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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA
11

12 In the Matter of the Statement of Issues
Against:

Case No. 1003353

13 **DAL SMITH**
14 **MARGARET PATT-SMITH**
15 **DBA NATIONAL CULINARY**
& BAKERY SCHOOL

**FIRST AMENDED STATEMENT OF
ISSUES**

16 **Applicant for Renewal of Approval to**
17 **Operate an Institution Non-Accredited**

18 **Institution Code 3711241**

19 Respondents.

20 Complainant alleges:

21 **PARTIES**

22 1. Dr. Michael Marion, Jr. (Complainant) brings this First Amended Statement of Issues
23 solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education,
24 Department of Consumer Affairs.

25 2. On January 17, 2003, the Bureau for Private Postsecondary and Vocational Education
26 issued Dal Smith and Margaret Patt-Smith, doing business as National Culinary & Bakery School
27 an approval to operate which was valid on June 30, 2007. The Bureau for Private Postsecondary
28 and Vocational Education sunsetted on July 1, 2007. On October 11, 2009, the Bureau for

1 Private Postsecondary Education Act of 2009 (SB 48 and hereinafter, "the Act") was signed into
2 law. The Act, which became operative on January 1, 2010, established the Bureau for Private
3 Postsecondary Education (hereinafter "Bureau"). As a result, National Culinary & Bakery
4 School's approval to operate expired on January 16, 2013.

5 3. On or about November 8, 2012, the Bureau received an Application for Renewal of
6 Approval to Operate a Non-Accredited Institution from Respondents Dal Smith and Margaret
7 Patt-Smith, doing business as National Culinary & Bakery School (Respondents). The Bureau
8 denied the application on February 16, 2018. On March 5, 2018, Respondents submitted to the
9 Bureau a request for administrative hearing as well as further documents in support of its
10 application.

11 JURISDICTION

12 4. This First Amended Statement of Issues is brought before the Director of the
13 Department of Consumer Affairs (Director) for the Bureau for Private Postsecondary Education,
14 under the authority of the following laws. All section references are to the Education Code unless
15 otherwise indicated.

16 5. **Section 94885, subdivision (a)** provides, in part:

17 (a) The bureau shall adopt by regulation minimum operating standards for an
18 institution that shall reasonably ensure that all of the following occur:

19 (1) The content of each educational program can achieve its stated objective.

20 ...

21 (3) The facilities, instructional equipment, and materials are sufficient to enable
students to achieve the educational program's goals.

22 ...

23 (7) That, upon satisfactory completion of an educational program, the
24 institution gives students a document signifying the degree or diploma awarded.

25 ...

26 (9) The institution is maintained and operated in compliance with this chapter
and all other applicable ordinances and laws.

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6. Section 94887 provides:

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

STATUTORY PROVISIONS

7. Section 94909, subdivision (a)(15) provides:

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

...

(15) The following statement:

"NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma, or certificate) will transfer."

...

8. Section 94911 provides, in part:

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

...

(d) A clear and conspicuous statement that the enrollment agreement is legally binding when signed by the student and accepted by the institution.

(e) (1) A disclosure with a clear and conspicuous caption, "STUDENT'S RIGHT TO CANCEL," under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund of the charges paid through attendance at the first class session, or the seventh day after enrollment whichever is later.

1 (2) The disclosure shall contain the institution's refund policy and a statement
2 that, if the student has received federal student financial aid funds, the student is
entitled to a refund of moneys not paid from federal student financial aid program
funds.

3 (3) The text shall also include a description of the procedures that a student is
4 required to follow to cancel the enrollment agreement or withdraw from the
institution and obtain a refund.

5 (f) A statement specifying that, if the student is eligible for a loan guaranteed by
6 the federal or state government and the student defaults on the loan, both of the
following may occur:

7 (1) The federal or state government or a loan guarantee agency may take action
8 against the student, including applying any income tax refund to which the person is
entitled to reduce the balance owed on the loan.

9 (2) The student may not be eligible for any other federal student financial aid at
10 another institution or other government assistance until the loan is repaid.

11 (g) A statement specifying that, if the student is eligible for a loan guaranteed
12 by the federal or state government and the student defaults on the loan, both of the
following may occur:

13 (1) The federal or state government or a loan guarantee agency may take action
14 against the student, including applying any income tax refund to which the person is
entitled to reduce the balance owed on the loan.

15 (2) The student may not be eligible for any other federal student financial aid at
another institution or other government assistance until the loan is repaid.

16 (h) The transferability disclosure that is required to be included in the school
17 catalog, as specified in paragraph (15) of subdivision (a) of Section 94909.

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

22 (2) Immediately following the statement required by paragraph (1), a line for
23 the student to initial, including the following statement: "I certify that I have received
24 the catalog, School Performance Fact Sheet, and information regarding completion
25 rates, placement rates, license examination passage rates, salary or wage information,
and the most recent three-year cohort default rate, if applicable, included in the
School Performance Fact sheet, and have signed, initialed, and dated the information
provided in the School Performance Fact Sheet."

26 (j) The following statements:

27 (1) Any questions a student may have regarding this enrollment agreement that
28 have not been satisfactorily answered by the institution may be directed to the Bureau
for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code),

(Internet Web site address), (telephone and fax numbers.

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

(k) The following statement above the space for the student's signature:

"I understand that this is a legally binding contract. My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me."

9. **Section 94913** provides, in pertinent part:

(a) An institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:

...

(2) A School Performance Fact Sheet for each educational program offered by the institution.

...

(4) A link to the bureau's Internet Web site.

(5) The institution's most recent annual report submitted to the bureau.

10. **Section 94916** provides:

An institution extending credit or lending money to an individual for institutional and noninstitutional charges for an educational program shall cause any note, instrument, or other evidence of indebtedness taken in connection with that extension of credit or loan to be conspicuously marked on its face in at least 12-point type with the following notice: "Notice. You may assert against the holder of the promissory note you signed in order to finance the cost of the educational program all of the claims and defenses that you could assert against this institution, up to the amount you have already paid under the promissory note."

11. **Section 94943.5** provides:

An institution shall designate and maintain an agent for service of process within this state, and provide the name, address, and telephone number of the agent to the bureau. The bureau shall furnish the agent's name, address, and telephone number to a person upon request.

REGULATORY PROVISIONS

12. **California Code of Regulations, title 5, section 71475**, provides, in part:

(c) The application for renewal of approval to operate and offer educational

programs for non-accredited institutions shall include all of the following:

....

(7) The name, title, address, email address, telephone number, nature of interest and percentage of ownership of each person, as defined in section 94855 of the Code, who owns or controls 25% or more of the stock or an interest in the institution and, to the extent applicable, each general partner, officer, corporate director, member of the board of directors, and any other person who exercises substantial control over the institution's management or policies. For the purpose of this paragraph, a person exercises "substantial control over the institution's management or policies" if the person has the authority to cause the institution to expend money or incur debt in the amount of five thousand dollars (\$5,000) or more in any year.

....

(e) The institution shall submit at the time it applies for renewal current financial statements that meet the requirements of section 74115 as follows: (1) for an institution with annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution with annual gross revenues less than \$500,000, statements shall be reviewed.

....

(h) The institution shall include in its application the name, title, physical address, telephone number, fax number, and e-mail address for the agent for service of process in California as required by section 94943.5 of the Code. The agent shall be at an address other than the address of the institution or any branch. The agent must confirm the information and acknowledge in writing that he or she is the designated agent for service of process. The information shall be kept current pursuant to section 74190.

....

(r) The institution shall identify and describe, in the application, the educational program it offers, or proposes to offer. If the educational program is a degree program, the institution shall identify the full title which it will place on each degree awarded. If there have been no substantive changes since the last submission, the institution may so state and is not required to submit documentation.

....

(t) In addition, the institution shall list in the application, the following for each educational program offered unless there have been no substantive changes since the last submission. If there have been no substantive changes made the institution may so state and is not required to provide documentation.

....

(4) The title of the educational programs and other components of instruction offered, including a description of the level of the courses (e.g., below college level, undergraduate level, graduate level);

....

(6) The graduation requirements.

....

1 (u) For each educational program that the institution offers or proposes to offer,
2 the application shall contain a statement that the educational program meets the
3 requirements of section 71710, as well as the following unless there have been no
4 substantive changes since the last submission. If there have been no substantive
5 changes made the institution may so state and is not required to provide
6 documentation:

7 (1) A description of the educational program.

8 (2) A description of the equipment to be used during the educational program.

9 (3) A description of the number and qualifications of the faculty needed to
10 teach the educational program.

11 (4) A projection, and the bases for the projection, of the number of students that
12 the institution plans to enroll in the educational program during each of the three
13 years following the date the application was submitted.

14 (5) A description of the learning, skills, and other competencies to be acquired
15 by students who complete the educational program.

16 (6) If licensure is a goal of an educational program, a copy of the approval from
17 the appropriate licensing agency. A copy of the intent to approve conditioned solely
18 upon institutional approval from the Bureau will also meet this requirement.

19

20 13. **California Code of Regulations, title 5, section 71710**, provides:

21 In order to meet its mission and objectives, the educational program defined in
22 section 94837 of the Code shall be comprised of a curriculum that includes:

23 (a) those subject areas that are necessary for a student to achieve the educational
24 objectives of the educational program in which the student is enrolled;

25 (b) subject areas and courses or modules that are presented in a logically organized
26 manner or sequence to students;

27 (c) course or module materials that are designed or organized by duly qualified
28 faculty. For each course or module, each student shall be provided with a syllabus or course
outline that contains:

(1) a short, descriptive title of the educational program;

(2) a statement of educational objectives;

(3) length of the educational program;

(4) sequence and frequency of lessons or class sessions;

(5) complete citations of textbooks and other required written materials;

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(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured;

(7) instructional mode or methods.

(d) if degree granting, require research of an appropriate degree that utilizes a library and other learning resources;

(e) specific learning outcomes tied to the sequence of the presentation of the material to measure the students' learning of the material; and

(f) evaluation by duly qualified faculty of those learning outcomes.

14. **California Code of Regulations, title 5, section 71745** provides:

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

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

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

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

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

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

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

....

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

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

...

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

2 (11) Student Tuition Recovery Fund fee (non-refundable);

3 ...

4 16. **California Code of Regulations, title 5, section 74115** provides, in part:

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

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

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

12 (2) Financial statements prepared on an annual basis as required by section
13 74110(b) shall be prepared in accordance with the generally accepted accounting
14 principles established by the American Institute of Certified Public Accountants.
Nonprofit institutions shall provide annual financial statements as required under
generally accepted accounting principles for nonprofit organizations.

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

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

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

21 ...

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

26 17. **California Code of Regulations, title 5, section 74117** provides:

27 In addition to the requirement in Section 94913(b) of the Code, an institution
28 that maintains a website shall provide on the homepage of that website clear and
conspicuous links to all the items required in Section 94913(a) of the Code.

1 **BACKGROUND**

2 18. On or about January 17, 2003, the Bureau for Private Postsecondary and Vocational
3 Education issued National Culinary & Bakery School an approval to operate which was valid on
4 June 30, 2007. On July 1, 2007, the former Bureau sunsetted. At the time the former Bureau
5 sunsetted, Respondents' approval to operate remained in effect.

6 19. Between July 1, 2007 until January 1, 2010, there was no regulatory body with
7 oversight over private postsecondary educational institutions. Respondents continued to operate
8 during this time. On January 1, 2010, the Bureau was established when the Private Secondary
9 Education Act of 2009 (the Act) became effective.

10 20. Pursuant to the Act, an institution that had a valid approval to operate with the former
11 Bureau on June 30, 2007, could continue to operate for three calendar years after the expiration
12 date of the approval, but was required to comply with the laws governing private postsecondary
13 institutions. Therefore, Respondents were authorized to continue to operate pursuant to its
14 approval to operate and the Act until January 16, 2013.

15 21. On August 1, 2012, the Bureau notified Respondents that if they wished to continue
16 to be approved, an appropriate application needed to be submitted no later than the date of
17 Respondents' expiration of its approval, January 13, 2013. Accordingly, on or about November
18 3, 2012, Respondents submitted an Application for Renewal of Approval to Operate an Institution
19 Non-Accredited.

20 22. On or about August 25, 2016, the Bureau sent the first letter describing the
21 deficiencies in the application to Respondents. Respondents submitted materials in support of its
22 application and otherwise attempted to correct the deficiencies. On or about April 25, 2017, the
23 Bureau sent Respondents a second letter describing the deficiencies in Respondents' application.
24 Again, Respondents submitted materials and attempted to correct the deficiencies.

25 23. On August 22, 2017, the Bureau sent another letter describing the deficiencies to
26 Respondents and advising that if the application documents do not fall in compliance the
27 application will be recommended for denial. Since the deficiencies were not corrected, the
28 Bureau denied the application on February 16, 2018.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**
2 **(Incomplete Application)**
3 **(Educ. Code §§ 94887 and 94943.5; and**
4 **title 5 Cal. Code Regs., §§ 71475, subd. (c)(7) and 71475, subd. (h))**

5 24. Respondents' application is subject to denial because they fail to demonstrate that
6 Respondents have the capacity to satisfy minimum operating standards. ((Educ. Code §§ 94887
7 and 94943.5; and title 5 Cal. Code Regs., § 71475, subd. (c)(7); and 71475, subd. (h)). In
8 particular:

9 a. Respondents failed to submit with their application an updated Section 4.1 of Form
10 Application 94891 (rev. 2/10) which would have provided the current ownership structure of
11 Respondents. (title 5 Cal. Code Regs., § 71475, subd. (c)(7)).

12 b. Respondents failed to submit with their application an updated Section 5 of Form
13 Application 94891 (rev. 2/10) which would have identified the new agent for service of process
14 and his physical address. (Educ. Code § 94943.5 and title 5 Cal. Code Regs., § 71475, subd.
15 (h)).

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**
17 **(Enrollment Agreement)**
18 **(Cal. Educ. Code §§ 94877, 94909, subd. (a)(15), 94911, subds. (d), (e)(1), (e)(2), (e)(3), (f),**
19 **(g)(1), (g)(2), (h), (i)(1), (i)(2), (j)(1), (j)(2), and (k) and 94916; and title 5**
20 **Cal. Code Regs., § 71800, subd. (e)(11))**

21 25. Respondents' application is subject to denial because Respondents failed to submit an
22 enrollment agreement that complies with minimum requirements. (Cal. Educ. Code
23 §§ 94909, subd. (a)(15), 94911, subds. (d), (e)(1), (e)(2), (e)(3), (f), (g)(1), (g)(2), (h), (j)(1),
24 (j)(2), (i)(1), (i)(2) and (k) and 94916; and title 5 Cal. Code Regs., § 71800, subd. (e)(11)). In
25 particular:

26 a. Respondents' enrollment agreement fails to state the correct amount for the Student
27 Tuition Recovery Fund. (title 5 Cal. Code Regs., § 71800, subd. (e)(11)).

28 b. Respondents' enrollment agreement fails to include the following disclosures: (1) a
clear and conspicuous caption, "STUDENT'S RIGHT TO CANCEL," under which it is
explained that the student has the right to cancel and obtain a refund of charges paid through
attendance at the first class session, or the seventh day after enrollment, whichever is later; (2) a

1 statement that, if a student has received federal student financial aid funds, the student is entitled
2 to a refund of moneys not paid from federal student financial aid program funds; and (3) a
3 description of the procedures that a student is required to follow to cancel the enrollment
4 agreement or withdraw from the institution and obtain a refund. (Cal. Educ. Code § 94911, subs.
5 (e)(1), (2) and (3)).

6 c. Respondents' enrollment agreement fails to include a statement specifying that, if a
7 student obtains a loan to pay for an educational program, the student will have the responsibility
8 to repay the full amount of the loan plus interest, less the amount of any refund. (Cal. Educ. Code
9 § 94911, subd. (f)).

10 d. Respondents' enrollment agreement fails to include a statement specifying that, if a
11 student defaults on a federal or state loan, both the following may occur:

12 (1) The federal or state government or a loan guarantee agency may take action against
13 the student, including applying any income tax refund to which the person is entitled to reduce the
14 balance owed on the loan.

15 (2) A student may not be eligible for any other federal student financial aid at another
16 institution or other government financial assistance until the loan is repaid.
17 (Cal. Educ. Code § 94911, subs. (g)(1) and (2)).

18 e. Respondents' enrollment agreement fails to include the transferability disclosure that
19 is required to be included in the school catalog (i.e., "NOTICE CONCERNING
20 TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR
21 INSTITUTION.* The transferability of credits you earn at (insert name of institution) is at the
22 complete discretion of an institution to which you may seek to transfer. Acceptance of the (insert
23 degree, diploma, or certificate) you earn in (insert name of educational program) is also at the
24 complete discretion of the institution to which you may seek to transfer. If the (insert credits or
25 degree, diploma, or certificate) that you earn at this institution are not accepted at the institution
26 to which you seek to transfer, you may be required to repeat some or all of your coursework at
27 that institution. For this reason, you should make certain that your attendance at this institution
28 will meet your educational goals. This may include contacting an institution to which you may

1 seek to transfer after attending (insert name of institution) to determine if your (insert credits or
2 degree, diploma or certificate) will transfer.”) (Cal. Educ. Code §§ 94911, subd. (h) and 94909,
3 subd. (a)(15)).

4 f. Respondents’ enrollment agreement fails to include the required statements directing
5 a student to the Bureau for unanswered questions and for filing a complaint with the Bureau (i.e.,
6 “Any questions a student may have regarding this enrollment agreement that have not been
7 satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary
8 Education at [2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833 P.O. Box 980818,
9 West Sacramento, CA 95798-0818, www.bppe.ca.gov, (888) 370-7589 or (916) 263-1897 or by
10 fax (916) 263-1897].* A student or any member of the public may file a complaint about this
11 institution with the Bureau for Private Postsecondary Education by calling (888) 370-7589 toll-
12 free or by completing a complaint form, which can be obtained on the bureau's internet web site
13 www.bppe.ca.gov.”) (Cal. Educ. Code § 94911, subds. (j)(1) and (2)).

14 g. Respondents’ enrollment agreement fails to include the following required
15 statements, with a line for the student to initial: “(1) Prior to signing this enrollment agreement,
16 you must be given a catalog or brochure and a School Performance Fact Sheet, which you are
17 encouraged to review prior to signing this agreement. These documents contain important policies
18 and 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, and the most recent
21 three- year cohort default rate, if applicable, prior to signing this agreement.”

22 (2) Immediately following the statement required by paragraph (1), a line for the student
23 to 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, and the most recent three-year cohort
26 default rate, if applicable, included in the School Performance Fact sheet, and have signed,
27 initialed, and dated the information provided in the School Performance Fact Sheet.” (Cal. Educ.
28 Code § 94911, subd. (i)(1) and, (i)(2)).

1 h. Respondents' enrollment agreement fails to include a clear and conspicuous statement
2 that the enrollment agreement is legally binding when signed by the student and accepted by the
3 institution. (Cal. Educ. Code § 94911, subd. (d)).

4 i. Respondents' enrollment agreement fails to include the following specific required
5 statement above the space for the student's signature: "I understand that this is a legally binding
6 contract. My signature below certifies that I have read, understood, and agreed to my rights and
7 responsibilities, and that the institution's cancellation and refund policies have been clearly
8 explained to me." (Cal. Educ. Code § 94911, subd. (k)).

9 j. Respondents' enrollment agreement fails to include that an institution extending
10 credit or lending money to an individual for institutional and non institutional charges for an
11 educational program shall cause any note, instrument, or other evidence of indebtedness taken in
12 connection with that extension of credit or loan to be conspicuously marked on its face in at least
13 12-point type with the following notice: "NOTICE." "YOU MAY ASSERT AGAINST THE
14 HOLDER OF THE PROMISSORY NOTE YOU SIGNED IN ORDER TO FINANCE THE
15 COST OF THE EDUCATIONAL PROGRAM ALL OF THE CLAIMS AND DEFENSES
16 THAT YOU COULD ASSERT AGAINST THIS INSTITUTION, UP TO THE AMOUNT YOU
17 HAVE ALREADY PAID UNDER THE PROMISSORY NOTE." (Cal. Educ. Code § 94916).

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Instruction and Degrees Offered)**

20 **(Educ. Code § 94887; and title 5 Cal. Code Regs., § 71475, subds. (r), (t)(4) and (t)(6))**

21 26. Respondents' application is subject to denial because Respondents failed to submit a
22 list of the titles and required educational program lengths for all current educational programs
23 offered by Respondents and may be offering unapproved programs (Educ. Code § 94887; and
24 title 5 Cal. Code Regs., § 71475, subds. (r), (t)(4) and (t)(6)).

25 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

26 **(Educational Programs)**

27 **(Educ. Code § 94887; and title 5 Cal. Code Regs., § 71475, subds. (u)(1-6) and 71710 (a)-(f))**

28 27. Respondents' application is subject to denial because Respondents failed to submit
(a) a description of each educational program, (b) the equipment to be used during each
educational program, (c) the number and qualifications of the faculty needed to teach each

1 educational program, (d) a projection and the basis for the projection of the number of students
2 that Respondents plans to enroll in each educational program during each of the three years
3 following the date the application was submitted, (e) a description of the learning skills, and other
4 competencies to be acquired by students who complete each educational program; and (f) if
5 licensure is a goal of the educational program, a copy of the approval from the appropriate
6 licensing agency (or a copy of the intent to approve conditional solely upon institutional approval
7 from the Bureau). (Educ. Code § 94887; and title 5 Cal. Code Regs., § 71475, subs. (u)(1-6) and
8 71710, subs. (a)-(f)).

9 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

10 (Financial Resources)

11 (Educ. Code § 94887; and title 5 Cal. Code Regs., §§ 71475, subd. (e), 71745, subs. (a)(1-6)
and 74115, subs. (a), (b)(1-5), and (d))

12 28. Respondents' application is subject to denial because Respondent did not submit
13 current and compliant financial statements. (Educ. Code § 94887; and title 5 Cal. Code Regs., §§
14 71475, subd. (e), 71745, subs. (a)(1-6) and 74115, subs. (a), (b)(1-5) and (d)).

15 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

16 (Institutional Website)

17 (Educ. Code §§ 94887 and 94913, subs. (a)(2), (a)(4) and (a)(5); and title 5 Cal. Code Regs.,
§ 74117)

18 29. Respondents' application is subject to denial because Respondents' website failed to
19 satisfy the minimum operating standards. (Educ. Code §§ 94887 and 94913, subs. (a)(2), (a)(4)
20 and (a)(5) and title 5 Cal. Code Regs., § 74117). In particular:

21 a. Respondents' website fails to post the School Performance Fact Sheet for each
22 approved educational program offered and an electronic link to the information on Respondents'
23 website. (Educ. Code § 94913, subd. (a)(2); title 5 Cal. Code Regs., § 74117.)

24 b. Respondents' website fails to clearly and conspicuously, include a link to the
25 Bureau's internet website. (Educ. Code § 94913, subd. (a)(4); title 5 Cal. Code Regs., § 74117.)

26 c. Respondents' website fails to post its most recent Annual Report and contain an
27 electronic link to the information on Respondents' website. (Educ. Code § 94913, subd. (a)(5);
28 title 5 Cal. Code Regs., § 74117.)


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PRAYER

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

1. Denying the application of Dal Smith and Margaret Patt-Smith, doing business as National Culinary & Bakery School, for a renewal of an approval to operate an institution non-accredited; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/29/19


DR. MICHAEL MARION, JR.
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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