states:

12 “The Bureau for Private Postsecondary Education, as established by Section 6 of Chapter
13 635 of the Statutes of 2007, is continued in existence and shall commence operations. This
14 chapter establishes the functions and responsibilities of the bureau, for the purposes of Section 6
15 of Chapter 635 of the Statutes of 2007. The bureau shall regulate private postsecondary
16 educational institutions through the powers granted, and duties imposed, by this chapter. In
17 exercising its powers, and performing its duties, the protection of the public shall be the bureau’s
18 highest priority. If protection of the public is inconsistent with other interests sought to be
19 promoted, the protection of the public shall be paramount.”

20 6. Section 94877 states in part:

21 “(d) The bureau shall establish a program to proactively identify unlicensed institutions,
22 identify material or repeated violations of this chapter and regulations implementing this chapter,
23 and take all appropriate legal action.”

24 **STATUTORY PROVISIONS**

25 7. Section 94886 states:

26 “Except as exempted in Article 4 (commencing with Section 94874) or in compliance
27 with the transition provisions in Article 2 (commencing with Section 94802), a person shall not
28 open, conduct, or do business as a private postsecondary educational institution in this state

1 without obtaining an approval to operate under this chapter.”

2 8. Section 94897 states in part:

3 “An institution shall not do any of the following:

4 . . .

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

9 . . .

10 “(3) Any other record or document required by this chapter or by the bureau.”

11 9. Section 94937 states in part:

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

16 “(1) Obtaining an approval to operate by fraud.”

17 **COST RECOVERY**

18 10. Business and Professions Code section 125.3 states that the Bureau may request
19 the administrative law judge to direct a licentiate found to have committed a violation or
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
22 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
23 may be included in a stipulated settlement.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Approval to Operate Required)

26 11. Respondent has subjected its approval to operate to discipline under section 94886
27 for opening, conducting, or doing business as a private postsecondary educational institution
28 without obtaining an approval to operate. Respondent enrolled students into its program before

1 the Bureau issued its approval to operate on July 11, 2018.

2 **SECOND CAUSE FOR DISCIPLINE**

3 (Prohibited Business Practices)

4 12. Respondent has subjected its approval to operate to discipline under section 94897,
5 subdivision (j), for making untrue or misleading statements. The Bureau approved Respondent to
6 offer a two-year, 4331 hour, Full-Stack software engineer program. Respondent encouraged
7 students to leave the program after nine months of education and pursue employment. After
8 finding and maintaining employment for six months, Respondent requested that students have
9 their employers write letters to verify that the students had completed six months of employment
10 and were in good standing. Based on those letters, Respondent gave students credit for 15
11 months of education which the students had not completed, and issued graduation certificates to
12 those students.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Obtaining Approval to Operate by Fraud)

15 13. Respondent has subjected its approval to operate to discipline under section 94937,
16 subdivision (a)(1), for obtaining an approval to operate by fraud. As a condition of the Bureau
17 granting Respondent an approval to operate, Respondent agreed to not offer an income share
18 agreement (ISA) to students as a method of paying for their education. An ISA allows students to
19 defer paying their tuition at the beginning of their education program in exchange for paying the
20 institution a percentage of their income for a number of years after graduating. Respondent had
21 removed all mention of ISAs from its school catalog and enrollment agreement before it received
22 its approval to operate. However, it offered ISAs to students after it received an approval to
23 operate on July 11, 2018.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
26 accusation, and that following the hearing, the Director of the Department of Consumer Affairs
27 issues a decision:

- 28 1. Revoking or suspending Approval to Operate a Non-accredited Institution, Code

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

No. 47845455, issued to Respondent;

2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case under Business and Professions Code section 125.3; and

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

DATED: "2/4/2020"

"Original signature on file"
DR. MICHAEL MARION, JR.
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

SF2020200181
21793533.docx