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7

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

11 In the Matter of the Statement of Issues  
Against:  
12 **GENDARME INSTITUTE**  
13 **Application for Renewal of Approval to**  
14 **Operate Applicant**  
15 **Institution Code 3007651**

Case No. 1002020

**FIRST AMENDED STATEMENT OF**  
**ISSUES**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

20 1. Leeza Rifredi (Complainant) brings this First Amended Statement of Issues solely in  
21 her official capacity as the Deputy Chief of the Bureau for Private Postsecondary Education  
22 (Bureau), Department of Consumer Affairs.

23 2. On or about May 31, 2012, the Bureau received an Application for Renewal of  
24 Approval to Operate an Institution Non-Accredited, No. 24878 (Application) from Gendarme  
25 Institute (Respondent).

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28 ///

1           3. On or about May 29, 2012, N'dri Aboli certified under penalty of perjury to the  
2 truthfulness of all statements, answers, and representations in the application. The Bureau denied  
3 the application on or about June 24, 2016.

4   **JURISDICTION**

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

8           5. Section 94886 states:

9                                 Except as exempted in Article 4 (commencing with section 94874) or in  
10 compliance with the transition provisions in Article 2 (commencing with Section  
11 94802), a person shall not open, conduct, or do business as a private  
postsecondary educational institution in this state without obtaining an approval  
to operate under this chapter.

12           6. Section 94887 states:

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

17   **STATUTORY PROVISIONS<sup>1</sup>**

18           7. Section 94891 provides as follows:

19                                 (a) The bureau shall adopt by regulation the process and procedures  
20 whereby an institution may obtain a renewal of an approval to operate.

21                                 (b) To be granted a renewal of an approval to operate, the institution shall  
demonstrate its continued capacity to meet the minimum operating standards.

22                                 (c)(1) An institution that is denied renewal of an approval to operate may  
23 file an appeal in accordance with the procedures established by the bureau  
pursuant to Section 94888.

24                                 (2) An institution that has filed an appeal of a denial of a renewal  
25 application may continue to operate during the appeal process, but must disclose  
26 in a written statement, approved by the bureau, to all current and prospective  
students, that the institution's application for renewal of approval to operate was

27   <sup>1</sup> On October 11, 2009, the California Private Postsecondary Education Act (Act) of 2009  
28 was signed into law. (Educ. Code, §§94800, et seq.) The Act was recently amended, effective  
January 1, 2017. (*See*: Senate Bill No. 1192.) This Statement of Issues is based on the post-  
amendment version of the Act.

1 denied by the bureau because the bureau determined the application did not  
2 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.

3 (3) If the bureau determines that the continued operation of the institution  
4 during the appeal process poses a significant risk of harm to students, the bureau  
5 shall make an emergency decision pursuant to its authority provided in Section  
94938.

6 **REGULATORY PROVISIONS**

7 8. California Code of Regulations, title 5, section 71475, states, in pertinent part:

8 . . . .

9 (e) The institution shall submit at the time it applies for renewal current  
10 financial statements that meet the requirements of section 74115 as follows: (1)  
11 for an institution with annual gross revenues of \$500,000 and over, statements  
shall be audited; (2) for an institution with annual gross revenues less than  
\$500,000, statements shall be reviewed.

12 . . . .

13 9. California Code of Regulations, title 5, section 71700 states that "The Bureau may  
14 request that an institution document compliance with the standards set forth in the Act and this  
15 Division to obtain and maintain an approval to operate."

16 10. California Code of Regulations, title 5, section 71745, states as follows:

17 (a) The institution shall document that it has at all times sufficient assets  
18 and financial resources to do all of the following:

19 (1) Provide all of the educational programs that the institution represented  
it would provide.

20 (2) Ensure that all students admitted to its educational programs have a  
21 reasonable opportunity to complete the programs and obtain their degrees or  
diplomas.

22 (3) Maintain the minimum standards required by the Act and this chapter.

23 (4) Pay timely refunds as required by Article 13 of the Act.

24 (5) Pay all operating expenses due within 30 days.

25 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or  
26 greater at the end of the most recent fiscal year when using generally accepted  
27 accounting principles, or for an institution participating in Title IV of the federal  
Department of Education. For the purposes of this section, current assets does  
28 not include: intangible assets, including goodwill, going concern value,  
organization expense, startup costs, long-term prepayment of deferred charges,

1 and non-returnable deposits, or state or federal grant or loan funds that are not  
2 the property of the institution but are held for future disbursement for the benefit  
3 of students. Unearned tuition shall be accounted for in accordance with general  
4 accepted accounting principles.

5 .....

6 (c) An institution shall provide to the Bureau its most current financial  
7 statements upon request.

8 11. California Code of Regulations, title 5, section 74115, states:

9 (a) This section applies to every set of financial statements required to be  
10 prepared or filed by the Act or by this chapter.

11 (b) A set of financial statements shall contain, at a minimum, a balance  
12 sheet, an income statement, and a cash flow statement, and the preparation of  
13 financial statements, shall comply with all of the following:

14 (1) Audited and reviewed financial statements shall be conducted and  
15 prepared in accordance with the generally accepted accounting principles  
16 established by the American Institute of Certified Public Accountants by an  
17 independent certified public accountant who is not an employee, officer, or  
18 corporate director or member of the governing board of the institution.

19 (2) Financial statements prepared on an annual basis as required by section  
20 74110(b) shall be prepared in accordance with the generally accepted accounting  
21 principles established by the American Institute of Certified Public Accountants.  
22 Nonprofit institutions shall provide annual financial statements as required under  
23 generally accepted accounting principles for nonprofit organizations.

24 (3) The financial statements shall establish that the institution meets the  
25 requirements for financial resources required by Section 71745.

26 (4) If an audit performed to determine compliance with any federal or state  
27 student financial aid program reveals any failure to comply with the requirements  
28 of the program and the noncompliance creates any liability or potential liability  
for the institution, the financial statements shall reflect the liability or potential  
liability.

(5) Any audits shall demonstrate that the accountant obtained an  
understanding of the institution's internal financial control structure, assessed any  
risks, and has reported any material deficiencies in the internal controls.

(c) Work papers for the financial statements shall be retained for five years  
from the date of the statements and shall be made available to the Bureau upon  
request.

(d) "Current" with respect to financial statements means completed no  
sooner than 120 days prior to the time it is submitted to the Bureau, and covering  
no less than the most recent complete fiscal year. If more than 8 months will have  
elapsed between the close of the most recent complete fiscal year and the time it  
is submitted, the fiscal statements shall also cover no less than five months of  
that current fiscal year.

**FACTUAL BACKGROUND**

1  
2       12. On or about May 31, 2012, the Bureau received Respondent's Application, which  
3 included the following information:

- 4           • Limited Liability Company Articles of Organization filing with the California  
5           Secretary of State
- 6           • Announced Compliance Inspection Report
- 7           • Notice to Comply
- 8           • Catalog Minimum Requirements Checklist
- 9           • Enrollment Agreement Minimum Requirements Checklist
- 10          • Advertisement (email)

11       13. On or about June 8, 2012, the Bureau sent Respondent a letter that the Application  
12 was incomplete and requested that the Institution provide the following items and/or documents,  
13 in order for the Application to be deemed complete:

- 14           • Articles of Incorporation and Bylaws
- 15           • Enrollment Agreement (checklist attached)
- 16           • Advertisement
- 17           • Reviewed financial statements
- 18           • Catalog (checklist attached)
- 19           • Renewal fee late (35% penalty due) \$1,225.00

20       14. On or about February 1, 2013, the Bureau received a response from Respondent to its  
21 June 8, 2012 letter, with the following documentation:

- 22           • Articles of Incorporation and Bylaws
- 23           • Enrollment Agreement
- 24           • Compiled Financials
- 25           • Catalog
- 26           • Cashier Check in the amount of \$1,225.00 (35% late penalty fee)

27       15. On or about October 23, 2015, the Bureau sent a deficiency letter to Respondent,  
28 which indicated there were deficiencies in the following sections of the Application:

- 1 • Institution Contact Person, Section 2
- 2 • Form of Business Organization, Section 3
- 3 • Institution Representative, Section 8
- 4 • Mission and Objectives, Section 9
- 5 • Enrollment Agreement, Section 10
- 6 • Advertising and Other Public Statements, Section 12
- 7 • Financial Resources and Statements, Section 16
- 8 • Faculty, Section 17
- 9 • Catalog, Section 21
- 10 • Self-Monitoring Procedures, Section 24

11 16. On December 14, 2015, the Bureau received a response from Respondent, which  
12 included the following documentation:

- 13 • Institution's contact person's facsimile number
- 14 • Identified institution as an LLC Corporation
- 15 • Institution's representative's facsimile number
- 16 • Revised mission and objectives statement
- 17 • Enrollment Agreement (checklist included)
- 18 • Reviewed financials
- 19 • Catalog (checklist included)
- 20 • Self-Monitoring Procedures

21 17. On or about June 24, 2016, the Bureau denied the Application since it did not satisfy  
22 the minimum operating standards and certain deficiencies were not cured, as set forth in this  
23 Statement of Issues, below.

24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 **(Failure to Submit Current Financial Statements)**

26 18. Respondent's Application is subject to denial under Section 94891, subdivision (b), in  
27 that, on December 14, 2015, Respondent submitted reviewed financial statements for the fiscal  
28 year covering January 1, 2014 through December 31, 2014, which were not current, as defined in

1 California Code of Regulations, title 5, section 74115, subdivision (d). Furthermore, it could not  
2 be determined if the financial statements met the ratio of 1.25 to 1.00 as required by California  
3 Code of Regulations, title 5, section 71745, subdivision (a)(6), because the financial statements  
4 were not current, as defined by 74115, subdivisions (d).

5 19. Respondent's Application is also subject to denial under Section 94891, subdivision  
6 (b), in that, on or about August 8, 2017, the Bureau received compiled financial statements for  
7 Respondent for the year ended on December 31, 2015 which were not in compliance with  
8 California Code of Regulations, title 5, section 71745, subdivision (e) because they were not  
9 audited (if the institution has gross revenues of \$500,000 or more per year) or reviewed (if the  
10 institution has annual gross revenues less than \$500,000), as required by Section 71475,  
11 subdivision (e). In addition, it could not be determined if these financial statements met the ratio  
12 of 1.25 to 1.00 as required by California Code of Regulations, title 5, section 71745, subdivision  
13 (a)(6), because the financial statements were not current, as defined by 74115, subdivisions (d).

14 20. Respondent incorporates by reference herein Paragraphs 12-17, above.

15 **PRAYER**

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

- 19 1. Denying the application of Gendarme Institute for a Renewal of an Approval to  
20 Operate; and  
21 2. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 10/2/2017



24 LEEZA RIFREDI  
25 Deputy Bureau Chief  
26 Bureau for Private Postsecondary Education  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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