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

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

Case No. 1004368

14
15 **NEW AMERICA BEAUTY ED. CORP.;**
DBA HAIR CALIFORNIA BEAUTY
16 **ACADEMY**

STATEMENT OF ISSUES

17 **Approval to Operate an Institution Non-**
Accredited Applicant

18 Respondent.
19

20
21 Complainant alleges:

22 **PARTIES**

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

26 2. On or about July 18, 2018, the Bureau for Private Postsecondary Education received
27 an application for an Approval to Operate a Non-Accredited Institution from New America
28 Beauty Ed. Corp.; dba Hair California Beauty Academy (Respondent). On or about July 10,

1 2018, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
2 and representations in that application. The Bureau denied the application on February 14, 2019.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education (Bureau), under
6 the authority of the following laws.

7 4. Education Code Section 94885, subdivision (a) states, in part:

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

10 ...

11 (9) The institution is maintained and operated in compliance with this
12 chapter and all other applicable ordinances and 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 Section
16 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 **STATUTORY AND REGULATORY PROVISIONS**

27 7. California Code of Regulations, title 5, section 71100 states:

28 (a) An applicant seeking approval to operate pursuant to Section 94886 of the
Code, other than Approval to Operate by Accreditation pursuant to Section
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). An
applicant seeking approval to operate by accreditation pursuant to Section
94890(a)(1) of the Code shall comply with section 71390.

(b) An applicant shall submit the completed form, the information or
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.

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

3 8. California Code of Regulations, title 5, section 71220, subdivision (c) states:

4 (c) A description of the number and qualifications of the faculty needed to teach
5 the educational program.

6 9. California Code of Regulations, title 5, section 71230, subdivision (b) and (c) state:

7 (b) A statement that the institution has contracted with sufficient duly qualified
8 faculty who will teach each language group of students.

9 (c) The language of the textbooks and other written materials to be used by each
10 language group of students.

11 10. California Code of Regulations, title 5, section 71240 states:

12 (a) The Form Application 94886 shall contain a statement that the institution
13 has
14 and can maintain the financial resources required pursuant to section 71745.

15 (b) The institution shall submit current, reviewed financial statements at the
16 time it applies for approval to operate. Each set of financial statements shall
17 comply with Section 74115 of this chapter.

18 11. California Code of Regulations, title 5, section 71250 states:

19 The Form Application 94886 shall include a statement that the institution has
20 contracted with sufficient duly qualified faculty members who meet the
21 qualifications of section 71720.

22 12. California Code of Regulations, title 5, section 71700 states:

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

26 13. California Code of Regulations, title 5, section 71710 states in pertinent part:

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

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

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

(c) course or module materials that are designed or organized by duly qualified

1 faculty. For each course or module, each student shall be provided with a
2 syllabus or course outline that contains:

3 ...

4 (2) a statement of educational objectives;

5 ...

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

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

8 ...

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

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

12 14. California Code of Regulations, title 5, section 71715, states in part:

13 ...

14 (b) The institution shall document that the instruction offered leads to the
15 achievement of the learning objectives of each course.

16 ...

17 15. California Code of Regulations, title 5, section 71745 states:

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

20 ...

21 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or
22 greater at the end of the most recent fiscal year when using generally accepted
23 accounting principles, or for an institution participating in Title IV of the federal
24 Higher Education Act of 1965, meet the composite score requirements of the U.S.
25 Department of Education. For the purposes of this section, current assets does
26 not include: intangible assets, including goodwill, going concern value,
27 organization expense, startup costs, long-term prepayment of deferred charges,
28 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.

...

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

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

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

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

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

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

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

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

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

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

(d) "Current" with respect to financial statements means completed no sooner 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 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 year.

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1 **FACTS**

2 17. On July 18, 2018, the Bureau received an Application for Approval to Operate a Non-
3 Accredited Institution from Respondent.

4 18. On July 27, 2018, the Bureau sent Respondent an intake letter indicating the
5 submitted application was incomplete.

6 19. On August 6, 2018, the Bureau received Respondent’s response to the intake letter.

7 20. On August 9, 2018, the Bureau mailed a deficiency letter to Respondent identifying
8 various deficiencies.

9 21. On September 13, 2018, the Bureau received Respondent’s response to the deficiency
10 letter.

11 22. On November 14, 2018, the Bureau mailed a deficiency letter to Respondent
12 identifying deficiencies.

13 23. On December 13, 2018, the Bureau received Respondent’s response to the deficiency
14 letter.

15 24. On December 14, 2018, Bureau staff received an email from Respondent’s contact,
16 H.D., providing licensing information for one of Respondent’s faculty members.

17 25. Numerous telephone calls and email exchanges took place during the course of the
18 review of Respondent’s application.

19 26. The Bureau denied Respondent’s Application for Approval to Operate a Non-
20 Accredited Institution and sent Respondent a “Notice of Denial” on February 14, 2019.

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards – Description
23 of Educational Program)**

24 27. Respondent’s application is subject to denial under Education Code section 94887
25 and Cal. Code Regs, title 5, sections 71710 subdivisions (a), (c)(2), (c)(4), (c)(5) and (e) and
26 71715 subdivision (b), in that Respondent did not satisfy learning objectives for its educational
27 programs. The circumstances are as follows:

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1 28. The course objectives identified on the syllabus provided are not all clear, the stated
2 objectives did not all align to the program outcome of becoming an instructor, and the “Major
3 Segments of Course Content” outlined did not map well to the stated objectives. Additionally,
4 the syllabus provided for the Teacher Training Course did not include the sequence and frequency
5 of lessons or class sessions. Further, textbook citations were incomplete for the Vietnamese
6 language instruction.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards – Instruction in**
9 **Languages Other than English)**

10 29. Respondent’s application is subject to denial under Education Code section 94887
11 and Cal. Code Regs, title 5, section 71230, subdivision (c), in that Respondent did not clearly
12 identify the language of the textbooks for each of the programs offered in the Vietnamese
13 language.

14 **THIRD CAUSE FOR DENIAL OF APPLICATION**

15 **(Failure to Demonstrate Capacity to Satisfy Minimum Operations Standards – Financial**
16 **Resources and Statements)**

17 30. Respondent’s application is subject to denial under Education Code section 94887
18 and Cal. Code Regs., title 5, sections 71240, 71745 and 74115, in that Respondent failed to
19 demonstrate the capacity to comply with financial requirements by not providing current financial
20 statements and failing to provide financial reports that met the required ratio of total current assets
21 to total current liabilities of 1.25 to 1.00. The circumstances are as follows:

22 31. The audited financial statements received by the Bureau in December 2018 included
23 2017 audited financials for Respondent. More than five months had elapsed since the close of the
24 fiscal year and the auditor’s report was not current. The 2017 financials submitted for fiscal year
25 ending 2017 indicated a current assets to current liabilities ratio of 0.16 to 1.0, and do not meet
26 the required ratio of 1.25 to 1.0.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Failure to Demonstrate Capacity to Satisfy Minimum Operating Standards – Faculty)**

3 32. Respondent’s application is subject to denial under Education Code section 94887
4 and Cal. Code Regs., title 5, sections 71220 subdivision (c) and 71230 subdivision (b), in that
5 Respondent failed to demonstrate capacity to comply by failing to satisfy requirements for the
6 number of instructors by only listing three of the five instructors, and by not indicating the
7 number of faculty needed to instruct and demonstrate that there were enough instructors to teach
8 the proposed programs in three different languages.

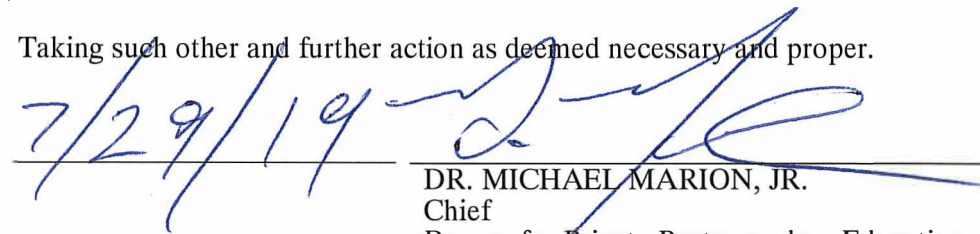
9 33. Respondent’s application is subject to denial under Education Code section 94887
10 and Cal. Code Regs., title 5, sections 71250 and 71700, in that Respondent failed to demonstrate
11 that the institution has contracted with sufficient duly qualified faculty by not providing the
12 teaching contracts requested.

13 **PRAYER**

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

- 17 1. Denying Respondent’s Application for Approval to Operate an Institution Non-
18 Accredited;
19 2. Taking such other and further action as deemed necessary and proper.

20 DATED: 7/29/19


21 DR. MICHAEL MARION, JR.
22 Chief
23 Bureau for Private Postsecondary Education
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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