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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 Statement of Issues
Against:

13 **THE BROTHERS & SISTERS**
14 **BARBERCOSMO ACADEMY**

15 **Application for Approval to Operate an**
16 **Accredited Institution**

17 Respondent.

Case No. 1002666

OAH No. 2017110825

SECOND AMENDED STATEMENT OF
ISSUES

18 Complainant alleges:

19 PARTIES

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

23 2. On or about December 23, 2016, the Bureau for Private Postsecondary Education
24 ("Bureau") received an Application for Approval to Operate an Accredited Institution from
25 Respondent The Brothers & Sisters BarberCosmo Academy ("Respondent"). The Bureau denied
26 the application on April 12, 2017. On May 11, 2017, Respondent submitted to the Bureau a
27 request for administrative hearing as well as further documents in support of its application.

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JURISDICTION

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2 3. This Second Amended Statement of Issues is brought before the Director of the
3 Department of Consumer Affairs (“Director”) for the Bureau, under the authority of the following
4 laws. All section references are to the Education Code unless otherwise indicated.

5 4. **Section 94885, subdivision (a)** provides, in part:

6 “(a) The bureau shall adopt by regulation minimum operating standards for an institution
7 that shall reasonably ensure that all of the following occur:

8 “(1) The content of each educational program can achieve its stated objective.

9 ...

10 “(3) The facilities, instructional equipment, and materials are sufficient to enable students to
11 achieve the educational program's goals.

12 ...

13 “(7) That, upon satisfactory completion of an educational program, the institution gives
14 students a document signifying the degree or diploma awarded.

15 ...

16 “(9) The institution is maintained and operated in compliance with this chapter and all other
17 applicable ordinances and laws.”

18 5. **Section 94886** provides:

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

23 6. **Section 94887** provides:

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

1 “(7) A statement indicating whether the institution is, or is not, current in remitting Student
2 Tuition Recovery Fund assessments.

3 “(8) A statement indicating whether an accrediting agency has taken any final disciplinary
4 action against the institution.

5 “(9) Additional information deemed by the bureau to be reasonably required to ascertain
6 compliance with this chapter.

7 “(b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method
8 of delivery.”

9 10. **California Code of Regulations, title 5, section 71390, subdivision (b)** provides:

10 “(b) An applicant shall submit to the Bureau the form required by subdivision (a) of this
11 section, a certified copy of its current verification of accreditation granted by its accrediting
12 agency, and the appropriate application fee, as provided in Section 94930.5(a)(3) of the Code.”

13 11. **California Code of Regulations, title 5, section 71810** provides, in part:

14 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
15 all of the following:

16 ...

17 “(4) Language proficiency information, including: (A) the level of English language
18 proficiency required of students and the kind of documentation of proficiency, such as the Test of
19 English as a Foreign Language (TOEFL), that will be accepted; and (B) whether English
20 language services, including instruction such as ESL, are provided and, if so, the nature of the
21 service and its cost;

22 ...

23 “(6) The institution's policies and practices regarding any form of financial aid, including
24 all consumer information which the institution is required to disclose to the student under any
25 state or federal financial aid program;

26 ”

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1 12. **California Code of Regulations, title 5, section 74000** provides:

2 “(a) An institution shall pay the fees established by Article 17 of the Act. A failure to
3 include a fee with an application or other request renders the application or request incomplete.

4 “(b) All fees lawfully collected are non-refundable.

5 “(c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the
6 Code.

7 “(d) The Bureau shall deny a renewal of an approval to operate if the institution fails to
8 submit at the time it files its application for renewal of an approval to operate: all unpaid fees;
9 penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and
10 reimbursement of all payments made to students from, the Student Tuition Recovery Fund.

11 “(e)(1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
12 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.

13 “(2) Any proceeding to revoke an institution's approval to operate is subject to the
14 provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be
15 limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty
16 were paid when originally due.

17 “(3) The procedure specified in this subdivision is cumulative to any other right or remedy
18 the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee
19 when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other
20 administrative or judicial action against an institution that fails to pay its fees when due.

21 “(4) An institution whose approval to operate was revoked because of nonpayment of an
22 annual fee or penalty fee may seek to obtain approval to operate only by filing an application for
23 a new approval to operate.”

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1 13. **California Code of Regulations, title 5, section 74006, subdivisions (a) and (b)**
2 provide:

3 “(a) An institution's annual fee is due within 30 days of the date on which the institution
4 originally receives its approval to operate and each year thereafter on the anniversary of the date
5 of the original approval.

6 “(b) An institution shall pay its annual fee in addition to any other applicable fees.”

7 14. **California Code of Regulations, title 5, section 74110** provides:

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

11 “(1) Information regarding institutional branch campuses, including addresses and
12 programs offered at each campus, if applicable;

13 “(2) Information regarding satellite locations, including addresses and with which
14 campus(es) the satellite location is affiliated, if applicable;

15 “(3) Name of institutional accreditors for each branch and satellite campus, and for each
16 such campus at which any programs have programmatic accreditation, the names of the
17 programmatic accreditor for each such program, and effective dates for each programmatic
18 accreditation, if applicable;

19 “(4) Information regarding participation in state and federal student loan and grant
20 programs, including the total amount of funding received from each source for those students
21 enrolled in an approved California school regardless of their state of residency;

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

1 c. Respondent failed to submit the Annual Fee for 2011, 2015, and 2017. (Cal.
2 Code Regs, title 5, § 74006, subds. (a) and (b)).

3 d. Respondent failed to submit completed Annual Reports for 2014, 2015, and
4 2016. (Educ. Code § 94934 and Cal. Code Regs, title 5, § 74110).

5 SECOND CAUSE FOR DENIAL OF APPLICATION

6 (Enrollment Agreement)

7 (Educ. Code §§ 94887 and 94911, subd. (d))

8 16. Respondent's application is subject to denial because Respondent's proposed
9 enrollment agreement fails to include a clear and conspicuous statement that the enrollment
10 agreement is legally binding when signed by the student and accepted by the institution. (Educ.
11 Code §§ 94887 and 94911, subd. (d)). Instead, Respondent's proposed enrollment agreement
12 reads, at page 8, item 2: "This agreement is a legally binding instrument. Both sides of the
13 contract is binding only when the agreement is accepted, signed and dated by the authorized
14 officer of the school or the admissions officer at the school's principal place of business. Read
15 both sides before signing."

16 THIRD CAUSE FOR DENIAL OF APPLICATION

17 (Catalog)

18 (Educ. Code §§ 94887 and 94909, subd. (a)(10); and
19 Cal. Code Regs, title 5, § 71810, subd. (b)(4) and (b)(6))

20 17. Respondent's application is subject to denial because it failed to offer a student
21 catalog that satisfies minimum standards. (Educ. Code §§ 94887 and 94909, subd. (a)(10); and
22 Cal. Code Regs, title 5, § 71810, subd. (b)(4) and (b)(6)). In particular:

23 a. Respondent's catalog fails to include policies and practices regarding any form
24 of financial aid. (Educ. Code § 94909, subd. (a)(10) and Cal. Code Regs, title 5, § 71810, subd.
25 (b)(6)).

26 b. Respondent's catalog does not include information related to language
27 proficiency, including the level of English language proficiency required of the students and the
28 kind of documentation of proficiency that will be accepted. (Cal. Code Regs, title 5, § 71810,
subd. (b)(4)).

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Website)
(Educ. Code §§ 94887 and 94913, subd. (a))

18. Respondent's application is subject to denial because Respondent's institution's website fails to contain operational links to the school catalog, a School Performance Fact Sheet for each educational program offered by the institution, student brochures, a link to the Bureau for Private Postsecondary Education's Internet website, and the institution's most recent annual report submitted to the Bureau for Private Postsecondary Education.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Second Amended Statement of Issues, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

- 1. Denying Respondent's Application for Approval to Operate an Accredited Institution;
- and
- 2. Taking such other and further action as deemed necessary and proper.

DATED:

3/27/18



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

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