1	XAVIER BECERRA	
2	Attorney General of California DIANN SOKOLOFF	х.
3	Supervising Deputy Attorney General CARTER OTT	
4	Deputy Attorney General State Bar No. 221660	
5	1515 Clay Street, 20th Floor P.O. Box 70550	
6	Oakland, CA 94612-0550 Telephone: (510) 879-1349	
7	Facsimile: (510) 622-2270 E-mail: Carter.Ott@doj.ca.gov	
8	Attorneys for Complainant	
9	BEFOR DEPARTMENT OF C	
10	FOR THE BUREAU FOR PRIVATE STATE OF C.	
11		
12	In the Matter of the Statement of Issues	Case No. 1002666
13	Against:	OAH No. 2017110825
14	THE BROTHERS & SISTERS BARBERCOSMO ACADEMY	
15	Application for Approval to Operate an	SECOND AMENDED STATEMENT OF ISSUES
16	Accredited Institution	
17	Respondent.	
18	Complainant alleges:	
19	PARTIES	
20	1. Dr. Michael Marion, Jr. ("Complainar	nt") brings this Second Amended Statement of
21	Issues solely in his official capacity as the Chief o	f the Bureau for Private Postsecondary
22	Education, Department of Consumer Affairs.	
23	2. On or about December 23, 2016, the I	Bureau for Private Postsecondary Education
24	("Bureau") received an Application for Approval	to Operate an Accredited Institution from
25	Respondent The Brothers & Sisters BarberCosmo	Academy ("Respondent"). The Bureau denied
26	the application on April 12, 2017. On May 11, 20	017, Respondent submitted to the Bureau a
27	request for administrative hearing as well as furth	er documents in support of its application.
28	/////	
	SECOND AMENDED STATEMENT OF ISSUES	
		I SECOND AMENDED STATEMENT OF ISSUES

In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

[		
1	JURISDICTION	
2	3. This Second Amended Statement of Issues is brought before the Director of the	
3	Department of Consumer Affairs ("Director") for the Bureau, under the authority of the following	
4	laws. All section references are to the Education Code unless otherwise indicated.	
5	4. Section 94885, subdivision (a) provides, in part:	
6	"(a) The bureau shall adopt by regulation minimum operating standards for an institution	
7	that shall reasonably ensure that all of the following occur:	
8	"(1) The content of each educational program can achieve its stated objective.	
9	••••	
10	"(3) The facilities, instructional equipment, and materials are sufficient to enable students to	
11	achieve the educational program's goals.	
12	••••	
13	"(7) That, upon satisfactory completion of an educational program, the institution gives	
14	students a document signifying the degree or diploma awarded.	
15	••••	
16	"(9) The institution is maintained and operated in compliance with this chapter and all other	
17	applicable ordinances and laws."	
18	5. Section 94886 provides:	
19	"Except as exempted in Article 4 (commencing with Section 94874) or in compliance with	
20	the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,	
21	conduct, or do business as a private postsecondary educational institution in this state without	
22	obtaining an approval to operate under this chapter."	
23	6. Section 94887 provides:	
24	"An approval to operate shall be granted only after an applicant has presented sufficient	
25	evidence to the bureau, and the bureau has independently verified the information provided by the	
26	applicant through site visits or other methods deemed appropriate by the bureau, that the applicant	
27	has the capacity to satisfy the minimum operating standards. The bureau shall deny an application	
28	for an approval to operate if the application does not satisfy those standards."	
	2 SECOND AMENDED STATEMENT OF ISSUES	
	In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)	

ł

.

1 i

1	STATUTORY AND REGULATORY PROVISIONS	
2	7. Section 94911 provides, in part:	
3	"An enrollment agreement shall include, at a minimum, all of the following:	
4	•••	
5	"(d) A clear and conspicuous statement that the enrollment agreement is legally binding	
6	when signed by the student and accepted by the institution.	
7	>> • • • •	
8	8. Section 94913, subdivision (a) provides:	
9	"(a) An institution that maintains an Internet Web site shall provide on that Internet Web	
10	site all of the following:	
11	"(1) The school catalog.	
12	"(2) A School Performance Fact Sheet for each educational program offered by the	
13	institution.	
14	"(3) Student brochures offered by the institution.	
15	"(4) A link to the bureau's Internet Web site.	
16	"(5) The institution's most recent annual report submitted to the bureau."	
17	9. Section 94934 provides:	
18	"(a) As part of the compliance program, an institution shall submit an annual report to the	
19	bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,	
20	or another date designated by the bureau, and it shall include the following information for	
21	educational programs offered in the reporting period:	
22	"(1) The total number of students enrolled by level of degree or for a diploma.	
23	"(2) The number of degrees, by level, and diplomas awarded.	
24	"(3) The degree levels and diplomas offered.	
25	"(4) The Student Performance Fact Sheet, as required pursuant to Section 94910.	
26	"(5) The school catalog, as required pursuant to Section 94909.	
27	"(6) The total charges for each educational program by period of attendance.	
28	3	

·

1	(7) A statement indicating whether the institution is, or is not, current in remitting Student
2	Tuition Recovery Fund assessments.
3	(8) A statement indicating whether an accrediting agency has taken any final disciplinary
4	action against the institution.
5	(9) Additional information deemed by the bureau to be reasonably required to ascertain
6	compliance with this chapter.
7	"(b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method
8	of delivery."
9	10. California Code of Regulations, title 5, section 71390, subdivision (b) provides:
10	"(b) An applicant shall submit to the Bureau the form required by subdivision (a) of this
11	section, a certified copy of its current verification of accreditation granted by its accrediting
12	agency, and the appropriate application fee, as provided in Section 94930.5(a)(3) of the Code."
13	11. California Code of Regulations, title 5, section 71810 provides, in part:
14	"(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
15	all of the following:
16	
17	"(4) Language proficiency information, including: (A) the level of English language
18	proficiency required of students and the kind of documentation of proficiency, such as the Test of
19	English as a Foreign Language (TOEFL), that will be accepted; and (B) whether English
20	language services, including instruction such as ESL, are provided and, if so, the nature of the
21	service and its cost;
22	
23	"(6) The institution's policies and practices regarding any form of financial aid, including
24	all consumer information which the institution is required to disclose to the student under any
25	state or federal financial aid program;
26	"
27	
28	
	4
	Second Amended Statement of Issues In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017)10825)

California Code of Regulations, title 5, section 74000 provides: 12. 1 "(a) An institution shall pay the fees established by Article 17 of the Act. A failure to 2 include a fee with an application or other request renders the application or request incomplete. 3 "(b) All fees lawfully collected are non-refundable. 4 "(c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the 5 6 Code. "(d) The Bureau shall deny a renewal of an approval to operate if the institution fails to 7 submit at the time it files its application for renewal of an approval to operate: all unpaid fees; 8 penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and 9 10 reimbursement of all payments made to students from, the Student Tuition Recovery Fund. 11 "(e)(1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may initiate proceedings to revoke the institution's approval to operate for failure to pay fees. 12 "(2) Any proceeding to revoke an institution's approval to operate is subject to the 13 provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be 14 limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty 15 were paid when originally due. 16 17 "(3) The procedure specified in this subdivision is cumulative to any other right or remedy the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee 18 when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other 19 administrative or judicial action against an institution that fails to pay its fees when due. 20 "(4) An institution whose approval to operate was revoked because of nonpayment of an 21 annual fee or penalty fee may seek to obtain approval to operate only by filing an application for 22 a new approval to operate." 23 1//// 24 ///// 25 11/11 26 1111 27 ///// 28 5 SECOND AMENDED STATEMENT OF ISSUES

In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

1	13. California Code of Regulations, title 5, section 74006, subdivisions (a) and (b)	
2	provide:	
3	"(a) An institution's annual fee is due within 30 days of the date on which the institution	
4	originally receives its approval to operate and each year thereafter on the anniversary of the date	
5	of the original approval.	
6	"(b) An institution shall pay its annual fee in addition to any other applicable fees."	
7	14. California Code of Regulations, title 5, section 74110 provides:	
8	"(a) The annual report required by Section 94934 of the Code shall include the information	
9	required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar	
10	year, and all of the following for the prior calendar year:	
11	"(1) Information regarding institutional branch campuses, including addresses and	
12	programs offered at each campus, if applicable;	
13	"(2) Information regarding satellite locations, including addresses and with which	
14	campus(es) the satellite location is affiliated, if applicable;	
15	"(3) Name of institutional accreditors for each branch and satellite campus, and for each	
16	such campus at which any programs have programmatic accreditation, the names of the	
17	programmatic accreditor for each such program, and effective dates for each programmatic	
18	accreditation, if applicable;	
19	"(4) Information regarding participation in state and federal student loan and grant	
20	programs, including the total amount of funding received from each source for those students	
21 -	enrolled in an approved California school regardless of their state of residency;	
22	"(5) Information regarding participation in other public funding programs, including the	
23	amount of funding received from each public funding source; for purposes of this section, public	
24	funding is any financial aid paid on behalf of students or directly to an institution from any public	
25	source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to	
26	Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program	
27	that is intended to help students pay education-related expenses, including tuition, fees, room and	
28	board, and supplies for education; and	
	6	

SECOND AMENDED STATEMENT OF ISSUES In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

"(6) The total percentage of institutional income that comes from any public funding sources.

1

2

18

19

3 "(b) In addition to the information required by section 94934 and this section provided 4 under penalty of perjury, the institution shall have annual financial statements prepared for the 5 institution's prior fiscal year and signed under penalty of perjury, and shall submit a hard copy 6 under separate cover of such statements in conjunction with its annual report. The form, content 7 and mode of preparation of financial statements shall comply with Section 74115 of this Division. 8 The Bureau may request that the institution immediately make available for inspection to a 9 representative of the Bureau, these financial statements at the offices of the institution.

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

"(d) The annual report shall be electronically filed by submitting the information required
by section 94934 of the Code and this section via the online form provided on the Bureau's
website, electronically attaching, as directed, the School Performance Fact Sheet, the enrollment
agreement, and the school catalog."

## FIRST CAUSE FOR DENIAL OF APPLICATION (Incomplete Application)

(Educ. Code §§ 94887 and 94934; and
Cal. Code Regs, title 5, § 71390, subd. (b), 74000, 74006, subds. (a) and (b), and 74110)
15. Respondent's application is subject to denial because it fails to demonstrate that
Respondent has the capacity to satisfy minimum operating standards. (Educ. Code §§ 94887 and
94934; and Cal. Code Regs, title 5, § 71390, subd. (b), 74000, 74006, subds. (a) and (b), and
74110). In particular:

a. Respondent failed to submit with its application a certified copy of its current
verification of accreditation. (Cal. Code Regs, title 5, § 71390, subd. (b)).

b. Respondent failed to submit Student Tuition Recovery Fund ("STRF")
reporting forms for the fourth quarter of 2017. (Cal. Code Regs, title 5, § 74000).

SECOND AMENDED STATEMENT OF ISSUES In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

1	c. Respondent failed to submit the Annual Fee for 2011, 2015, and 2017. (Cal.
2	Code Regs, title 5, § 74006, subds. (a) and (b)).
3	d. Respondent failed to submit completed Annual Reports for 2014, 2015, and
4	2016. (Educ. Code § 94934 and Cal. Code Regs, title 5, § 74110).
5	SECOND CAUSE FOR DENIAL OF APPLICATION
6	(Enrollment Agreement) (Educ. Code §§ 94887 and 94911, subd. (d))
7	16. Respondent's application is subject to denial because Respondent's proposed
8	enrollment agreement fails to include a clear and conspicuous statement that the enrollment
9	agreement is legally binding when signed by the student and accepted by the institution. (Educ.
10	Code §§ 94887 and 94911, subd. (d)). Instead, Respondent's proposed enrollment agreement
11	reads, at page 8, item 2: "This agreement is a legally binding instrument. Both sides of the
12	contract is binding only when the agreement is accepted, signed and dated by the authorized
13	officer of the school or the admissions officer at the school's principal place of business. Read
14	both sides before signing."
15	TUIDD CALICE FOR DENIAL OF ADDI ICATION
16	THIRD CAUSE FOR DENIAL OF APPLICATION (Catalog) (Educ, Code §§ 94887 and 94999, subd. (a)(10)) and
17	(Educ. Code §§ 94887 and 94909, subd. (a)(10); and Cal. Code Regs, title 5, § 71810, subd. (b)(4) and (b)(6))
18	17. Respondent's application is subject to denial because it failed to offer a student
19	catalog that satisfies minimum standards. (Educ. Code §§ 94887 and 94909, subd. (a)(10); and
20	Cal. Code Regs, title 5, § 71810, subd. (b)(4) and (b)(6)). In particular:
21	a. Respondent's catalog fails to include policies and practices regarding any form
22	of financial aid. (Educ. Code § 94909, subd. (a)(10) and Cal. Code Regs, title 5, § 71810, subd.
23	(b)(6)).
24	b. Respondent's catalog does not include information related to language
25	proficiency, including the level of English language proficiency required of the students and the
26	kind of documentation of proficiency that will be accepted. (Cal. Code Regs, title 5, § 71810,
27	subd. (b)(4)).
28	
	8
	SECOND AMENDED STATEMENT OF ISSUES In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

SECOND AMENDED STATEMENT OF ISSUES In the Matter of Statement of Issues Against The Brothers & Sisters BarberCosmo Acad. (OAH No. 2017110825)

1	FOURTH CAUSE FOR DENIAL OF APPLICATION	
2	(Website) (Educ. Code §§ 94887 and 94913, subd. (a))	
3	18. Respondent's application is subject to denial because Respondent's institution's	
4	website fails to contain operational links to the school catalog, a School Performance Fact Sheet	
5	for each educational program offered by the institution, student brochures, a link to the Bureau for	
6	Private Postsecondary Education's Internet website, and the institution's most recent annual	
7	report submitted to the Bureau for Private Postsecondary Education.	
8	PRAYER	
9	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
10	Second Amended Statement of Issues, and that following the hearing, the Director of the	
11	Department of Consumer Affairs issue a decision:	
12	1. Denying Respondent's Application for Approval to Operate an Accredited Institution;	
13	and	
14	2. Taking such other and further action as deemed necessary and proper.	
15		
16	-11 A Tilut	
17	DATED: 3/27/18	
18	DŘ. MICHAEL MARION, JR. Bureau Chief	
19 20	Bureau for Private Postsecondary Education Department of Consumer Affairs State of California <i>Complainant</i>	
21	Compression	
22	OK2017901340 90923918.docx	
23		
24		
25		
26		
27		
28		
	9	