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

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

13 **A-1 TRUCK DRIVING SCHOOL INC.**
14 **also known as A 1 Truck Driving School,**
15 **Inc.**

16 **Application for Renewal of Approval to**
17 **Operate and Offer Educational Programs**
18 **for Non-Accredited Institutions**

19 **Institution Code: 0106221**

20 Respondent.

Case No. 1002980

OAH No. 2018030600

THIRD AMENDED STATEMENT OF
ISSUES

21 Complainant alleges:

22 **PARTIES**

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

26 2. On or about December 13, 2013, the Bureau for Private Postsecondary Education
27 received an Application for Renewal of Approval to Operate and Offer Educational Programs for
28 Non-Accredited Institutions from Respondent A-1 Truck Driving School Inc., also known as A 1
Truck Driving School, Inc. ("Respondent"), a California corporation. Between January 2014 and

1 July 2017, the Bureau and Respondent conferred regarding Respondent's application, including
2 Respondent's transmittal of additional application materials. The Bureau denied the application
3 via a Notice of Denial of Application for Renewal of Approval to Operate on or about August 15,
4 2017. On or about September 28, 2017, Respondent submitted to the Bureau a request for
5 administrative hearing.

6 JURISDICTION

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

10 4. **Section 94885, subdivision (a)** states, in part:

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

13 "(1) The content of each educational program can achieve its stated objective.

14 ...

15 "(3) The facilities, instructional equipment, and materials are sufficient to enable students to
16 achieve the educational program's goals.

17 ...

18 "(6) The institution is financially sound and capable of fulfilling its commitments to
19 students.

20 "(7) That, upon satisfactory completion of an educational program, the institution gives
21 students a document signifying the degree or diploma awarded.

22 ...

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

25 ////

26 ////

27 ////

28 ////

1 5. **Section 94886** states:

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

6 6. **Section 94887** states:

7 “An approval to operate shall be granted only after an applicant has presented sufficient
8 evidence to the bureau, and the bureau has independently verified the information provided by the
9 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
10 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
11 for an approval to operate if the application does not satisfy those standards.”

12 **STATUTORY AND REGULATORY PROVISIONS**

13 7. **Section 94909** states, in part:

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

17

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

19 ...

20 “(B) Cancellation, withdrawal, and refund policies, including an explanation that the
21 student has the right to cancel the enrollment agreement and obtain a refund of charges paid
22 through attendance at the first class session, or the seventh day after enrollment, whichever is
23 later. The text shall also include a description of the procedures that a student is required to
24 follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund
25 consistent with the requirements of Article 13 (commencing with Section 94919).

26

27 //////

28 //////

1 “(9) The schedule of total charges for a period of attendance and an estimated schedule of
2 total charges for the entire educational program.

3 ”

4 8. **Section 94920** states, in part:

5 “An institution that does not participate in the federal student financial aid programs shall
6 do all of the following:

7 ...

8 (d) The institution shall have a refund policy for the return of unearned institutional charges
9 if the student cancels an enrollment agreement or withdraws during a period of attendance. The
10 refund policy for students who have completed 60 percent or less of the period of attendance shall
11 be a pro rata refund.

12 (e) The institution shall pay or credit refunds within 45 days of a student's cancellation or
13 withdrawal.”

14 9. **California Code of Regulations, title 5, section 71240, subdivision (b)** states:

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

18 10. **California Code of Regulations, title 5, section 71475, subdivisions (c) and (w)(2)**
19 state:

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

24 ...

25 “[(w)](2) The institution shall submit current, audited financial statements at the time it
26 applies for approval to operate. Each set of financial statements shall comply with Section 74115
27 of this chapter.”

1 11. **California Code of Regulations, title 5, section 71745, subdivision (a)(6)** states:

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

4 ...

5 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
6 end of the most recent fiscal year when using generally accepted accounting principles, or for an
7 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
8 composite score requirements of the U.S. Department of Education. For the purposes of this
9 section, current assets does not include: intangible assets, including goodwill, going concern
10 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
11 returnable deposits, or state or federal grant or loan funds that are not the property of the
12 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
13 be accounted for in accordance with general accepted accounting principles.”

14 12. **California Code of Regulations, title 5, section 71750** states, in part:

15 “(a) Every institution shall make refunds that are no less than the refunds required under the
16 Act and this Division.

17 ...

18 “(c) A pro rata refund pursuant to section 94919(c) or 94920(d) or 94927 of the Code shall
19 be no less than the total amount owed by the student for the portion of the educational program
20 provided subtracted from the amount paid by the student, calculated as follows:

21 “(1) The amount owed equals the daily charge for the program (total institutional charge,
22 divided by the number of days or hours in the program), multiplied by the number of days student
23 attended, or was scheduled to attend, prior to withdrawal.

24 “(2) Except as provided for in subdivision (a)(3) of this section, all amounts paid by the
25 student in excess of what is owed as calculated in subdivision (a)(1) shall be refunded.

26 “(3) Except as provided herein, all amounts that the student has paid shall be subject to
27 refund unless the enrollment agreement and the refund policy outlined in the catalog specify
28 amounts paid for an application fee or deposit not more than \$250.00, books, supplies, or

1 equipment, and specify whether and under what circumstances those amounts are non-refundable.
2 Except when an institution provides a 100% refund pursuant to section 94919(d) or section
3 94920(b) of the Code, any assessment paid pursuant to section 94923 of the Code is non-
4 refundable.

5 “(4) For purposes of determining a refund under the Act and this section, a student shall be
6 considered to have withdrawn from an educational program when he or she withdraws or is
7 deemed withdrawn in accordance with the withdrawal policy stated in its catalog.

8 . . .

9 “(e) An institution shall refund any credit balance on the student's account within 45 days
10 after the date of the student's completion of, or withdrawal from, the educational program in
11 which the student was enrolled. For purposes of this subdivision and section 94919(d) of the
12 Code, “day” means calendar day.

13”

14 13. **California Code of Regulations, title 5, section 74115** states, in part:

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

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

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

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

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

7”

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(Financial Statements)

9 (Educ. Code §§ 94885, subd. (a)(6) and 94887; and
10 Cal. Code of Regs., title 5, §§ 71240, subd. (b); 71475, subds. (e) and (w)(2);
71745, subd. (a)(6); and 74115, subds. (a), (b)(1), (b)(2), and (d))

11 14. Respondent’s application is subject to denial because Respondent failed to provide
12 compliant financial statements. (Educ. Code §§ 94885, subd. (a)(6) and 94887; and Cal. Code of
13 Regs., title 5, §§ 71240, subd. (b); 71745, subd. (a)(6); and 74115, subds. (a), (b)(1), (b)(2), and
14 (d)). In particular:

15 a. Respondent’s financial statements were not “audited” or “reviewed,” as
16 required by California Code of Regulations, title 5, section 71475, subdivisions (e) and (w)(2).

17 b. Respondent’s financial statements were not prepared in accordance with
18 generally accepted accounting principles. (Educ. Code § 94885, subd. (a)(6) and Cal. Code of
19 Regs., title 5, §§ 71240, subd. (b) and 74115, subds. (a) and (b)(1) and (b)(2)).

20 c. Respondent’s financial statements were not prepared by a certified public
21 accountant. (Educ. Code § 94885, subd. (a)(6) and Cal. Code of Regs., title 5, §§ 71240, subd.
22 (b) and 74115, subds. (a) and (b)(1)).

23 d. Respondent’s financial statements demonstrate that Respondent does not
24 maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater. (Educ. Code §
25 94885, subd. (a)(6) and Cal. Code of Regs., title 5, §§ 71745, subd. (a)(6)).

26 e. Respondent’s financial statements are not “current,” as required by California
27 Code of Regulations, title 5, section 74115, subdivision (d).

28

SECOND CAUSE FOR DENIAL OF APPLICATION

(School Catalog)

(Educ. Code §§ 94887, 94909, subds. (a)(8)(B) and (a)(9), and 94920, subds. (d) and (e); and Cal. Code Regs., title 5, § 71750, subds. (a), (c), and (e))

15. Respondent's application is subject to denial because Respondent failed to offer a compliant school catalog. (Educ. Code §§ 94887, 94909, subds. (a)(8)(B) and (a)(9), and 94920, subds. (d) and (e); and Cal. Code Regs., title 5, § 71750, subds. (a), (c), and (e)). In particular:

a. Respondent's proposed catalog fails to state the schedule of total charges for a period of attendance and an estimated schedule of total charges for the entire educational program. (Educ. Code § 94909, subd. (a)(9)).

b. Respondent's proposed catalog fails to state a refund policy meeting the minimum requirements of the law. (Educ. Code §§ 94909, subd. (a)(8)(B) and 94920, subds. (d) and (e); and Cal. Code Regs., title 5, § 71750, subds. (a), (c), and (e)).


PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Third Amended Statement of Issues and that, following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Denying Respondent's Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions; and
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

10/17/18



DR. MICHAEL MARION, JR.
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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