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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 Accusation Against:  
13  
14 **THE COSMO FACTORY**  
**COSMETOLOGY ACADEMY; JAMES**  
15 **FISHER (OWNER)**  
131 B Front Street  
16 Santa Cruz, CA 95060  
17 **Institution Code Number 98311708**  
18 Respondent.

Case No. 1001841  
OAH No. 2019040990  
**STIPULATED SETTLEMENT AND  
WITHDRAWAL OF ACCUSATION AND  
ISSUANCE OF CITATION NUMBER  
1920063**

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Dr. Michael Marion, Jr. (Complainant) is the Chief of the Bureau for Private  
24 Postsecondary Education (Bureau). He brought this action solely in his official capacity and is  
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by  
26 Susana A. Gonzales, Deputy Attorney General.

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1 2. The Cosmo Factory Cosmetology Academy, with James Fisher as Owner, is  
2 representing itself in this proceeding and has chosen not to exercise its right to be represented by  
3 counsel.

4 3. On or about October 13, 2011, the Bureau for Private Postsecondary Education issued  
5 Institution Code Number 98311708 to The Cosmo Factory Cosmetology Academy with James  
6 Fisher as Owner (Respondent).

### 7 JURISDICTION

8 4. Accusation No. 1001841 was filed before the Director of the Department of Consumer  
9 Affairs (Director), for the Bureau for Private Postsecondary Education (Bureau), and is currently  
10 pending against Respondent. The Accusation and all other statutorily required documents were  
11 properly served on Respondent on January 14, 2019. Respondent timely filed its Notice of  
12 Defense contesting the Accusation.

13 A copy of Accusation No. 1001841 is attached as exhibit A and incorporated herein by  
14 reference.

### 15 ADVISEMENT AND WAIVERS

16 5. Respondent has carefully read, and understands the charges and allegations in  
17 Accusation No. 1001841. Respondent has also carefully read, and understands the effects of this  
18 Stipulated Settlement.

19 6. Respondent is fully aware of its legal rights in this matter, including the right to a  
20 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
21 its own expense; the right to confront and cross-examine the witnesses against them; the right to  
22 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel  
23 the attendance of witnesses and the production of documents; the right to reconsideration and  
24 court review of an adverse decision; and all other rights accorded by the California Administrative  
25 Procedure Act and other applicable laws.

26 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
27 every right set forth above.

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1 CONTINGENCY

2 8. By signing the stipulation, the parties understand and agree that they may not  
3 withdraw their agreement or seek to rescind the stipulation.

4 9. The parties understand and agree that Portable Document Format (PDF) and facsimile  
5 copies of this Stipulated Settlement, including Portable Document Format (PDF) and facsimile  
6 signatures thereto, shall have the same force and effect as the originals.

7 10. This Stipulated Settlement is intended by the parties to be an integrated writing  
8 representing the complete, final, and exclusive embodiment of their agreement. It supersedes any  
9 and all prior or contemporaneous agreements, understandings, discussions, negotiations, and  
10 commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be  
11 altered, amended, modified, supplemented, or otherwise changed except by a writing executed by  
12 an authorized representative of each of the parties.

13 11. In consideration of the foregoing, the parties agree that the Bureau may, without  
14 further notice or formal proceeding, issue and enter the following Order:

15 ORDER

16 12. Complainant shall withdraw the pending Accusation in Case No. 1001841 and, in  
17 place of the Accusation, issue Citation Number 1920063 to Respondent pursuant to Business and  
18 Professions Code section 129.5, Education Code section 94936, and California Code of  
19 Regulations, title 5, section 75020, on the terms set forth below.

20 13. Respondent agrees to waive its right to appeal Citation Number 1920063 and request  
21 an informal conference or administrative hearing.

22 14. Respondent agrees to pay the Bureau its cost recovery in the amount of nine thousand  
23 nine-hundred and forty-nine dollars and ninety-nine cents (\$9,949.99), pursuant to Business and  
24 Professions Code section 125.3. Respondent shall pay the \$9,949.99 in six equal monthly  
25 payments, with the first payment due thirty (30) days from the issuance of Citation Number  
26 1920063. Subsequent payments shall be made on or before the first day of the month following  
27 Respondent's initial payment. Respondent must pay the cost recovery in full within six months of  
28 the issuance of Citation Number 1920063.

1           15. Compliance with Citation Number 1920063 shall not constitute an admission of the  
2 violations charged.

3           16. Failure to comply with this agreement and Citation Number 1920063 within the time  
4 agreed upon will subject Respondent's approval to operate to further discipline.

5           17. Respondent agrees that Citation Number 1920063 will become final on the date on  
6 which the Stipulated Settlement is signed by counsel for Complainant, and Respondent shall not  
7 contest or appeal the Citation.

8           18. Respondent is hereby cited for violating the following sections of the Education Code  
9 and Title 5 of the California Code of Regulations:

10           a.     **Education Code section 94897.** Respondent engaged in prohibited business practices  
11 by making untrue or misleading statements related to test scores, grades or records of grades,  
12 attendance records, and records indicating student completion, in violation of Education Code  
13 section 94897, subdivision (j). Respondent's conduct resulted in a falsified Enrollment  
14 Agreement and attendance records in violation of Education Code section 94897, subdivision (k).  
15 Respondent did not accurately define the term "approval" in its 2017 School Catalog, in that it did  
16 not state clearly and conspicuously that approval to operate means compliance with state  
17 standards, in violation of Education Code section 94897, subdivision (l). Respondent included  
18 language in its 2017 School Catalog that could persuade a student not to report unlawful activity,  
19 or complain to the Bureau, in violation of Education Code section 94897, subdivision (m).

20           **Order of Abatement:**

21           The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
22 submit an updated School Catalog to the Bureau. The School Catalog should accurately define the  
23 term "approval," and should not include language which could persuade a student to not report  
24 unlawful activity or complain to the Bureau. The School Catalog must comply with Education  
25 Code section 94909, and California Code of Regulations, title 5, section 71810.

26           b.     **California Code of Regulations, title 5, section 71660.** Respondent advertised a  
27 class on its website that is not approved by the Bureau, and for which it does not have an  
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1 application on file with Bureau to add the unapproved program. Respondent also failed to notify  
2 the Bureau within 30 days of adding a program related to an approved program.

3 **Order of Abatement:**

4 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
5 shall provide the Bureau with a list of all programs offered and approved by the Bureau, as well as  
6 submit an application to the Bureau to add an unapproved program if Respondent wishes to add a  
7 program.

8 c. **California Code of Regulations, title 5, section 76120, subdivision (a).** Respondent  
9 did not accurately charge a student the Student Tuition Recovery Fund (STRF) assessment fee  
10 when the student enrolled in 2012. The fee was \$2.50 per \$1,000 of total institutional charges  
11 when the student enrolled in 2012. The student was charged \$17.25 for STRF fees, but should  
12 have been charged \$30.00 based on total institutional charges of \$11,675.00.

13 **Order of Abatement:**

14 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
15 submit to the Bureau its policy or procedure for calculating STRF assessment fees in compliance  
16 with California Code of Regulations, title 5, section 76120.

17 d. **Education Code section 94919, subdivision (a).** Respondent provided an inaccurate  
18 refund calculation due to its miscalculation of attendance rates and a noncompliant refund policy.

19 e. **California Code of Regulations, title 5, section 71750.** Respondent violated the  
20 refund requirements by providing a refund calculation that is inaccurate due to its miscalculation  
21 of attendance rates and a non-compliant refund policy. The documents collected by the Bureau  
22 regarding student N.H. indicate that Respondent used incorrect information regarding N.H.'s  
23 attendance rate to calculate the refund. Respondent did not provide a pro rata refund because it  
24 charged N.H. a withdrawal fee that was above and beyond the deposit or application fee. (Cal.  
25 Code of Regs., tit. 5, § 71750, subds. (a)-(c).) Respondent's withdrawal log does not show the  
26 dates of N.H.'s withdrawal on October 26, 2012, or April 5, 2013. (Cal. Code of Regs., tit. 5, §  
27 71750, subd. (f).) N.H.'s file contains timecards demonstrating attendance between September 11,  
28 2012 and October 26, 2012, and does not contain documentation reflecting N.H.'s withdrawal.

1           **Order of Abatement:**

2           The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
3 submit a refund policy to the Bureau that complies with Education Code section 94919.

4           **f. California Code of Regulations, title 5, section 71770, subdivisions (a)(1), and (c).**

5 Respondent failed to collect documentation from students E.M., N.H., and S.K., establishing that  
6 these students possessed a high school diploma or its equivalent, or otherwise successfully took  
7 and passed the relevant examination as required under Education Code section 94904. (Cal. Code  
8 of Regs., tit. 5, § 71770, subd. (a)(1).) In addition, Respondent's School Catalog does not contain  
9 information regarding the policies and procedures related to accepting credit for prior experiential  
10 training. (Cal. Code of Regs., tit. 5, § 71770, subd. (c).)

11           **Order of Abatement:**

12           The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
13 submit proof to the Bureau that its School Catalog contains information regarding the policies and  
14 procedures related to accepting credit for prior experiential training and that it is in compliance  
15 with Education Code section 94909, and California Code of Regulations, title 5, section 71810.

16           **g. Education Code section 94912.** The files for students N.H., A.M., and S.K. did not  
17 include proof that the required information was disclosed to the students and initialed and dated by  
18 the students and the institution prior to executing their Enrollment Agreements.

19           **Order of Abatement:**

20           The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
21 shall submit to the Bureau a policy or procedure for how Respondent will disclose required  
22 information to students, and the policy or procedure for how students and the institution will initial  
23 and date such information prior to executing their Enrollment Agreements.

24           **h. Education Code section 94909, subdivision (a); California Code of Regulations,**  
25 **title 5, section 71810, subd. (b)(7).** Respondent's 2017 School Catalog failed to meet the  
26 minimum requirements for a school catalog. Specifically, Respondent's 2017 School Catalog:  
27 (1) does not contain the list of the requirements to be eligible sit for licensure in either of the  
28 programs listed (Educ. Code, § 94909, subd. (a)(6)); (2) does not contain the qualifications of

1 current faculty (Educ. Code, § 94909, subd. (a)(7)); (3) contains a statement that Respondent  
2 accepts credit based on challenge examinations but does not contain the information regarding  
3 procedures or requirements for challenge examinations (Educ. Code, § 94909, subd. (a)(8)(A));  
4 (4) does not include the schedule of total charges for a period of attendance (Educ. Code, § 94909,  
5 subd. (a)(9)); and (5) does not include the required verbatim statement concerning the  
6 transferability of credits, and is missing the required “the educational program” statement (Educ.  
7 Code, § 94909, subd. (a)(15)). In addition, Respondent’s 2017 School Catalog does not contain  
8 information regarding the policies and procedures related to accepting credit for prior experiential  
9 learning. (Cal. Code of Regs., tit. 5, § 71810, subd. (b)(7).)

10 **Order of Abatement:**

11 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
12 submit proof to the Bureau that its School Catalog meets the minimum requirements of Education  
13 Code section 94909 and California Code of Regulations, title 5, section 71810.

14 **i. California Code of Regulations, title 5, section 71720, subdivision (b)(2).**

15 Respondent was unable to provide proof that its faculty participated in continuing education.

16 **Order of Abatement:**

17 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
18 submit proof to the Bureau that each of its faculty members participates in continuing education.

19 **j. Education Code section 94900.5, subdivision (b).** Respondent was unable to

20 provide faculty files or the names, addresses, and records of the educational qualifications of each  
21 member of its faculty during the Bureau’s on-site investigation on June 29, 2016.

22 **Order of Abatement:**

23 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
24 submit to the Bureau the names, addresses, and records of the educational qualifications of each  
25 member of its faculty.

26 **k. Education Code section 94913; California Code of Regulations, title 5, section**

27 **74117.** As of March 8, 2017, Respondent’s website did not contain a link to the Bureau’s website,  
28 nor links to its most recent annual report submitted to the Bureau, its catalog, or its most recent

1 School Performance Fact Sheet (SPFS). (Educ. Code, § 94913, subs. (a)(1)-(3) & (5).) In  
2 addition, as of March 8, 2017, Respondent's website homepage did not contain clear and  
3 conspicuous links to the information required under Education Code section 94913, subdivision  
4 (a). (Cal. Code of Regs., tit. 5, § 74117.)

5 **Order of Abatement:**

6 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
7 submit proof to the Bureau that its website has been updated and is in compliance with Education  
8 Code section 94913, and California Code of Regulations, title 5, section 74117.

9 l. **Education Code section 94900, subdivisions (b)(1), (2), and (3).** Respondent's files  
10 for graduated and withdrawn students did not contain a transcript reflecting the certificate granted,  
11 the date on which the certificate was granted, the courses and units on which the certificate was  
12 based, or the grades earned by the students

13 **Order of Abatement:**

14 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
15 submit to the Bureau a policy or procedure in compliance with Education Code section 94900.

16 m. **California Code of Regulations, title 5, section 71920.** Respondent's student  
17 records fail to comply with the Bureau's regulations. Student files did not contain: (1) proof of a  
18 High School Diploma, GED, or ATB (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(A));  
19 (2) records documenting hours of credit that have been accepted and applied by Respondent as  
20 transfer credit (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(B)); (3) documentation for dates of  
21 student N.H.'s leave of absence or attendance, making it impossible for the Bureau to determine  
22 N.H.'s dates of attendance or leave or information regarding N.H.'s date of withdrawal (Cal. Code  
23 Regs., tit. 5, § 71920, subd. (b)(4)); (4) a transcript showing the courses that were completed or  
24 attempted and not completed (Cal. Code Regs., tit. 5, § 71920, subd. (b)(5)(A)); (5) financial aid  
25 documentation for disbursements received by the institution (Cal. Code Regs., tit. 5, § 71920,  
26 subd. (b)(8)); (6) a document showing the total amount of money received by or on behalf of  
27 student N.H. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(9)); and (7) a document specifying the  
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1 amount of refund, including the method of calculating the refund provided to student N.H. (Cal.  
2 Code Regs., tit. 5, § 71920, subd. (b)(10)).

3 n. **California Code of Regulations, title 5, section 71930.** Respondent failed to  
4 maintain the required records, such as documentation that faculty members were participating in  
5 continuing education, and a second set of academic records when the first set is not stored in a  
6 manner that is secure from loss or damage. Respondent was storing student files in cardboard  
7 boxes throughout its administrative offices. Respondent was unable to provide SPFS backup  
8 documentation or the 2014 Annual Report.

9 **Order of Abatement:**

10 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
11 shall submit to the Bureau its policy or procedure for maintaining compliance with California  
12 Code of Regulations, title 5, section 71930.

13 o. **California Code of Regulations, title 5, section 74112, subdivision (h).**

14 Respondent's documentation provided to the Bureau in support of its 2013/2014 SPFS did not  
15 include the address, phone number, email address, program start dates, place of employment and  
16 position, salary, hours, and description of all attempts to contact each student. The documentation  
17 also did not include the name, email address, phone number, and position or title of the  
18 institution's representative who is primarily responsible for obtaining the students' completion,  
19 placement, licensing, salary and wage data, the date the information was gathered, and copies of  
20 notes, letters, or emails through which the information was requested and gathered.

21 p. **Education Code section 94929, subdivision (a).** Respondent did not accurately  
22 report the completion rate for its programs on the 2013/2014 SPFS.

23 q. **Education Code section 94929.5, subdivision (a)(2).** Respondent did not accurately  
24 report the license exam passage rate for its programs on the 2013/2014 SPFS.

25 **Order of Abatement:**

26 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
27 submit a policy or procedure to the Bureau of how it will maintain compliance with California  
28

1 Code of Regulations, title 5, section 74112, subdivision (h), and Education Code sections 94929  
2 and 94929.5.

3 r. Education Code section 94934, subdivision (a); California Code of Regulations,  
4 title 5, section 74110, subdivisions (b), (c). Respondent did not submit documentation, including  
5 financial statements, for the 2015 Annual Report by the December 1 deadline.


6 **Order of Abatement:**

7 The Bureau orders that within thirty (30) days of the issuance of this Citation, Respondent  
8 submit to the Bureau its policy or procedure for maintaining compliance with California Code of  
9 Regulations, title 5, section 74110, and Education Code section 94934.

10  
11 ACCEPTANCE

12 I have carefully read and understand the Stipulated Settlement. I enter into this Stipulated  
13 Settlement voluntarily, knowingly, and intelligently, and agree to be bound by its terms.

14  
15 DATED: 9/5/19

  
16 THE COSMO FACTORY COSMETOLOGY  
17 ACADEMY  
18 JAMES FISHER, OWNER  
19 Respondent

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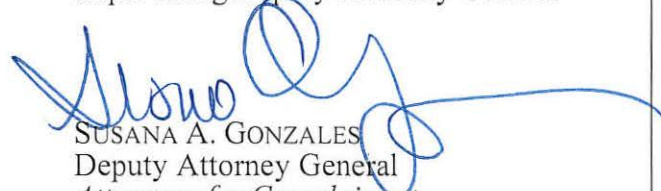
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ACCEPTANCE ON BEHALF OF COMPLAINANT

I have discussed the terms and conditions of the above Stipulated Settlement with Complainant or Complainant's designee and agree to the stipulation on Complainant's behalf.

DATED: 9/5/19

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

  
SUSANA A. GONZALES  
Deputy Attorney General  
*Attorneys for Complainant*

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