

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 MARICHELLE S. TAHIMIC  
Deputy Attorney General  
4 State Bar No. 147392  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-3154  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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. 998491

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14 **CALIFORNIA ACADEMY FOR THE**  
**HEALING ARTS; ARIEL F. HUBBARD**  
15 **73% Owner; RONALD DUNHAM, 24%**  
16 **Owner; MARK MUSGRAVE, 2% Owner**

**STATEMENT OF ISSUES**

17 School Code No. 18469321

18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about October 18, 2004, the Bureau for Private Postsecondary and Vocational  
26 Education<sup>1</sup> (hereinafter "BPPVE") issued Ariel Hubbard, 73% Owner; Ronald Dunham, 24%

27 <sup>1</sup> The former Bureau for Private Postsecondary and Vocational Education sunsetted on  
28 July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009  
(continued...)

1 Owner; and, Mark Musgrave, 2% Owner, an Approval to Operate California Academy for the  
2 Healing Arts, Inc. (Respondent). The Approval to Operate expired on August 11, 2011.

3 3. On or about August 11, 2011, the Bureau for Private Postsecondary Education  
4 (hereinafter "Bureau") received an "Application for Renewal of Approval to Operate and Offer  
5 Educational Programs for Non-Accredited Institutions" (Application number 23852) from  
6 Respondent. On or about August 8, 2011, Ariel F. Hubbard certified under penalty of perjury to  
7 the truthfulness of all statements, answers, and representations in the application. The Bureau  
8 denied the application on September 21, 2012.

### 9 JURISDICTION

10 4. This Statement of Issues is brought before the Director of the Department of  
11 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education under the  
12 authority of the following laws.

13 5. Education Code Section 94886 states:

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

19 6. Education Code Section 94887 states:

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

26 7. Title 5, California Code of Regulations (hereinafter "CCR"), section 71400.5 states:

27 (a) The inclusion of false or misleading information, or the intentional or  
28 negligent omission of pertinent information on any application may result in the  
denial of the application or a delay in processing, and may be grounds for  
action pursuant to Article 18 of the Act.

(b) In addition to denying an application pursuant to section 94887 of the Code,  
the Bureau may deny any application based on any act that constitutes grounds

(AB 48) was signed into law. The Act, which became operative on January 1, 2010, established  
the Bureau for Private Postsecondary Education (hereinafter "Bureau").

1 for the denial of a license under Section 480 of the Business and Professions  
Code, incorporated herein by reference.

2 (c) The proceedings under this section shall be conducted in accordance with  
3 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
of the Government Code.

4 **STATUTORY AND REGULATORY PROVISIONS**

5 8. Title 5, California Code of Regulations ("CCR"), section 71475 states in part:

6 (a) Unless renewed, an approval to operate shall expire at 12 midnight on the  
7 last day of the institution's term of approval to operate as granted pursuant to  
section 94802 or section 94889 of the Code.

8 (b) An institution seeking to renew its Approval to Operate pursuant to section  
9 94891 of the Code shall, prior to its expiration, complete and submit to the  
10 Bureau the "Application for Renewal of Approval to Operate and Offer  
Educations Programs for Non-Accredited Institutions," Form Application  
94891 (rev. 2/10).

11 ...

12 (jj) An approval to operate that has expired may be renewed at any time within  
13 6 months after its expiration on filing of an application for renewal and, as a  
14 condition precedent to renewal, payment of all accrued and unpaid renewal  
15 fees, late payment penalty fees prescribed in subdivision (e) of this section, and  
16 any other fees that would have been due in order to renew timely. After an  
approval to operate has expired for more than 6 months, the approval is  
automatically cancelled and the institution must submit a complete application  
pursuant to section 71100, meet all current requirements, and pay all fees that  
would have been due in order to timely renew, in order to apply for approval....

17 9. Title 5, CCR, section 71100 states:

18 (a) An applicant seeking approval to operate pursuant to Section 94886 of the  
19 Code, other than Approval to Operate by Accreditation pursuant to Section  
20 94890(a)(1) of the Code, shall complete the "Application for Approval to  
Operate for an Institution Not Accredited," Form Application 94886 (rev. 2/10).  
21 An applicant seeking approval to operate by accreditation pursuant to Section  
94890(a)(1) of the Code shall comply with section 71390.

22 (b) An applicant shall submit the completed form, the information or  
23 documentation required by this Article, the appropriate application fee as  
provided in Section 94930.5(a)(1) of the Code, and any appropriate annual fee  
as required by Article 1 of Chapter 5 of this Division, to the Bureau.

24 (c) An application that fails to contain all of the information required by this  
25 article shall render it incomplete.

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10. Section 94897 of the Education Code states:

An institution shall not do any of the following:

...

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

...

(3) Any other record or document required by this chapter or by the bureau.

...

(p) Offer an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students prior to enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

(1) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

11. Section 94906 of the Education Code states:

(a) An enrollment agreement shall be written in language that is easily understood. If English is not the student's primary language, and the student is unable to understand the terms and conditions of the enrollment agreement, the student shall have the right to obtain a clear explanation of the terms and conditions and all cancellation and refund policies in his or her primary language.

(b) If the recruitment leading to enrollment was conducted in a language other than English, the enrollment agreement, disclosures, and statements shall be in that language.

12. Section 94908 of the Education Code states:

Any information or statement required by this article to be included in the catalog, School Performance Fact Sheet, or enrollment agreement shall be printed in at least the same size font as the majority of the text in that document.

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13. Section 94909 of the Education Code states:

(a) 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:

...

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

...

(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the 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. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

...

(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 or degree, 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 may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma or certificate) will transfer."

(16) A statement specifying whether the institution, or any of its degree programs, are accredited by an accrediting agency recognized by the United States Department of Education. If the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree, or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or doctoral degree, the statement shall disclose the known limitations of the degree program, including, but not limited to, all of the following:

(A) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

1 (B) A degree program that is unaccredited or a degree from an  
2 unaccredited institution is not recognized for some employment positions,  
including, but not limited to, positions with the State of California.

3 (C) That a student enrolled in an unaccredited institution is not  
4 eligible for federal financial aid programs.

14. Section 94911 of the Education Code states:

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

6 ...

7 (b) A schedule of total charges, including a list of any charges that are  
8 nonrefundable and the student's obligations to the Student Tuition Recovery  
Fund, clearly identified as nonrefundable charges.

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

12 ...

13 (e) (1) A disclosure with a clear and conspicuous caption, "STUDENT'S  
14 RIGHT TO CANCEL," under which it is explained that the student has the  
15 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.

16 (2) The disclosure shall contain the institution's refund policy and a  
17 statement 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.

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

21 ...

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

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

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

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

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(i)(1) The following statement: "Prior to signing this enrollment agreement, you must be given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to review prior to signing this agreement. These documents contain 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 Fact 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."

(2) Immediately following the statement required by paragraph (1), a line for the student to initial, including the following statement: "I certify that I have received the catalog, School Performance Fact Sheet, and information regarding completion 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."

....

15. Title 5, California Code of Regulations (hereinafter "CCR"), section 71180 states, "The institution shall include, with its Form Application 94886, exemplars of all student enrollment agreements and instruments of indebtedness."

16. Title 5, CCR, section 71340 states:

(a) The institution shall include in the Form Application 94886 any material facts, which have not otherwise been disclosed in the Form Application 94886 that without inclusion would cause the information in the Form Application 94866 to be false, misleading or incomplete or that might reasonably affect the Bureau's decision to grant an approval to operate. In this context, a fact would be "material" if it would alter the Bureau's determination concerning the institution's ability to comply with any applicable provisions of the Act.

(b) The institution may also include in the Form Application 94886 any other facts which the institution would like the Bureau to consider in deciding whether to grant an approval to operate.

17. Title 5, CCR, section 71290 states:

The Form Application 94886 shall include a copy of the institution's catalog, in published or proposed-to-be-published form. The catalog shall meet the requirements of the Act and of section 71810.

18. Title 5, CCR, section 71475 states:

...

(o) The institution shall include, with its application, exemplars of all student enrollment agreements and instruments of indebtedness.

...

1 (bb) The application shall include a copy of the institution's catalog, in  
2 published or proposed-to-be-published form. The catalog shall meet the  
3 requirements of the Act and of section 71810.

4 19. Title 5, CCR, section 71700 states:

5 The Bureau may request that an institution document compliance with the  
6 standards set forth in the Act and this Division to obtain and maintain an  
7 approval to operate.

8 20. Title 5, CCR, section 71716 states:

9 (a) An institution offering a distance educational program where the instruction  
10 is not offered in real time shall transmit the first lesson and any materials to any  
11 student within seven days after the institution accepts the student for admission.

12 (b) The student shall have the right to cancel the agreement and receive a full  
13 refund pursuant to section 71750 before the first lesson and materials are  
14 received. Cancellation is effective on the date written notice of cancellation is  
15 sent. The institution shall make the refund pursuant to section 71750. If the  
16 institution sent the first lesson and materials before an effective cancellation  
17 notice was received, the institution shall make a refund within 45 days after the  
18 student's return of the materials.

19 (c)(1) An institution shall transmit all of the lessons and other materials to the  
20 student if the student: (A) has fully paid for the educational program; and (B)  
21 after having received the first lesson and initial materials, requests in writing  
22 that all of the material be sent.

23 (2) If an institution transmits the balance of the material as the student requests,  
24 the institution shall remain obligated to provide the other educational services it  
25 agreed to provide, such as responses to student inquiries, student and faculty  
26 interaction, and evaluation and comment on lessons submitted by the student,  
27 but shall not be obligated to pay any refund after all of the lessons and material  
28 are transmitted.

21 21. Title 5, CCR, section 71800 states:

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

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

27 (b) Period covered by the enrollment agreement.

28 (c) Program start date and scheduled completion date.

(d) Date by which the student must exercise his or her right to cancel or  
withdraw, and the refund policy, including any alternative method of



1 calculation if approved by the Bureau pursuant to section 94921 of the Code.

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

- 3 (1) tuition;
- 4 (2) registration fee (non-refundable);
- 5 (3) equipment;
- 6 (4) lab supplies or kits;
- 7 (5) Textbooks, or other learning media;
- 8 (6) uniforms or other special protective clothing;
- 9 (7) in-resident housing;
- 10 (8) tutoring;
- 11 (9) assessment fees for transfer of credits;
- 12 (10) fees to transfer credits;
- 13 (11) Student Tuition Recovery Fund fee (non-refundable);
- 14 (12) any other institutional charge or fee.

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

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

18 (a) Each institution shall provide a catalog pursuant to section 94909 of the  
19 Code, which shall be updated annually. Annual updates may be made by the  
20 use of supplements or inserts accompanying the catalog. If changes in  
21 educational programs, educational services, procedures, or policies required to  
22 be included in the catalog by statute or regulation are implemented before the  
23 issuance of the annually updated catalog, those changes shall be reflected at the  
24 time they are made in supplements or inserts accompanying the catalog.

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

27 . . . .

28 23. Title 5, CCR, section 76120 states:

(a) Each qualifying institution shall collect an assessment of fifty cents (\$.50)  
per one thousand dollars (\$1,000) of institutional charges, rounded to the  
nearest thousand dollars, from each student in an educational program who is a  
California resident or is enrolled in a residency program. For institutional  
charges of one thousand dollars (\$1,000) or less, the assessment is fifty cents  
(\$.50).

1 (b) Unless a student has a separate agreement to repay the third party, a student  
2 whose costs are paid to the institution by third-party payer shall not pay the  
3 STRF assessment to the qualifying institution.

4 (c) Except when an institution provides a 100% refund pursuant to section  
5 94919(d) or section 94920(b) of the Code, the assessment is non-refundable.

#### 6 FACTS

7 24. On or about August 11, 2011, the Bureau received an "Application for Renewal of  
8 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions"  
9 (Application Number 23852) from Respondent.

10 25. On May 30, 2012, the Bureau advised Respondent of the deficiencies in the  
11 application, including but not limited to deficiencies in the enrollment agreement and the school  
12 catalog. On June 27, 2012, the Bureau received Respondent's response to the letter of  
13 deficiencies with corrections to the enrollment agreement and school catalog.

14 26. On September 21, 2012, the Bureau notified Respondent that Application number  
15 23852 was denied and set forth deficiencies in the enrollment agreement, catalog and financial  
16 statements submitted.

17 27. On October 1, 2012, Respondent requested reconsideration of the denial of her  
18 application and on October 2, 2012, Respondent appealed the denial of the application and  
19 requested a hearing.

20 28. On November 21, 2012, the Bureau advised Respondent that it would place the denial  
21 letter "On Hold" until December 3, 2012, to allow Respondent to submit a corrected enrollment  
22 agreement and catalog. The Bureau further advised Respondent that if these deficiencies were  
23 cured, a provisional approval to operate for six months may be granted to give Respondent time  
24 to meet the required current liabilities to current asset ratio of 1:1.25.

25 29. On November 26, 2012, Respondent submitted a revised enrollment agreement and  
26 catalog. On November 30, 2012, the Bureau advised Respondent that errors in the enrollment  
27 agreement and catalog remained. Errors in the Performance Fact Sheet were also noted.

28 30. On December 7, 2012, Respondent submitted revisions to the enrollment agreement  
and catalog. On December 11, 2012, the Bureau advised Respondent that a provisional approval

1 to operate could not be granted because the enrollment agreement and catalog did not comply  
2 with the statutory and regulatory requirements.

3 31. On December 14, 2012 and January 16, 2013, Respondent submitted additional  
4 revisions to the enrollment agreement and catalog. On February 20, 2013, the Bureau advised  
5 Respondent of deficiencies in the enrollment agreement and catalog that had not been cured.

6 32. On February 21, 2013, Respondent submitted a revised catalog. On May 3, 2013,  
7 Respondent submitted a revised enrollment agreement. The catalog and enrollment agreement  
8 continued to have deficiencies and did not comply with the Bureau's statutory and regulatory  
9 requirements.

10 **FIRST CAUSE FOR DENIAL**

11 **(Failure To Specify Whether Institution's Programs are Accredited in School Catalog)**

12 33. Respondent's application is subject to denial under title 5, CCR, sections 71100 and  
13 Education Code sections 94909(a)(16) and 94897(p) in that Respondent's school catalog did not  
14 state whether the school offers a degree program, if the school is unaccredited, or whether the  
15 school offers an unaccredited degree program, if the school is accredited, and failed to disclose  
16 the known limitations of the degree program, as set forth in Education Code section  
17 94909(a)(16).

18 **SECOND CAUSE FOR DENIAL**

19 **(Misleading and/or Untrue Information in Documents Required By the Bureau)**

20 34. Respondent's application is subject to denial under title 5, CCR, sections 71100 and  
21 71400.5(a) and Education Code sections 94909(a)(8)(B) and 94897(j)(3), in that Respondent  
22 made untrue or misleading statements in the school catalog and enrollment agreement as follows:

23 a. Under the section entitled "Withdrawal from Classes for Program Students," the  
24 school catalog states, "If the student chooses to withdraw after attending the second day of class  
25 or later, the student will be charged a \$100 non-refundable application fee (included as part of  
26 tuition costs when they enroll)." This language is misleading in that it implies that a refund of the  
27 application fee is available under other circumstances.

28



1 e. The school's enrollment agreement failed to state whether there are charges to an  
2 entity other than the institution, which are specifically required for participation in the education  
3 program, as required by CCR section 71800(f).

4 f. The school's enrollment agreement failed to clearly state that the Student Tuition  
5 Recovery Fee is a nonrefundable charge, as required by Code section 94911(b).

6 g. The school's enrollment agreement failed to state in underlined capital letters on the  
7 same page of the enrollment agreement in which the student's signature is required, the total  
8 charges for the current period of attendance, the estimated total charges for the entire educational  
9 program, and the total charges the student is obligated to pay upon enrollment, as required by  
10 Code section 94911(c).

11 h. The school's enrollment agreement failed to state that if the student is eligible for a  
12 loan guaranteed by the federal or state government and the student defaults on the loan, the  
13 student may not be eligible for any other federal student financial aid at another institution or  
14 other government assistance until the loan is repaid, as required by Code section 94911(g)(2).

15 i. The school's enrollment agreement did not contain the transferability disclosure  
16 required by Code sections 94911(h) and 94909(a)(15).

17 j. The school's enrollment agreement failed to contain the required language regarding  
18 a school catalog or brochure and School Performance Fact Sheet with a line for the student to  
19 initial as required by Code section 94909(i).

20 k. The school's enrollment agreement failed to disclose that an institution offering a  
21 distance educational program where the instruction is not offered in real time shall transmit the  
22 first lesson and any materials to any student within seven days after the institution accepts the  
23 student for admission as required by CCR section 71716(a).

24 l. The school's enrollment agreement failed to disclose that for institutions offering a  
25 distance educational program where the instruction is not offered in real time, the student shall  
26 have the right to cancel the agreement and receive a full refund pursuant to section 71750 before  
27 the first lesson and materials are received; that cancellation is effective on the date written notice  
28 of cancellation is sent; that the institution shall make the refund pursuant to section 71750; and,

1 that if the institution sent the first lesson and materials before an effective cancellation notice was  
2 received, the institution shall make a refund within 45 days after the student's return of the  
3 materials. This language is required by CCR section 71716(b).


4 m. The school's enrollment agreement failed to disclose that, for institutions offering a  
5 distance educational program where the instruction is not offered in real time, an institution shall  
6 transmit all of the lessons and other materials to the student if the student: (A) has fully paid for  
7 the educational program; and (B) after having received the first lesson and initial materials,  
8 requests in writing that all of the material be sent. The enrollment also failed to disclose that if an  
9 institution transmits the balance of the material as the student requests, the institution shall remain  
10 obligated to provide the other educational services it agreed to provide, such as responses to  
11 student inquiries, student and faculty interaction, and evaluation and comment on lessons  
12 submitted by the student, but shall not be obligated to pay any refund after all of the lessons and  
13 material are transmitted. This language is required by CCR section 71716(c).

14 **PRAYER**

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

- 18 1. Denying the application of Ariel F. Hubbard for a Renewal of Approval to Operate  
19 and Offer Educational Programs for Non-Accredited Institutions; and,  
20 2. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: 4/9/14

  
23 JOANNE WENZEL  
24 Chief  
25 Bureau for Private Postsecondary Education  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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