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8
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
14 **CODING HOUSE INSTITUTE**

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

17 Respondent.

Case No. 1000841

OAH No. 2015121007

SECOND AMENDED STATEMENT OF
ISSUES

18 Complainant alleges:

19 PARTIES

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

23 2. On or about April 8, 2014, the Bureau for Private Postsecondary Education
24 ("Bureau") received an Application for Approval to Operate an Institution Non-Accredited from
25 Respondent Coding House Institute ("Respondent"). Respondent is owned by non-party N.J..
26 Between April 17, 2014 and May 27, 2015, the Bureau and Respondent exchanged
27 correspondence regarding Respondent's application.

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1 “(i) The institution is maintained and operated in compliance with this chapter and all other
2 applicable ordinances and laws.”

3 7. **Section 94886** provides:

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

8 8. **Section 94887** provides:

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

14 STATUTORY AND REGULATORY PROVISIONS¹

15 9. **Business and Professions Code section 480** provides, in part:

16 “(a) A board may deny a license regulated by this code on the grounds that the applicant
17 has one of the following:

18 ...

19 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
20 benefit himself or herself or another, or substantially injure another.

21 “(3)(A) Done any act that if done by a licentiate of the business or profession in question,
22 would be grounds for suspension or revocation of license.

23 ...

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25 ////

26 _____
27 ¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective
28 January 1, 2015. See Senate Bill No. 1247. This Second Amended Statement of Issues is based
on the pre-amendment version of the Act.

1 “(d) A board may deny a license regulated by this code on the ground that the applicant
2 knowingly made a false statement of fact that is required to be revealed in the application for the
3 license.”

4 10. **Section 94817.5** provides:

5 “‘Approved to operate’ or ‘approved’ means that an institution has received authorization
6 pursuant to this chapter to offer to the public and to provide postsecondary educational programs.

7 11. **Section 94840** provides:

8 “‘Enrollment agreement’ means a written contract between a student and institution
9 concerning an educational program.”

10 12. **Section 94868** provides:

11 “‘To offer to the public’ means to advertise, publicize, solicit, or recruit.”

12 13. **Section 94869** provides:

13 “‘To operate’ means to establish, keep, or maintain any facility or location in this state
14 where, or from which, or through which, postsecondary educational programs are provided.”

15 14. **Section 94897** provides, in part:

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

17 ...

18 “(b) Promise or guarantee employment, or otherwise overstate the availability of jobs upon
19 graduation.

20 ...

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

25 “(1) A financial report filed with the bureau.

26 “(2) Information or records relating to the student's eligibility for student financial aid at the
27 institution.

28 ////

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

2 ...

3 “(m) Direct any individual to perform an act that violates this chapter, to refrain from
4 reporting unlawful conduct to the bureau or another government agency, or to engage in any
5 unfair act to persuade a student not to complain to the bureau or another government agency.

6”

7 15. Section 94898 provides, in part:

8 ...

9 “(b) After a student has enrolled in an educational program, the institution shall not do
10 either of the following:

11 “(1) Make any unscheduled suspension of any class unless caused by circumstances beyond
12 the institution's control.

13 “(2) Change the day or time during the period of attendance in which any class is offered to
14 a day when the student is not scheduled to attend the institution or to a time that is outside of the
15 range of time that the student is scheduled to attend the institution on the day for which the
16 change is proposed unless at least 90 percent of the students who are enrolled consent to the
17 change and the institution offers full refunds to the students who do not consent to the change.
18 For the purpose of this paragraph, “range of time” means the period beginning with the time at
19 which the student's first scheduled class session for the day is set to start and ending with the time
20 the student's last scheduled class session for that day is set to finish.

21”

22 16. Section 94900 provides, in part:

23 ...

24 “(b) An institution shall maintain, for each student granted a degree or certificate by that
25 institution, permanent records of all of the following:

26 “(1) The degree or certificate granted and the date on which that degree or certificate was
27 granted.

28 ////

1 “(2) The courses and units on which the certificate or degree was based.

2 “(3) The grades earned by the student in each of those courses.”

3 17. **Section 94909** provides, in part:

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

7 ...

8 “(5) A description of the programs offered and a description of the instruction provided in
9 each of the courses offered by the institution, the requirements for completion of each program,
10 including required courses, any final tests or examinations, any required internships or
11 externships, and the total number of credit hours, clock hours, or other increments required for
12 completion.

13 ...

14 “(7) Information regarding the faculty and their qualifications.

15 ...

16 “(d) An accredited institution is not required to provide a School Performance Fact Sheet to
17 a prospective student who is not a California resident, not residing in California at the time of his
18 or her enrollment, and enrolling in an accredited distance learning degree program offered by the
19 institution, if the institution complies with all federal laws, the applicable laws of the state where
20 the student is located, and other appropriate laws, including, but not limited to, consumer
21 protection and student disclosure requirements.”

22 18. **Section 94902** provides, in part:

23 “(a) A student shall enroll solely by means of executing an enrollment agreement. The
24 enrollment agreement shall be signed by the student and by an authorized employee of the
25 institution.

26 “(b) An enrollment agreement is not enforceable unless all of the following requirements
27 are met:

28 ...

1 “(2) At the time of the execution of the enrollment agreement, the institution held a valid
2 approval to operate.

3”

4 19. **Section 94911** provides, in part:

5 “An enrollment agreement shall include, at a minimum, all of the following:

6 . . .

7 “(j) The following statements:

8 “(1) ‘Any questions a student may have regarding this enrollment agreement that have not
9 been satisfactorily answered by the institution may be directed to the Bureau for Private
10 Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address),
11 (telephone and fax numbers).’

12 “(2) ‘A student or any member of the public may file a complaint about this institution with
13 the Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
14 completing a complaint form, which can be obtained on the bureau's Internet Web site (Internet
15 Web site address).’”

16 20. **Section 94920** provides, in part:

17 “An institution that does not participate in the federal student financial aid programs shall
18 do all of the following:

19 . . .

20 “(b) Institutions shall refund 100 percent of the amount paid for institutional charges, less a
21 reasonable deposit or application fee not to exceed two hundred fifty dollars (\$250), if notice of
22 cancellation is made through attendance at the first class session, or the seventh day after
23 enrollment, whichever is later.

24 . . .

25 “(e) The institution shall pay or credit refunds within 45 days of a student's cancellation or
26 withdrawal.”

27 /////

28 /////

1 21. **California Code of Regulations, title 5, section 71110** provides, in part:

2 “An institution shall provide the following information on the Form Application 94886:

3 ...

4 “(d) The street address of each campus and branch at which the educational programs will
5 be offered, including the identification of the institution's main location and branch locations. If
6 an institution is applying for a branch in conjunction with the main location, all required
7 information must be provided for each location.

8 ”

9 22. **California Code of Regulations, title 5, section 71180** provides:

10 “The institution shall include, with its Form Application 94886, exemplars of all student
11 enrollment agreements and instruments of indebtedness.”

12 23. **California Code of Regulations, title 5, section 71200** provides:

13 “(a) The institution shall include in its Form Application 94886 copies of advertising and
14 other statements disseminated to the public in any manner by the institution or its representatives
15 that concern, describe, or represent each of the following:

16 “(1) The institution.

17 “(2) Each educational program offered by the institution.

18 “(b) If advertising is broadcast by television or radio, the Form Application 94886 shall also
19 include a copy of the script.”

20 24. **California Code of Regulations, title 5, section 71240** provides, in part:

21 ...

22 “(b) The institution shall submit current, reviewed financial statements at the time it applies
23 for approval to operate. Each set of financial statements shall comply with Section 74115 of this
24 chapter.”

25 25. **California Code of Regulations, title 5, section 71260** provides:

26 “(a) For each program offered, the Form Application 94886 shall contain a description of
27 the facilities and the equipment which is available for use by students at the main, branch, and
28 satellite locations of the institution.

1 “(b) For facilities that are leased or rented, the Form Application 94886 shall contain the
2 name and address of the lessor or landlord, together with a copy of any use, lease, or rental
3 agreements for the facilities.

4 “(c) The description of the physical facilities shall include building diagrams or campus
5 maps to assist the Bureau in locating these facilities. The diagrams or maps shall identify the
6 location of classrooms, laboratories, workshops, and libraries.

7 “(d) The description shall include specifications of significant equipment that demonstrate
8 that the equipment meets the standards prescribed by the Code and this chapter and is sufficient to
9 enable students to achieve the educational objectives of each education program.

10 “(e) For each item of significant equipment, the description shall indicate whether the
11 equipment is owned, leased, rented, or licensed for short- or long-term, or owned by another and
12 loaned to be used without charge.

13 “(f) The Form Application 94886 shall contain a list of all permits, certifications, or other
14 evidence of inspections or authorizations to operate required by the jurisdictions within which the
15 institution operates that the institution has obtained, and/or an explanation as to why those
16 permits, certifications, or inspections have not yet been obtained.”

17 **26. California Code of Regulations, title 5, section 71290** provides:

18 “The Form Application 94886 shall include a copy of the institution’s catalog, in published
19 or proposed-to-be-published form. The catalog shall meet the requirements of the Act and of
20 section 71810.”

21 **27. California Code of Regulations, title 5, section 71380** provides:

22 “(a) The Form Application 94886 shall be signed and dated, and each fact stated therein and
23 each attachment thereto shall be declared to be true under penalty of perjury, as follows:

24 “(1) By each owner of the institution, or

25 “(2) If the institution is incorporated, by the chief executive officer of the corporation and
26 each person who owns or controls 25 percent or more of the stock or interest in the institution, or

27 “(3) By each member of the governing body of a nonprofit corporation.

28 ////

1 possess the required three years of experience, education and training in the subject area they are
2 teaching, the institution shall document the qualifications the instructor possesses that are
3 equivalent to the minimum qualifications.

4”

5 31. **California Code of Regulations, title 5, section 71735** provides:

6 “(a) An institution shall have sufficient facilities and necessary equipment to support the
7 achievement of the educational objectives of all of the courses and educational programs in which
8 students are enrolled. If an institution represents that the educational service will fit or prepare a
9 student for employment in a particular occupation or as described in particular job titles, either of
10 the following conditions shall be met:

11 “(1) The equipment used for instruction or provided to the student shall be comparable in
12 model type or features to equipment generally used in those occupations or job titles at the time
13 the instruction is offered.

14 “(2) The institution shall establish that the equipment used for instruction or provided to a
15 student is not obsolete and is sufficient for instructional purposes to reasonably assure that a
16 student acquires the necessary level of education, training, skill, and experience to obtain
17 employment in the field of training and to perform the tasks associated with the occupation or job
18 title to which the educational program was represented to lead.

19 “(b) An institution's facilities, including heating and cooling, ventilation, lighting,
20 classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall
21 maintain all valid permits required by any public agencies relating to the health and safety of the
22 institution's facilities and equipment on file, and such permits shall be available to the Bureau
23 upon request.”

24 32. **California Code of Regulations, title 5, section 71745** provides, in part:

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

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

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

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

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

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

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

15 “...”

16 33. **California Code of Regulations, title 5, section 71760** provides, in part:

17 “Each institution shall develop and maintain adequate procedures used by the institution to
18 assure that it is maintained and operated in compliance with the Act and this Division.”

19 34. **California Code of Regulations, title 5, section 71770** provides, in part:

20 “(a) The institution shall establish specific written standards for student admissions for each
21 educational program. These standards shall be related to the particular educational program. An
22 institution shall not admit any student who is obviously unqualified or who does not appear to
23 have a reasonable prospect of completing the program. In addition to any specific standards for an
24 educational program, the admissions standards must specify as applicable that:

25 “(1) Each student admitted to an undergraduate degree program, or a diploma program,
26 shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the
27 relevant examination as required by section 94904 of the Code.

28 /////

1 “(2) Each student admitted into a post-baccalaureate degree program shall possess a
2 bachelor's degree or its equivalent. If a graduate program leads to a profession or an occupation
3 requiring state licensure and the licensing agency does not require that a member of the
4 profession or occupation possess a Bachelor's degree or its equivalent, this subdivision does not
5 apply.

6 ”

7 **35. California Code of Regulations, title 5, section 71800** provides, in part:

8 “In addition to the requirements of section 94911 of the Code, an institution shall provide to
9 each student an enrollment agreement that contains at the least the following information:

10 ...

11 “(e) Itemization of all institutional charges and fees including, as applicable:

12 ...

13 “(12) any other institutional charge or fee.”

14 **36. California Code of Regulations, title 5, section 74112** provides, in part:

15 ...

16 “(h) Documentation supporting all data reported shall be maintained by the institution for at
17 least five years from the time included in either an Annual Report or a Performance Fact Sheet,
18 and shall include at a minimum: student name(s), address, phone number, email address, program
19 completed, program start and completion dates, place of employment and position, salary, hours,
20 and a description of all attempts to contact each student. Documentation shall also include the
21 name, email address, phone number, and position or title of the institution's representative who is
22 primarily responsible for obtaining the students' completion, placement, licensing, and salary and
23 wage data, the date that the information was gathered, and copies of notes, letters or emails
24 through which the information was requested and gathered.”

25 **37. California Code of Regulations, title 5, section 74115** provides:

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

28

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

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

8 “(2) Financial statements prepared on an annual basis as required by section 74110(b) shall
9 be prepared in accordance with the generally accepted accounting principles established by the
10 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
11 financial statements as required under generally accepted accounting principles for nonprofit
12 organizations.

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

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

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

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

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

1 **38. California Code of Regulations, title 5, section 76000** provides, in part:

2 “For purposes of this chapter, the following definitions apply:

3 ...

4 “(f) ‘Qualifying institution’ is an approved institution or an institution subject to the
5 provisions of Article 14, commencing with section 94923 of the Code, and section 94874.1 of the
6 Code.

7 ...

8 “(h) ‘STRF’ means Student Tuition Recovery Fund.

9 “(i) ‘Student Tuition Recovery Fund assessment’ or ‘STRF assessment’ means a state-
10 imposed charge to fund this chapter that is required to be paid by a California resident student or
11 a student enrolled in a residency program, who pays tuition to an institution.

12 ...”

13 **39. California Code of Regulations, title 5, section 76120** provides:

14 “(a) Each qualifying institution shall collect an assessment of zero dollars (\$0) per one
15 thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from
16 each student in an educational program who is a California resident or is enrolled in a residency
17 program. For institutional charges of one thousand dollars (\$1,000) or less, the assessment is zero
18 dollars (\$0).

19 “(b) Unless a student has a separate agreement to repay the third party, a student whose
20 costs are paid to the institution by third-party payer shall not pay the STRF assessment to the
21 qualifying institution.

22 “(c) Except when an institution provides a 100% refund pursuant to section 94919(d) or
23 section 94920(b) of the Code, the assessment is non-refundable.”

24 **40. California Code of Regulations, title 5, section 76130** provides:

25 “(a) A qualifying institution shall collect the assessment from each student in an
26 educational program at the time it collects the first payment from or on behalf of the student at or
27 after enrollment. The assessment shall be collected for the entire period of enrollment, regardless
28 of whether the student pays the institutional charges in increments.

1 “(b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev.
2 2/10) and remit it with the STRF assessments collected from students to be received by the
3 Bureau no later than the last day of the month following the close of the quarter as follows:

4 “(1) April 30 for the first quarter,

5 “(2) July 31 for the second quarter,

6 “(3) October 31 for the third quarter, and

7 “(4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday or State or
8 federal holiday, the due date shall be extended to the next regular business day for the Bureau.

9 “If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall
10 be extended to the next regular business day for the Bureau.

11 “(c) The STRF Assessment Reporting Form shall contain the following information:

12 “(1) Total number of students who signed enrollment agreements for educational programs
13 during the reporting period; and

14 “(2) Total number of students eligible for STRF who signed enrollment agreements for
15 educational programs during the reporting period; and

16 “(3) The total number of students who signed their enrollment agreement during the
17 reporting period, were eligible for STRF, and who made their first payment during the reporting
18 period; and

19 “(4) The total number of students who signed their enrollment agreement in a previous
20 reporting period, were eligible for STRF, and who made their first payment during the current
21 reporting period; and

22 “(5) Total amount of institutional charges after rounding each student's institutional charges
23 to the nearest \$1,000, for all eligible STRF students whose STRF assessment was collected in the
24 reporting period; and

25 “(6) Current contact telephone number of the person preparing the form; and

26 “(7) A declaration dated and signed under penalty of perjury by the person preparing the
27 form that the form and any attachments are true and correct.

28

1 “(d) In the event of a school closure, any collected assessments shall be remitted to the
2 Bureau within seven days following the cessation of instruction.

3 “(e) Submission of all prior reports and assessments required by this section is a condition
4 of renewal.”

5 FIRST CAUSE FOR DENIAL OF APPLICATION
6 (Incomplete Application – Financial Statements)
(Cal. Code Regs., title 5, §§ 71240, subd. (b); and 74115)

7 41. Respondent’s application is subject to denial because Respondent failed to include a
8 current, reviewed financial statement that is compliant with Code of Regulations, title 5, section
9 74115 for the year 2015. (Cal. Code Regs., title 5, §§ 71240, subd. (b)and 74115).

10 SECOND CAUSE FOR DENIAL OF APPLICATION
11 (Ratio of Current Assets to Current Liabilities)
(Cal. Code Regs., title 5, § 71745, subd. (a)(6))

12 42. Respondent’s application is subject to denial because Respondent failed to document
13 that it has at all times sufficient assets and financial resources to maintain a ratio of current assets
14 to current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year when using
15 generally accepted accounting principles. (Cal. Code Regs., title 5, § 71745, subd. (a)(6)).

16 THIRD CAUSE FOR DENIAL OF APPLICATION
17 (Ability to Pay Operating Expenses)
(Cal. Code Regs., title 5, § 71745, subd. (a)(5))

18 43. Respondent’s application is subject to denial because Respondent failed to document
19 that it has at all times sufficient assets and financial resources to pay all operating expenses when
20 due within 30 days. (Cal. Code Regs., title 5, § 71745, subd. (a)(5)).

21 FOURTH CAUSE FOR DENIAL OF APPLICATION
22 (Ability to Pay Timely Refunds)
(Cal. Code Regs., title 5, § 71745, subd. (a)(4))

23 44. Respondent’s application is subject to denial because Respondent failed to document
24 that it has at all times sufficient assets and financial resources to pay timely refunds as required by
25 Article 13 of the California Private Postsecondary Education Act of 2009 (Education Code §
26 94926 *et seq.*) (Cal. Code Regs., title 5, § 71745, subd. (a)(4)).

27 ////

28 ////

1 FIFTH CAUSE FOR DENIAL OF APPLICATION

2 (Incomplete Application - Advertising)
3 (Cal. Code Regs., title 5, § 71200)

4 45. Respondent's application is subject to denial because Respondent failed to provide
5 with its application copies of advertising and other statements disseminated to the public. (Cal.
6 Code Regs., title 5, § 71200). In particular, Respondent has failed to provide screenshots of its
7 current website, which advertises its institution and educational program.

8 SIXTH CAUSE FOR DENIAL OF APPLICATION

9 (Incomplete Application - School Catalog)
10 (Cal. Code Regs., title 5, § 71290)

11 46. Respondent's application is subject to denial because Respondent's proposed school
12 catalog is incomplete as it does not include the requirements for completion for each program.
13 (Cal. Code Regs., title 5, § 71290). In particular, as a result of its investigation, the Bureau
14 learned that Respondent forces students to work as mentors and/or tutors for 15 hours per day at
15 least once per week and threatens to terminate students who do not comply with this requirement.
16 Respondent failed to include this requirement in its proposed school catalog.

17 SEVENTH CAUSE FOR DENIAL OF APPLICATION

18 (Insufficient Facilities and Equipment)
19 (Cal. Code Regs., title 5, §§ 71735 and 71400.5, subd. (b); and
20 Bus. & Prof. Code § 480, subd. (a)(3)(A))

21 47. Respondent's application is subject to denial because Respondent does not have
22 sufficient facilities and equipment, lacks necessary permits, and its facilities are not maintained
23 and operated in compliance with applicable ordinances and laws. (Cal. Code Regs., title 5, §§
24 71735 and 71400.5, subd. (b); and Bus. & Prof. Code § 480, subd. (a)(3)(A)). In particular, as a
25 result of its investigation, the Bureau learned the following:

26 a. The City of Fremont Community Development Department Building & Safety
27 Division issued Respondent a Notice and Order to Abate Nuisance for a single-family detached
28 residential house located at 46684 Windmill Drive, Fremont, California that Respondent used as a
campus. The Notice states that this house/campus was being used as a boardinghouse for
approximately 30 people as well as providing meals and lodging for compensation, a violation of
the home occupation permit regulations. The City of Fremont ordered Respondent to stop using

1 this house/campus for vocational education purposes as that use is not permitted in a residential
2 zoning district and does not meet the building code requirements to be used for educational
3 purposes. In addition, the City of Fremont found that Respondent failed to obtain the necessary
4 permits to allow equipment Respondent used in teaching at this house/campus: the installation of
5 electrical extension cords used for computers, a wooden stage, and lighting structure. Respondent
6 subsequently vacated this house/campus.

7 b. In violation of local building codes, Respondent was operating a campus out of
8 a single-family detached residential house located at 349 Harvard Commons, Fremont, California.
9 The City of Fremont found that Respondent was violating local codes for operating a school in a
10 location not zoned for business use, constructing a wall addition in an upstairs loft to convert a
11 sixth bedroom without a permit, and a missing smoke detector. Respondent subsequently vacated
12 this house/campus.

13 c. Following the closure of its campuses in Fremont, California (referenced
14 above), Respondent started running a campus in a five-bedroom residential home at 3381 E. Ruby
15 Hill Drive, Pleasanton, California. During an inspection of that property, the City of Pleasanton
16 found that Respondent was operating that campus without the requisite home occupation business
17 license. In addition, the owner of the house has filed an Unlawful Detainer Complaint against
18 Respondent's owner, N.J., based on the following grounds, among others: (i) operating a
19 business at the property without a business license from the City of Pleasanton; (ii) allowing
20 between 13 and 16 individuals to reside in the home, in violation of local home owner association
21 covenants, conditions, and restrictions ("CC&Rs"); (iii) operating a business that is prohibited by
22 Pleasanton Municipal Code and applicable CC&Rs; and (iv) complaints received from neighbors.

23
24 EIGHTH CAUSE FOR DENIAL OF APPLICATION

 (Waiver of Student Claims and Non-Disclosure)

 (Educ. Code § 94897, subd. (m); Cal. Code Regs., title 5, § 71400.5, subd. (b);
 and Bus. & Prof. Code § 480, subd. (a)(3)(A))

26 48. Respondent's application is subject to denial because Respondent directs its students
27 to perform an act (or acts) that violates the California Private Postsecondary Education Act of
28 2009 (Education Code section 94800 *et seq.*) and/or to refrain from reporting unlawful conduct to

1 the Bureau or another governmental agency. (Educ. Code § 94897, subd. (m); Cal. Code Regs.,
2 title 5, § 71400.5, subd. (b); and Bus. & Prof. Code § 480, subd. (a)(3)(A)). In particular:

3 a. Respondent offers a 30% discount on tuition to students who sign an agreement
4 titled "Document and Guarantee of Service" in exchange for, among other things, a waiver of the
5 student's rights, which reads "All claims, complaints, suits, against [Respondent] have been
6 satisfied and retracted." This waiver provision is contrary to Education Code sections 94897,
7 subdivision (m), and 94911, subdivision (j). The Document and Guarantee of Service agreement
8 also contains confidentiality clauses, which is contrary to Education Code sections 94897,
9 subdivision (m), and 94911, subdivision (j).

10 b. In September 2016, Respondent's owner, N.J., tendered to students an
11 agreement titled "Exit and Release Agreement" which, among other things, offers students a
12 reduction in tuition and other debt they owe Respondent in exchange for a global release of all
13 known and unknown claims against Respondent and its various affiliated entities; an agreement
14 that students will "not publicly or privately disparage [Respondent], or [its] reputation, or act in
15 any such manner which would reasonably be expected to lead to unwanted or unfavorable
16 publicity"; and an agreement to maintain the confidentiality of the agreement and all negotiations
17 regarding the agreement. This is also contrary to Education Code sections 94897, subdivision
18 (m), and 94911, subdivision (j).

19 NINTH CAUSE FOR DENIAL OF APPLICATION

20 (Use of Unapproved Enrollment Agreement)

21 (Educ. Code § 94902; Cal. Code Regs., title 5, §§ 71180 and 71400.5, subd. (b); and
22 Bus. & Prof. Code § 480, subs. (a)(3)(A))

23 49. Respondent's application is subject to denial because Respondent used and uses
24 agreements related to enrollment not approved by the Bureau. (Educ. Code § 94902; Cal. Code
25 Regs., title 5, §§ 71180 and 71400.5, subd. (b); and Bus. & Prof. Code § 480, subs. (a)(3)(A)).
26 The circumstances are described in paragraph 48, above.

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2 TENTH CAUSE FOR DENIAL OF APPLICATION
3 (Subverting Requirements for Enrollment Agreement)
4 (Educ. Code § 94911, subd. (j); Cal. Code Regs., title 5, § 71400.5, subd. (b); and
5 Bus. & Prof. Code § 480, subds. (a)(3)(A))

6 50. Respondent's application is subject to denial because it is contrary to the
7 requirements of Section 94911, subdivision (j), and attempts to subvert that statute. (Educ. Code
8 § 94911, subd. (j); Cal. Code Regs., title 5, § 71400.5, subd. (b); and Bus. & Prof. Code § 480,
9 subds. (a)(3)(A)). In particular:

10 a. Pursuant to Section 94911, subdivision (j), every enrollment agreement must
11 contain the following statements:

12 "Any questions a student may have regarding this enrollment agreement that have not been
13 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
14 Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and
15 fax numbers).

16 "A student or any member of the public may file a complaint about this institution with the
17 Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
18 completing a complaint form, which can be obtained on the bureau's Internet Web site (Internet
19 Web site address)."

20 b. However, Respondent seeks, in part, to nullify this mandatory portion of its
21 students' enrollment agreements via the Document and Guarantee of Service agreement and Exit
22 and Release Agreement described in paragraph 48, above. The intended result appears to be an
23 enrollment agreement that would not comply with Section 94911 and to subvert the purpose of
24 Section 94911, subdivision (j).

25 ELEVENTH CAUSE FOR DENIAL OF APPLICATION
26 (Enrollment Agreement -- Failure to Include Charges and Fees)
27 (Cal. Code Regs., title 5, §§ 71400.5, subd. (b) and 71800, subd. (e)(12); and
28 Bus. & Prof. Code § 480, subds. (a)(3)(A))

51. Respondent's application is subject to denial because Respondent utilizes an
enrollment agreement that does not contain an itemization of all institutional charges and fees.
(Cal. Code Regs., title 5, §§ 71400.5, subd. (b) and 71800, subd. (e)(12); and Bus. & Prof. Code §

1 480, subds. (a)(3)(A)). In particular, Respondent requires that students who are not succeeding
2 academically to pay an additional down payment or fee or repeat the program. This policy, and
3 these additional charges and/or fees, are not stated in Respondent's enrollment agreement or
4 otherwise disclosed.

5
6 TWELFTH CAUSE FOR DENIAL OF APPLICATION

7 (Use of Unenforceable Enrollment Agreements)
8 (Educ. Code § 94902, subd. (b)(2); Cal. Code Regs., title 5, § 71400.5, subd. (b); and
9 Bus. & Prof. Code § 480, subd. (a)(3)(A))

10 52. Respondent's application is subject to denial because Respondent utilizes
11 unenforceable enrollment agreements. (Educ. Code § 94902, subd. (b)(2); Cal. Code Regs., title
12 5, § 71400.5, subd. (b); and Bus. & Prof. Code § 480, subd. (a)(3)(A)). In particular, because
13 Respondent does not have a valid approval to operate a private postsecondary institution, the
14 enrollment agreements it offers its students are unenforceable, pursuant to Education Code
15 section 94902, subd. (b)(2).

16
17 THIRTEENTH CAUSE FOR DENIAL OF APPLICATION

18 (False Statement - Omission from Application)
19 (Bus. & Prof. Code § 480, subd. (d); Educ. Code § 94840; and
20 Cal. Code Regs., title 5, §§ 71180, 71380, 71400.5, subds. (a) and (b))

21 53. Respondent's application is subject to denial because Respondent intentionally or
22 negligently omitted pertinent information from its application and knowingly made a false
23 statement of fact in its application. (Bus. & Prof. Code § 480, subd. (d); Educ. Code § 94840; and
24 Cal. Code Regs., title 5, §§ 71180, 71380, 71400.5, subds. (a) and (b)). In particular, Respondent
25 was required to provide a copy of the Document and Guarantee of Service agreement and Exit
26 and Release Agreement, referenced in paragraph 48, above, to the Bureau with its application.
27 However, Respondent failed to provide the Bureau with a copy of this document or otherwise
28 disclose its existence. In addition, by certifying in its application, pursuant to California Code of
Regulations, title 5, section 71380, subdivision (b), that it had provided all the documents it was
required to provide to the Bureau, when it had not, Respondent knowingly made a false
representation to the Bureau.

1 FOURTEENTH CAUSE FOR DENIAL OF APPLICATION

2 (False Employment Statements - Website)
3 (Educ. Code § 94897, subd. (j)(3); Cal. Code Regs., title 5, § 71400.5, subd. (b); and
4 Bus. & Prof. Code § 480, subd. (a)(3)(A))

5 54. Respondent's application is subject to denial because Respondent, on its website,
6 makes and made untrue or misleading statements related to student completion, placement, and
7 employment. (Educ. Code § 94897, subd. (j)(3); Cal. Code Regs., title 5, § 71400.5, subd. (b);
8 and Bus. & Prof. Code § 480, subd. (a)(3)(A)). In particular:

9 a. On its website, Respondent advertises: "95% of our students get a job within 2
10 months of graduating the boot camp." However, according to data maintained by Respondent, its
11 placement rate for that period is 81%.

12 b. On its website, under a heading reading "WHERE OUR GRADUATES WORK
13 NOW," Respondent includes the logos of the companies Paypal, US Bank, and Infuse. But
14 according to data maintained by Respondent regarding its graduates, none of Respondent's
15 graduates were employed by Paypal, US Bank, or Infuse.

16 c. On its website, under a heading reading "Partners," Respondent includes the
17 logos of 14 companies. On this page, Respondent represents that "many" of these "partner"
18 companies "are offering positions to our graduates." In response to a request by the Bureau for
19 copies of Respondent's partnership agreements with these companies, Respondent's owner, N.J.,
20 stated that the "partner" companies give Respondent's students guest workshops and tours and
21 that "some" of those companies hire Respondent's graduates. However, according to data
22 maintained by Respondent regarding its graduates, only two of Respondent's graduates were
23 employed by any of the "partner" companies (specifically, Google and Zurb).

24 FIFTEENTH CAUSE FOR DENIAL OF APPLICATION

25 (False Employment Statements - to Students)
26 (Educ. Code § 94897, subd. (b); Cal. Code Regs., title 5, § 71400.5, subd. (b);
27 and Bus. & Prof. Code § 480, subds. (a)(3)(A))

28 55. Respondent's application is subject to denial because Respondent promises or
guarantees employment, or otherwise overstates the availability of jobs upon graduation. (Educ.
Code § 94897, subd. (b); Cal. Code Regs., title 5, § 71400.5, subd. (b); and Bus. & Prof. Code §
480, subds. (a)(3)(A)). In particular, Respondent's owner N.J. told students that Respondent has

1 a 98% job placement rate and that “sister” or “partner” companies would employ Respondent
2 graduates. Students were also assured that they would find jobs unless they did not want one.
3 Students later discovered that Respondent did not have any “sister” or “partner” companies.

4
5 SIXTEENTH CAUSE FOR DENIAL OF APPLICATION

(Suspension of Classes)

6 (Educ. Code § 94898, subd. (b); Cal. Code Regs., title 5, § 71400.5, subd. (b); and
7 Bus. & Prof. Code § 480, subd. (a)(3)(A))

8 56. Respondent’s application is subject to denial because Respondent suspended classes
9 in violation of Education Code section 94898, subdivision (b). (Educ. Code § 94898, subd. (b);
10 Cal. Code Regs., title 5, § 71400.5, subd. (b); and Bus. & Prof. Code § 480, subd. (a)(3)(A)). In
11 particular:

12 a. Respondent’s website and enrollment agreement represents that Respondent
13 will provide students with 14 weeks of education. However, Respondent suspended two-days of
14 instruction (on April 8 and 9, 2016) to relocate Respondent’s house/campus from 46684
15 Windmill Drive, Fremont, California to 394 Harvard Commons, Fremont, California.

16 b. In another instance, Respondent informed students that they must move out a
17 day prior to the end date specified in their enrollment agreement and an Use License agreement,
18 an agreement which permits 24/7 access to Respondent’s house/campus.

19 SEVENTEENTH CAUSE FOR DENIAL OF APPLICATION

(Act Involving Dishonesty, Fraud, or Deceit)

20 (Bus. & Prof. Code § 480, subds. (a)(2); and
21 Cal. Code Regs., title 5, § 71400.5, subd. (b))

22 57. Respondent’s application is subject to denial because Respondent committed an act
23 involving dishonesty, fraud, or deceit with the intent to substantially benefit itself or another, or
24 substantially injure another. (Bus. & Prof. Code § 480, subds. (a)(2); and Cal. Code Regs., title 5,
25 § 71400.5, subd. (b)). In particular:

26 a. Respondent’s website represents that students will be taught “React” and
27 “ReactJS” coding. After they enroll, students discover that they will not be taught these coding
28 forms.

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1 to students. According to these complainants, a female student was assaulted by a male student
2 during an evening of drinking at a house/campus. Two student complainants also alleged that
3 N.J. brought a stripper to a house/campus, contrary to student objections.

4
5 NINETEENTH CAUSE FOR DENIAL OF APPLICATION
6 (Qualified Faculty)

7 (Educ. Code § 94909, subd. (a)(7); Cal. Code Regs., title 5, §§ 71720, subd. (b)(1) and
8 71400.5, subd. (b); and Bus. & Prof. Code §§ 480, subd. (a)(3)(A))

9 59. Respondent's application is subject to denial because Respondent's school catalog
10 and website do not contain sufficient information regarding its faculty. (Educ. Code § 94909,
11 subd. (a)(7); Cal. Code Regs., title 5, §§ 71720, subd. (b)(1) and 71400.5, subd. (b); and Bus. &
12 Prof. Code §§ 480, subd. (a)(3)(A))). In particular, contrary to California Code of Regulations,
13 title 5, section 71720, subdivision (b)(1) and Education Code section 94909, subdivision (a)(7):

14 a. Respondent's 2014-2016 catalog states that Lead Instructor C.N. has a mastery
15 of JavaScript, but does not contain information regarding his qualifications.

16 b. Although Respondent's catalog indicates that Teacher Assistant P.S. and
17 Mentors J.Z. and M.J.P. have "1+ years of experience with web development," it does not specify
18 the length of their experience.

19 c. Respondent's website does not include Lead Instructor C.N., Teacher Assistant
20 P.S., any instructors, or any instructor assistants.

21 d. The individual webpages for Mentors M.S. and E.R. only list their current
22 occupations.

23 e. Students report that C.N. and P.S. provide the majority of instruction, but are
24 unqualified. According to their LinkedIn profiles, C.N. and P.S. lack the minimum three-years
25 experience, education and training necessary to teach coding.

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2 TWENTIETH CAUSE FOR DENIAL OF APPLICATION

(Failure to Refund Tuition)

3 (Educ. Code § 94920, subds. (b) and (e); Cal. Code Regs., title 5, § 71400.5, subd. (b); and
4 Bus. & Prof. Code § 480, subd. (a)(3)(A))

5 60. Respondent's application is subject to denial because Respondent violated Section
6 94920, subdivisions (b) and (e) by failing or refusing to refund student J.C.'s tuition within 45
7 days of his cancellation or withdrawal. (Educ. Code § 94920, subds. (b) and (e); Cal. Code Regs.,
8 title 5, § 71400.5, subd. (b); and Bus. & Prof. Code § 480, subd. (a)(3)(A)).

9 TWENTY-FIRST CAUSE FOR DENIAL OF APPLICATION

(Maintenance of Uniform Data)

10 (Cal. Code Regs., title 5, §§ 71400.5, subd. (b) and 74112, subd. (h); and
11 Bus. & Prof. Code § 480, subd. (a)(3)(A))

12 61. Respondent's application is subject to denial because Respondent has failed to
13 maintain student data as required by California Code of Regulations, title 5, section 74112,
14 subdivision (h). (Cal. Code Regs., title 5, §§ 71400.5, subd. (b) and 74112, subd. (h); and
15 Bus. & Prof. Code § 480, subd. (a)(3)(A)). In particular, a 2014 School Performance Fact Sheet
16 data spreadsheet provided by Respondent only lists the 19 students who graduated from the
17 program in 2014, and does not include any information for the five students who withdrew (and
18 did not graduate). This spreadsheet also fails to include a description of all attempts to contact
19 each student.

20 TWENTY-SECOND CAUSE FOR DENIAL OF APPLICATION

(Collection of STRF Funds)

21 (Cal. Code Regs., title 5, §§ 71400.5, subd. (b), 76000, subds. (f), (h), and (i); 76120; and
22 76130; and Bus. & Prof. Code § 480, subds. (a)(3)(A))

23 62. Respondent's application is subject to denial because Respondent violates applicable
24 regulations related to Student Tuition Recovery Fund collection and assessment. (Cal. Code
25 Regs., title 5, §§ 71400.5, subd. (b), 76000, subds. (f), (h), and (i); 76120; and 76130; and Bus. &
26 Prof. Code § 480, subds. (a)(3)(A)). In particular:

27 a. Respondent collected STRF fees of \$8.50 from its students when, pursuant to
28 Code of Regulations, title 5, section 76120, the appropriate STRF fee was \$0.

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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 Institution Non-Accredited; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11-4-2016

Joanne Wenzel
JOANNE WENZEL

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

SF2015900708