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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 1003353

STATEMENT OF ISSUES

14 **DAL SMITH, 50% OWNER**
15 **MARGARET PATT-SMITH, 50%**
16 **OWNER**
17 **NATIONAL SCHOOLS,**
18 **DBA, NATIONAL CULINARY &**
19 **BAKERY SCHOOL**

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

Respondent.

20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about November 8, 2012, the Bureau for Private Postsecondary Education
26 (Bureau) received an Application for Renewal of Approval to Operate a Non-Accredited
27 Institution from Respondents Dal Smith, 50% owner and Margaret Patt-Smith, 50% owner,
28 National Schools, doing business as National Culinary & Bakery School (Respondent). The

1 Bureau denied the application on February 16, 2018. On March 5, 2018, Respondent submitted
2 to the Bureau a request for administrative hearing as well as further documents in support of its
3 application.

4 JURISDICTION

5 3. This Statement of Issues is brought before the Director of the Department of
6 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
7 authority of the following laws. All section references are to the Education Code unless
8 otherwise indicated.

9 4. **Section 94885, subdivision (a)** provides, in part:

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

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

13 ...

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

15 ...

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

18 ...

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

20 5. **Section 94887** provides:

21 An approval to operate shall be granted only after an applicant has presented
22 sufficient evidence to the bureau, and the bureau has independently verified the
23 information provided by the applicant through site visits or other methods deemed
24 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.

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STATUTORY PROVISIONS

6. **Section 94900**, provides:

(a) An institution shall maintain records of the name, address, e-mail address, and telephone number of each student who is enrolled in an educational program in that institution.

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

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

(2) The courses and units on which the certificate or degree was based.

(3) The grades earned by the student in each of those courses.

7. **Section 94904, subdivision (a)** provides:

Except as provided in Subdivision (c), before an ability-to-benefit student may execute an enrollment agreement, the institution shall have the student take an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered.

8. **Section 94909, subdivision (a)** provides, in part:

(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:

(A) A question a student may have regarding this catalog that 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).

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

...

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

(A) Admissions policies, including the institution's policies regarding the acceptance of credits earned at other institutions or through challenge examinations and achievement tests, admissions requirements for ability-to-benefit students, and a list describing any transfer or articulation agreements between the institution and any other college or university that provides for the transfer of credits earned in the

1 program of instruction. If the institution has not entered into an articulation or transfer
2 agreement with any other college or university, the institution shall disclose that fact.

3 (B) Cancellation, withdrawal, and refund policies, including an explanation that
4 the student has the right to cancel the enrollment agreement and obtain a refund of
5 charges paid through attendance at the first class session, or the seventh day after
6 enrollment, whichever is later. The text shall also include a description of the
7 procedures that a student is required to follow to cancel the enrollment agreement or
8 withdraw from the institution and obtain a refund consistent with the requirements of
9 Article 13 (commencing with Section 94919).

10 ...

11 (15) The following statement:

12 NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND
13 CREDENTIALS EARNED AT OUR INSTITUTION.

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

25

26 9. **Section 94911** provides, in part:

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

28 ...

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

...

10. **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.

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

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

11. **Sections 94920, subdivisions (b) and (d)** provide, in part:

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

(b) Institutions shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed two hundred fifty dollars (\$250), if notice of cancellation is made through attendance at the first class session, or the seventh day after enrollment, whichever is later.

...

(d) The institution shall have a refund policy for the return of unearned institutional charges if the student cancels an enrollment agreement or withdraws during a period of attendance. The refund policy for students who have completed 60 percent or less of the period of attendance shall be a pro rata refund.

....

12. **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

13. **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.

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

6

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

14

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

20

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

25

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

.....

(6) The graduation requirements.

.....

(u) For each educational program that the institution offers or proposes to offer,
the application shall contain a statement that the educational program meets the
requirements of section 71710, as well as the following 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:

(1) A description of the educational program.

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

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

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

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

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

11

12 14. **California Code of Regulations, title 5, section 71710** provides, in part:

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

15

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

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

20 (2) a statement of educational objectives;

21 (3) length of the educational program;

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

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

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

26 (7) instructional mode or methods.

27

28 15. **California Code of Regulations, title 5, section 71720, subdivision (b)** provides, in
part:

.....

(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

1 experience, education and training in the subject area they are teaching, the institution
2 shall document the qualifications the instructor possesses that are equivalent to the
3 minimum qualifications.

4 (2) Each instructor shall maintain their knowledge by completing continuing
5 education courses in his or her subject area, classroom management or other courses
6 related to teaching.

7 (3) The institution shall not employ or continue to employ an instructor who
8 was adjudicated in a judicial administrative proceeding as having violated any
9 provision of the Act or this chapter, or as having committed any act that would
10 constitute grounds for the denial of a license under Section 480 of the Business and
11 Professions Code.

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

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

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

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

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

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

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

23 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or
24 greater at the end of the most recent fiscal year when using generally accepted
25 accounting principles, or for an institution participating in Title IV of the federal
26 Higher Education Act of 1965, meet the composite score requirements of the U.S.
27 Department of Education. For the purposes of this section, current assets do not
28 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.

(b) At an institution's request, the Bureau may consider the financial resources
of a parent company if the parent company, as defined by section 94853 of the Code,
meets and maintains all of the following provisions:

(1) Consents in writing to be sued in California;

(2) Consents in writing to be subject to the jurisdiction of the Bureau with
respect to the institution's regulation under the Act and this Chapter;

(3) Designates and maintains an agent for service of process, consistent with
section 74190;

1 (4) Agrees in writing to pay any refund, claim, penalty, or judgment that the
2 institution is obligated to pay; and

3 (5) Files financial reports, maintains financial records, and consents in writing
4 to permit the inspection and copying of financial records to the same extent as is
5 required of the institution.

6 (c) An institution shall provide to the Bureau its most current financial
7 statements upon request.

8 **17. California Code of Regulations, title 5, section 71750** provides, in part:

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

11 (b) An institution may not enforce any refund policy that is not specified in the
12 catalog as required pursuant to section 94909(a)(8)(B) of the Code, and must refund
13 all institutional charges upon a student's withdrawal. Withdrawal policy procedures
14 pursuant to section 94909(a)((8)(B) of the Code shall include, at a minimum: the
15 acceptable methods of delivery of a notice to withdraw; whether withdrawal can be
16 accomplished by conduct, and if so, how; the position or positions to whom the notice
17 to withdraw must be delivered; and the date that the notice to withdraw is considered
18 effective, which shall be no later than the date received by the institution.

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

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

26 (2) Except as provided for in subdivision (a)(3) of this section, all amounts paid
27 by the student in excess of what is owed as calculated in subdivision (a)(1) shall be
28 refunded.

(3) Except as provided herein, all amounts that the student has paid shall be
subject to refund unless the enrollment agreement and the refund policy outlined in
the catalog specify amounts paid for an application fee or deposit not more than
\$250.00, books, supplies, or equipment, and specify whether and under what
circumstances those amounts are non-refundable. Except when an institution provides
a 100% refund pursuant to section 94919(d) or section 94920(b) of the Code, any
assessment paid pursuant to section 94923 of the Code is non-refundable.

(4) For purposes of determining a refund under the Act and this section, a
student shall be considered to have withdrawn from an educational program when he
or she withdraws or is deemed withdrawn in accordance with the withdrawal policy
stated in its catalog.

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1 (d) If an institution has collected money from a student for transmittal on the
2 student's behalf to a third party for a bond, library usage, or fees for a license,
3 application, or examination and the institution has not paid the money to the third
4 party at the time of the student's withdrawal or cancellation, the institution shall
5 refund the money to the student within 45 days of the student's withdrawal or
6 cancellation.

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

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

15 **18. California Code of Regulations, title 5, section 71770** provides, in part:

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

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

26

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

28 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:

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

. . .

(c) Program start date and scheduled completion date.

. . .

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

(1) tuition;

(2) registration fee (non-refundable)

1 ...
2 (4) lab supplies or kits;

3 ...
4 (6) uniforms or other special protective clothing;

5 ...
6 (11) Student Tuition Recovery Fund fee (non-refundable);

7 (12) any other institutional charge or fee.

8 (f) Charges paid to an entity other than an institution that is specifically
9 required for participation in the educational program.

10 20. **California Code of Regulations, title 5, section 71810** provides, in part:

11 (b) The catalog shall contain the information prescribed by Section 94909 of
12 the Code and all of the following:

13 ...
14 (2) A statement of the institution's missions and purposes and the objectives
15 underlying each of its educational programs;

16 ...
17 (15) Policies on the retention of student records.

18 21. **California Code of Regulations, title 5, section 71920** provides:

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

21 (b) In addition to the requirements of section 94900, the file shall contain all of
22 the following pertinent student records:

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

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

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

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

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

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

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

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

7 (5) In addition to the requirements of section 94900(b) of the Code, a transcript
8 showing all of the following:

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

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

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

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

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

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

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

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

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

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

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

(12) Complaints received from the student.

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

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

///

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

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

6 (2) Financial statements prepared on an annual basis as required by section
7 74110(b) shall be prepared in accordance with the generally accepted accounting
principles established by the American Institute of Certified Public Accountants.
8 Nonprofit institutions shall provide annual financial statements as required under
generally accepted accounting principles for nonprofit organizations.

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

11 (4) If an audit performed to determine compliance with any federal or state
12 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.

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

15 (c) Work papers for the financial statements shall be retained for five years
16 from the date of the statements and shall be made available to the Bureau upon
request.

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

21 **23. California Code of Regulations, title 5, section 74117 provides:**

22 In addition to the requirement in Section 94913(b) of the Code, an institution
23 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.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Incomplete Application)**

3 **(Educ. Code §§ 94887 and 94943.5; and**
4 **Cal. Code Regs, title 5, §§ 71475, subd. (c)(7) and 71475, subd. (h))**

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

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

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

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Enrollment Agreement)**

17 **(Cal. Educ. Code §§ 94877 and 94911, subds. (a) and (c)); and**
18 **Cal. Code Regs, title 5, §§ 71800, subds. (a), (e)(1), (e)(2), (e)(4), (e)(6), (e)(11) and (e)(12))**

19 25. Respondent's application is subject to denial because Respondent failed to submit an
20 enrollment agreement that complies with minimum requirements. (Cal. Educ. Code §§ 94877
21 and 94911, subds. (a) and (c); and Cal. Code Regs, title 5, §§ 71800, subds. (a), (e)(1), (e)(2),
22 (e)(4), (e)(6), (e)(11) and (e)(12)). In particular:

23 a. Respondent's enrollment agreement inconsistently refers to itself as both the
24 "National Culinary School" and "National Culinary & Baking School." (Educ. Code § 94911,
25 subd. (a) and Cal. Code Regs, title 5, § 71800, subd. (a)).

26 b. Respondent's enrollment agreement does not clearly identify the address(es) of
27 the location(s) where classroom instruction will be provided. (Cal. Code Regs., title 5, § 71800,
28 subd. (a)).

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1 c. Respondent's enrollment agreement does not list tuition for all educational
2 programs offered by it, in that it only lists the tuition for the Baking and Pastry Program and the
3 Culinary Arts Program. (Cal. Code Regs., title 5, § 71800, subd. (e)(1)).

4 d. Respondent's enrollment agreement and its catalog ambiguously identify a non-
5 refundable registration fee and/or administrative fee of \$150.00 without specifying if this is one
6 or two separate fees. (Cal. Code Regs., title 5, §§ 71800, subds. (e)(2) and (12)).

7 e. Respondent's enrollment agreement specifies that there is no charge for the
8 Knife Kit but the catalog lists a \$225.00 fee for the Knife Kit. If the fee for the Knife Kit is a
9 required fee, the enrollment agreement must list the \$225.00 fee for the Knife Kit. (Cal. Code
10 Regs., title 5, § 71800, subd. (e)(4); Cal. Educ. Code § 94909, subd. (a)(9)).

11 f. Respondent's enrollment agreement identifies that there is a \$135.00 cost for
12 uniforms but the catalog lists the cost for uniforms as \$140.00. The cost for uniforms should be
13 listed identically in both the catalog and enrollment agreement. (Cal. Code Regs., title 5, § 71800,
14 subd. (e)(6); Cal. Educ. Code § 94909, subd. (a)(9)).

15 g. Respondent's enrollment agreement fails to state the correct amount for the
16 Student Tuition Recovery Fund. (Cal. Code Regs., title 5, § 71800, subd. (e)(11)).

17 h. Respondent's enrollment agreement failed to contain the following in
18 underlined capital letters on the same page as the student's signature line: TOTAL CHARGES
19 FOR THE CURRENT PERIOD OF ATTENDANCE; ESTIMATED TOTAL CHARGES FOR
20 THE ENTIRE EDUCATION PROGRAM; AND THE TOTAL CHARGES THE STUDENT IS
21 OBLIGATED TO PAY UPON ENROLLMENT and the corresponding fees or spaces to enter the
22 fee amounts indicated. (Educ. Code § 94911, subd. (c)).

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**
24 **(Instruction and Degrees Offered)**

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

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

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Educational Programs)

(Educ. Code § 94887; and Cal. Code Regs, title 5, § 71475, subs. (u)(1-6) and 71710, subd. (c))

27. Respondent's application is subject to denial because Respondent 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 educational program, (d) a projection and the basis for the projection of the number of students that Respondent plans to enroll in each educational program during each of the three years following the date the application was submitted, (e) a description of the learning skills, and other competencies to be acquired by students who complete each educational program; (f) a copy of the approval from the appropriate licensing agency (or a copy of the intent to approve conditional solely upon institutional approval from the Bureau) if licensure is a goal of an educational program; and (g) current syllabi for all educational programs offered. (Educ. Code § 94887; and Cal. Code Regs, title 5, § 71475, subs. (u)(1-6) and 71710, subd. (c)).

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Faculty)

(Educ. Code § 94887; and Cal. Code Regs, title 5, § 71720, subd. (b)(1))

28. Respondent's application is subject to denial because Respondent failed to submit a current list of faculty confirming that Respondent employs qualified instructors. (Educ. Code § 94887; and Cal. Code Regs, title 5, § 71720, subd. (b)(1)).

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Financial Resources)

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

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

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SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Catalog)

(Educ. Code §§ 94887, 94904, 94909, subds. (a)(8)(A), (a)(8)(B) and (a)(15), 94920, subds. (b) and (d) and 94900; and Cal. Code Regs, title 5, §§ 71750; 71770, subd. (a)(1); 71810, subd. (b)(2) and (b)(15), 71920)

30. Respondent's application is subject to denial because it failed to offer a student catalog that satisfies minimum standards. (Educ. Code §§ 94887, 94904, 94909, subds. (a)(8)(A), (a)(8)(B) and (a)(15), 94920, subds. (b) and (d) and 94900; and Cal. Code Regs, title 5, §§ 71770, subd. (c); 71750; 71770, subd. (a)(1); 71810, subd. (b)(2) and (b)(15). In particular:

a. Respondent's catalog fails to contain a clear statement of its missions and purposes. (Cal. Code Regs., title 5, § 71810, subd. (b)(2)).

b. Respondent's catalog fails to contain the required "NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION." (Educ. Code § 94909, subd. (a)(15)).

c. Respondent's catalog fails to contain a detailed description of admission requirements for ability-to-benefit students as the catalog does not include the specific Department of Education-approved ability-to-benefit test and score that will be accepted for admission. (Educ. Code §§ 94904, 94909, subd. (a)(8)(A); Cal. Code Regs., title 5, § 71770, subd. (a)(1)).

d. Respondent's catalog includes a non-compliant refund policy and does not state that students have a right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later. (Educ. Code §§ 94909, subd. (a)(8)(B), 94920, subds. (b) and (d) and Cal. Code Regs., title 5, § 71750).

e. Respondent's catalog fails to include its policies on the retention of student records; therefore the Bureau cannot determine compliance. (Educ. Code § 94900; Cal. Code Regs., title 5, §§ 71810, subd. (b)(15) and 71920).

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EIGHTH CAUSE FOR DENIAL OF APPLICATION
(Institutional Website)

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

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

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

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

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


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, 50% owner and Margaret Patt-Smith, 50% owner, National Schools, doing business as National Culinary & Bakery School, for renewal of an approval to operate an institution non-accredited;

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

DATED: 9/4/18


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