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

15 **Institution Code 3007651**

16 Respondent.
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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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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:

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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:

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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.

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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.

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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
22 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.

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
26 Accountants. Nonprofit institutions shall provide annual financial statements as
required under generally accepted accounting principles for nonprofit
organizations.

27 (3) The financial statements shall establish that the institution meets the
28 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 **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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