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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 First Amended Accusation
Against:

Case No. 997378

12 **SUNNY COLLEGE; DEVDAT**
13 **MAHESHWARI and VIDHYA**
14 **MAHESHWARI, Owners**
15 **545 N. Mountain Avenue, Ste 203**
Upland, CA 91786 (Main Campus)

FIRST AMENDED ACCUSATION

16 **13916 Hillview Place,**
Victorville, CA 92392 (Branch Campus)

17 **School Code Nos. 3604261 and 3604971**

18 Respondents.

19
20 Complainant alleges:

21 PARTIES

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

25 2. On or about October 26, 1998, the Bureau for Private Postsecondary Education issued
26 an Approval to Operate under changed ownership and approval for change of institutional name
27 and location for (Main Campus) Sunny College (No. 3604261) to Devdat Maheshwari, 50%
28 Owner and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force and

1 effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless
2 renewed.

3 3. On or about September 6, 2002, the Bureau for Private Postsecondary Education
4 issued an Approval to Operate (Branch) Sunny College (No. 3604971) to Devdat Maheshwari,
5 50% Owner, and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force
6 and effect at all times relevant to the charges brought herein and will expire on June 30, 2013,
7 unless renewed.

8 JURISDICTION

9 4. This First Amended Accusation is brought before the Bureau for Private
10 Postsecondary Education (hereinafter "Bureau"), Department of Consumer Affairs under the
11 authority of the following laws. All section references are to the Education Code (Code) unless
12 otherwise indicated.

13 5. Section 94932 provides:

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

19 6. Section 94937 provides:

20 (a) As a consequence of an investigation, and upon a finding that an
21 institution has committed a violation, the bureau may place an institution on
22 probation or may suspend or revoke an institution's approval to operate for:

22 ...

23 (2) A material violation or repeated violations of this chapter or regulations
24 adopted pursuant to this chapter that have resulted in harm to students. For
25 purposes of this paragraph, "material violation" includes, but is not limited to,
26 misrepresentation, fraud in the inducement of a contract, and false or misleading
27 claims or advertising, upon which a student reasonably relied in executing an
28 enrollment agreement that resulted in harm to the student....

27 7. Section 477 of the Business and Professions Code provides in pertinent part:

28 As used in this division:

1 (a) "Board" includes "bureau," "commission," "committee," "department,"
2 "division," "examining committee," "program," and "agency."

3 (b) "License" includes certificate, registration or other means to engage in a
4 business or profession regulated by this code.

5 8. Section 480 of the Business and Professions Code states, in pertinent part:

6 "(a) A board may deny a license regulated by this code on the grounds that the applicant
7 has one of the following:

8 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
9 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
10 board is permitted to take following the establishment of a conviction may be taken when the
11 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
12 an order granting probation is made suspending the imposition of sentence, irrespective of a
13 subsequent order under the provisions of Section 1203.4 of the Penal Code.

14 "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
15 benefit himself or herself or another, or substantially injure another; or

16 "(3)(A) Done any act which if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

18 (B) "The board may deny a license pursuant to this subdivision only if the crime or act is
19 substantially related to the qualifications, functions or duties of the business or profession for
20 which application is made.

21

22 9. Section 490 of the Business and Professions Code provides, in pertinent part, that a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime substantially related to the qualifications, functions, or duties of the business or profession
25 for which the license was issued.

26 10. Section 493 of the Business and Professions Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a
28 board within the department pursuant to law to deny an application for a license or
to suspend or revoke a license or otherwise take disciplinary action against a person
who holds a license, upon the ground that the applicant or the licensee has been

1 convicted of a crime substantially related to the qualifications, functions, and duties
2 of the licensee in question, the record of conviction of the crime shall be conclusive
3 evidence of the fact that the conviction occurred, but only of that fact, and the board
4 may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially
6 related to the qualifications, functions, and duties of the licensee in question.

7
8 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
9 'registration.'

10 11. Education Code section 94851 defines "owner" as an individual in the case of a sole
12 proprietorship, partners in a partnership, members in a limited liability company, or shareholders
13 in a corporation.

14 12. Education Code section 94856 defines "person in control" as a person who, by his or
15 her position's authority or conduct, directs the management of an institution.

16 13. Title 5, California Code of Regulations, section 71730, subdivision (g) states:

17 The institution shall not employ or continue to employ any administrative
18 personnel who were adjudicated in a judicial or administrative proceeding as having
19 violated any provision of the Act or this chapter or as having committed any act that
20 would constitute grounds for the denial of a license under Section 480 of the
21 Business and Professions Code.

22 14. Title 5, California Code of Regulations, section 75060, states:

23 In determining whether any of the grounds for denial set forth in Section 480
24 of the Business and Professions Code exist, a crime or act shall be considered
25 substantially related to the qualifications, functions, or duties of any owner,
26 corporate director or member of the governing board, officer, or administrator under
27 any of the following circumstances:

28 (a) The crime or act involves any violation of the Act or this chapter, Title
IV of the federal Higher Education Act of 1965 (20 U.S.C. § 1070, et.seq.), the
closure of an institution, fraud or misrepresentation, breach of fiduciary duty, any
type of forgery or theft, or any type of dishonesty causing any financial loss.

(b) The crime, to a substantial degree, evidences present or potential
unfitness to perform the functions and duties authorized or required by the Act or
this chapter in a manner consistent with the public health, safety, or welfare,
including a crime prohibited by Title 8 (commencing with Section 187) or Title 9
(commencing with Section 261) of the Penal Code.

COST RECOVERY

15. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
may request the administrative law judge to direct a licentiate found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 16. Education Code section 94937 provides, in pertinent part, that the Bureau may seek
4 reimbursement of costs of investigation and enforcement pursuant to section 125.3 of the
5 Business and Professions Code but that an institution shall not be required to pay the cost of
6 investigation to more than one agency.

7 FIRST CAUSE FOR DISCIPLINE

8 (Conviction of Crime)

9 17. Devdat and Vidhya Maheshwari are subject to disciplinary action pursuant to
10 Business and Professions Code section 490 and Title 5, California Code of Regulations, section
11 71730, subdivision (g), in conjunction with Business and Professions Code section 480, in that on
12 or around April 23, 2009, Devdat Maheshwari was convicted of one felony count of violating
13 Insurance Code section 1871.4(a)(2) (Present False or Fraudulent Statement) in the Superior
14 Court of California (County of San Diego – Central Division) in a case entitled *The People of the*
15 *State of California v. Devdat Uttamchand Maheshwari*, Case No. CD219106.

16 18. The circumstances surrounding the conviction are that between August 1, 2008 and
17 February 20, 2009, Devdat Maheshwari knowingly and unlawfully presented and caused to be
18 presented a false and fraudulent written material statement in support of a claim for compensation
19 for the purpose of obtaining compensation. As a result of the conviction, Devdat Maheshwari
20 was sentenced to three years of formal probation with 180 days in county jail, ordered to pay
21 \$200 in civil fines, \$800 in criminal fines, and to perform 320 hours of community service.
22 Devdat Maheshwari also paid between \$30,400-\$56,397 in restitution to the State Compensation
23 Insurance Fund at the time of sentencing.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Bureau for Private Postsecondary Education issue a decision:

27 1. Revoking all approvals to operate for Devdat and Vidhya Maheshwari, Owners of
28 Sunny College, including Approval to Operate No. 3604261, Sunny College (545 N. Mountain


1 Avenue, Ste. 203, Upland, CA 91786) and Approval to Operate No. 3604971, Sunny College
2 (13916 Hillview Place, Victorville, CA 92392);

3 2. Ordering Devdat and Vidhya Maheshwari, owners of Sunny College, to pay the
4 Bureau for Private Postsecondary Education the reasonable costs of the investigation and
5 enforcement of this case, pursuant to Business and Professions Code section 125.3 and Education
6 Code section 94937;

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

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DATED: 4/19/2012



JOANNE WENZEL
Deputy Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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