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

11 In the Matter of the Statement of Issues
12 Against:
13 **AMERICAN SPORTS UNIVERSITY**
14 **American Sports University, Owner, Non-**
Profit Public Benefit
15 **Application for Renewal of Approval to**
16 **Operate an Institution Non-Accredited**
Applicant
17 **Institution Code 14960906**
18 Respondent.

Case No. 1000414

**FIRST AMENDED STATEMENT OF
ISSUES**

19
20 Complainant alleges:

21 **PARTIES**

22 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24 Consumer Affairs (the Bureau).

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

4 (2) An institution that has filed an appeal of a denial of a renewal
5 application may continue to operate during the appeal process, but must disclose in a
6 written statement, approved by the bureau, to all current and prospective students,
7 that the institution's application for renewal of approval to operate was denied by the
8 bureau because the bureau determined the application did not satisfy the requirements
9 to operate in California, that the institution is appealing the bureau's decision, and
10 that the loss of the appeal may result in the institution's closure.

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

14 **STATUTORY PROVISIONS**

15 6. Section 94886 states:

16 "Except as exempted in Article 4 (commencing with Section 94874) or in
17 compliance with the transition provisions in Article 2 (commencing with Section
18 94802), a person shall not open, conduct, or do business as a private postsecondary
19 educational institution in this state without obtaining an approval to operate under
20 this chapter."

21 7. Section 94887 states:

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

28 8. Section 94894 states:

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

(a) A change in educational objectives, including an addition of a new
diploma or a degree educational program unrelated to the approved educational
programs offered by the institution.

(b) A change in ownership.

(c) A change in control.

(d) A change in business organization form.

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9. Section 94909 states:

“(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

...

(8) A detailed description of institutional policies in the following areas:

(A) Admissions policies, including the institution’s policies regarding the acceptance of credits earned at other institutions or through challenge examinations and achievement tests, admissions requirements for ability-to-benefit students, and a list describing any transfer or articulation agreements between the institution and any other college or university that provides for the transfer of credits earned in the program of instruction. If the institution has not entered into an articulation or transfer agreement with any other college or university, the institution shall disclose that fact.”

10. Section 94913 states:

“(a) An institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:

(1) The school catalog.

(2) A School Performance Fact Sheet for each educational program offered by the institution.

(3) Student brochures offered by the institution.

(4) A link to the bureau’s Internet Web site.

(5) The institution’s most recent annual report submitted to the bureau.

(b) An institution shall include information concerning where students may access the bureau’s Internet Web site anywhere the institution identifies itself as being approved by the bureau.”

11. Section 94932 of the Education Code states:

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

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1 12. Section 94937 of the Education Code states, in pertinent part:

2 “(a) As a consequence of an investigation, and upon a finding that an
3 institution has committed a violation, the bureau may place an institution on
4 probation or may suspend or revoke an institution’s approval to operate for:

5 (1) Obtaining an approval to operate by fraud.

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

12 (b) The bureau shall adopt regulations, within one year of the enactment
13 of this chapter, governing probation and suspension of an approval to operate.”

14 13. Title 5, California Code of Regulations, section 75100, subdivision (a) states that
15 “[t]he Bureau may suspend, revoke or place on probation with terms and conditions an approval
16 to operate.”

17 REGULATORY PROVISIONS

18 14. California Code of Regulations, title 5, section 71700 states:

19 “The Bureau may request that an institution document compliance with
20 the standards set forth in the Act and this Division to obtain and maintain an approval
21 to operate.”

22 15. California Code of Regulations, title 5, section 71475 states:

23 “(a) Unless renewed, an approval to operate shall expire at 12 midnight
24 on the last day of the institution’s term of approval to operate as granted pursuant to
25 section 94802 or section 94889 of the Code.

26 (b) An institution seeking to renew its Approval to Operate pursuant to
27 section 94891 of the Code shall, prior to its expiration, complete and submit to the
28 Bureau the ‘Application for Renewal of Approval to Operate and Offer Educational
Programs for Non-Accredited Institutions,’ Form Application 94891 (rev. 2/10).

(c) The application for renewal of approval to operate and offer
educational programs for non-accredited institutions shall include all of the
following:

...

(6) The form of business organization of the institution (e.g., sole
proprietorship, general or limited partnership, for-profit corporation, nonprofit
corporation, or Limited Liability Corporation). If the institution is incorporated, the
institution shall also identify the state within which the institution is incorporated and
the date of incorporation, and provide copies of the articles of incorporation and

1 bylaws.

2 (7) The name, title, address, email address, telephone number, nature of
3 interest and percentage of ownership of each person, as defined in section 94855 of
4 the Code, who owns or controls 25% or more of the stock or an interest in the
5 institution and, to the extent applicable, each general partner, officer, corporate
6 director, member of the board of directors, and any other person who exercises
substantial control over the institution's management or policies. For the purpose of
this paragraph, a person exercises "substantial control over the institution's
management or policies" if the person has the authority to cause the institution to
expend money or incur debt in the amount of five thousand dollars (\$5,000) or more
in any year.

7 . . .

8 (f) The renewal application shall include a statement from any person
9 identified in subdivision (h)(1) of this section who -

10 (1) Was found in any judicial or administrative proceeding to have
11 violated the Act or the law of any other state related to untrue or misleading
advertising, the solicitation of prospective students for enrollment in an educational
service, or the operation of a postsecondary school;

12 (2) Was denied any type of license on grounds set forth in Section 480 of
13 the Business and Professions Code;

14 (3) Was adjudicated as responsible for the closure of an institution in
15 which there were unpaid liabilities to the state or federal government or any
uncompensated pecuniary losses suffered by students;

16 (4) Has stipulated to a judgment or administrative order or entered a
consent decree involving any of the matters described in this section.

17 (5) Was convicted of any misdemeanor or felony as provided in Section
18 480(a)(1) of the Business and Professions Code;

19 . . .

20 (h) The institution shall include in its application the name, title, physical
21 address, telephone number, fax number, and e-mail address for the agent for service
22 of process in California as required by section 94943.5 of the Code. The agent shall
23 be at an address other than the address of the institution or any branch. The agent
must confirm the information and acknowledge in writing that he or she is the
designated agent for service of process. The information shall be kept current
pursuant to section 74190.

24 (i) The institution shall include in its application an organization chart
25 that shows the governance and administrative structure of the institution and the
26 relationship between faculty and administrative positions. If there have been no
substantive changes since the last submission of an organizational chart, the
institution may so state and is not required to submit documentation.

27 . . .

28 (n) The institution shall describe in the application, in detail its mission
and objectives. If there have been no substantive changes since the last submission,

1 the institution may so state and is not required to submit documentation.

2 (x) The application shall include a statement that the institution has
3 contracted with sufficient duly qualified faculty members who meet the qualifications
4 of section 71720 unless there have been no substantive changes since the last
5 submission. If there have been no substantive changes made the institution may so
6 state and is not required to provide documentation.

7 ...

8 (kk) An incomplete application filed under this section will render the institution
9 ineligible for renewal.

10 16. California Code of Regulations, title 5, section 71640 states:

11 “(a) An institution seeking to change the business organization form,
12 control, or ownership as defined in sections 94821, 94822, or 94823, respectively
13 shall complete the “Change of Business Organization/Control/Ownership” form
14 (OWN rev. 2/10) to obtain prior authorization. The form shall be submitted to the
15 Bureau along with the appropriate fee as provided in Section 94930.5(c) of the Code.
16 An application under this section shall be signed by all signatories to the initial
17 application, or the last approved application under this section, as well as the persons
18 required to sign an application pursuant to section 71380 for institutions approved
19 under section 94885 of the code and section 71390 for institutions approved under
20 section 94890 of the code. Each signature shall be dated, and each fact stated therein
21 and each attachment thereto shall be declared to be true under penalty of perjury, in
22 the following form:

23 ‘I declare under penalty of perjury under the laws of the State of
24 California that the foregoing and all attachments are true and correct.

25 _____
26 (Date)

27 _____
28 (Signature)’

29 (b) An application for a change in ownership or control shall identify the
30 name, title, address, e-mail address and telephone number of each new person
31 required to be listed pursuant to section 71130 in an application, as well as the
32 persons previously listed pursuant to section 71130 that will no longer have
33 ownership or control. For each proposed person listed, the application shall include
34 the information required pursuant to section 71130(b), (c), and (d).

35 (c) An application for a change in the form of business organization of
36 the institution shall identify the approved organization as well as the proposed
37 organization. If the proposed organization is incorporated, the application shall also
38 identify the state within which the proposed organization is incorporated and the date
39 of incorporation, along with copies of the articles of incorporation and bylaws. To the
40 extent that a change in the form of business organization represents a change in
41 ownership or control, the application shall include the information required by
42 subdivision (b) of this section.

43 (d) In addition to the above required information, each application under
44 this section shall include:

45 (1) The name, address, telephone number, fax number, and school code of

1 the institution;

2 (2) The reason for the proposed change;

3 (3) The impact of the change on the financial resources of the institution,
4 including the institution's ability to comply with section 71745;

5 (4) A description of the planned administrative relationship between the
6 persons previously approved and the proposed owners or persons in control,
7 including the nature and extent of the supervision by the chief academic officer, chief
8 operating officer, chief executive officer, and administrators; and

9 (5) Any additional information required by the Bureau pursuant to section
10 71340 of this Chapter; and

11 (6) The name, address, email address, telephone number and fax number
12 of the contact person for this application.

13 (e) An institution that has been granted an approval to operate by means
14 of accreditation shall notify the Bureau of the substantive change within 30 days of
15 that change on the Change of Business Organization/Control/ Ownership form, by
16 completing section (d)(1) and (d)(6) and shall attach certification from the
17 institution's accreditation agency demonstrating that the substantive change was made
18 in accordance with the institution's accreditation standards, and complies with the Act
19 and this Division.”

20 17. California Code of Regulations, title 5, section 71710 states:

21 “In order to meet its mission and objectives, the educational program
22 defined in section 94837 of the Code shall be comprised of a curriculum that
23 includes:

24 (a) those subject areas that are necessary for a student to achieve the
25 educational objectives of the educational program in which the student is enrolled;

26 (b) subject areas and courses or modules that are presented in a logically
27 organized manner or sequence to students;

28 (c) course or module materials that are designed or organized by duly
qualified faculty. For each course or module, each student shall be provided with a
syllabus or course outline that contains:

(1) a short, descriptive title of the educational program;

(2) a statement of educational objectives;

(3) length of the educational program;

(4) sequence and frequency of lessons or class sessions;

(5) complete citations of textbooks and other required written materials;

(6) sequential and detailed outline of subject matter to be addressed or a
list of skills to be learned and how those skills are to be measured;

1 (7) instructional mode or methods.

2 (d) if degree granting, require research of an appropriate degree that
utilizes a library and other learning resources;

3 (e) specific learning outcomes tied to the sequence of the presentation of
4 the material to measure the students' learning of the material; and

5 (f) evaluation by duly qualified faculty of those learning outcomes.”

6 18. California Code of Regulations, title 5, section 71720 states:

7 “(a) An Educational Program Leading to a Degree.

8 (1) An institution offering an educational program that leads to a degree
9 shall employ duly qualified faculty sufficient in number to provide the instruction,
10 student advisement, and learning outcomes evaluation necessary for the institution to
achieve the specific learning objectives of each course offered;

11 . . .

12 (4) The faculty shall have sufficient expertise to support the institution's
13 awarding of a degree identifying a specialty or major field of emphasis, demonstrated
by, at a minimum:

14 (A) That the person possesses one of the following:

15 1. a degree from: an institution approved by the Bureau or previously
16 approved by a predecessor agency of the Bureau; or an accredited institution in the
17 United States or Canada; or other state approved institution that documents that the
18 institution at which the faculty member earned his or her degree is equivalent to an
institution that is approved by the Bureau; or an institution outside the United States
19 or Canada and in addition provides a comprehensive evaluation of the degree
performed by a foreign credential evaluation service that is a member of the National
Association of Credential Evaluation Services (NACES).

20 2. a credential generally recognized in the field of instruction.

21 (B) The degree, professional license, or credential possessed by the
22 person shall be at least equivalent to the level of instruction being taught or
evaluated;

23 (9) The institution shall maintain records documenting that each faculty
24 member is duly qualified and was qualified to perform the duties to which the faculty
25 member was assigned, including providing instruction, evaluating learning outcomes,
evaluating graduate dissertations, theses, and student projects, and participating on
26 doctoral committees.

26 . . .”

27 19. California Code of Regulations, title 5, section 71810 states:

28 “. . .

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

2 ...

3 (2) A statement of the institution's missions and purposes and the
4 objectives underlying each of its educational programs;

5 ...

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

8 ...”

9 20. California Code of Regulations, title 5, section 71770 states:

10 “... ”

11 (b) The institution shall specify the maximum credit it will transfer from
12 another institution for each educational program, and the basis upon which the
transferred credit will be awarded.

13 (1) Except as limited by subdivision (c) of this section, a maximum of 75
14 percent of the units or credit that may be applied toward the award of a bachelor's
degree may be derived from a combination of any or both of the following:

15 (A) Units earned at institutions approved by the Bureau, public or private
16 institutions of higher learning accredited by an accrediting association recognized by
the U. S. Department of Education, or any institution of higher learning, including
17 foreign institutions, if the institution offering the undergraduate program documents
that the institution of higher learning at which the units were earned offers degree
18 programs equivalent to degree programs approved by the Bureau or accredited by an
accrediting association recognized by the U.S. Department of Education;

19 (B) Challenge examinations and standardized tests such as the College
20 Level Placement Tests (CLEP) for specific academic disciplines.”

21 21. California Code of Regulations, title 5, section 71130, states:

22 “(a)(1) The institution shall identify the name, address, email address, and
23 telephone number of each person, as defined in section 94855 of the Code, who owns
or controls 25% or more of the stock or an interest in the institution and, to the extent
24 applicable, each general partner, officer, corporate director, member of the board of
directors and any other person who exercises substantial control over the institution's
25 management or policies. For the purpose of this paragraph, a person exercises
“substantial control over the institution's management or policies” if the person has
26 the authority to cause the institution to expend money or incur debt in the amount of
five thousand dollars (\$5,000) or more in any year.

27 ...

28 (c) The institution shall provide a statement from any person identified in

1 subdivision (a) of this section who -

2 ...

3 (5) Was convicted of any misdemeanor or felony as provided in Section
480(a)(1) of the Business and Professions Code;

4 (d) The institution shall furnish an explanation of any legal action
5 pending against the institution or ownership or any of the institution's owners,
6 officers, corporate directors, administrators, or instructors by any federal, state, or
7 local law enforcement agency involving alleged acts of fraud, dishonesty, financial
mismanagement, unpaid liabilities to any governmental agency or claims for
pecuniary loss suffered by any student.”

8 22. California Code of Regulations, title 5, section 71735, subdivision (b), states:

9 An institution's facilities, including heating and cooling, ventilation,
10 lighting, classrooms, laboratories, and campus environs, shall be well-maintained.
11 The institution shall maintain all valid permits required by any public agencies
relating to the health and safety of the institution's facilities and equipment on file,
and such permits shall be available to the Bureau upon request.

12 23. California Code of Regulations, title 5, section 71745 states:

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

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

16 ...

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

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

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

20 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00
21 or greater at the end of the most recent fiscal year when using generally accepted
22 accounting principles, or for an institution participating in Title IV of the federal
23 Higher Education Act of 1965, meet the composite score requirements of the U.S.
24 Department of Education. For the purposes of this section, current assets does not
25 include: intangible assets, including goodwill, going concern value, organization
expense, startup costs, long-term prepayment of deferred charges, and non-returnable
deposits, or state or federal grant or loan funds that are not the property of the
institution but are held for future disbursement for the benefit of students. Unearned
tuition shall be accounted for in accordance with general accepted accounting
principles.

26 24. California Code of Regulations, title 5, section 71650 states

27 “(a) An institution seeking to change its educational objectives shall
28 complete the “Change in Educational Objectives” form (OBJ rev. 2/10) to obtain
prior authorization. The form shall be submitted to the Bureau along with the

1 appropriate fee as provided in Section 94930.5(c) of the Code. For an institution
2 approved under section 94885 of the Code it shall be signed and dated by the
3 signatory(ies) required by section 71380, and for an institution approved under
4 section 94890 of the Code it shall be signed and dated by the signatory(ies) required
5 by section 71390, and each fact stated therein and each attachment thereto shall be
6 declared to be true under penalty of perjury, in the following form:

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

9 _____
10 (Date)

11 _____
12 (Signature)"

13 (b) For an application to add a degree program:

14 (1) "Unrelated to the approved educational programs" as used in section
15 94894(a) of the Code includes the addition of a degree program where no degree at
16 that level was previously approved, whether or not the proposed program would offer
17 a degree in the same subject area as a previously approved non-degree program or
18 lower level degree; and a program leading to licensure whether or not the proposed
19 program is in the same subject area as a previously approved program that did not
20 lead to licensure.

21 (2) The owner of an institution approved pursuant to section 94886 of the
22 Code seeking to add a degree-granting program must complete an accreditation plan
23 under section 71105, or provide proof of accreditation with the scope of that
24 accreditation covering the institution and at least one degree program.

25 (3) If an application is granted pursuant to this subdivision, the Bureau
26 shall issue a provisional approval of no more than two degree programs for which
27 approval is sought. Such approval of the program shall run in conjunction with any
28 existing approval to operate the institution.

(c) The application shall establish that the institution, including any
branch, can meet the minimum operating standards contained in Chapter 3, and shall
include:

(1) The name, school code, address, website address, and telephone and
fax numbers of the institution;

(2) The reasons for changing the educational objectives, and how the
proposed change helps to further the institution's mission and objectives;

(3) When the institution proposes to change the educational objectives;

(4) The impact of the change on the financial resources of the institution,
including the institution's ability to comply with section 71745;

(5) A description of the facility and equipment, as required by section
71260, required for the change;

1 (6) For addition of a new program, all information required by sections
71210 and 71220;

2 (7) If the application is for a change to an existing program, a description
3 of the differences between any programs approved and the proposed programs,
4 including differences in admissions standards, degree requirements, curricula, and
standards for student achievement;

5 (8) A statement that the institution has contracted with duly qualified
6 faculty that meet the requirements of section 71720;

7 (9) A description of library and other learning resources, as required by
8 Section 71270, required for the proposed change;

9 (10) The name, address, email address, and telephone and fax numbers of
10 the institution's contact person for the purpose of this application; and

11 (11) Any additional information required by the Bureau pursuant to
12 section 71340.

13 (d) An institution that has been granted an approval to operate by means
14 of accreditation shall notify the Bureau of the substantive change within 30 days of
15 that change on the Change in Educational Objectives form, by providing the
16 information required by (c)(1) and (c)(10), and shall attach certification from the
17 institution's accreditation agency demonstrating that the substantive change was made
18 in accordance with the institution's accreditation standards, and complies with the Act
19 and this Division.”

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 **(Incomplete Application/ Failure to Satisfy Minimum Operating Standards)**

22 25. Respondent's application is subject to denial under Education Code sections 94887
23 and 94891, subdivision (b), and California Code of Regulations, title 5, sections 71710, 71745
24 and 71475, in that on or about September 12, 2014, Respondent submitted an incomplete
25 application to the Bureau and failed to satisfy the minimum required operating standards. Each
26 violation is a sole and separate cause for denial. The violations are as follows:

27 a. Application for Ownership, Control or Business Organization: Respondent failed to
28 submit an application for Change in Ownership, Control or Business Organization. Prior to
obtaining an authorization from the Bureau, the institution changed the form of business
organization from non-profit to for profit. Since the institution changed to for profit, the
institution was required to provide copies of the articles of incorporation and bylaws.
Respondent submitted “Certificate of Amendment of Articles of Incorporation” and that
document does not meet this requirement. In addition, Respondent indicated a change of

1 ownership in its July 30, 2014 Application for Renewal of Approval to Operate an Institution
2 Non-Accredited when it listed Jane Hwang, 50% owner, and Harry Hwang, 50% Owner. Also,
3 the September 12, 2014 renewal application listed Jane Hwang as 100 % owner, and Harry
4 Hwang as Chief Executive Officer. In addition, its November 26, 2014 letter in response to the
5 Bureau's inquiry stated that Jane Hwang was 100% owner. The Bureau's records reflect
6 ownership by American Sports University. Respondent violated Section 94894 and California
7 Code of Regulations, title 5, sections 71640 and 71475(c)(6) and (7);

8 b. Compliance Organizational Chart: Respondent failed to submit an accurate and
9 compliant organizational chart. The revised organizational chart submitted in response to the
10 deficiency letter does not indicate the relationship of two main positions: faculty and Chief
11 Executive Officer, in relation to the administrative positions in violation of California Code of
12 Regulations, title 5, section 71475, subdivision (i);

13 c. Comprehensive and Accurate Mission and Objectives: Respondent failed to provide
14 a comprehensive and accurate mission and objectives for the institution and each of the
15 educational programs in violation of California Code of Regulations, title 5, section 71475,
16 subdivision (n), as follows:

17 (1) The institution's mission indicates that the sole academic focus is on the discipline of
18 Sports Education. The institution offers a degree in Bachelor of Science (BS) in Personal
19 Security Management and certificate programs in Personal Security Management, Intensive
20 English language programs (Beginner, Intermediate and Advanced) and TOEFL Instruction. On
21 page 4 of the catalog, none of the institutional objectives address the fulfillment of the above
22 degree and certificate programs;

23 (2) The institution failed to provide an accurate mission statement for the BS in Sports
24 Management. On page 13 of the catalog, the mission for BS in Sports Management states:
25 "American Sports University aims to prepare graduates with technology and principles of
26 security management including global terrorism and emergency management;"

27 (3) The institution failed to list program objectives and a list of courses fulfilling the
28 stated mission for the BS in Sports Training and Fitness. On page 15 of the catalog, the mission

1 for the BS in Sports Training and Fitness is “to prepare graduates with technology and principles
2 of sports training and fitness.” None of the stated objectives and/or sequences of courses address
3 the technology aspect of the mission;

4 d. Instruction and Degrees Offered: The mission and objectives for the BS in Personal
5 Security Management degree on page 10 of the catalog are not associated with the field of Sports
6 or Sports Management. The Bureau is unable to determine whether 36 units of core sports related
7 courses and 16 units of sports activity course are appropriate for the BS in Personal Security
8 Management. This is a violation of California Code of Regulations, title 5, sections 71710 and
9 71475, subdivision (n).

10 e. Faculty:

11 (1) Respondent failed to provide evidence that the following ten instructors are
12 qualified to teach their assigned courses: LB⁴, PCR, RF, JSK, BGIM, TWM, LB, DH, DBS, and
13 TAB. This is a violation of California Code of Regulations, title 5, section 71720, subdivisions
14 (a) (1), (4) and (9);

15 (2) In the “Instructors’ Teaching Assignments” list Respondent listed “E/M⁵” as faulty
16 that teach several physical education courses. Respondent failed to submit verification of
17 qualifications for the following faculty member(s): “E/M:” This is a violation of California Code
18 of Regulations, title 5, sections 71720, subdivisions (a) (1) and (4), and 71475, subdivision (x).

19 f. Catalog:

20 (1) The institution catalog failed to contain an accurate statement of the institution’s
21 missions and purposes and the objectives underlying each of the institutional programs in its
22 catalog. The mission and objective statements on page 4 of the catalog do not address the degree
23 in BS in Personal Security Management, certificate programs in Personal Security Management,
24 Intensive English language programs (Beginner, Intermediate and Advanced) and TOEFL

25 _____
26 ⁴ Initials are being used to protect the individual’s identity. Individuals will be identified
during the course of discovery.

27 ⁵ Initials could not be used as Respondent did not provide the full name of these faculty
28 member(s). In addition, Respondent listed what appears to be two last names. Complainant was
not able to determine if one or two individuals would be teaching this subject.

1 Instruction. This is a violation of California Code of Regulations, title 5, sections 71810,
2 subdivision (b)(2);

3 (2) The institution's website provides the name of five sister schools "with whom the
4 university exchanges faculty and students and cooperates in education and projects." The catalog
5 does not indicate whether the institution has entered into an articulation or transfer agreement
6 with any other college or university. If the institution has not entered into an articulation or
7 transfer agreement with any other college or university, the institution shall disclose that fact.

8 This is a violation of Section 94909, subdivision (a)(8)(A);

9 (3) The admission policy on page 42 of the catalog for allowing students to earn credits
10 by passing an oral examination is not in compliance with California Code of Regulations, title 5,
11 sections 71770, subdivision (b). Transfer credits from another institution, written standardized
12 tests, and challenge examinations could be the basis for awarding bachelor level credits. This is a
13 violation of Section 94909(a)(8)(A) and California Code of Regulations, title 5, sections 71770,
14 subdivision (b)(1)(A-B);

15 (4) Respondent's catalog does not contain the institution's policies and practices, including
16 required disclosures regarding any form of financial aid in violation of California Code of
17 Regulations, title 5, section 71810, subdivision (b)(6).

18 g. Website: An institution that maintains an Internet website must provide the following
19 in its site: a School Performance Fact Sheet for each educational program offered by the
20 institution, student brochures offered by the institution, the most recent annual report submitted to
21 the Bureau, a link to the Bureau's Internet Website, including anywhere the institution identifies
22 itself as being approved by the Bureau. Respondent's website failed to provide these items in
23 violation of Section 94913.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Failure To Disclose Conviction)**

26 26. Respondent is subject to discipline under section 94932 and Code of Regulations,
27 title 5, sections 71130, subdivision (c)(5), and 71475, subdivision (f), and Business and
28 Professions Code 490, subdivision (a), in that it failed to provide a statement that Harry Hwang

1 was convicted in 2002 of bribery in any of the applications it submitted to the Bureau. On
2 February 4, 2002, Harry Hwang plead guilty to two felony counts of violating 18 United States
3 Code section 666, subdivision (a)(2), Bribery Concerning Programs Receiving Federal Funds in
4 the case entitled *USA v. Harry Hwang, United States District Court, Central District, Case No.*
5 *2:01-MJ-01990*. He was sentenced to three years probation, with terms and conditions, including
6 payment of fines. The circumstances of the conviction are that Harry Hwang, who was doing
7 business as JD Trust Escrow, failed to disclose and actively concealed information related to a
8 loan. On or about November 10, 2004, the Bureau received Respondent's Application for
9 Approval to Operate a Degree Granting Institution, Application No. 17860. The application was
10 signed under penalty of perjury, on October 1, 2004 by Harry Hwang, on December 3, 2003 by
11 Chun Y. Lee and on December 6, 2003 by Charles T. Moffitt, Members of the Board of
12 Directors. Harry Hwang's title was listed as the "Chair of the Board" and he was also listed as a
13 "Member, Board of Directors." Respondent failed to disclose Mr. Hwang's felony convictions.
14 On or about May 23, 2007, full approval was issued to operate Institution Code Number 1460906
15 to Respondent, American Sports University. Said Full approval expired on June 30, 2014. On
16 July 30, 2014, the Bureau received an Application for Renewal of Approval to Operate an
17 Institution Non-Accredited from American Sports University, Jane Hwang, 50% owner, and
18 Harry Hwang, 50% Owner. Again, Respondent failed to disclose Mr. Hwang's felony
19 convictions. On August 11, 2014, the Bureau advised Respondent that the application was
20 incomplete. On or about September 12, 2014, the Bureau received another Application for
21 Renewal of Approval to Operate an Institution Non-Accredited from American Sports University.
22 The application listed Jane Hwang as 100 % owner, and Harry Hwang as Chief Executive
23 Officer. The application was dated July 29, 2014 and Jane Hwang and Harry Hwang certified
24 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. Respondent failed to disclose Mr. Hwang's felony conviction.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Pay Timely Refunds)**

3 27. Respondent is subject to discipline under sections 94932 and 94937, subdivision
4 (a)(2), and CCR, title 5, section 71745, subdivisions (a)(4), in that the institution failed to pay a
5 timely refund to two students, HKP and SC. The circumstances are as follows:

6 (a) On or about April 14, 2010 an amended default judgment was entered against
7 Respondent in the amount of \$265,028.01 in the case entitled *HKP⁶ v. American Sports*
8 *University*, San Bernardino Superior Court Case No. CIVDS 903403. On March 16, 2009, a
9 former student HKP sued Respondent and Harry Hwang for breach of contract and fraud. HKP
10 alleged that he withdrew from Respondent to enroll in another school reasonably believing he
11 would be refunded for an entire second semester within 30 days of his last day of class as stated
12 in Respondent's refund policy and as promised by Respondent's Financial Director. HKP sought
13 a total loss of tuition in the amount of \$12,491.96 and punitive damages in the amount of
14 \$250,000.00 for Negligent Misrepresentation of Material Fact and Promise Without Intent to
15 Perform.

16 (b) On October 31, 2011, a judgment was entered against American Sports University in
17 the amount of \$695.00 in the case entitled *SC v. American Sports University, Jane Hwang, agent*,
18 San Bernardino Superior Court, Victorville District, Case No. SMCVSI102438. The
19 circumstances are that on August 26, 2011, a former student, SC, sued Respondent and alleged
20 that she paid \$695 for class fees and the class was cancelled before the course was completed due
21 to lack of instructor. She further alleged that she requested a refund but Respondent refused to
22 refund her the money. On June 27, 2012, SC filed a declaration in Superior Court stating that
23 Respondent had failed to pay the judgment.

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28 ⁶ Initials are being used to protect the individual's identity. Individuals will be identified during the course of discovery.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violated Facilities and Equipment Requirements)**

3 28. Respondent is subject to discipline under sections 94932 and CCR, title 5, section
4 71735, subdivision (b) in that the school has not been properly maintained. On August 19, 2014,
5 Bureau investigators conducted an unannounced site visit to Respondent's campus. The school is
6 housed in a two-story building, which has a separate theatre that is rented out for events and a
7 sports center that is rented out for classes and sporting events. The visit revealed that the school
8 has not been properly maintained. There is visible damage to the school's buildings including
9 water damage to the ceilings, walls and wooden floors. Plaster and paint are peeling from walls.
10 Panels are missing from the ceiling. The floors were warped and uneven, and the dorms smelled
11 of mold. Mr. Hwang confirmed that the dormitory area had been flooded.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Have Sufficient Assets and Financial Resources to Pay Operating Expenses)**

14 29. Respondent is subject to discipline under sections 94932 and CCR, title 5, section
15 71745, subdivisions (a)(5) and (a)(6), in that the institution failed to document, and will be unable
16 to document, that it has sufficient assets and financial resources to pay all operating expenses
17 within 30 days, including as follows:

18 a. Respondent failed to have sufficient financial resources to pay all of its operating
19 expenses because it failed to pay wages to several employees, including including BSH, EB, JC,
20 TW, NWF, DC, and RC. Further, Respondent failed to disclose the lawsuits filed by the
21 employees and its inability to pay the wages, including in its July 30, 2014 application. The
22 circumstances are as follows:

23 (1) On September 25, 2009, an order was issued by the Labor Commissioner of the State
24 of California, in Case No. 09-36611SM, requiring payment of wages, plus interest and waiting
25 time penalties, against Respondent and in favor of BSH, a former employee. On November 20,
26 2009, final judgment was entered based on the Labor Commissioner's order totaling \$13,989.47
27 in the case entitled *BSH v. American Sports University*, San Bernardino Superior Court Case No.
28 CIVDS916819;.

1 (2) Respondent also failed to pay the staff wages of EB, a former employee. On
2 September 29, 2009, an order was issued against Respondent by the Labor Commissioner of the
3 State of California, in Case No. 09-3667SM, requiring payment of wages, plus interest and
4 waiting time penalties, in favor of EB, a former employee. The order stated that Respondent
5 acknowledged the wages were due but Respondent did not have the finances to pay the wages.
6 On December 9, 2009, judgment was entered based on the Labor Commissioner's order totaling
7 \$10,060.53 in the case entitled *EB v. American Sports University*, San Bernardino Superior Court
8 Case No. CIVDS917505;

9 (3) Respondent also failed to pay the staff wages of JC, a former employee. On August
10 23, 2011, an order was issued against Respondent by the Labor Commissioner of the State of
11 California, in Case No. 09-40171CC, requiring payment of 8 months of wages, plus interest and
12 waiting time penalties, in favor of JC. On October 25, 2011, final judgment was entered based on
13 the Labor Commissioner's order totaling \$33,539.48 in the case entitled *JC v. Pacific Property*
14 *Investment & Management, Inc. dba American Sports University*, San Bernardino Superior Court
15 Case No. CIVDS1112595;

16 (4) Respondent also failed to pay the staff wages of TW, a former employee. Respondent
17 also failed to pay the staff wages of TW, a former employee On July 13, 2012, an order was
18 issued by the Labor Commissioner of the State of California, in Case No. 09-43893CC, requiring
19 payment of wages, plus interest, fees and waiting time penalties, against Respondent and in favor
20 of TW, a former employee. On July 19, 2012, final judgment was entered based on the Labor
21 Commissioner's order totaling \$16,212.04 in the case entitled *TW v. Pacific Property Investment*
22 *& Management, Inc. dba American Sports University*, San Bernardino Superior Court Case No.
23 CIVDS1208505;

24 (5) Respondent also failed to pay the staff wages of NWF, a former employee. On
25 November 7, 2012, an order was issued by the Labor Commissioner of the State of California, in
26 Case No. 09-45724CC, requiring payment of wages, plus interest, fees and waiting time penalties,
27 against Respondent and in favor of NMF, a former employee. On January 15, 2013, final
28 judgment was entered based on the Labor Commissioner's order totaling \$3,005.83 in the case

1 entitled *NMF v. Pacific Property Investment & Management, Inc. dba American Sports*
2 *University*, San Bernardino Superior Court Case No. CIVDS1300536;

3 (6) Respondent also failed to pay the staff wages of DC, a former employee. On August
4 13, 2013, an order was issued by the Labor Commissioner of the State of California, in Case No.
5 09-49584CC, requiring payment of wages, plus interest, fees and waiting time penalties, against
6 Respondent and in favor of DC, a former employee. On October 4, 2013, final judgment was
7 entered based on the Labor Commissioner's order totaling \$3,765.95 in the case entitled *DC v.*
8 *Pacific Property Investment & Management, Inc. dba American Sports University*, San
9 Bernardino Superior Court Case No. CIVDS1312175;

10 (7) Respondent also failed to pay the staff wages of RC, a former employee. On October
11 14, 2013, an order was issued by the Labor Commissioner of the State of California, in Case No.
12 09-47856CC, requiring payment of wages, plus interest, fees and waiting time penalties, against
13 Respondent and in favor of RC, a former employee. On December 5, 2013, final judgment was
14 entered based on the Labor Commissioner's order totaling \$56,958.59 in the case entitled *RC v.*
15 *Pacific Property Investment & Management, Inc. dba American Sports University*, San
16 Bernardino Superior Court Case No. CIVDS1315003.

17 b. Also, Respondent is facing several liabilities which it failed to disclose and which
18 indicate that the institution cannot document sufficient assets and financial resources to pay all
19 operating expenses as required, including the following: April 14, 2010 amended default
20 judgment entered against American Sports University in the amount of \$265,028.01 in the case
21 entitled *HKP v. American Sports University*, San Bernardino Superior Court Case No. CIVDS
22 903403. In addition, on November 17, 2011, judgment was entered against Respondent, and its
23 owners in the case entitled *Interstate Properties v. Harry Hwang, et al*, San Bernardino Superior
24 Court, Case No. CIVDS106355 in the sum of \$537,358.40. On the breach of lease cause of
25 action, Hyung Hwang, aka Harry Hwang, was ordered to pay to plaintiff, the sum of \$537,358.40,
26 and as to the cause of action for fraudulent transfer, Hyung Hwang, aka Harry Hwang, Jung Hee
27 Shin, aka Jung Hee Hwang (Harry Hwang's wife), Pacific Property Investment and Management,
28 Inc. and Respondent American Sports University, jointly and severally, were ordered to pay

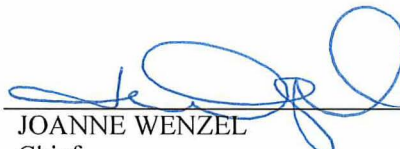
1 Plaintiff the sum of \$537,358.40. The court clarified that Harry Hwang's total obligation was
2 \$537,358.40. Plaintiff alleged that Harry Hwang failed to make lease payments after May 14,
3 2009 on a property located in Huntington Park. Plaintiffs also alleged that Harry Hwang
4 collected rents from sub-tenants at this location and gave the money to Pacific Property
5 Investment and Management, Inc., Jung Hee Shin, aka Jung Hee Hwang, and Respondent
6 American Sports University to avoid monetary obligations Respondent's owners did not notify
7 the Bureau of these lawsuits and judgments.

8 **PRAYER**

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

- 12 1. Denying the application of American Sports University for a Renewal of Approval to
13 Operate and Offer Educational Programs for Non-Accredited Institution;
- 14 2. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 6/21/16


17 JOANNE WENZEL
18 Chief
19 Bureau for Private Postsecondary Education
20 Department of Consumer Affairs
21 State of California
22 *Complainant*

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