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7

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

10
11 In the Matter of the Accusation Against:

Case No. 996860

12 **FORM ACADEMY, INC., MIRIAM**
JONES, OWNER
13 **1316 Glendale Blvd**
Los Angeles, CA 90026
14

A C C U S A T I O N

15 **Certification of Institutional and Program**
Approval No. 83978984

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 27, 2010, the Bureau for Private Postsecondary Education
23 (Bureau) issued Certification of Institutional and Program Approval Number 83978984 to Form
24 Academy Inc. with Miriam Jones (Respondent) as sole owner. The Certification of Institutional
25 and Program Approval was in full force and effect at all times relevant to the charges brought
26 herein and will expire on October 20, 2016, unless renewed.

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28 //

JURISDICTION

1
2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) for the Bureau under the authority of the following laws. All § references are to
4 the Education Code¹ unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides in pertinent part that the
6 suspension, expiration, surrender, cancellation of a license shall not deprive the Director of
7 jurisdiction to proceed with a disciplinary action during the period within which the license may
8 be renewed, restored, reissued or reinstated.

9 5. Section 94932 of the Code states:

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

18 6. Section 94933 of the Code states:

19 “The bureau shall provide an institution with the opportunity to remedy noncompliance,
20 impose fines, place the institution on probation, or suspend or revoke the institution’s approval to
21 operate, in accordance with this article, as it deems appropriate based on the severity of an
22 institution’s violations of this chapter, and the harm caused to students.”

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24 //

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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 Accusation is based on the amended version of
the Act.

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

2 “(a) As a consequence of an investigation, and upon a finding that an institution has
3 committed a violation, the bureau may place an institution on probation or may suspend or revoke
4 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 regulations adopted
7 pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph,
8 “material violation” includes, but is not limited to, misrepresentation, fraud in the inducement of a
9 contract, and false or misleading claims or advertising, upon which a student reasonably relied in
10 executing an enrollment agreement and that resulted in harm to the student.”

11 ...

12 8. Cal. Code of Regs., Title 5, § 75100 states:

13 “(a) The Bureau may suspend, revoke or place on probation with terms and conditions an
14 approval to operate.

15 (b) ‘Material violation’ as used in § 94937 of the Code includes committing any act that
16 would be grounds for denial under § 480 of the Business and Professions Code.

17 (c) The proceedings under this § shall be conducted in accordance with Article 10
18 (commencing with § 11445.10) of Chapter 4.5 or Chapter 5 (commencing with § 11500) of Part 1
19 of Division 3 of Title 2 of the Government Code, as requested by the institution.”

20

21 **STATUTORY PROVISION**

22 9. Section 94897 of the Code states, in pertinent part:

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

24 ...

25 (e) Advertise, or indicate in promotional material, that the institution is accredited, unless
26 the institution has been accredited by an accrediting agency.”

27 ...

28

1 (k) Willfully falsify, destroy, or conceal any document of record while that document of
2 record is required to be maintained by this chapter.”

3 10. Section 94900(b)(1) of the Code states, in pertinent part:

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

6 (1) The degree or certificate granted and the date on which that degree or certificate was
7 granted.”

8 11. Section 94900.5 of the Code states, in pertinent part:

9 “An institution shall maintain, for a period of not less than five years, at its principal place
10 of business in this state, complete and accurate records of all of the following information:

11 ...

12 (b) The names and addresses of the members of the institution’s faculty and records of the
13 educational qualifications of each member of the faculty.”

14 12. Section 94902 of the Code states, in pertinent part:

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

18 (b) An enrollment agreement is not enforceable unless all of the following requirements are
19 met:

20 ...

21 (3) Prior to the execution of the enrollment agreement, the student and the institution have
22 signed and dated the information required to be disclosed in the Student Performance Fact Sheet
23 pursuant to subdivisions (a) to (d), inclusive, of § 94910. Each of these items in the Student
24 Performance Fact Sheet shall include a line for the student to initial and shall be initialed and
25 dated by the student.”

26 //

27 //

28 //

1 13. Section 94909 of the Code states, in pertinent part:

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

5 (1) The name, address, telephone number, and, if applicable, Internet Web site address of
6 the institution.

7 (2) Except as specified in Article 2 (commencing with § 94802), a statement that the
8 institution is a private institution and that it is approved to operate by the bureau.

9 (3) The following statements:

10 (A) “Any questions a student may have regarding this catalog that have not been
11 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
12 Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and
13 fax numbers).”

14 (B) “As a prospective student, you are encouraged to review this catalog prior to signing an
15 enrollment agreement. You are also encouraged to review the School Performance Fact Sheet,
16 which must be provided to you prior to signing an enrollment agreement.”

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

21 ...

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

23 (A) Admissions policies, including the institution’s policies regarding the acceptance of
24 credits earned at other institutions or through challenge examinations and achievement tests,
25 admissions requirements for ability-to-benefit students, and a list describing any transfer or
26 articulation agreements between the institution and any other college or university that provides
27 for the transfer of credits earned in the program of instruction. If the institution has not entered
28

1 into an articulation or transfer agreement with any other college or university, the institution shall
2 disclose that fact.

3 ...

4 (12) A statement specifying whether the institution has a pending petition in bankruptcy, is
5 operating as a debtor in possession, has filed a petition within the preceding five years, or has had
6 a petition in bankruptcy filed against it within the preceding five years that resulted in
7 reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Sec. 1101 et
8 seq.).”

9 14. Section 94910 of the Code states, in pertinent part:

10 “Except as provided in subdivision (d) of Section 94909 and Section 94910.5, prior to
11 enrollment, an institution shall provide a prospective student with a School Performance Fact
12 Sheet containing, at a minimum, the following information, as it relates to the educational
13 program:

14 (a) Completion rates, as calculated pursuant to Article 16 (commencing with § 94928).

15 (b) Placement rates for each educational program, as calculated pursuant to Article 16
16 (commencing with § 94928), if the educational program is designed to lead to, or the institution
17 makes any express or implied claim related to preparing students for, a particular career,
18 occupation, vocation, job, or job Title.

19 (c) License examination passage rates for programs leading to employment for which
20 passage of a state licensing examination is required, as calculated pursuant to Article 16
21 (commencing with § 94928).

22 (d) Salary or wage information, as calculated pursuant to Article 16 (commencing with §
23 94928).

24 ...

25 (g) The following statements:

26 (1) ‘This fact sheet is filed with the Bureau for Private Postsecondary Education. Regardless
27 of any information you may have relating to completion rates, placement rates, starting salaries, or
28

1 license exam passage rates, this fact sheet contains the information as calculated pursuant to state
2 law.

3 (2) "Any questions a student may have regarding this fact sheet that have not been
4 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
5 Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and
6 fax numbers)."

7 15. Section 94911 of the Code states, in pertinent part:

8 "An enrollment agreement shall include, at a minimum, all of the following:

9 ...

10 (c) In underlined capital letters on the same page of the enrollment agreement in which the
11 student's signature is required, the total charges for the current period of attendance, the estimated
12 total charges for the entire educational program, and the total charges the student is obligated to
13 pay upon enrollment.

14 ...

15 (i) (1) The following statement: 'Prior to signing this enrollment agreement, you must be
16 given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to
17 review prior to signing this agreement. These documents contain important policies and
18 performance data for this institution. This institution is required to have you sign and date the
19 information included in the School Performance Fact Sheet relating to completion rates,
20 placement rates, license examination passage rates, and salaries or wages, prior to signing this
21 agreement.'

22 (2) Immediately following the statement required by paragraph (1), a line for the student to
23 initial, including the following statement: 'I certify that I have received the catalog, School
24 Performance Fact Sheet, and information regarding completion rates, placement rates, license
25 examination passage rates, and salary or wage information included in the School Performance
26 Fact sheet, and have signed, initialed, and dated the information provided in the School
27 Performance Fact Sheet.'

28 //

1 (j) The following statements:

2 (1) 'Any questions a student may have regarding this enrollment agreement that have not
3 been satisfactorily answered by the institution may be directed to the Bureau for Private
4 Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address),
5 (telephone and fax numbers).''

6 16. Section 94912 of the Code states:

7 "Prior to the execution of an enrollment agreement, the information required to be disclosed
8 pursuant to subdivisions (a) to (d), inclusive, of § 94910 shall be signed and dated by the
9 institution and the student. Each of these items shall also be initialed and dated by the student."

10 17. Section 94920 of the Code states, in pertinent part:

11 "An institution that does not participate in the federal student financial aid programs shall
12 do all of the following:

13 ...

14 (e) The institution shall pay or credit refunds within 45 days of a student's cancellation or
15 withdrawal."

16 18. Section 94929 of the Code states, in pertinent part:

17 "(a) An institution shall annually report to the bureau, as part of the annual report, and
18 publish in its School Performance Fact Sheet, the completion rate for each program. Except as
19 provided in subdivision (b), the completion rate shall be calculated by dividing the number of
20 graduates by the number of students available for graduation."

21 19. Section 94930.5 of the Code states, in pertinent part:

22 "Subject to § 94930, an institution shall remit to the bureau for deposit in the Private
23 Postsecondary Education Administration Fund the following fees, in accordance with the
24 following schedule:

25 ...

26 (d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c),
27 inclusive, each institution that is approved to operate pursuant to this chapter shall remit both of
28 the following:

1 (A) An annual institutional fee, in an amount equal to three-quarters of 1 percent of the
2 institution's annual revenues derived from students in California, but not exceeding a total of
3 twenty-five thousand dollars (\$25,000) annually."

4 20. Section 94934 of the Code states, in pertinent part:

5 "(a) As part of the compliance program, an institution shall submit an annual report to the
6 bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,
7 or another date designated by the bureau, and it shall include the following information for
8 educational programs offered in the reporting period:

9 (1) The total number of students enrolled by level of degree or for a diploma.

10 (2) The number of degrees, by level, and diplomas awarded.

11 (3) The degree levels and diplomas offered.

12 (4) The Student Performance Fact Sheet, as required pursuant to § 94910.

13 (5) The school catalog, as required pursuant to § 94909.

14 (6) The total charges for each educational program by period of attendance.

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

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

19 (9) Additional information deemed by the bureau to be reasonably required to ascertain
20 compliance with this chapter."

21
22 **REGULATORY PROVISIONS**

23 21. Cal. Code of Regs., Title 5, § 71715 states, in pertinent part:

24 "(a) Instruction shall be the central focus of the resources and services of the institution.

25 ...

26 (c) Direct instruction requires the physical presence of one or more students and one or
27 more faculty members at the same location. Direct instruction includes instruction presented in a
28

1 classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or other physical learning
2 settings consistent with the mission, purposes, and objectives of the institution.”

3 22. Cal. Code of Regs., Title 5, § 71720(b) states, in pertinent part:

4 “(b) Instructors in an Educational Program Not Leading to a Degree.

5 (1) An institution shall employ instructors who possess the academic, experiential and
6 professional qualifications to teach, including a minimum of three years of experience, education
7 and training in current practices of the subject area they are teaching. If an instructor does not
8 possess the required three years of experience, education and training in the subject area they are
9 teaching, the institution shall document the qualifications the instructor possesses that are
10 equivalent to the minimum qualifications.”

11 23. Cal. Code of Regs., Title 5, § 71735 states:

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

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

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

25 (b) An institution’s facilities, including heating and cooling, ventilation, lighting,
26 classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall
27 maintain all valid permits required by any public agencies relating to the health and safety of the
28

1 institution's facilities and equipment on file, and such permits shall be available to the Bureau
2 upon request."

3 24. Cal. Code of Regs., Title 5, § 71740(b) states, in pertinent part:

4 "(b) An institution shall provide or make provisions for the library and other learning
5 resources needed to support each educational program it offers, including resources such as
6 reference works, periodicals, monographs, and media and equipment specific to the educational
7 programs offered."

8 25. Cal. Code of Regs., Title 5, § 71745 states, in pertinent part:

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

11 ...

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

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

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

23 26. Cal. Code of Regs., Title 5, § 71750 states, in pertinent part:

24 "(a) Every institution shall make refunds that are no less than the refunds required under the
25 Act and this Division.

26 ...

1 (c) A pro rata refund pursuant to § 94919(c) or 94920(d) or 94927 of the Code shall be no
2 less than the total amount owed by the student for the portion of the educational program provided
3 subtracted from the amount paid by the student, calculated as follows:

4 (1) The amount owed equals the daily charge for the program (total institutional charge,
5 divided by the number of days or hours in the program), multiplied by the number of days student
6 attended, or was scheduled to attend, prior to withdrawal.

7 ...

8 (e) An institution shall refund any credit balance on the student's account within 45 days
9 after the date of the student's completion of, or withdrawal from, the educational program in
10 which the student was enrolled. For purposes of this subdivision and § 94919(d) of the Code,
11 'day' means calendar day.

12 (f) The institution shall maintain a cancellation and withdrawal log, kept current on a
13 monthly basis, which shall include the names, addresses, telephone numbers, and dates of
14 cancellations or withdrawal of all students who have cancelled the enrollment agreement with, or
15 withdrawn from, the institution during the calendar year."

16 27. Cal. Code of Regs., Title 5, § 71660 states:

17 "An institution shall notify the Bureau of a non-substantive change including: change of
18 location of less than 10 miles; addition of a program related to the approved programs offered by
19 the institution; addition of a new branch five miles or less from the main or branch campus;
20 addition of a satellite; and change of mailing address. All such notifications shall be made within
21 30 days of the change and sent to the Bureau, in writing, to the address listed in § 70020."

22 28. Cal. Code of Regs., Title 5, § 71770 states, in pertinent part:

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

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

4 29. Cal. Code of Regs., Title 5, § 71800 states, in pertinent part:

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

7 (a) The name and address of the institution and the addresses where instruction will be
8 provided.

9 (b) Period covered by the enrollment agreement.

10 (c) Program start date and scheduled completion date.

11 (d) Date by which the student must exercise his or her right to cancel or withdraw, and the
12 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
13 to § 94921 of the Code.”

14 ...

15 30. Cal. Code of Regs., Title 5, § 71810 states:

16 “(a) Each institution shall provide a catalog pursuant to § 94909 of the Code, which shall
17 be updated annually. Annual updates may be made by the use of supplements or inserts
18 accompanying the catalog. If changes in educational programs, educational services, procedures,
19 or policies required to be included in the catalog by statute or regulation are implemented before
20 the issuance of the annually updated catalog, those changes shall be reflected at the time they are
21 made in supplements or inserts accompanying the catalog.

22 (b) The catalog shall contain the information prescribed by § 94909 of the Code and all of
23 the following:

24 (1) The specific beginning and ending dates defining the time period covered by the catalog;

25 ...

26 (9) A description of the facilities and of the types of equipment and materials that will be
27 used for instruction;

28 ...

1 (12) A description of all student services;

2 (13) Housing information including all of the following:

3 (A) Whether the institution has dormitory facilities under its control;

4 (B) The availability of housing located reasonably near the institution's facilities and an
5 estimation of the approximate cost or range of cost of the housing; and

6 (C) If the institution has no responsibility to find or assist a student in finding housing, a
7 clear and conspicuous statement so indicating. A statement that the program is "non- residential"
8 does not satisfy this subparagraph."

9 31. - Cal. Code of Regs., Title 5, § 71920 states:

10 "(a) The institution shall maintain a file for each student who enrolls in the institution
11 whether or not the student completes the educational service.

12 (b) In addition to the requirements of § 94900, the file shall contain all of the following
13 pertinent student records:

14 (1) Written records and transcripts of any formal education or training, testing, or
15 experience that are relevant to the student's qualifications for admission to the institution or the
16 institution's award of credit or acceptance of transfer credits including the following:

17 (A) Verification of high school completion or equivalency or other documentation
18 establishing the student's ability to do college level work, such as successful completion of an
19 ability-to-benefit test;

20 (B) Records documenting units of credit earned at other institutions that have been accepted
21 and applied by the institution as transfer credits toward the student's completion of an educational
22 program;

23 (C) Grades or findings from any examination of academic ability or educational
24 achievement used for admission or college placement purposes;

25 (D) All of the documents evidencing a student's prior experiential learning upon which the
26 institution and the faculty base the award of any credit;

27 (2) Personal information regarding a student's age, gender, and ethnicity if that information
28 has been voluntarily supplied by the student;

1 (3) Copies of all documents signed by the student, including contracts, instruments of
2 indebtedness, and documents relating to financial aid;

3 (4) Records of the dates of enrollment and, if applicable, withdrawal from the institution,
4 leaves of absence, and graduation; and

5 (5) In addition to the requirements of § 94900(b) of the Code, a transcript showing all of the
6 following:

7 (A) The courses or other educational programs that were completed, or were attempted but
8 not completed, and the dates of completion or withdrawal;

9 (B) Credit awarded for prior experiential learning, including the course title for which credit
10 was awarded and the amount of credit;

11 (C) Credit for courses earned at other institutions;

12 (D) Credit based on any examination of academic ability or educational achievement used
13 for admission or college placement purposes;

14 (E) The name, address, website address, and telephone number of the institution.

15 (6) For independent study courses, course outlines or learning contracts signed by the
16 faculty and administrators who approved the course;

17 (7) The dissertations, theses, and other student projects submitted by graduate students;

18 (8) A copy of documents relating to student financial aid that are required to be maintained
19 by law or by a loan guarantee agency;

20 (9) A document showing the total amount of money received from or on behalf of the
21 student and the date or dates on which the money was received;

22 (10) A document specifying the amount of a refund, including the amount refunded for
23 tuition and the amount for other itemized charges, the method of calculating the refund, the date
24 the refund was made, and the name and address of the person or entity to which the refund was
25 sent;

26 (11) Copies of any official advisory notices or warnings regarding the student's progress;
27 and

28 (12) Complaints received from the student.”

1 32. Cal. Code of Regs., Title 5, § 74006 states:

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

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

6 (c) The annual institutional fee is based on the institution’s annual revenue. For purposes of
7 this article, annual revenue is annual gross revenue.”

8 33. Cal. Code of Regs., Title 5, § 74110(c) states, in pertinent part:

9 “(c) An institution shall file its annual report by September 1st. The Bureau may extend the
10 period for filing if the institution demonstrates evidence of substantial need but in no case longer
11 than 60 days. The institution shall not change the date of its filing its annual report because of a
12 change in the fiscal year without the Bureau’s approval.”

13 34. Cal. Code of Regs., Title 5, § 76120(a) states, in pertinent part:

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 35. Cal. Code of Regs., Title 5, § 76130 states, in pertinent part:

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

24 (b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev.
25 2/10) and remit it with the STRF assessments collected from students to be received by the
26 Bureau no later than the last day of the month following the close of the quarter as follows:

27 (1) April 30 for the first quarter,

28 (2) July 31 for the second quarter,

1 (3) October 31 for the third quarter, and
2 (4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday or State or
3 federal holiday, the due date shall be extended to the next regular business day for the Bureau.
4 If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall be
5 extended to the next regular business day for the Bureau.”

6 36. Cal. Code of Regs., Title 5, § 76140 states:

7 “(a) A qualifying institution shall collect and maintain records of student information to
8 substantiate the data reported on the STRF Assessment Reporting Form and records of the
9 students’ eligibility under the Fund. Such records shall include the following for each student:

- 10 (1) Student identification number,
- 11 (2) First and last names,
- 12 (3) Email address,
- 13 (4) Local or mailing address,
- 14 (5) Address at the time of enrollment,
- 15 (6) Home address,
- 16 (7) Date enrollment agreement signed,
- 17 (8) Courses and course costs,
- 18 (9) Amount of STRF assessment collected,
- 19 (10) Quarter in which the STRF assessment was remitted to the Bureau,
- 20 (11) Third-party payer identifying information,
- 21 (12) Total institutional charges charged, and
- 22 (13) Total institutional charges paid.

23 (b) The qualifying institution shall maintain the data required under this § in an electronic
24 format that is readily available and open to inspection by the Bureau upon request. The institution
25 shall make the records immediately available to a Bureau representative conducting a site
26 inspection or, upon written request, shall provide a copy within 14 calendar days of the request.
27 All records shall be provided to the Bureau in an intelligible and orderly manner and in an
28 electronic format.”

1 37. Cal. Code of Regs., Title 5, § 76215 states:

2 “(a) A qualifying institution shall include the following statement on both its enrollment
3 agreement for an educational program and its current schedule of student charges:

4 You must pay the state-imposed assessment for the Student Tuition Recovery Fund
5 (STRF) if all of the following applies to you:

6 1. You are a student in an educational program, who is a California resident, or are
7 enrolled in a residency program, and prepay all or part of your tuition either by cash,
8 guaranteed student loans, or personal loans, and

9 2. Your total charges are not paid by any third-party payer such as an employer,
10 government program or other payer unless you have a separate agreement to repay the
11 third party.

12 You are not eligible for protection from the STRF and you are not required to pay the
13 STRF assessment, if either of the following applies:

14 1. You are not a California resident, or are not enrolled in a residency program, or

15 2. Your total charges are paid by a third party, such as an employer, government
16 program or other payer, and you have no separate agreement to repay the third party.

17 (b) In addition to the statement described under subdivision (a) of this §, a qualifying
18 institution shall include the following statement on its current schedule of student charges:

19 The State of California created the Student Tuition Recovery Fund (STRF) to relieve
20 or mitigate economic losses suffered by students in educational programs who are
21 California residents, or are enrolled in a residency programs attending certain schools
22 regulated by the Bureau for Private Postsecondary and Vocational Education.

23 You may be eligible for STRF if you are a California resident or are enrolled in a
24 residency program, prepaid tuition, paid the STRF assessment, and suffered an
25 economic loss as a result of any of the following:

26 1. The school closed before the course of instruction was completed.

27 2. The school’s failure to pay refunds or charges on behalf of a student to a third party
28 for license fees or any other purpose, or to provide equipment or materials for which a
charge was collected within 180 days before the closure of the school.

3. The school’s failure to pay or reimburse loan proceeds under a federally guaranteed
student loan program as required by law or to pay or reimburse proceeds received by
the school prior to closure in excess of tuition and other costs.

4. There was a material failure to comply with the Act or this Division within 30 days
before the school closed or, if the material failure began earlier than 30 days prior to
closure, the period determined by the Bureau.

5. An inability after diligent efforts to prosecute, prove, and collect on a judgment
against the institution for a violation of the Act.

1 However, no claim can be paid to any student without a social security number or a taxpayer
2 identification number.”

3
4 **COST RECOVERY**

5 38. Section 94937 of the Code states, in pertinent part:

6 “(c) The bureau may seek reimbursement pursuant to § 125.3 of the Business and
7 Professions Code.

8 ...

9 (d) An institution shall not be required to pay the cost of investigation to more than one
10 agency.”

11 39. Section 125.3 of the Business and Professions Code provides, in pertinent part, that
12 the Board may request the administrative law judge to direct a licentiate found to have committed
13 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
14 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the
15 license to not being renewed or reinstated. If a case settles, recovery of investigation and
16 enforcement costs may be included in a stipulated settlement.

17
18 **BACKGROUND FACTS**

19 40. On or around February 2012, Respondent was investigated by the Bureau pursuant to
20 several consumer complaints that it failed to provide students with adequate educational materials
21 and supplies, operated without an instructor, failed to provide refunds when requested, charged
22 excessive fees, did not follow a curriculum and hosted students in an unclean facility.

23 41. The Board of Barbering and Cosmetology (Board) also conducted inspections of
24 Respondent and found that it failed to meet minimum equipment requirements. The Board also
25 found that there was no instructor on premises and that students were providing services to
26 consumers without supervision. The Board subsequently issued citations to Respondent.

27 42. Bureau records obtained during investigation established that Respondent advertised
28 unapproved programs, and at times, falsely claimed it was accredited.

1 43. Respondent was approved for various programs by the Board in 2011 and 2013,
2 including Barbering, Manicuring, Barbering Crossover and Cosmetology Crossover, but failed to
3 timely notify the Bureau.

4 44. Bureau investigation revealed unclean areas of the school and areas in need of repair.

5 45. Admissions by Respondent owner, Miriam Jones, established that Respondent failed
6 to submit Student Tuition Recovery Fund (STRF) payments to the Bureau over a three (3) year
7 period.

8 46. Documents obtained during Bureau investigation demonstrated inadequate
9 maintenance of student and faculty records, information and insufficient financial stability
10 required to meet obligations related to student refunds and operational expenses.

11 47. Respondent catalogs were found to be deficient in providing verbatim, required
12 information and disclosures to students, including but not limited to Respondent's obligations to
13 provide student refunds, provide information regarding housing assistance, and other pertinent
14 information.

15
16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Falsely Advertising as an Accredited Institution)**

18 48. Respondent is subject to disciplinary action under Code §§ 94932 and 94897(e) in
19 conjunction with Cal. Code of Regs., Title 5, § 75100 in that at the time of the Bureau
20 Investigator's inspection on February 10, 2012, Respondent advertised on a postcard that it was
21 an "Accredited Beauty and Esthetician School" but it is not and has never been accredited by an
22 agency recognized by the United States Department of Education. Complainant incorporates
23 paragraphs 40 – 47 by reference, as if fully set forth herein.

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SECOND CAUSE FOR DISCIPLINE

(Falsification of Records)

49. Respondent is subject to disciplinary action under Code §§ 94932 and 94897(k) in conjunction with Cal. Code of Regs., Title 5, § 75100 in that on March 1, 2012, Respondent Jones sent students an email stating that classes would be canceled on March 9, 2012 so she could celebrate her birthday but students would still receive credit for that day. Additionally, on May 15, 2015, C.M.² was excused from class because it was too hot in the building but she still received credit for that day. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Degree Granted)

50. Respondent is subject to disciplinary action under Code §§ 94900(b)(1) and 94932 in conjunction with Cal. Code of Regs., Title 5, § 75100 in that per a 2014 inspection by a Bureau Investigator, the student file for graduate L.C. failed to contain a certificate of completion even though Respondent reported that L.C. completed all of her hours.

51. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Faculty Records)

52. Respondent is subject to disciplinary action under Code §§ 94900.5(b) and 94932 in conjunction with Cal. Code of Regs., Title 5, § 75100 in that Respondent failed to maintain records of the educational qualifications of each member of the faculty. Specifically, Respondent failed to produce documents that Jessica Bolstad, Erica Chavez, Shannon Dean, Sierra Drucker, Tamika James and Tracy O'Brien possessed the proper qualifications to teach in their subject

² Initials are used throughout to protect consumer confidentiality.

1 areas. Respondent provided W-9 tax forms, copies of drivers licenses, and/or Instructor Position
2 Policies Agreements.

3 53. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
4

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Failure to Maintain Student Records)**

7 54. Respondent is subject to disciplinary action under Cal. Code of Regs., Title 5, §§
8 71920 as follows:

9 (a) Respondent violated Cal. Code of Regs., Title 5, § 71920(b)(1)(A) in that Respondent
10 failed to maintain written records and transcripts of any formal education or training, testing or
11 experience relevant to the students' qualifications for admission to the institution, including but
12 not limited to verification of high school completion or equivalency or ability-to-benefit test for
13 the student files of D.A., J.P., S.Y., L.C., K.K., C.M. and M.W.

14 (b) Respondent violated Cal. Code of Regs., Title 5, § 71920, subdivision (b)(4) in that
15 the student file for C.B. did not contain any documentation regarding the dates of her approved
16 leave of absence or her date of withdrawal; The file for L.C. did not contain the date she
17 graduated; The files for K.K. and C.M. did not have any documents showing the dates they
18 withdrew; The files for C.M. and M.W. did not contain any documentation regarding the dates
19 they enrolled.

20 (c) Respondent violated Cal. Code of Regs., Title 5, § 71920, subdivisions (b)(5)(A) and
21 (E) in that the student files for B.A., D.C., J.P., T.Sp., S.Y., C.B., L.C., K.K., C.M., and M.W. did
22 not contain any transcripts.

23 (d) Respondent violated Cal. Code of Regs., Title 5, § 71920, subdivision (b)(9) in that
24 the student files for C.M. and M.W. did not contain documentation showing the amount they paid
25 Respondent and when it was received.

26 (e) Respondent violated Cal. Code of Regs., Title 5, § 71920, subdivision (b)(10) in that
27 the student files for C.B. and K.K. did not contain any refund documents. Additionally, the
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1 Student Withdrawal Agreement in M.W.'s file does not contain the method of calculating the
2 refund, the date of the refund, or the name and address of where the refund was sent.

3 55. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
4

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Violation of Enrollment Agreement Requirements)**

7 56. Respondent is subject to disciplinary action under Code §§ 94932, 92902, 94911 and
8 94912 in conjunction with Cal. Code of Regs., Title 5, §§ 71800, 75100, 76215, and 76120 as
9 follows:

10 (a) Respondent violated Code § 94902, subdivision (a) in that student files Bureau
11 Investigators examined in 2012 and 2014 revealed that enrollment agreements for T.S., C.M. and
12 M.W. did not contain the signature of Respondent's authorized employee.

13 (b) Respondent violated Code § 94902 subdivision (b)(3) and 94912 in that student files
14 Bureau Investigators examined in 2012 and 2014 revealed that there were no Student Performance
15 Fact Sheets (SPFS) for D.C. and S.Y. and the SPFS for B.A., J.P., T.S., C.B., L.C., K.K., C.M.,
16 and M.W. were not signed, initialed and dated by the student and signed and dated by
17 Respondent's authorized employee.

18 (c) Respondent violated Code § 94911, subdivisions (c), (i)(1), (i)(2), and (j)(1) in that
19 the enrollment agreements did not contain the total charges for the current period of attendance.
20 Additionally, the estimated total charges for the entire educational program and the total charges
21 the student is obligated to pay upon enrollment are not underlined as is required. Finally, the
22 enrollment agreement did not include certain requirement disclosures regarding receipt of a
23 School Performance and the Bureau's contact information.

24 (d) Respondent violated Cal. Code of Regs., Title 15, § 71800, subdivisions (a), (b), (c)
25 and (d) in that enrollment agreements for C.M. and M.W. failed to show the dates that they started
26 their programs, when they were scheduled to complete their programs, or the date by which they
27 must exercise their right to cancel or withdraw. Additionally, a template enrollment agreement
28 that the Bureau Investigator obtained during the 2014 inspection did not include certain

1 information such as: the address of the institution and location of instruction, the time period
2 covered by the enrollment agreement, the start and end dates of the program, the date to withdraw
3 or cancel, and the refund policy.

4 (e) Respondent violated Cal. Code of Regs. Title 5, § 76215, subdivisions (a) and (b) in
5 that the required Student Tuition Recovery Fund (STRF) disclosures were not properly set forth in
6 the template enrollment agreement.

7 (f) Respondent violated Cal. Code of Regs. Title 5, § 76120, subdivision (a) in that
8 enrollment agreements for B.A., J.P., T.S., C.B., L.C., and K.K. incorrectly calculated the
9 assessment for the STRF. The enrollment agreements for C.M. and M.W. did not include the
10 specific STRF amounts that they were charged.

11 57. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
12

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Violation of School Catalog Requirements)**

15 58. Respondent is subject to disciplinary action under Code §§ 94909 and 94932 in
16 conjunction with Cal. Code of Regs., Title 5, §§ 75100, and 71810 as follows:

17 (a) Respondent violated Code § 94909, subdivision (a)(1) in that in 2014, Respondent
18 failed to list its website in the school catalog.

19 (b) Respondent violated Code § 94909, subdivision (a)(3)(A) in that its catalog failed to
20 provide proper language regarding how to contact the Bureau if the student had questions about
21 the catalog.

22 (c) Respondent violated Code § 94909, subdivision (a)(3)(B) in that its catalog failed to
23 provide the proper language encouraging the prospective student to review the catalog and SPFS
24 prior to signing the enrolling enrollment.

25 (d) Respondent violated Code § 94909, subdivision (a)(8)(A) in that its catalog failed to
26 contain detailed descriptions of institutional policies, including but not limited to the admissions
27 requirements for ability-to-benefit students.
28

1 (e) Respondent violated Code § 94909, subdivision (a)(12) in that its catalog failed to
2 contain a statement specifying whether it has a pending petition in bankruptcy, is operating as a
3 debtor in possession, has filed a petition within the preceding five (5) years or has had a petition
4 in bankruptcy filed against it within the preceding five (5) years that resulted in reorganization
5 pursuant to Chapter 11 of the U.S. Bankruptcy Code.

6 (f) Respondent violated Cal. Code of Regs., Title 5, § 71810, subdivision (b)(1) in that
7 its catalog failed to identify the time period covered by the catalog.

8 (g) Respondent violated Cal. Code of Regs., Title 5, § 71810, subdivision (b)(9) in that
9 its catalog failed to contain a description of the facilities and the types of equipment and materials
10 that will be used for instruction.

11 (h) Respondent violated Cal. Code of Regs., Title 5, § 71810, subdivision (b)(12) in that
12 its catalog failed to contain a description of all student services.

13 (i) Respondent violated Cal. Code of Regs., Title 5, § 71810, subdivision (b)(13)(B) in
14 that its catalog failed to contain information about the availability of housing located reasonably
15 nearby and an estimation of the approximate cost or range of cost of the housing.

16 (j) Respondent violated Cal. Code of Regs., Title 5, § 71810, subdivision (b)(13)(C) in
17 that its catalog failed to contain a statement that the institution has no responsibility to find or
18 assist a student in finding housing. A statement that the program is “non-residential” does not
19 satisfy this requirement.

20 59. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
21

22 EIGHTH CAUSE FOR DISCIPLINE

23 (School Performance Fact Sheet)

24 60. Respondent is subject to disciplinary action under Code §§ 94910 subdivisions (a),
25 (b), (c), (d), (g)(2) and 94932 in conjunction with Cal. Code of Regs., Title 5, § 75100 in that the
26 student files for D.C. and S.Y. did not contain a SPFS. Additionally Respondent only had one
27 SPFS for an unidentified program, not for each program, as required. The one SPFS indicated
28 that the school was too new to provide the required information. However Respondent was

1 approved in 2010 and accordingly, should have been able to provide information about
2 completion rates, placement rates, and salary and wage information. Additionally, the SPFS
3 contained the incorrect contact information for the Bureau.

4 61. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
5

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Failure to Provide a Refund)**

8 62. Respondent is subject to disciplinary action under Code §§ 94932 and 94920 in
9 conjunction with Cal. Code of Regs., Title 5, §§ 75100, 71745 and 71750 as follows:

10 (a) Respondent violated Code § 94920, subdivision (e) and Cal. Code of Regs., Title 5, §
11 71750, subdivisions (a), (c)(1), and (e) in that Respondent did not provide accurate refunds to
12 certain students within 45 days of their withdrawal from school. Specifically, C.B. withdrew on
13 June 12, 2012 and did not receive a \$3,053.72 refund, to which she was entitled. K.K. withdrew
14 on September 26, 2012 and did not receive a \$1,875.97 refund, to which she was entitled. M.W.
15 withdrew on July 2, 2012 and did not receive a refund until April 30, 2015, more than 45 days
16 later.

17 (b) Respondent violated Cal. Code of Regs., Title 5, § 71745, subdivisions (a)(4), (a)(5),
18 and (a)(6) in that Respondent did not have sufficient assets and financial resources to pay refunds.
19 During the 2014 inspection, the Bureau Investigator discovered that according to a balance sheet,
20 Respondent's assets and liabilities had a 1 to 1 ratio. In June 30, 2014, Respondent's assets were
21 -\$8,071.50, meaning that Respondent did not have sufficient funds to pay refunds or operating
22 expenses.

23 63. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

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1 69. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

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THIRTEENTH CAUSE FOR DISCIPLINE

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(Failure to Maintain Evidence That Students Met Minimum Qualifications)

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70. Respondent is subject to disciplinary action under Code § 94932 in conjunction with Cal. Code of Regs., Title 5, §§ 75100, 71770, subdivision (a)(1), 71920, subdivision (b)(1)(A) in that the student files for D.C., J.P., S.Y., L.C., K.K., C.M., and M.W. did not contain documentation that they met the minimum admission requirements, including a copy of a high school diploma, GED, or ability-to-benefit test.

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71. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

FOURTEENTH CAUSE FOR DISCIPLINE

(Failure to Notify the Bureau of New Programs)

72. Respondent is subject to disciplinary action under Code § 94932 in conjunction with Cal. Code of Regs., Title 5, §§ 75100 and 71660 in that Respondent advertised that it offered programs in “Barbering, Manicuring, and Cosmetology Crossover,” but Form Academy had not yet received Bureau approval to offer the programs. The student files for L.C. and M.W. showed that they were enrolled in an unapproved Manicuring program. During an August 19, 2014 school visit, a Bureau Investigator confirmed that students enrolled Respondent’s unapproved Barbering and Manicuring programs.

73. Letters from the Board dated December 5, 2011 and October 3, 2013 granted Respondent approval of courses in Manicuring, Barbering, Barber Crossover and Cosmetology Crossover but the Bureau was not notified within 30 days of the program additions.

74. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

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FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Have Instructors and/or Qualified Instructors)

75. Respondent is subject to disciplinary action under Code § 94932, Cal. Code of Regs., Title 5, §§ 75100, 71715 and 71720 as follows:

(a) Respondent violated Cal. Code of Regs., Title 5, § 71715, subdivision (a) and (c) in that during an inspection of Respondent conducted by the Board on February 15, 2012, there was no instructor on the premises and the students were working on consumers without supervision.

(b) Respondent violated Cal. Code of Regs., Title 5, § 71720, subdivision (b)(1) in that Respondent employed unqualified instructors. Specifically, L.C. identified Stephanie Yniguez as her instructor in 2012, however Stephanie Yniguez did not become licensed until 2013. In addition, instructors Sierra Drucker and Ashley Edmond were already teaching students prior to being issued an esthetician license in 2014.

76. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Meet Facility Standards)

77. Respondent is subject to disciplinary action under Code § 94932 in conjunction with Cal. Code of Regs., Title 5, §§ 75100, 71735 and 71740 as follows:

(a) Respondent violated Cal. Code of Regs., Title 5, § 71735, subdivision (a) in that on or around October 4, 2011 and April 10, 2012 the Board of Barbering and Cosmetology issued citations to Respondent for failing to meet the minimum equipment requirements.

(b) Respondent violated Cal. Code of Regs., Title 5, § 71735, subdivision (b) in that on or around February 10, 2012, a Bureau Investigator observed that many areas of institution were dirty and/or in a state of disrepair. Specifically, the bathroom flooring around the base of the toilet was dirty, cracked, and in bad condition, a wall and ceiling grate appeared dirty, wall paint was cracked and chipping and a soiled towel was on top of a garbage can labeled “dirty.”

1 (c) Respondent violated Cal. Code of Regs., Title 5, § 71740, subdivision (b) in that the
2 citation issued on April 10, 2012 [referenced in paragraph 56 (a), above] included a violation for
3 each student not possessing a Board-approved textbook.

4 78. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
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6 **SEVENTEENTH CAUSE FOR DISCIPLINE**

7 **(Violations Regarding Student Tuition Recovery Fund)**

8 79. Respondent is subject to disciplinary action under Code § 94932 in conjunction with
9 Cal. Code of Regs., Title 5, §§ 75100, 76130 and 76140 as follows:

10 (a) Respondent violated Cal. Code of Regs., Title 5, § 76130, subdivision (a) in that
11 Respondent collected the full tuition from student C.B, but failed to collect the STRF balance
12 owed.

13 (b) Respondent violated Cal. Code of Regs., Title 5, § 76130, subdivision (b) in that
14 Respondent did not submit the STRF assessments and forms by the close of the third quarter
15 (October 31) and fourth quarter (January 31) of 2014.

16 (c) Respondent violated Cal. Code of Regs., Title 5, § 76140, subdivisions (a) and (b) in
17 that Respondent was unable to produce the required STRF documents to the Bureau per requests
18 made on August 19, 2014 and September 2, 2014.

19 80. Complainant incorporates paragraphs 40 – 47 by reference, as if fully set forth herein.
20

21 **PRAYER**

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

25 1. Revoking or suspending Certification of Institutional and Program Approvals Number
26 83978984, issued to Form Academy, Inc. with Miriam Jones as sole owner;
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2. Ordering Form Academy, Inc. and Miriam Jones to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code § 125.3; and

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

DATED: 2/2/16


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

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