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

10
11 In the Matter of the Accusation Against:

Case No. 997378

12 **DEVDAT MAHESHWARI, Owner**
SUNNY COLLEGE
13 **545 N. Mountain Avenue, Ste 203**
Upland, CA 91786 (Main Campus)
14
15 **13916 Hillview Place,**
Victorville, CA 92392 (Branch Campus)
16
17 **School Code Nos. 3604261 and 3604971**

A C C U S A T I O N

Respondent.

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20 Complainant alleges:

21 PARTIES

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

25 2. On or about January 20, 1998, the Bureau for Private Postsecondary Education issued
26 an Approval to Operate (Main Campus) Sunny College (No. 3604261) to Devdat Maheshwari,
27 Owner (Respondent.) The Approval to Operate was in full force and effect at all times relevant to
28 the charges brought herein and will expire on June 30, 2013, unless renewed.

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

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

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

10 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
11 benefit himself or herself or another, or substantially injure another; or

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

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

17

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

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

23 Notwithstanding any other provision of law, in a proceeding conducted by a
24 board within the department pursuant to law to deny an application for a license or
25 to suspend or revoke a license or otherwise take disciplinary action against a person
26 who holds a license, upon the ground that the applicant or the licensee has been
27 convicted of a crime substantially related to the qualifications, functions, and duties
28 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially
related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration.'

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

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

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

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

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

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

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

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

COST RECOVERY

22 15. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
23 may request the administrative law judge to direct a licentiate found to have committed a
24 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
25 investigation and enforcement of the case.

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

3 FIRST CAUSE FOR DISCIPLINE

4 (Conviction of Crime)

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

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

20 PRAYER

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

23 1. Revoking all approvals to operate for Devdat Maheshwari, Owner of Sunny College,
24 including Approval to Operate No. 3604261, Sunny College (545 N. Mountain Avenue, Ste. 203,
25 Upland, CA 91786) and Approval to Operate No. 3604971, Sunny College (13916 Hillview
26 Place, Victorville, CA 92392);

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2. Ordering Devdat Maheshwari, owner of Sunny College, 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 section 125.3 and Education Code section 94937;

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

DATED: 12/8/11



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

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