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7

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

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

Case No. 1003604

15 **EMPOWERTECH**

STATEMENT OF ISSUES

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

19 **Institution Code: 25860940**

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about October 15, 2014, the Bureau for Private Postsecondary Education
28 received an Application for Renewal of Approval to Operate an Institution Non-Accredited from

1 Empowertech (Respondent). On or about September 12, 2014, Keith Breaux, David B. Rogers,
2 Francine Gelbrach, Joan Elaine Anderson, Millie E. Davis, Ronald Wheeler and Lisa Y. Davis
3 certified under penalty of perjury to the truthfulness of all statements, answers, and
4 representations in the application. The Bureau denied the application on May 22, 2018.

5 JURISDICTION

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

10 STATUTORY PROVISIONS

11 4. Business and Professions Code Section 22 defines the term “board” to include
12 “bureau.”

13 5. Education Code section 94885¹ states:

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

16 ...

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

19 6. Education Code Section 94886 states:

20 Except as exempted in Article 4 (commencing with section 94874) or in compliance with
21 the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,
22 conduct, or do business as a private postsecondary educational institution in this state without
23 obtaining an approval to operate under this chapter.

24 7. Education Code Section 94887 states:

25 An approval to operate shall be granted only after an applicant has presented sufficient
26 evidence to the bureau, and the bureau has independently verified the information provided by the
27 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant

28 ¹ California Private Postsecondary Education Act of 2009, Ed. Code §§ 94800 et seq.

1 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
2 for an approval to operate if the application does not satisfy those standards.

3 8. Education Code Section 94891 states in pertinent part:

4 “(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
5 continued capacity to meet the minimum operating standards.”

6 9. Education Code Section 94909 states in pertinent part:

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

10

11

12 (7) Information regarding the faculty and their qualifications.

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

14

15 (C) Probation and dismissal policies.

16 (10) A statement reporting whether the institution participates in federal and state financial
17 aid programs, and if so, all consumer information that is required to be disclosed to the student
18 pursuant to the applicable federal and state financial aid programs.

19 (11) A statement specifying that, if a student obtains a loan to pay for an educational
20 program, the student will have the responsibility to repay the full amount of the loan plus interest,
21 less the amount of any refund, and that, if the student has received federal student financial aid
22 funds, the student is entitled to a refund of the moneys not paid from federal student financial aid
23 program funds.

24

25 (13) If the institution provides placement services, a description of the nature and extent of
26 the placement services.

27 10. Education Code Section 94911 states in pertinent part:

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

1 ...

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

6

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

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

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

14

15 11. Education Code Section 94913 states:

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

18

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

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

21 12. Education Code Section 94934 states:

22 (a) As part of the compliance program, an institution shall submit an annual report to the
23 bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,
24 or another date designated by the bureau, and it shall include the following information for
25 educational programs offered in the reporting period:

26 (1) The total number of students enrolled by level of degree or for a diploma.

27 (2) The number of degrees, by level, and diplomas awarded.

28 (3) The degree levels and diplomas offered.

- 1 (4) The Student Performance Fact Sheet, as required pursuant to Section 94910.
2 (5) The school catalog, as required pursuant to Section 94909.
3 (6) The total charges for each educational program by period of attendance.
4 (7) A statement indicating whether the institution is, or is not, current in remitting Student
5 Tuition Recovery Fund assessments.
6 (8) A statement indicating whether an accrediting agency has taken any final disciplinary
7 action against the institution.
8 (9) Additional information deemed by the bureau to be reasonably required to ascertain
9 compliance with this chapter.

10

11 **REGULATORY PROVISIONS**

12 13. Title 5, California Code of Regulations (CCR), section 71700 states:
13 "The Bureau may request that an institution document compliance with the standards set
14 forth in the Act and this Division to obtain and maintain an approval to operate."

15 14. Title 5, CCR, section 71710 states:

16 In order to meet its mission and objectives, the educational program defined in section
17 94837 of the Code shall be comprised of a curriculum that includes:

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

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

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

- 25 (1) a short, descriptive title of the educational program;
26 (2) a statement of educational objectives;
27 (3) length of the educational program;
28 (4) sequence and frequency of lessons or class sessions;

- 1 (5) complete citations of textbooks and other required written materials;
2 (6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
3 learned and how those skills are to be measured;
4 (7) instructional mode or methods.
5 (d) if degree granting, require research of an appropriate degree that utilizes a library and
6 other learning resources;
7 (e) specific learning outcomes tied to the sequence of the presentation of the material to
8 measure the students' learning of the material; and
9 (f) evaluation by duly qualified faculty of those learning outcomes.

10 15. Title 5, CCR, section 71475 states in pertinent part:

11

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

16 (1) The admissions requirements, including minimum levels of prior education,
17 preparation, or training;

18 (2) If applicable, information regarding the ability-to-benefit examination as required by
19 section 94904 of the Code.

20 (3) The types and amount of general education required;

21

22 (6) The graduation requirements.

23

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

1 ...

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

4

5 16. Title 5, CCR, section 71745 states in pertinent part:

6

7 (b) Instructors in an Educational Program Not Leading to a Degree.

8 (1) An institution shall employ instructors who possess the academic, experiential and
9 professional qualifications to teach, including a minimum of three years of experience, education
10 and training in current practices of the subject area they are teaching. If an instructor does not
11 possess the required three years of experience, education and training in the subject area they are
12 teaching, the institution shall document the qualifications the instructor possesses that are
13 equivalent to the minimum qualifications.

14

15 17. Title 5, CCR, section 71800 states:

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

18

19 “(d) Date by which the student must exercise his or her right to cancel or withdraw, and the
20 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
21 to section 94921 of the Code.”

22 18. Title 5, CCR, section 71810 states:

23

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

26 ...

27 (4) Language proficiency information, including: (A) the level of English language
28 proficiency required of students and the kind of documentation of proficiency, such as the Test of

1 English as a Foreign Language (TOEFL), that will be accepted; and (B) whether English
2 language services, including instruction such as ESL, are provided and, if so, the nature of the
3 service and its cost;

4 ...

5 (6) The institution's policies and practices regarding any form of financial aid, including all
6 consumer information which the institution is required to disclose to the student under any state
7 or federal financial aid program;

8 (7) The institution's policies and procedures for the award of credit for prior experiential
9 learning, including assessment policies and procedures, provisions for appeal, and all charges that
10 a student may be required to pay;

11

12 (10) A description of library and other learning resources and the procedures for student
13 access to those resources;

14

15 (13) Housing information including all of the following:

16

17 (B) The availability of housing located reasonably near the institution's facilities and an
18 estimation of the approximate cost or range of cost of the housing; and

19

20 19. Title 5, CCR, section 74006 states:

21 (a) An institution's annual fee is due within 30 days of the date on which the institution
22 originally receives its approval to operate and each year thereafter on the anniversary of the date
23 of the original approval.

24 (b) An institution shall pay its annual fee in addition to any other applicable fees.

25 (c) The annual institutional fee is based on the institution's annual revenue. For purposes of
26 this article, annual revenue is annual gross revenue.

27 20. Title 5, CCR, section 74115 states:

28 ...

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

6 21. Title 5, CCR, section 76130 states:

7 ...

8 (b) A qualifying institution shall complete the STRF Assessment report and remit it with
9 the STRF assessments collected from students to be received by the Bureau no later than the last
10 day of the month following the close of the quarter as follows:

- 11 (1) April 30 for the first quarter,
12 (2) July 31 for the second quarter,
13 (3) October 31 for the third quarter, and
14 (4) January 31 for the fourth quarter.

15 If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall be
16 extended to the next regular business day for the Bureau.

17 22. Title 5, CCR, section 76215 states:

18 (a) A qualifying institution shall include the following statement on both its enrollment
19 agreement and school catalog:

20 "The State of California established the Student Tuition Recovery Fund (STRF) to relieve
21 or mitigate economic loss suffered by a student in an educational program at a qualifying
22 institution, who is or was a California resident while enrolled, or was enrolled in a residency
23 program, if the student enrolled in the institution, prepaid tuition, and suffered an economic loss.
24 Unless relieved of the obligation to do so, you must pay the state-imposed assessment for the
25 STRF, or it must be paid on your behalf, if you are a student in an educational program, who is a
26 California resident, or are enrolled in a residency program, and prepay all or part of your tuition.

27 You are not eligible for protection from the STRF and you are not required to pay the STRF
28 assessment, if you are not a California resident, or are not enrolled in a residency program."

1 (b) In addition to the statement required under subdivision (a) of this section, a qualifying
2 institution shall include the following statement in its school catalog:

3 "It is important that you keep copies of your enrollment agreement, financial aid
4 documents, receipts, or any other information that documents the amount paid to the school.
5 Questions regarding the STRF may be directed to the Bureau for Private Postsecondary
6 Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 431-6959 or (888)
7 370-7589.

8 To be eligible for STRF, you must be a California resident or enrolled in a residency
9 program, prepaid tuition, paid or deemed to have paid the STRF assessment, and suffered an
10 economic loss as a result of any of the following:

11 1. The institution, a location of the institution, or an educational program offered by the
12 institution was closed or discontinued, and you did not choose to participate in a teach-out plan
13 approved by the Bureau or did not complete a chosen teach-out plan approved by the Bureau.

14 2. You were enrolled at an institution or a location of the institution within the 120 day
15 period before the closure of the institution or location of the institution, or were enrolled in an
16 educational program within the 120 day period before the program was discontinued.

17 3. You were enrolled at an institution or a location of the institution more than 120 days
18 before the closure of the institution or location of the institution, in an educational program
19 offered by the institution as to which the Bureau determined there was a significant decline in the
20 quality or value of the program more than 120 days before closure.

21 4. The institution has been ordered to pay a refund by the Bureau but has failed to do so.

22 5. The institution has failed to pay or reimburse loan proceeds under a federal student loan
23 program as required by law, or has failed to pay or reimburse proceeds received by the institution
24 in excess of tuition and other costs.

25 6. You have been awarded restitution, a refund, or other monetary award by an arbitrator or
26 court, based on a violation of this chapter by an institution or representative of an institution, but
27 have been unable to collect the award from the institution.

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1 to the Bureau. To be timely, the financial statements were required to include an additional 5
2 months of the current fiscal year.

3 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

4 (Failed to Meet Minimum Operating Standards - Catalog)

5 31. Respondent's application is subject to denial under Education Code sections 94891
6 subdivision (b) and 94909 subdivision (a) (7), (a)(8)(C), (a)(11) and (a)(13) in conjunction with
7 CCR title 5, sections 71810 subdivision (b)(4), (6), (7), (10), and (13)(B) and 76215 subdivision
8 (a) and (b) in that the Respondents' catalog did not provide the required information. The
9 circumstances are as follows:

10 32. Respondent's catalog did not contain a description of library and other learning
11 resources and the procedures for student access to those resources.

12 33. Respondent's catalog did not contain the institution's policies and procedures for the
13 award of credit for prior experiential learning, including assessment policies and procedures,
14 provisions for appeal, and all charges that a student may be required to pay or a statement that
15 prior experiential learning is not given by the institution.

16 34. Respondent's catalog contained language proficiency information, including the level
17 of English language proficiency required of students; however, the catalog did not contain the
18 kind of documentation of proficiency, such as the Test of English as a Foreign Language
19 (TOEFL), that will be accepted.

20 35. Respondent's catalog contained a description of the student's rights and
21 responsibilities with respect to the Student Tuition Recovery Fund (STRF); however, the STRF
22 statement is not verbatim as required by 5, CCR §76215.

23 36. Respondent's catalog contained the name and responsibilities for the TRADE
24 program faculty; however, the catalog did not contain the faculty qualifications.

25 37. Respondent's catalog did not contain a statement specifying that, if a student obtains
26 a loan to pay for an educational program, the student will have to repay the full amount of the
27 loan plus interest, less the amount of any refund, and that, if the student receives federal student

28 ///

1 financial aid funds, the student is entitled to a refund of the moneys not paid from federal
2 financial aid funds.

3 38. Respondent's catalog contained references to "third party payer" and "funding
4 agencies" but did not contain the institution's policies and practices, including required
5 disclosures, regarding any form of financial aid.

6 39. Respondent's catalog did not contain probation and dismissal policies.

7 40. Respondent's catalog did not contain a description of the nature and extent of the
8 placement services.

9 41. Respondent's catalog did not contain the availability of housing located reasonably
10 near the institution's facilities and an estimation of the approximate cost or range of cost of the
11 housing.

12 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

13 (Failure to Meet Minimum Operating Standards – Description of Educational Program

14 42. Respondent's application is subject to denial under Education Code section 94891
15 subdivision (b) and 5, CCR sections 71710 subdivision (a)-(c) and 71715 subdivision (b) in that
16 Respondent has not sufficiently demonstrated a fully developed curriculum that is ready to be
17 delivered. It must show that the subject areas and courses are presented in a logically organized
18 manner or sequence to students. The circumstances are as follows:

19 43. Respondent's syllabus for the TRADE program was an Individual Program Plan
20 (IPP) document that outlined the specific goals for each student. Respondent did not provide a
21 syllabus for each course that included the following required information: a short, descriptive title
22 of the educational program; a statement of educational objectives; length of the educational
23 program; sequence and frequency of lessons or class sessions; complete citations of textbooks and
24 other required written materials; sequential and detailed outline of subject matter to be addressed
25 or a list of skills to be learned and how those skills are to be measured; instructional mode or
26 methods; specific learning outcomes tied to the sequence of the presentation of the material to
27 measure the students' learning of the material.

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