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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 **OIKOS UNIVERSITY**
7901 Oakport Street, Ste. 3000
Oakland, CA 94621
15
16 **Accredited Institution Approval to Operate**
No. 93159648
17
18 Respondent.

Case No. 1004881

OAH No. 2019100521

FIRST AMENDED ACCUSATION

19 **PARTIES**

20 1. Dr. Michael Marion, Jr. (Complainant) brings this First Amended Accusation solely
21 in his official capacity as the Chief of the Bureau for Private Postsecondary Education,
22 Department of Consumer Affairs.

23 2. On or about May 13, 2011, the Bureau for Private Postsecondary Education (Bureau)
24 issued Respondent Oikos University, a California non-profit corporation, Non-Accredited
25 Institution Approval to Operate Number 93159648. Respondent's Non-Accredited Institution
26 Approval to Operate expired on May 12, 2016 and was superseded by Accredited Institution
27 Approval to Operate Number 93159648, issued by the Bureau on or about December 22, 2016.
28 The Accredited Institution Approval to Operate was in full force and effect at all times relevant to

1 the charges brought in this First Amended Accusation, and will expire on May 31, 2021, unless
2 renewed.

3 **JURISDICTION**

4 3. This First Amended Accusation is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
6 authority of the following laws. All section references are to the Education Code (Code) unless
7 otherwise indicated.

8 4. Business and Professions Code section 118, subdivision (b) states:

9 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
10 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
11 order of a court of law, or its surrender without the written consent of the board, shall not, during
12 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
14 provided by law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.”

16 5. Section 94875 states:

17 “The Bureau for Private Postsecondary Education, as established by Section 6 of Chapter
18 635 of the Statutes of 2007, is continued in existence and shall commence operations. This
19 chapter establishes the functions and responsibilities of the bureau, for the purposes of Section 6
20 of Chapter 635 of the Statutes of 2007. The bureau shall regulate private postsecondary
21 educational institutions through the powers granted, and duties imposed, by this chapter. In
22 exercising its powers, and performing its duties, the protection of the public shall be the bureau's
23 highest priority. If protection of the public is inconsistent with other interests sought to be
24 promoted, the protection of the public shall be paramount.”

25 6. Section 94932 states:

26 “The bureau shall determine an institution's compliance with the requirements of this
27 chapter. The bureau shall have the power to require reports that institutions shall file with the
28 bureau in addition to the annual report, to send staff to an institution's sites, and to require

1 documents and responses from an institution to monitor compliance. When the bureau has reason
2 to believe that an institution may be out of compliance, it shall conduct an investigation of the
3 institution. If the bureau determines, after completing a compliance inspection or investigation,
4 that an institution has violated any applicable law or regulation, the bureau shall take appropriate
5 action pursuant to this article.”

6 7. Section 94936 states:

7 “(a) As a consequence of an investigation, which may incorporate any materials obtained or
8 produced in connection with a compliance inspection, and upon a finding that the institution has
9 committed a violation of this chapter or that the institution has failed to comply with a notice to
10 comply pursuant to Section 94935, the bureau shall issue a citation to an institution for violation
11 of this chapter, or regulations adopted pursuant to this chapter.

12 “(b) The citation may contain any of the following:

13 “(1) An order of abatement that may require an institution to demonstrate how future
14 compliance with this chapter or regulations adopted pursuant to this chapter will be
15 accomplished.

16 “(2) Notwithstanding Section 125.9 of the Business and Professions Code, an
17 administrative fine not to exceed five thousand dollars (\$5,000) for each violation. The bureau
18 shall base its assessment of the administrative fine on:

19 “(A) The nature and seriousness of the violation.

20 “(B) The persistence of the violation.

21 “(C) The good faith of the institution.

22 “(D) The history of previous violations.

23 “(E) The purposes of this chapter.

24 “(F) The potential harm to students.

25 “(3) An order to compensate students for harm, including a refund of moneys paid to the
26 institution by or on behalf of the student, as determined by the bureau.

27 “(c)(1) The citation shall be in writing and describe the nature of the violation and the
28 specific provision of law or regulation that is alleged to have been violated.

1 “(2) The citation shall inform the institution of its right to request a hearing in writing
2 within 30 days from service of the citation.

3 “(3) If a hearing is requested, the bureau shall select an informal hearing pursuant to Article
4 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
5 Government Code or a formal hearing pursuant to Chapter 5 (commencing with Section 11500)
6 of Part 1 of Division 3 of Title 2 of the Government Code.

7 “(4) If a hearing is not requested, payment of the administrative fine is due 30 days from the
8 date of service, and shall not constitute an admission of the violation charged.

9 “(5) If a hearing is conducted and payment of an administrative fine is ordered, the
10 administrative fine is due 30 days from when the final order is entered.

11 “(6) The bureau may enforce the administrative fine as if it were a money judgment
12 pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

13 “(d) All administrative fines shall be deposited in the Private Postsecondary Education
14 Administration Fund.”

15 **STATUTORY PROVISIONS**

16 8. Section 94923, states, in part:

17 “(a) The Student Tuition Recovery Fund relieves or mitigates economic loss suffered by a
18 student while enrolled in an institution not exempt from this article pursuant to Article 4
19 (commencing with Section 94874), who, at the time of his or her enrollment, was a California
20 resident or was enrolled in a California residency program, prepaid tuition, and suffered economic
21 loss.

22 “(b)(1) The bureau shall adopt, by regulation, procedures governing the administration and
23 maintenance of the Student Tuition Recovery Fund. The fund shall be used to provide awards to
24 students who suffer economic loss.

25 . . .

26 “(d) A student who suffers educational opportunity losses, whose charges are paid by a
27 third-party payer, is eligible for educational credits under the fund.

28

1 “(e) The bureau may seek repayment to the Student Tuition Recovery Fund from an
2 institution found in violation of the law for which a student claim was paid. An institution shall
3 not be eligible to renew its approval to operate with the bureau if the repayment is not made to the
4 bureau as requested.

5 “...”

6 9. California Code of Regulations, title 5, section 75020 states, in part:

7 “(a) The Bureau Chief, or his or her designee, or the Director's designee, is authorized to
8 issue citations containing orders of abatement and/or administrative fines pursuant to section
9 94936 of the Code against approved private, postsecondary institutions that have committed any
10 acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto.

11 “... ”

12 “(c) In addition to the requirements of section 94936 of the Code, each citation shall inform
13 the cited institution or person that:

14 “(1) if a hearing pursuant to the Administrative Procedure Act (APA) is not requested,
15 payment of the administrative fine is due 30 days from the date of service, and shall not constitute
16 an admission of the violation charged.

17 “... ”

18 “(3) if the cited institution or person desires an informal conference to contest the finding of
19 a violation prior to an APA hearing, the informal conference shall be requested by written notice
20 to the Bureau within 30 days from service of the citation;

21 “(4) failure to comply with any order of abatement within the time set forth in the citation,
22 unless the citation is being appealed, may result in disciplinary action being taken by the Bureau;
23 and

24 “(5) the Bureau may enforce the administrative fine as if it were a money judgment
25 pursuant to the California Code of Civil Procedure (beginning with section 680.010).

26 “//////”

27 “//////”

28 “//////”

1 “(d) Each citation shall be served on the cited institution or person, in person, or by certified
2 and regular mail at the address of record on file with the Bureau. Citations served by certified and
3 regular mail shall be deemed “served” on the date of mailing.

4 ”

5 10. California Code of Regulations, title 5, section 75040 states, in part:

6 “(a) Pursuant to section 94936(c)(2) of the Code, a cited institution or person may, within
7 30 days of service of the citation, request a hearing in writing to the Bureau, or it is waived. In
8 addition to contesting a citation by requesting a hearing, the cited institution or person may,
9 within the same 30 days, submit a written request to the Bureau for an informal conference.

10 “(b) The Bureau Chief, or his or her designee, or the Director, or his or her designee, shall
11 within 30 days from the Bureau's receipt of a written request for an informal conference, hold an
12 informal conference with the cited institution or person. The 30-day period may be extended by
13 the Bureau Chief or the Director for good cause. The informal conference may be by telephone.

14 “(c) Following the informal conference, the Bureau Chief, or his or her designee, or the
15 Director, or his or her designee, will affirm, modify, or dismiss the citation, including any fine
16 assessed and/or order of abatement issued. A written order affirming, modifying, or dismissing
17 the original citation shall be served on the cited institution or person within 30 days from the
18 informal conference. If the order affirms or modifies the original citation, said order shall fix a
19 reasonable period of time for abatement of the violation and/or payment of the fine of not more
20 than 30 days.

21 . . .

22 “(g) If a written request for a hearing pursuant to section 94936(c)(2) of the Code, or for an
23 informal conference as provided in subsection (a), or both, is not submitted to the Bureau within
24 30 days from service of the citation, the cited institution or person is deemed to have waived the
25 right to an informal conference and/or administrative hearing.”

26 11. California Code of Regulations, title 5, section 75050 states, in part:

27 “(a) If a cited institution or person that or who has been issued an order of abatement is
28 unable to complete the correction within the time set forth in the citation because of conditions

1 beyond the institution's or person's control after the exercise of reasonable diligence, the
2 institution or person may request an extension of time within which to complete the correction.
3 Such a request shall be in writing and shall be made within the time set forth for abatement.

4 “(b) Failure of an applicant or institution issued an approval to operate to abate the violation
5 or to pay the fine within the time allowed is a ground for denial or discipline of an approval to
6 operate.

7”

8 12. California Code of Regulations, title 5, section 76020 states:

9 “(a) The fund exists to relieve or mitigate economic losses suffered by a student while
10 enrolled at a qualifying institution, who at the time of enrollment is or was a California resident or
11 was enrolled in a California residency program, if the student enrolled in the institution and the
12 student or a third-party payer prepaid tuition, paid or is deemed to have paid the assessment and
13 suffered economic loss as a result of any of the conditions specified in section 94923 of the Code
14 or due to an institution losing its eligibility to receive a third-party payer benefit such as Cal
15 Grant, Pell Grant, or veterans' financial aid programs under Title 38 of the Code of Federal
16 Regulations.”

17 **COST RECOVERY**

18 13. Business and Professions Code section 125.3 and Education Code section 94937,
19 subdivision (c) provides, in part, that the Bureau may request the administrative law judge to
20 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
21 sum not to exceed the reasonable costs of the investigation and enforcement of the case, with
22 failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a
23 case settles, recovery of investigation and enforcement costs may be included in a stipulated
24 settlement.

25 **FACTUAL BACKGROUND**

26 14. On or about January 23, 2019, the Bureau issued Citation Number 1819092 (Citation)
27 to Respondent, alleging that Respondent violated Education Code section 94927. The Citation
28 includes an order of abatement, in part, directing Respondent to pay tuition refunds to five former

1 students identified as “student A,” “student B,” “student C,” “student D,” and “student E.” The
2 order of abatement also directs Respondent to provide to the Bureau a roster of each student.

3 15. On or about February 4, 2019, Respondent appealed the Citation and requested an
4 informal conference. Respondent declined to request an administrative hearing. An informal
5 conference regarding the Citation was held on or about February 19, 2019. As a result of the
6 informal conference, on or about April 29, 2019, the Bureau issued a decision affirming the
7 Citation. The decision orders Respondent to submit evidence of compliance with the Citation’s
8 order of abatement within 30 days.

9 16. On or about October 14, 2019, Respondent’s former students, referenced in the
10 Citation as students A through E, received tuition-reimbursement payments from the Student
11 Tuition Recovery Fund in amounts less than required by the Citation.

12
13 **FIRST CAUSE FOR DISCIPLINE**
(Failure to Comply with Citation)

14 17. Respondent subjected its Accredited Institution Approval to Operate to disciplinary
15 action for failing to comply with the Citation’s order of abatement, described in paragraphs 14
16 through 16, above. (Cal. Code of Regs., title 5, §§ 75020, subd. (c)(4) and 75050, subd. (b)). In
17 particular:

18 a. Respondent failed to timely submit evidence showing that it paid tuition
19 refunds to the former students referenced as students A through E.

20 b. Although Respondent provided the Bureau with a roster as required by the
21 Citation’s order of abatement, that roster does not include all of Respondent’s former students.

22
23 **SECOND CAUSE FOR DISCIPLINE**
(Failure to Repay Student Tuition Recovery Fund)

24 18. Respondent subjected its Accredited Institution Approval to Operate to disciplinary
25 action for failing to repay the Student Tuition Recovery Fund for the payments referenced in
26 paragraph 16, above. (Educ. Code § 94923, subd. (e) and Cal. Code of Regs., title 5, § 76020).

27 ////

28 ////

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Accredited Institution Approval to Operate No. 93159648, issued to Respondent Oikos University;

2. Imposing, as a condition of any application Respondent Oikos University submits to the Bureau for Private Postsecondary Education for renewal of an approval to operate, repayment to the Student Tuition Recovery Fund, pursuant to Education Code section 94923, subdivision (e);

3. Ordering Respondent Oikos University to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and Education Code section 94937, subdivision (c); and

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

DATED: _____

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

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