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7

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

10  
11 In the Matter of the Statement of Issues  
Against:

Case No. 1002020

12 **GENDARME INSTITUTE**

**STATEMENT OF ISSUES**

13  
14 **Application for Renewal of Approval to**  
**Operate Applicant**

15 **Institution Code 3007651**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official  
21 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of  
22 Consumer Affairs.

23 2. On or about May 31, 2012, the Bureau received an Application for Renewal of  
24 Approval to Operate an Institution Non-Accredited, No. 24878 (Application) from Gendarme  
25 Institute (Respondent).

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3. On or about May 29, 2012, N'dri Aboli certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on or about June 24, 2016.

**JURISDICTION**

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

5. Section 94886 states:

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

6. Section 94887 states:

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<sup>1</sup>**

7. Section 94891 provides as follows:

(a) The bureau shall adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.

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

(c)(1) An institution that is denied renewal of an approval to operate may file an appeal in accordance with the procedures established by the bureau pursuant to Section 94888.

(2) An institution that has filed an appeal of a denial of a renewal application may continue to operate during the appeal process, but must disclose in a written statement, approved by the bureau, to all current and

<sup>1</sup> On October 11, 2009, the California Private Postsecondary Education Act (Act) of 2009 was signed into law. (Educ. Code, §§94800, et seq.) The Act was recently amended, effective January 1, 2015. (See: Senate Bill No. 1247.) This Statement of Issues is based on the post-amendment version of the Act.

1 prospective students, that the institution's application for renewal of approval to  
2 operate was denied by the bureau because the bureau determined the  
3 application did not satisfy the requirements to operate in California, that the  
4 institution is appealing the bureau's decision, and that the loss of the appeal may  
5 result in the institution's closure.

6 (3) If the bureau determines that the continued operation of the institution  
7 during the appeal process poses a significant risk of harm to students, the  
8 bureau shall make an emergency decision pursuant to its authority provided in  
9 Section 94938.

10 8. Section 94909 states in part:

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

15 . . . .

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

17 **REGULATORY PROVISIONS**

18 9. California Code of Regulations, title 5, section 71475, states, in pertinent part:

19 . . . .

20 (e) The institution shall submit at the time it applies for renewal current  
21 financial statements that meet the requirements of section 74115 as follows: (1)  
22 for an institution with annual gross revenues of \$500,000 and over, statements  
23 shall be audited; (2) for an institution with annual gross revenues less than  
24 \$500,000, statements shall be reviewed.

25 . . . .

26 (q) The institution shall include in its application copies of advertising  
27 and other statements disseminated to the public in any manner by the institution  
28 or its representatives that concern, describe, or represent each of the following:

(1) The institution.

(2) Each educational program offered by the institution.

. . . .

10 10. California Code of Regulations, title 5, section 71700 states that "The Bureau may  
11 request that an institution document compliance with the standards set forth in the Act and this  
12 Division to obtain and maintain an approval to operate."

13 11. California Code of Regulations, title 5, section 71745, states as follows:

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

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

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

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

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

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

7 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00  
8 or greater at the end of the most recent fiscal year when using generally  
9 accepted accounting principles, or for an institution participating in Title IV of  
10 the federal Higher Education Act of 1965, meet the composite score  
11 requirements of the U.S. Department of Education. For the purposes of this  
12 section, current assets does 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.

13 . . . .

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

16 12. California Code of Regulations, title 5, section 74115, states:

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

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

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

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

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

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

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

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

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

18 13. California Code of Regulations, title 5, section 76215 states:

19 (a) A qualifying institution shall include the following statement on both  
20 its enrollment agreement for an educational program and its current schedule of  
21 student charges:

22 "You must pay the state-imposed assessment for the Student Tuition  
23 Recovery Fund (STRF) if all of the following applies to you:

24 1. You are a student in an educational program, who is a California  
25 resident, or are enrolled in a residency program, and prepay all or part of  
26 your tuition either by cash, guaranteed student loans, or personal loans,  
27 and

28 2. Your total charges are not paid by any third-party payer such as an  
employer, government program or other payer unless you have a separate  
agreement to repay the third party.

You are not eligible for protection from the STRF and you are not  
required to pay the STRF assessment, if either of the following applies:

1. You are not a California resident, or are not enrolled in a residency  
program, or

2. Your total charges are paid by a third party, such as an employer,  
government program or other payer, and you have no separate agreement  
to repay the third party."

(b) In addition to the statement described under subdivision (a) of this  
section, a qualifying institution shall include the following statement on its  
current schedule of student charges:

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1 "The State of California created the Student Tuition Recovery Fund  
2 (STRF) to relieve or mitigate economic losses suffered by students in  
3 educational programs who are California residents, or are enrolled in a  
4 residency programs attending certain schools regulated by the Bureau for  
5 Private Postsecondary and Vocational Education.

6 You may be eligible for STRF if you are a California resident or are  
7 enrolled in a residency program, prepaid tuition, paid the STRF  
8 assessment, and suffered an economic loss as a result of any of the  
9 following:

- 10 1. The school closed before the course of instruction was completed.
- 11 2. The school's failure to pay refunds or charges on behalf of a student to  
12 a third party for license fees or any other purpose, or to provide  
13 equipment or materials for which a charge was collected within 180 days  
14 before the closure of the school.
- 15 3. The school's failure to pay or reimburse loan proceeds under a federally  
16 guaranteed student loan program as required by law or to pay or  
17 reimburse proceeds received by the school prior to closure in excess of  
18 tuition and other costs.
- 19 4. There was a material failure to comply with the Act or this Division  
20 within 30 days before the school closed or, if the material failure began  
21 earlier than 30 days prior to closure, the period determined by the Bureau.
- 22 5. An inability after diligent efforts to prosecute, prove, and collect on a  
23 judgment against the institution for a violation of the Act."

24 **FACTUAL BACKGROUND**

25 14. On or about May 31, 2012, the Bureau received Respondent's Application, which  
26 included the following information:

- 27 • Limited Liability Company Articles of Organization filing with the California  
28 Secretary of State
- Announced Compliance Inspection Report
- Notice to Comply
- Catalog Minimum Requirements Checklist
- Enrollment Agreement Minimum Requirements Checklist
- Advertisement (email)

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1           15. On or about June 8, 2012, the Bureau sent Respondent a letter that the Application  
2 was incomplete and requested that the Institution provide the following items and/or documents,  
3 in order for the Application to be deemed complete:

- 4           • Articles of Incorporation and Bylaws
- 5           • Enrollment Agreement (checklist attached)
- 6           • Advertisement
- 7           • Reviewed financial statements
- 8           • Catalog (checklist attached)
- 9           • Renewal fee late (35% penalty due) \$1,225.00

10           16. On or about February 1, 2013, the Bureau received a response from Respondent to its  
11 June 8, 2012 letter, with the following documentation:

- 12           • Articles of Incorporation and Bylaws
- 13           • Enrollment Agreement
- 14           • Compiled Financials
- 15           • Catalog
- 16           • Cashier Check in the amount of \$1,225.00 (35% late penalty fee)

17           17. On or about October 23, 2015, the Bureau sent a deficiency letter to Respondent,  
18 which indicated there were deficiencies in the following sections of the Application:

- 19           • Institution Contact Person, Section 2
- 20           • Form of Business Organization, Section 3
- 21           • Institution Representative, Section 8
- 22           • Mission and Objectives, Section 9
- 23           • Enrollment Agreement, Section 10
- 24           • Advertising and Other Public Statements, Section 12
- 25           • Financial Resources and Statements, Section 16
- 26           • Faculty, Section 17
- 27           • Catalog, Section 21
- 28           • Self-Monitoring Procedures, Section 24

1 18. On December 14, 2015, the Bureau received a response from Respondent, which  
2 included the following documentation:

- 3 • Institution's contact person's facsimile number
- 4 • Identified institution as an LLC Corporation
- 5 • Institution's representative's facsimile number
- 6 • Revised mission and objectives statement
- 7 • Enrollment Agreement (checklist included)
- 8 • Reviewed financials
- 9 • Catalog (checklist included)
- 10 • Self-Monitoring Procedures

11 19. On or about June 24, 2016, the Bureau denied the Application since it did not satisfy  
12 the minimum operating standards and certain deficiencies were not cured, as set forth in this  
13 Statement of Issues, below.

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 **(Deficiencies in Enrollment Agreement)**

16 20. Respondent's Application is subject to denial under Sections 94887 and 94891,  
17 subdivision (b), in conjunction with California Code of Regulations, title 5, section 76215,  
18 subdivisions (a) and (b), in that Respondent provided a statement regarding the Student Tuition  
19 Recovery Fund which was not verbatim. The following language was included:

20 "You must pay the state-imposed assessment for the Student Tuition  
21 Recovery Fund (STRF) if all of the following applies to you:

22 1. You are a student in an educational program, who is a California  
23 resident, or are enrolled in a residency program, and prepay all or part of your  
tuition either by cash, guaranteed student loans, or personal loans, and

24 2. Your total charges are not paid by any third-party payer such as an  
25 employer, government program or other payer unless you have a separate  
agreement to repay the third party.

26 You are not eligible for protection from the STRF and you are not  
required to pay the STRF assessment, if either of the following applies:

27 1. You are not a California resident, or any not enrolled in a residency  
28 program, or . . ."



1 21. In addition, Respondent inserted language from California Code of Regulations,  
2 title 5, section 76120 within the required verbatim statement which was not supposed to be  
3 included.

4 22. Respondent incorporates by reference herein Paragraphs 14-19, above.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Failure to Include Adequate Advertising and Other Public Statements)**

7 23. Respondent's Application is subject to denial under Section 94891, subdivision (b)  
8 and California Code of Regulations, title 5, section 71475, subdivisions (q)(1)(2), in that  
9 Respondent did not include in its Application copies of advertising and other statements  
10 disseminated to the public in any manner by the Respondent or its representative that concern,  
11 describe, or represent: (1) the Respondent; and (2) each educational program offered by the  
12 Respondent. This information was requested in the October 23, 2015 deficiency letter, but was  
13 not provided as a part of the response received on December 14, 2015.

14 24. Respondent incorporates by reference herein Paragraphs 14-19, above.

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 **(Failure to Document Institution Has Sufficient Assets and Financial Resources)**

17 25. Respondent's Application is subject to denial under Section 94891, subdivision  
18 (b), in that, on December 14, 2015, Respondent submitted reviewed financial statements for the  
19 fiscal year covering January 1, 2014 through December 31, 2014, which were not current, as  
20 defined in California Code of Regulations, title 5, section 74115, subdivision (d). Furthermore,  
21 the financial statements met the ratio of 1.25 to 1.00; however, they did not establish that the  
22 Respondent would be able to pay timely refunds and all operating expenses within 30 days, as  
23 required by 74115, subdivisions (d), 71745, subdivision (a)(4) and (a)(5).

24 26. Respondent incorporates by reference herein Paragraphs 14-19, above.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Deficiencies in School Catalog)**

3 27. Respondent's Application is subject to denial under Sections 94887 and 94891,  
4 subdivision (b), 94909, subdivision (a)(7), in conjunction with California Code of Regulations,  
5 title 5, section 76215, subdivisions (a) and (b), in that the school catalog contains the following  
6 deficiencies:

7 a. The school catalog, on page 28, included disclosures regarding the Student  
8 Tuition Recovery Fund, but the statement provided was not verbatim, in violation of California  
9 Code of Regulations, title 5, section 76215, subdivisions (a) and (b). The following language was  
10 not included:

11 "You must pay the state-imposed assessment for the Student Tuition  
12 Recovery Fund (STRF) if all of the following applies to you:

13 1. You are a student in an educational program, who is a California  
14 resident, or are enrolled in a residency program, and prepay all or part of your  
tuition either by cash, guaranteed student loans, or personal loans, and

15 (b) In addition to the statement described under subdivision (a) of this  
16 section, a qualifying institution shall include the following statement on its  
17 current schedule of student charges: "The State of California created the  
18 Student Tuition Recovery Fund (STRF) to relieve or mitigate economic losses  
suffered by students in educational programs who are California residents, or  
are enrolled in a residency program attending certain schools regulated by the  
Bureau . . ."

19 b. Respondent's school catalog, on page 4, lists the faculty, but fails to provide  
20 each person's qualifications, in violation of Section 94909, subdivision (a)(7).

21 28. Respondent incorporates by reference herein Paragraphs 14-19, above.

22 **PRAYER**

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

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1. Denying the application of Gendarme Institute for a Renewal of an Approval to Operate; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/2/17

  
JOANNE WENZEL  
Chief  
Bureau for Private Postsecondary Education  
Department of Consumer Affairs  
State of California  
*Complainant*

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