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7

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. 1001990

12 **INSTITUTE FOR ADVANCED STUDY OF**
13 **HUMAN SEXUALITY**

STATEMENT OF ISSUES

14 **Applicant for Renewal of Approval to**
15 **Operate a Non-Accredited Institution**

16 **Application No. 27920**
Institution No. 3800061

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
23 Consumer Affairs.

24 2. On or about June 1, 1997, the Bureau for Private Postsecondary Education,
25 Department of Consumer Affairs (hereinafter "the Bureau") granted approval to operate to the
26 Institute for Advanced Study of Human Sexuality (hereinafter "Respondent"). The approval
27 expired on December 31, 2014.

28 3. On or about November 26, 2014, the Bureau received an Application from

1 Respondent for Renewal of Approval to Operate. On or about November 25, 2014, Robert
2 Theodore McIlvenna certified under penalty of perjury to the truthfulness of all statements,
3 answers, and representations in the application. The Bureau denied the application on June 24,
4 2016.

5 JURISDICTION

6 4. This Statement of Issues is brought before the Director of the Department of
7 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
8 authority of the following laws. All Code section references are to the Education Code unless
9 otherwise indicated.¹ All Regulation section references are to California Code of Regulations,
10 Title 5, unless otherwise indicated.

11 STATUTES AND REGULATIONS

12 5. Section **94885** of the Code states:

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

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

16 (2) The institution maintains specific written standards for student admissions for each
17 educational program and those standards are related to the particular educational program.

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

20 (4) The institution maintains a withdrawal policy and provides refunds.

21 (5) The directors, administrators, and faculty are properly qualified.

22 (6) The institution is financially sound and capable of fulfilling its commitments to
23 students.

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

26 (8) Adequate records and standard transcripts are maintained and are available to students.

27 ¹ References to the Education Code are to the Code sections currently in effect as of the
28 filing of this Statement of Issues.

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

3 (b) Except as provided in Section 94855.1, an institution offering a degree must satisfy one
4 of the following requirements:

5 (i) Accreditation by an accrediting agency recognized by the United States Department of
6 Education, with the scope of that accreditation covering the offering of at least one degree
7 program by the institution.

8 (ii) An accreditation plan, approved by the bureau, for the institution to become fully
9 accredited within five years of the bureau's issuance of a provisional approval to operate to the
10 institution. The provisional approval to operate to an unaccredited degree-offering institution
11 shall be in compliance with Section 94885.5.

12 6. Section **94886** of the Code states:

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

17 7. Section **94887** of the Code states:

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

23 8. Section **94891(b)** of the Code states:

24 To be granted a renewal of an approval to operate, the institution shall demonstrate its
25 continued capacity to meet the minimum operating standards.

26 9. Section **94897** of the Code states, in pertinent part:

27 An institution shall not do any of the following:

28

...

1 (1) Use the terms “approval,” “approved,” “approval to operate,” or “approved to operate”
2 without stating clearly and conspicuously that approval to operate means compliance with state
3 standards as set forth in this chapter. If the bureau has granted an institution approval to operate,
4 the institution may indicate that the institution is “ licensed” or “licensed to operate,” but may not
5 state or imply either of the following:

6 (1) The institution or its educational programs are endorsed or recommended by the state or
7 by the bureau.

8 (2) The approval to operate indicates that the institution exceeds minimum state standards
9 as set forth in this chapter. . . .

10 10. Section **94909** of the Code states, in pertinent part:

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

14 (1) The name, address, telephone number, and, if applicable, Internet Web site address of
15 the institution.

16 (2) Except as specified in Article 2 (commencing with Section 94802), a statement that the
17 institution is a private institution and that it is approved to operate by the bureau.

18 . . .

19 11. Section **94913(a)** of the Code states, in pertinent part:

20 (a) An institution that maintains an Internet Web site shall provide on that Internet Web site
21 all of the following:

22 (1) The school catalog.

23 (2) A School Performance Fact Sheet for each educational program offered by the
24 institution.

25 (3) Student brochures offered by the institution.

26 (4) A link to the bureau's Internet Web site.

27 (5) The institution's most recent annual report submitted to the bureau.

28 . . .

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

2 . . .

3 (t) [T]he institution shall list in the application, the following for each educational program
4 offered unless there have been no substantive changes since the last submission. If there have
5 been no substantive changes made the institution may so state and is not required to provide
6 documentation.

7 (1) The admissions requirements, including minimum levels of prior education,
8 preparation, or training;

9 (2) If applicable, information regarding the ability-to-benefit examination as required by
10 section 94904 of the Code.

11 (3) The types and amount of general education required;

12 (4) The title of the educational programs and other components of instruction offered,
13 including a description of the level of the courses (e.g., below college level, undergraduate level,
14 graduate level);

15 (5) The mode of instruction;

16 (6) The graduation requirements.

17 (7) Whether the educational program is designed to fit or prepare students for employment
18 in any occupation. If so, the application shall identify each occupation and job title to which the
19 institution represents the educational program will lead.

20 (u) For each educational program that the institution offers or proposes to offer, the
21 application shall contain a statement that the educational program meets the requirements of
22 section 71710, as well as the following unless there have been no substantive changes since the
23 last submission. If there have been no substantive changes made the institution may so state and is
24 not required to provide documentation:

25 (1) A description of the educational program.

26 (2) A description of the equipment to be used during the educational program.

27 (3) A description of the number and qualifications of the faculty needed to teach the
28 educational program.

1 (4) A projection, and the bases for the projection, of the number of students that the
2 institution plans to enroll in the educational program during each of the three years following the
3 date the application was submitted.

4 (5) A description of the learning, skills, and other competencies to be acquired by students
5 who complete the educational program.

6 (6) If licensure is a goal of an educational program, a copy of the approval from the
7 appropriate licensing agency. A copy of the intent to approve conditioned solely upon
8 institutional approval from the Bureau will also meet this requirement.

9 (7) Upon request, the institution shall provide to the Bureau copies of the curriculum or
10 syllabi required pursuant to section 71710.

11 . . .

12 (kk) An incomplete application filed under this section will render the institution ineligible
13 for renewal.

14 13. California Code of Regulations, Title 5, section **71700** states:

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

17 14. California Code of Regulations, Title 5, section **71710** states:

18 In order to meet its mission and objectives, the educational program defined in section
19 94837 of the Code shall be comprised of a curriculum that includes:

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

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

24 (c) course or module materials that are designed or organized by duly qualified faculty. For
25 each course or module, each student shall be provided with a syllabus or course outline that
26 contains:

27 (1) a short, descriptive title of the educational program;

28 (2) a statement of educational objectives;

- 1 (3) length of the educational program;
- 2 (4) sequence and frequency of lessons or class sessions;
- 3 (5) complete citations of textbooks and other required written materials;
- 4 (6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
- 5 learned and how those skills are to be measured;
- 6 (7) instructional mode or methods.
- 7 (d) if degree granting, require research of an appropriate degree that utilizes a library and
- 8 other learning resources;
- 9 (e) specific learning outcomes tied to the sequence of the presentation of the material to
- 10 measure the students' learning of the material; and
- 11 (f) evaluation by duly qualified faculty of those learning outcomes.

12 15. California Code of Regulations, Title 5, section 71715 states:

- 13 (a) Instruction shall be the central focus of the resources and services of the institution.
- 14 (b) The institution shall document that the instruction offered leads to the achievement of
- 15 the learning objectives of each course.
- 16 (c) Direct instruction requires the physical presence of one or more students and one or
- 17 more faculty members at the same location. Direct instruction includes instruction presented in a
- 18 classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or other physical learning
- 19 settings consistent with the mission, purposes, and objectives of the institution.
- 20 (d) Distance education as defined in section 94834 of the Code, does not require the
- 21 physical presence of students and faculty at the same location but provides for interaction
- 22 between students and faculty by such means as telecommunication, correspondence, electronic
- 23 and computer augmented educational services, postal service, and facsimile transmission. In
- 24 addition to the other requirements of this chapter and the Act, an institution offering distance
- 25 education shall:
- 26 (1) ensure that the educational program offered through distance education is appropriate
- 27 for delivery through distance education methods;
- 28 (2) assess each student, prior to admission, in order to determine whether each student has

- 1 the skills and competencies to succeed in a distance education environment;
- 2 (3) ensure that the materials and programs are current, well organized, designed by faculty
3 competent in distance education techniques and delivered using readily available, reliable
4 technology;
- 5 (4) provide for meaningful interaction with faculty who are qualified to teach using distance
6 education methods;
- 7 (5) maintain clear standards for satisfactory academic progress;
- 8 (6) timely complete student evaluations of learning outcomes by duly qualified faculty,
9 which are appropriate for use with the distance education methods used, and evaluated by duly
10 qualified faculty.
- 11 (7) employ a sufficient number of faculty to assure that (A) the institution's response to, or
12 evaluation of, each student lesson is returned to the student within 10 days after the lesson is
13 received by the institution; and (B) the institution's response to, or evaluation of, each student
14 project or dissertation is returned to the student within the time disclosed in the catalog; and
- 15 (8) shall maintain a record of the dates on which lessons, projects, and dissertations were
16 received and responses were returned to each student.

17 16. California Code of Regulations, Title 5, section 71720(a) states:

- 18 (a) An Educational Program Leading to a Degree.
- 19 (1) An institution offering an educational program that leads to a degree shall employ duly
20 qualified faculty sufficient in number to provide the instruction, student advisement, and learning
21 outcomes evaluation necessary for the institution to document its achievement of its stated
22 mission and objectives, and for students to achieve the specific learning objectives of each course
23 offered;

24 ...

- 25 (5) The institution's faculty as a whole shall possess a diverse educational background
26 which shall be demonstrated in part by earned degrees from a variety of colleges and universities
27 or by credentials generally recognized in the field of instruction;

28 ...

1 (8) Each institution shall have a written Academic Freedom Policy which describes the
2 latitude the institution allows faculty in the classroom so faculty will not inadvertently violate the
3 principles of academic freedom. These policies shall be made available to any person upon
4 request. The institution shall not take adverse action based on a staff member's exercise of
5 academic freedom consistent with the institution's policy; and

6 (9) The institution shall maintain records documenting that each faculty member is duly
7 qualified and was qualified to perform the duties to which the faculty member was assigned,
8 including providing instruction, evaluating learning outcomes, evaluating graduate dissertations,
9 theses, and student projects, and participating on doctoral committees.

10 17. California Code of Regulations, Title 5, section 71770(a) states:

11 (a) The institution shall establish specific written standards for student admissions for each
12 educational program. These standards shall be related to the particular educational program. An
13 institution shall not admit any student who is obviously unqualified or who does not appear to
14 have a reasonable prospect of completing the program. In addition to any specific standards for an
15 educational program, the admissions standards must specify as applicable that:

16 (1) Each student admitted to an undergraduate degree program, or a diploma program, shall
17 possess a high school diploma or its equivalent, or otherwise successfully take and pass the
18 relevant examination as required by section 94904 of the Code.

19 (2) Each student admitted into a post-baccalaureate degree program shall possess a
20 bachelor's degree or its equivalent. If a graduate program leads to a profession or an occupation
21 requiring state licensure and the licensing agency does not require that a member of the
22 profession or occupation possess a Bachelor's degree or its equivalent, this subdivision does not
23 apply.

24 18. California Code of Regulations, Title 5, section 71865 states, in pertinent part:

25 (a) A Master's degree may only be awarded to a student who demonstrates at least the
26 achievement of learning in a designated major field that is equivalent in depth to that normally
27 acquired in a minimum of 30 semester credits or its equivalent or one year of study beyond the
28 Bachelor's degree.

1 (b) A professional Doctoral degree may only be awarded to a student who has completed a
2 prescribed level of study normally requiring a minimum of three academic years of full-time
3 graduate study or the equivalent in part-time study; or, if the program leads to a profession or
4 occupation requiring state licensure, which satisfies the requirements of the state agency. The
5 degree shall include the name of the field in which it is offered (e.g., Juris Doctor or Doctor of
6 Music).

7 (c)(1) A Doctor of Philosophy degree (Ph.D.) is a research-oriented degree requiring a
8 minimum of three years of full-time graduate education or the equivalent in part-time study. Such
9 a doctoral program shall include substantial instruction in both theory and research at an
10 advanced level in a designated field and specialty, and may only be awarded to a student who has
11 completed a program of study that includes research methodology and demonstrated learning
12 achievement through original research directly attributable to the student. Each educational
13 program leading to a Doctor of Philosophy degree shall involve preparation for scholarship and
14 systematic inquiry.

15 (2)(A) Each Doctor of Philosophy program shall include a minimum of two formal
16 evaluations of the student by a doctoral committee. The doctoral committee shall be composed of
17 at least three members of the institution's own faculty who meet the qualifications in subdivision
18 (c)(3).

19 (B) The first evaluation shall consider the student's qualifications, including the student's
20 knowledge, skills, and conceptual framework, for undertaking rigorous inquiry into the student's
21 designated field.

22 (C) The second evaluation shall consider the design procedures and products of a formal
23 original inquiry proposed and completed by the student.

24 (3) The faculty members who serve on each student's doctoral examining committee shall
25 meet the following qualifications:

26 (A) Each member shall have earned a Doctoral degree from: an institution that is approved
27 by the Bureau or previously approved by a predecessor agency of the Bureau; or an accredited
28 institution in the United States or Canada; or other state approved institution that documents that

1 the institution at which the faculty member earned his or her degree is equivalent to an institution
2 that is approved by the Bureau; or an institution outside the United States or Canada and in
3 addition provides a comprehensive evaluation of the degree performed by a foreign credential
4 evaluation service that is a member of the National Association of Credential Evaluation Services
5 (NACES).

6 (B) The chair and the majority of the committee shall have earned degrees related to the
7 student's field of investigation.

8 (C) A minimum of 50% of the faculty on the committee shall have degrees conferred by an
9 institution accredited by an accrediting association recognized by the United States Department of
10 Education or the American Bar Association, unless the accreditation does not exist.

11 (D) All of the faculty shall have three or more years of field or research experience related
12 to their degrees obtained after they obtained their degrees.

13 (E) All of the faculty shall have been active in their field of scholarship or profession during
14 the five year period preceding their participation on the committee.

15 (4) The formal evaluation procedures shall provide the committee as a whole with the
16 opportunity to jointly examine the candidate.

17 (5) If the candidate is not physically present and the evaluation must take place by
18 telephone or other means of electronic communication, one of the following shall apply:

19 (A) One faculty member on the student's doctoral committee from the main location (i.e.,
20 the state in which the program is licensed or otherwise officially approved) must be present at the
21 location where the doctoral student is examined.

22 (B) A proctor, selected and approved by the doctoral committee, shall sit as an observer
23 with the student at the distant location and verify, under penalty of perjury under the laws of the
24 State of California, the identity of the student and the facts that the student received no prompting
25 by anyone and did not have access to unallowed materials during the evaluation process.

26 (6) If a project includes more than one student, the individual student's role and
27 contributions shall be clearly identified and documented.

28 (7) The institution shall maintain a written record of the evaluations. This record shall

1 include the names and signatures of all committee members who participated in the evaluations.

2 (d) No more than 25 percent of the credits required for graduate degree programs may be
3 awarded for a final product such as a thesis, dissertation, or product.

4 (e) Dissertations, theses and other products submitted by a student as part of a graduate
5 program shall be signed by all faculty members recommending the student for an award of a
6 degree.

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 (Failure to File Complete Application)

9 19. Respondent's application is subject to denial pursuant to Education Code sections
10 94887 and 94891(b), and pursuant to California Code of Regulations, Title 5, section 71700, and
11 section 71475, subsections (t), (u) and (kk), in that Respondent failed to file a complete
12 application. The circumstances are as follows:

13 20. Respondent failed to submit documentation regarding the types and amount of
14 general education required for its programs, thus failing to comply with Regulation section
15 71475(t)(3).

16 21. Respondent failed to specify graduation requirements, thus failing to comply with
17 Regulation section 71475(t)(6).

18 22. Respondent failed to submit documentation describing the number and qualifications
19 of the faculty needed to teach the educational programs, thus failing to comply with Regulation
20 section 71475(t)(3).

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 (Failure to Meet Minimum Operating Standards)

23 23. Respondent's application is subject to denial pursuant to Education Code sections
24 94887 and 94891(b), and pursuant to California Code of Regulations, Title 5, section 71700, in
25 that Respondent failed to establish compliance with minimum operating standards. The
26 circumstances are as follows:

27 **Master of Public Health in Human Sexuality Degree Program:**

28 24. Respondent failed to set forth specific written standards for student admissions into

1 the program, and failed to specify in its materials that applicants for admission must possess a
2 Bachelor's degree or the equivalent, in violation of Regulation section 71770(a).

3 25. Respondent failed to set forth its method of calculating the number of contact hours
4 required of students in the program and other programs, in violation of Regulation section
5 71865(a).

6 26. Respondent failed to set forth its method or mode of instruction and graduation
7 requirements, in violation of Regulation sections 71475(t) and 71715.

8 Erotology Certificate Program:

9 27. Respondent failed to set forth its specific standards for admission into the program, in
10 violation of Regulation section 71770(a).

11 28. Respondent failed to specify the types and amount of general education required for
12 completion of the program, in violation of Regulation 71475(t)(3).

13 29. Respondent failed to specify whether the method of instruction for the program is
14 direct or distance education, in violation of Regulation 71715.

15 30. Respondent's program information fails to indicated specific learning outcomes tied
16 to the sequence of the presentation of court material, in violation of Regulation 71710(e), and
17 fails to indicate that the course involves evaluation by duly qualified faculty of the learning
18 outcomes of the course, in violation of Regulation 71710(f).

19 31. Respondent failed, despite a direct inquiry by the Bureau on January 12, 2016, to
20 provide the intended outcome for the program, in violation of Regulations 71710, subsections
21 (c)(6), (e) and (f).

22 Sexological Bodywork Certificate Program

23 32. Respondent's program description fails to establish specific written standards for
24 admission to the program, in violation of Regulation 71770(a).

25 33. Respondent failed to specify the types and amount of general education required for
26 completion of the program, in violation of Regulation 71475(t)(3).

27 34. Respondent failed to specify whether the method of instruction for the program is
28 direct or distance education, in violation of Regulation 71715.

1 35. Respondent's program information fails to indicated specific learning outcomes tied
2 to the sequence of the presentation of court material, in violation of Regulation 71710(e), and
3 fails to indicate that the course involves evaluation by duly qualified faculty of the learning
4 outcomes of the course, in violation of Regulation 71710(f).

5 Associate in Sex Education Degree/Certificate:

6 36. Respondent's program description fails to establish specific written standards for
7 admission to the program, and fails to specify that a high school diploma or equivalent is required
8 as a condition of admission, in violation of Regulation 71770(a).

9 37. Respondent failed to specify the types and amount of general education required for
10 completion of the program, in violation of Regulation 71475(t)(3).

11 38. Respondent failed to specify whether the method of instruction for the program is
12 direct or distance education, in violation of Regulation 71715.

13 39. Respondent failed to specify how there would be meaningful interaction between
14 students and instructors, in violation of Regulation 71715(d)(4), and failed to specify how
15 compliance of the other aspects of Regulation 71715(d) would be achieved.

16 40. Respondent failed to specify the sequence and frequency of lessons or class sessions,
17 as required by Regulation 71710(c)(4).

18 41. Respondent's program information fails to indicated specific learning outcomes tied
19 to the sequence of the presentation of course material, in violation of Regulation 71710(e), and
20 fails to indicate that the course involves evaluation by duly qualified faculty of the learning
21 outcomes of the course, in violation of Regulation 71710(f).

22 42. Respondent failed, despite a direct inquiry by the Bureau on January 12, 2016, to
23 provide the intended outcome for the program, in violation of Regulations 71710, subsections
24 (c)(6), (e) and (f).

25 Clinical Sexology Certificate:

26 43. Respondent's program description fails to establish specific written standards for
27 admission to the program, in violation of Regulation 71770(a).

28 44. Respondent failed to specify the types and amount of general education required for

1 completion of the program, in violation of Regulation 71475(t)(3).

2 45. Respondent failed to specify whether the method of instruction for the program is
3 direct or distance education, in violation of Regulation 71715.

4 46. Respondent's program information fails to indicated specific learning outcomes tied
5 to the sequence of the presentation of court material, in violation of Regulation 71710(e), and
6 fails to indicate that the course involves evaluation by duly qualified faculty of the learning
7 outcomes of the course, in violation of Regulation 71710(f).

8 Failure to Adequately Describe Educational Program:

9 47. Respondent failed, despite a direct inquiry by the Bureau on October 8, 2015, to
10 establish that its curriculum includes learning outcomes tied to the sequence of the presentation of
11 course material, in violation of Regulation 71710(e), and failed to indicate that the curriculum
12 involves evaluation by duly qualified faculty of the learning outcomes, in violation of Regulation
13 71710(f).

14 48. Respondent failed, despite a direct inquiry by the Bureau on October 8, 2015, to
15 provide individualized program descriptions regarding the Associate in Sex Education, Clinical
16 Sexology, Erotology, Sexological Bodywork and Sexological Instructor/Advisor of AISA/STI
17 Prevention programs, and thus failed to provide required descriptions of the number and
18 qualifications of the faculty needed to teach said programs, in violation of Regulation 71475(u).

19 49. Respondent failed, despite a direct inquiry by the Bureau on October 8, 2015, to
20 provide adequate descriptions of equipment required for its individual programs, in violation of
21 Regulation 71475(u)(2).

22 50. Respondent failed, despite a direct inquiry by the Bureau on October 8, 2015, to
23 provide a projection for student enrollment, along with a basis for that projection, in in violation
24 of Regulation 71475(u)(4).

25 51. Respondent failed, despite a direct inquiry by the Bureau on October 8, 2015, to
26 provide a description of the learning, skills, and other competencies to be acquired by students in
27 its programs, in violation of Regulations 71710, subsections (b), (c)(6), (e) and (f), and
28 Regulation 71474(u)(5).

1 Sexuality for renewal of its approval to operate;

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

3

4 DATED: 12/19/16



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

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