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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:

Case No. 998538

13 **AMERICANA COLLEGE; ROBERT**
14 **GABAI, OWNER**
15 **835 N. Western Ave.**
16 **Los Angeles, CA 9029**

STATEMENT OF ISSUES

15 **Institution Code: 1939211**

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

Respondent.

20 Complainant alleges:

21 **PARTIES**

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

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1 2. On or about June 27, 2000, the Bureau for Private Postsecondary and Vocational
2 Education¹ (hereinafter "BPPVE") issued Robert Gabai an Approval to Operate Americana
3 College (Respondent). The Approval to Operate expired on December 31, 2011.

4 3. On or about December 23, 2011, the Bureau received an Application for Renewal of
5 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions
6 (Application #24234) from Respondent. The Bureau denied the application on October 23, 2012.

7 **JURISDICTION**

8 4. This Statement of Issues is brought before the Director of the Department of
9 Consumer Affairs (Director) for the Bureau.

10 5. Education Code section 94886² states:

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

14 6. Education Code section 94887 states:

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

19 **STATUTORY AND REGULATORY PROVISIONS**

20 7. Education Code section 94902 states:

21 (a) A student shall enroll solely by means of executing an enrollment
22 agreement. The enrollment agreement shall be signed by the student and by an
authorized employee of the institution.

23 (b) An enrollment agreement is not enforceable unless all of the following
24 requirements are met:

25 ¹ The former Bureau for Private Postsecondary and Vocational Education sunsetted on
26 July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009
27 (AB 48) was signed into law. The Act, which became operative on January 1, 2010, established
the Bureau for Private Postsecondary Education.

28 ² California Private Postsecondary Education Act of 2009, Ed. Code §§ 94800 et seq.

1 (1) The student has received the institution's catalog and School
Performance Fact Sheet prior to signing the enrollment agreement.

2 (2) At the time of the execution of the enrollment agreement, the
3 institution held a valid approval to operate.

4 (3) Prior to the execution of the enrollment agreement, the student and the
5 institution have signed and dated the information required to be disclosed in the
6 Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of
Section 94910. Each of these items in the Student Performance Fact Sheet shall
include a line for the student to initial and shall be initialed and dated by the
student.

7 (c) A student shall receive a copy of the signed enrollment agreement, in
8 writing or electronically, regardless of whether total charges are paid by the
student.

9 8. Education Code section 94911 states:

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

11 (a) The name of the institution and the name of the educational program,
12 including the total number of credit hours, clock hours, or other increment
required to complete the educational program.

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

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

17 (d) A clear and conspicuous statement that the enrollment agreement is legally
18 binding when signed by the student and accepted by the institution.

19 (e)(1) A disclosure with a clear and conspicuous caption, "STUDENT'S RIGHT
20 TO CANCEL," under which it is explained that the student has the right to
cancel the enrollment agreement and obtain a refund of charges paid through
21 attendance at the first class session, or the seventh day after enrollment,
whichever is later.

22 (2) The disclosure shall contain the institution's refund policy and a
23 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
24 aid program funds.

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

27 (f) A statement specifying that, if the student obtains a loan to pay for an
28 educational program, the student will have the responsibility to repay the full
amount of the loan plus interest, less the amount of any refund.

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

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

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

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

8 (i) (1) The following statement: "Prior to signing this enrollment agreement,
9 you must be given a catalog or brochure and a School Performance Fact Sheet,
10 which you are encouraged to review prior to signing this agreement. These
documents contain important policies and performance data for this institution.
11 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."

12 (2) Immediately following the statement required by paragraph (1), a line
13 for the student to initial, including the following statement: "I certify that I have
14 received the catalog, School Performance Fact Sheet, and information regarding
completion rates, placement rates, license examination passage rates, salary or
15 wage information, and the most recent three-year cohort default rate, if
applicable, included in the School Performance Fact sheet, and have signed,
16 initialed, and dated the information provided in the School Performance Fact
Sheet."

17 (j) The following statements:

18 (1) "Any questions a student may have regarding this enrollment
19 agreement that have not been satisfactorily answered by the institution may be
20 directed to the Bureau for Private Postsecondary Education at (address),
Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax
numbers)."

21 (2) "A student or any member of the public may file a complaint about
22 this institution with the Bureau for Private Postsecondary Education by calling
(toll-free telephone number) or by completing a complaint form, which can be
obtained on the bureau's Internet Web site (Internet Web site address)."

23 (k) The following statement above the space for the student's signature:

24 "I understand that this is a legally binding contract. My signature below
25 certifies that I have read, understood, and agreed to my rights and
responsibilities, and that the institution's cancellation and refund policies have
26 been clearly explained to me."

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

(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.

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

10. California Code of Regulations, title 5, section 71180 states that "[t]he institution shall include, with its Form Application 94886, exemplars of all student enrollment agreements and instruments of indebtedness."

11. California Code of Regulations, title 5, section 71340, subdivision (a), states:

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.

12. California Code of Regulations, title 5, section 71475 states, in pertinent part:

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

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

...

(d) In addition to the form required in (b), the institution shall submit all information required by section 71100(b), and the appropriate renewal fee as provided in Sections 94930.5(b)(1) and 94930.5(b)(2) of the Code, as applicable, to the Bureau. Except for the financial statements required by subdivision (e) of this section and the statement required in subdivision (f) of this section, if the information required in order to renew its approval to operate is substantially similar to the information submitted by the institution in its last renewal application, or initial application if it is the first renewal, the institution may state that there are no

substantial changes.

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

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

13. California Code of Regulations, title 5, section 71745, states in pertinent part:

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

(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year when using generally accepted accounting principles . . .

14. California Code of Regulations, title 5, section 71800 states:

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

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

(b) Period covered by the enrollment agreement.

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

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

(1) tuition;

(2) registration fee (non-refundable);

(3) equipment;

(4) lab supplies or kits;

(5) Textbooks, or other learning media;

(6) uniforms or other special protective clothing;

- (7) in-resident housing;
- (8) tutoring;
- (9) assessment fees for transfer of credits;
- (10) fees to transfer credits;
- (11) Student Tuition Recovery Fund fee (non-refundable);
- (12) any other institutional charge or fee.

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

15. 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.

FACTS

16. On or about December 23, 2011, the Bureau received an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions (#24234) from Respondent.

17. On or about January 10, 2012, Respondent was advised that the renewal application was deficient and additional documentation were requested. Deficiencies included failing to include appropriate exemplars of student agreements and appropriate financial resources and reports. Copies of the Bureau's regulations concerning requirements for compliance were included by the Bureau in its January 10, 2012 letter. The letter also advised Respondent to send a request to withdraw its additional pending application to renew as an accredited institution as the Bureau had been informed that Respondent had lost its accreditation with Accrediting Bureau of Health Education Schools (ABHES). On January 12, 2012, Respondent withdrew its application to renew as an accredited institution.

18. On or about February 6, 2012, the Bureau received Respondent's submittal of additional documentation in support of its Application for Renewal of Approval to Operate and Offer Educational Programs for a Non-Accredited Institutions. The submittal failed to cure the deficiencies previously identified.

19. On October 23, 2012, the Bureau notified Respondent that the Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institution (#24234) was denied. On October 27, 2012, Respondent appealed the denial and requested an administrative hearing.

FIRST CAUSE FOR DENIAL

(Failure to Provide Compliant Enrollment Agreements)

20. Respondent's application is subject to denial under Education Code sections 94887, and 94911, in conjunction with California Code of Regulations, title 5, sections 71100, 71180, 71475, subdivision (o), and 71800, in that in that Respondent's application failed to provide a compliant Enrollment Agreement as follows:

1 a. Respondent failed to provide an Enrollment Agreement that included a disclosure of
2 current Laws and Regulations and that was in compliance with new Laws and Regulations.

3 **SECOND CAUSE FOR DENIAL**

4 **(Failure to Provide Compliant Financial Resources and Statements)**

5 21. Respondent's application is subject to denial under Education Code sections 94887, in
6 conjunction with California Code of Regulations, title 5, section 71475, subdivision (e), section
7 71745, subdivision (a)(6), and section 74115, in that Respondent's application failed to provide
8 compliant financial resources and statements as follows:

9 a. Respondent failed to include financial statements sufficient for the Bureau's
10 evaluation and / or to demonstrate that the institution is able to maintain a ratio of current assets
11 to current liabilities of 1.25 to 1.00 or greater.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Director issue a decision:

15 1. Denying the application of Americana College; Robert Gabai, owner, for a Renewal
16 of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions;

17 2. Taking such other and further action as deemed necessary and proper.

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19 DATED: *March 25, 2013*

Laura Metune
LAURA METUNE
Chief

Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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