Bureau for Private Postsecondary Education
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Order After Informal Conference

To: Manuel Sequeira, Owner
Charles Grant, Owner
Truck Driving Academy
3100 Fite Circle, #105
Sacramento, CA 95827

c/o Tasos L. Geron
Law Offices of Tasos L. Geron
P.O. Box 866
Orinda, California 94563

INSTITUTION CODE: 3402821
CITATION NUMBER: 1314018
CITATION ISSUANCE/SERVICE DATE: November 17, 2014
DUE DATE: December 17, 2014
FINE AMOUNT: $ 15,005.00
ORDER OF ABATEMENT INCLUDED: YES
DATE OF INFORMAL HEARING: January 29, 2015
DATE INFORMAL HEARING RECORD CLOSED: February 28, 2015
DATE OF ORDER: MARCH 30, 2015

Joanne Wenzel issues this Order After Informal Conference which incorporates the original "Citation: Assessment of Fine and Order of Abatement" in her official capacity as Bureau Chief of the Bureau for Private Postsecondary Education (Bureau) of the California Department of Consumer Affairs.

CITATION AND PROCEDURAL HISTORY

On November 17, 2014, a Citation was issued to Manuel Sequeira and Charles Grant, owners of Truck Driving Academy located at 3100 Fite Circle #105, Sacramento, CA, 95827 pursuant to Business and Professions Code section 125.9; California Education Code (CEC) section 94936; and Title 5 of the California Code of Regulations (5 CCR) section 75020 for the violations described below. Mr. Sequeira and Mr. Grant requested an informal conference as allowed under CEC section 94936(c)(2), which was held on January 29, 2015. Joanne Wenzel, Bureau Chief and Ileana Butu, Bureau counsel, were present on behalf of the Bureau. Mr. Manuel Sequeira was present along with counsel Tasos L. Geronon. During the hearing, Mr. Sequeira requested additional time to respond to the violations. It was agreed that the record would be held open for 30 days. After the Bureau's consideration of the submissions received after the informal conference, the Bureau makes the following orders.

VIOLATION*

*The original violation, order of abatement, assessment of fine and related notices are included below, along with a summary of the submissions received by the Bureau after the informal conference and the Bureau's decision to affirm, modify, or dismiss the original violation.

#	The California Education Code (CEC) and the California Code of Regulations (CCR). Below you will find the code section(s) of law you are charged with violating.
1.	**Violation:** CEC 94897 (c) – Prohibited Business Practices *"An institution shall not do any of the following: (c) Advertise concerning job availability, degree of skill, or length of time required to learn a trade or skill unless the information is accurate and not misleading."* The institution advertised a 4 week training program. The institution extended the program requiring students to learn a new driving course. The institution advertised 111.5 hours of drive time with the 4 week training period. The institution did not provide 111.5 hours of drive time in the four weeks of training. **Order of Abatement:** The Bureau orders that the institution remove any false or misleading statements regarding the courses offered. Revise the program to accurately reflect the amount of time it will take to complete the driving course and submit evidence of compliance to the Bureau. **Assessment of Fine** The fine for this violation is $1,001.00 --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with a copy of the 2013-2014 Catalog for Truck Driving Academy. Jennifer McSwain, Director of Operations for Truck Driving Academy, represented, in pertinent part: 1) Truck Driving Academy would extend the course if students needed additional time to train; 2) The course is a 4 week, 160 hour program; 3) the explanation of the course is on page #10 of the catalog; and 4) two statements regarding the program: a) " Our advertisement does not state:'111.5 hours of training the students will have their hands on the wheel of the truck' and b) "Our 111.5 hours of training is a variety of different teaching techniques of various items of the inside and outside of the truck that the student needs to know to be successful." **Bureau's Review of Submitted Documentation** Upon review of Page #10 of the catalog the Bureau found the following representations: "Course Description - OTR Driver Training"... "OTR Driver Curriculum Outline". The curriculum outline includes:

	#1 "General Knowledge" "40 hrs." Method is "Lecture" #2 "Pre-Trip Inspection" "8.5 hrs." Method is "Lab" #3 "Operating Practices" "111.5 hrs." Method is "**Hands-on" (emphasis added)** "Comprehension and practice of shifting, backing tractor-trailer and parking maneuvers." "Demonstrate basic to proficient shifting techniques, turns and cornering." "Demonstrate use of communication devices." "Practice and demonstrate speed control, space management, and visual search techniques." "Demonstrate all competencies while driving in traffic, freeway, hill driving and city driving." Total "160 hours" The Bureau finds that given the statement in the catalog that the "Operating Practices" portion of training is 111.5 hours and the method is "Hands-on," along with the description of skills, the advertising statements in context necessarily imply that a student would have 111.5 hours of "Hands-on" driving time. No additional documentation was received from Truck Driving Academy to indicate compliance with the Order of Abatement. **Order:** **The violation is affirmed.**
2.	**Violation:** CEC 94897 (k) – Prohibited Business Practices *"An institution shall not do any of the following: (k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter."* The institution failed to provide the requested student files after a letter was sent to the school requesting them despite the school confirming they had received the letter and would send the documentation. **Order of Abatement:** The Bureau orders that the school provide the requested student record for student, D.P. **Assessment of Fine:** The fine for this violation is $501.00 --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with a copy of DP's student file. **Bureau's Review of Submitted Documentation** Upon review, the Bureau accepts the submitted documents as "DP's student file" and deems the order of abatement dismissed. However, as no fine was received the fine remains owing. **Order:**

	The order of abatement is dismissed; however, the violation and assessment of fine are affirmed.
3.	**Violation:** 94900.5 (b) – Required Institutional Records *"An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information: (b) The names and addresses of the members of the institution's faculty and records of the educational qualifications of each member of the faculty."* The institution failed to maintain a public driving record for an instructor in his faculty file. **Order of Abatement** The Bureau orders that the institution implement a system to maintain complete and accurate faculty records in compliance with CEC 94900.5. Submit evidence of compliance to the Bureau. **Assessment of Fine:** There is no fine for this violation as the institution has provided the Bureau with the current faculty file containing all required documentation. --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided a copy of a driving record for instructor Robert Mathews. **Bureau's Review of Submitted Documentation** Upon review, the Bureau accepts the submitted documents but has determined that submission of a single driving record for one instructor does not indicate the implementation of a system to maintain complete and accurate faculty records in compliance with CEC section 94900.5. **Order:** **The violation is affirmed.**
4.	**Violation:** 94900.5 (c) – Required Institutional Records *"An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:* *(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928)."* According to a California Highway Patrol (CHP) report, the institution failed to maintain vehicle maintenance records. **Order of Abatement:** The Bureau orders that the institution implement a system to maintain complete and accurate vehicle records in compliance with CEC 94900.5. Submit evidence of compliance to the Bureau. **Fine Assessment:** The fine for this violation is $501.00

Documentation Received from Truck Driving Academy after Informal Conference
On February 26, 2015, the Bureau was provided with some documents. Jennifer McSwain, Director of Operations for Truck Driving Academy, also represented, in pertinent part:

"We follow the code for all 90 day repairs and inspections."
"In the past we had an onsite mechanic that fixed all repairs on the trucks and now we send our trucks to truck repair shops and once they are inspected then they are taken to the scale houses where they are inspected by CHP (attached is an example of how we maintain our truck maintenance records)."

Included with the packet were five documents labeled either "sample" or "example". Those documents were 1) "Driver Vehicle Examination Report" labeled "Sample of CHP Scale Inspection", 2) A Sales Invoice from PM Truck Repair INC for a 90 Day Bit Inspection Fill Out Form labeled "Sample 90 day BIT Inspection, 3)" PM Truck Repair Truck Preventative Maintenance Form" labeled "example", 4) PM Truck Repair INC sales receipt for various parts, labor and 90 day BIT Inspection Fill Out Form labeled "Sample Repair Order and 90 day BIT Inspection and 5) PM Truck Repair "PM Inspection" labeled "Sample".

Bureau's Review of Submitted Documentation
The Bureau reviewed the submitted documents and determined that they did not represent the same vehicles; in fact there were no two documents that could be identified as belonging to the same vehicle. Consequently, it could not be determined that what was submitted was evidence of a vehicle maintenance file for one particular vehicle or copies of documents that the Bureau may find in any particular maintenance file. There was no documentation received to indicate that Truck Driving Academy had implemented a maintenance records *system.* A maintenance records system may be represented as a procedure to be followed for truck maintenance or even a maintenance file for one particular vehicle. The Order of Abatement required Truck Driving Academy to implement a system to maintain complete and accurate vehicle records and to submit evidence of compliance to the Bureau. Compliance could not be determined from what was submitted by Truck Driving Academy.

Order:

The violation is affirmed.

5. **Violation:**
CEC 94920 (e) – Mandatory Cancellation, Withdrawal, and Refund Policies
"(e) The institution shall pay or credit refunds within 45 days of a student's cancellation or withdrawal."

AND

CCR 71750 (e) - Withdrawals and Refunds
"(e) An institution shall refund any credit balance on the student's account within 45 days after the date of the student's completion of, or withdrawal from, the educational program in which the student was enrolled. For purposes of this subdivision and section 94919(d) of the Code, "day" means calendar day."

	The institution failed to provide a refund to the student within 45 days of the student's withdrawal. The institution has ignored letters from the Bureau ordering payment to student. **Order of Abatement:** The Bureau orders that the institution pay student, D.P., a refund of $1,280.00. Submit evidence of payment to the Bureau. **Assessment of Fine:** The fine for this assessment is $5,000.00 --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with some documents. Jennifer McSwain, Director of Operations for Truck Driving Academy, also represented, in pertinent part: 1) "The reason the refund was past the 45 days is the fact that we were never notified by DP that he was quitting the program" and 2) "Truck Driving Academy policy is once notified by the student that they are quitting the program a refund will be issued within 45 days." Ms. McSwain also provided a credit card "Dispute Notification" indicating an adjustment amount of $172.00. **Bureau's Review of Submitted Documentation** The Bureau reviewed the statements and the "Dispute Notification" submitted by Truck Driving Academy and re-reviewed the refund/withdrawal policy in the catalog submitted for violation #1 and determined that Truck Driving Academy does not have a withdrawal policy that requires notification from the student but states that a refund is calculated from the last date of attendance. The refund policy also states that the refund will be made within 30 days. The Bureau further reviewed the attendance sheet submitted with DP's student file (#2). The attendance sheet clearly indicates that DP's last date of attendance was February 12, 2013. In review of the credit card "dispute notification", it is noted that DP's refund was $172.00 which is not in compliance with the 60% pro rata refund policy stated in Truck Driving Academy's catalog and enrollment agreement. **Order:** **The violation is affirmed.**
6.	**Violation:** CCR 71720 (b) (1) – Faculty *"(b) Instructors in an Educational Program Not Leading to a Degree.* *(1) An institution shall employ instructors who possess the academic, experiential and professional qualifications to teach, including a minimum of three years of experience, education and training in current practices of the subject area they are teaching. If an instructor does not possess the required three years of experience, education and training in the subject area they are teaching, the institution shall document the qualifications the instructor possesses that are equivalent to the minimum qualifications."* The institution employed an instructor teaching on the road training who was not qualified to train

	students. **Order of Abatement:** The Bureau orders that the institution remove any unqualified instructors and hire instructors in compliance with CCR 71720 (b) (1). Please provide a list of current instructors and qualifications of each. **Assessment of Fine:** The fine for this violation is $2,500.00 --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with some documents. Jennifer McSwain, Director of Operations for Truck Driving Academy, provided the Bureau with two attachments: 1) a resume for Robert Mathews and a work application for Russell Otero, identified as a former instructor, and 2) A letter from Russell Otero. Ms. McSwain also stated: ""All of our instructors have over the required three years of experience." **Bureau's Review of Submitted Documentation** The Bureau reviewed the documentation and the statements that were provided and determined that those documents do not meet the documentation or action required by the Order of Abatement, which specifically ordered that "the institution remove any unqualified instructors and hire instructors in compliance with CCR 71720 (b) (1)" and "provide a list of current instructors and qualifications of each." **Order:** **The violation is affirmed.**
7.	**Violation:** CCR 71735 (a) (2) (b) – Facilities and Equipment *"(a) An institution shall have sufficient facilities and necessary equipment to support the achievement of the educational objectives of all of the courses and educational programs in which students are enrolled. If an institution represents that the educational service will fit or prepare a student for employment in a particular occupation or as described in particular job titles, either of the following conditions shall be met:* *(2) The institution shall establish that the equipment used for instruction or provided to a student is not obsolete and is sufficient for instructional purposes to reasonably assure that a student acquires the necessary level of education, training, skill, and experience to obtain employment in the field of training and to perform the tasks associated with the occupation or job title to which the educational program was represented to lead."* Trucks used for training are not sufficient for training students due to repeated mechanical failures. CHP found Truck Driving Academy equipment to be substandard. Two of three trucks inspected by CHP were not sufficient to be used for instruction. **Order of Abatement:** The Bureau orders that the institution take the proper steps to ensure that the equipment used for

	instruction is not obsolete and is sufficient for instructional purposes in compliance with CCR 71735 (a) (2). Submit evidence of compliance to the Bureau including maintenance records, CHP Biennial Inspection of Terminals (BIT) number, and proof that any advertised vehicles for instruction are available for use. **Assessment of Fine:** The fine for this violation is $2501.00 **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with statements by Jennifer McSwain, Director of Operations for Truck Driving Academy, including the following: 1) "During DPs training one of our trucks had a starter issue; it was fixed within two hours"; 2) "DP and other classmate were offered extended training to make up for that downtime; all of the students attended the extra training due to the truck having starter issues"; 3) "The trucks that were inspected by CHP were in a different truck yard in a different city"; 4) "The yard where DP attended the CHP report was satisfactory (with zero errors found)." **Bureau's Review of Submitted Documentation** The Bureau considered the statements provided by Truck Driving Academy and determined that they do not meet the requirement for evidence of compliance to the Bureau including maintenance records, CHP Biennial Inspection of Terminals (BIT) number, and proof that any advertised vehicles for instruction are available for use. **Order:** **The violation is affirmed.**
8.	**Violation:** CCR 71735 (b) Facilities and Equipment *"(b) An institution's facilities, including heating and cooling, ventilation, lighting, classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall maintain all valid permits required by any public agencies relating to the health and safety of the institution's facilities and equipment on file, and such permits shall be available to the Bureau upon request."* The institution failed to properly maintain the trucks used for instruction according to complainant and CHP's inspection report and unsatisfactory rating. The institution failed to obtain the State required BIT number from the CHP. Two of three trucks were ordered to be "out of service" by the CHP upon investigation. **Order of Abatement:** The Bureau orders that the institution maintain its equipment according to CCR 71735 (b). Provide evidence to the Bureau. **Assessment of Fine:** The fine for this violation is $2500.00 **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with some information. Specifically, Jennifer

	McSwain, Director of Operations for Truck Driving Academy, submitted a copy of a CHP Safety Compliance Report/Terminal Record Update and a statement that the Yuba City truck yard had multiple satisfactory CHP reports throughout the years. **Bureau's Review of Submitted Documentation** The Bureau considered the statement and reviewed the CHP Safety Compliance Report/Terminal Record Update and note that was submitted by Truck Driving Academy. Page one of the report indicates that the Current Terminal Rating is "Satisfactory" but indicates "refer to the following pages for violations". The violations indicate that the carrier does not perform periodic 90 day inspections and they do not require drivers to submit driver's daily vehicle condition reports. The order required Truck Driving Academy to provide evidence to the Bureau that the equipment is being maintained. Documentation of failure to conduct required inspections and failure to require daily vehicle condition reports does not meet that requirement. **Order:** **The violation is affirmed.**
9.	**Violation:** CCR 71930 (e) – Maintenance of Records *"(e) All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations."* The institution failed to provide complainants student file, and a listing of dropped, cancelled, withdrawn and graduated students for 2013. **Order of Abatement:** The Bureau orders that the institution provide the requested records. **Assessment of Fine:** The fine for this violation is $501.00 --- **Documentation Received from Truck Driving Academy after Informal Conference** On February 26, 2015, the Bureau was provided with some information. Specifically, Jennifer McSwain, Director of Operations for Truck Driving Academy, submitted to the Bureau a copy of the dropped, cancelled, "quit" and graduated list along with a statement that they have no record of a request for the 2013 drop, cancelled and graduated list. **Bureau's Review of Submitted Documentation** The Bureau considered the statement and reviewed the list provided. The information submitted includes the Graduated, Dropped, Withdrawn (listed as "quit" on the form") columns, along with a column labeled "TDA" which is not identified. The record indicates that the list is for the Yuba City campus. Information was not provided for the Sacramento campus. The institution did not provide any student complaint files. **Order:** **The violation is affirmed.**

	TOTAL ADMINISTRATIVE FINE DUE: $15,005.00
	TOTAL ADMINISTRATIVE FINE DUE PURSUANT TO ORDER AFTER INFORMAL CONFERENCE: $15,005.00 **Payment must be made, to the Bureau, within 30 days from the date of service of the Order After Informal Conference.****

ASSESSMENT OF A FINE

In accordance with CEC section 94936; and 5 CCR Sections 75040, the Bureau hereby orders this assessment of fine in the amount of **$15,005.00** for the violations described above. **Payment must be made, to the Bureau, within 30 days from the date of service of the Order after Informal Conference. **The payment of the fine is stayed until after the administrative hearing.**

ORDER OF ABATEMENT

In accordance with the provisions of CEC Section 94936 and 5 CCR Section 75040 the Bureau hereby issues the order(s) of abatement described above. **Evidence of compliance with the order(s) of abatement must be submitted, to the Bureau, within 30 days from the date of service of the Order after Informal Conference.**

BACKGROUND

On August 6, 2013 the Bureau received a complaint alleging that Truck Driving Academy falsely advertised a four week program; there was a lack of instruction, and equipment; and failure to make a timely refund. Through the course of the investigation the above mentioned violations were found.

APPEAL OF CITATION

Your request for an Informal Conference and Administrative Hearing was received by the Bureau on December 10, 2014. This matter will be referred to the Attorney General for scheduling of the Administrative Hearing.

CONTACT INFORMATION

If you have any questions regarding this Citation, or desire further information, please contact Jody Wright, Discipline Citation Program by telephone at (916) 431-6940 or by e-mail at jody.wright@dca.ca.gov.

Joanne Wenzel
Bureau Chief

March 30, 2015
Date

Enclosures

- Payment of Fine – Waiver of Appeal
- Declaration of Service by Certified and First Class Mail