BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against:

Case No. 997378

SUNNY COLLEGE; DEVDAT MAHESHWARI and VIDHYA MAHESHWARI, Owners 545 N. Mountain Avenue, Ste 203 Upland, CA 91786 (Main Campus)

13916 Hillview Place Victorville, CA 92392 (Branch Campus)

School Code Nos. 3604261 and 3604971

Respondents.

DECISION AND ORDER

The attached Stipulated Surrender of Approval to Operate and Order is hereby adopted by the Director of Consumer Affairs as the Decision and Order in the above entitled matter.

This Decision shall become effective on AUGUST 23, 2012

IT IS SO ORDERED JUL 18 2012

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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1	Kamala D. Harris	X 36 251	
2	Attorney General of California KAREN B. CHAPPELLE		
3	Supervising Deputy Attorney General THOMAS L. RINALDI	E S	
	Deputy Attorney General		
4	State Bar No. 206911 300 So. Spring Street, Suite 1702	*	
5	Los Angeles, CA 90013 Telephone: (213) 897-2541		
6	Facsimile: (213) 897-2804		
7	Attorneys for Complainant	e T	
8	BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS		
9	FOR THE BUREAU FOR PRIVAT	E POSTSECONDARY EDUCATION	
100	STATE OF	CALIFORNIA	
10	N	* * * * * * * * * * * * * * * * * * *	
11	In the Matter of the First Amended Accusation	Case No. 997378	
12	Against:		
13	SUNNY COLLEGE; DEVDAT MAHESHWARI and VIDHYA	STIPULATED SURRENDER OF	
14	MAHESHWARI, Owners 545 N. Mountain Avenue, Ste 203	APPROVAL TO OPERATE AND ORDER	
15	Upland, CA 91786 (Main Campus)	, and the second	
83 - 83	13916 Hillview Place,		
16	Victorville, CA 92392 (Branch Campus)		
17	School Code Nos. 3604261 and 3604971		
18			
19	Respondents.	la de la companya de	
20			
21	IT IS HEREBY STIPULATED AND AGE	REED by and between the parties in this	
22	proceeding that the following matters are true:		
23	PAR	TIES	
24	# %	Deputy Bureau Chief of the Bureau for Private	
25			
26	Postsecondary Education (Bureau). She brought this action solely in her official capacity and is		
	represented in this matter by Kamala D. Harris, Attorney General of the State of California, by		
27	Thomas L. Rinaldi, Deputy Attorney General.	•	
28			

- 2. Sunny College; Devdat Maheshwari, 50% Owner and Vidhya Maheshwari, 50% Owner (Respondents) are represented in this proceeding by attorney Joseph Scalfani, whose address is 1155 Hummingbird Ln. Corona, CA 92882.
- 3. On or about October 26, 1998, the Bureau for Private Postsecondary and Vocational Education (BPPVE)¹ issued an Approval to Operate under changed ownership and approval for change of institutional name and location for (Main Campus) Sunny College (Institution Code No. 3604261) to Devdat Maheshwari, 50% Owner and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.
- 4. On or about September 6, 2002, the BPPVE issued an Approval to Operate a Branch School (Branch School Code No. 3604971) to Devdat Maheshwari, 50% Owner, and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION

5. First Amended Accusation No. 997378 was filed before the Director of The Department of Consumer Affairs (Director), for the Bureau, and is currently pending against Respondents. The First Amended Accusation and all other statutorily required documents were properly served on Respondents on April 23, 2012. Respondents timely filed their Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation No. 997378 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in First Amended Accusation No. 997378. Respondents also have carefully read, fully discussed with counsel, and understand the effects of this Stipulated Surrender of Approval to Operate and Order.

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

13.

- 7. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 8. Respondents voluntarily, knowingly, and intelligently waive and gives up each and every right set forth above.

CULPABILITY

- 9. Respondents admit the truth of each and every charge and allegation in First Amended Accusation No. 997378, agree that cause exists for discipline and hereby surrender their Approval to Operate Sunny College for the Director's formal acceptance.
- 10. Respondents understand that by signing this stipulation they enable the Director to issue her order accepting the surrender of all Respondents' Approvals to Operate without further process.

CONTINGENCY

Respondents understand and agree that counsel for Complainant and the staff of the Bureau may communicate directly with the Director and staff of the Department of Consumer Affairs regarding this Stipulated Surrender of Approval to Operate and Order, without notice to or participation by Respondents or their counsel. By signing the Stipulated Surrender of Approval to Operate, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the Stipulated Surrender of Approval to Operate prior to the time the Director considers and acts upon it. If the Director fails to adopt this Stipulated Surrender of Approval to Operate, the Stipulated Surrender of Approval to Operate shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of Approval to Operate, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of Approval to Operate is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of Approval to Operate and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

<u>ORDER</u>

IT IS HEREBY ORDERED that all of the Approvals to Operate Sunny College that were issued to Respondents are surrendered and accepted by the Director.

- 1. The surrender of Respondents' Approval to Operate and the acceptance of the surrendered Approval to Operate by the Director shall constitute the imposition of discipline against Respondents. This stipulation constitutes a record of the discipline and shall become a part of Respondents' license history with the Bureau.
- 2. Respondents shall lose all rights and privileges to operate as a private post secondary institution in California as of the effective date of the Director's Decision and Order.
- 3. Respondents shall cause to be delivered to the Bureau the written document certifying issuance of their Approval to Operate Sunny College on or before the effective date of the Decision and Order.
- 4. If Respondents or any of Respondent's officers ever submit an application for an Approval to Operate in the State of California, Respondents and/or Applicant must comply with all of the laws, regulations, and procedures for approval to operate in effect at the time the application is filed and all charges and allegations contained in Accusation No. 997378 shall be

deemed to be true, correct, and admitted by Respondents or any of Respondents' officers when the Bureau determines whether to grant or deny the application.

- 5. If Respondents or any of Respondents' officers ever submit an application for an Approval to Operate or petitions for reinstatement of an Approval to Operate, by any other licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 997378 shall be deemed to be true, correct, and admitted by Respondents and any of Respondents' officers for the purpose of any Statement of Issues or any other proceeding secking to deny or restrict licensure.
- 6. If and when Respondents are granted an Approval to Operate, they shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Education Code section 94937 and Business and Professions Code section 125.3 in the amount of \$4,393.50.

 Respondents shall be permitted to pay these costs in a payment plan approved by the Bureau.
- 7. Respondents' acceptance of this Stipulated Surrender of Approval to Operate and Order in no way precludes the filing of civil claims against Respondents by individuals arising from the charges and allegations contained in Accusation No. 997378.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of Approval to Operate and Order and have fully discussed it with my attorney, Joseph Scalfani, or his representative. I understand the stipulation and the effect it will have on my Approval to Operate. I enter into this Stipulated Surrender of Approval to Operate voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

Ø 8.	
DATED:	6-12-2012.

SUNNY COLLEGE; DEVDAT MAHESHWARI, 50% Owner

Respondent

DATED: 6-12-2012

SUNNY COLLEGE, VIDHYA MAHBSHWARI,

50% Owner Respondent

Stipulated Surrender of Approval to Operate (Case No. 997378)

Stipulated Surrender of Approval to Operate (Case No. 997378)

Exhibit A

First Amended Accusation No. 997378

1	KAMALA D. HARRIS		
2	Attorney General of California KAREN B. CHAPPELLE		
3	Supervising Deputy Attorney General THOMAS L. RINALDI		
4	Deputy Attorney General State Bar No. 206911		
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-2541 Facsimile: (213) 897-2804		
7	Attorneys for Complainant BEFORE THE		
8	DEPARTMENT OF CONSUMER AFFAIRS FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION STATE OF CALIFORNIA		
10			
11	In the Matter of the First Amended Accusation Case No. 997378		
12	Against:		
13	SUNNY COLLEGE; DEVDAT MAHESHWARI and VIDHYA FIRST AMENDED ACCUSATION		
14	MAHESHWARI, Owners 545 N. Mountain Avenue, Ste 203		
15	Upland, CA 91786 (Main Campus)		
16	13916 Hillview Place, Victorville, CA 92392 (Branch Campus)		
17	School Code Nos. 3604261 and 3604971		
18	Respondents.		
19			
20	Complainant alleges:		
21	PARTIES		
22	1. Joanne Wenzel (Complainant) brings this First Amended Accusation solely in her		
23	official capacity as the Deputy Bureau Chief for the Bureau for Private Postsecondary Education		
24	Department of Consumer Affairs.		
25	2. On or about October 26, 1998, the Bureau for Private Postsecondary Education issue		
26	an Approval to Operate under changed ownership and approval for change of institutional name		
27	and location for (Main Campus) Sunny College (No. 3604261) to Devdat Maheshwari, 50%		
28	Owner and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force and		
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effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

3. On or about September 6, 2002, the Bureau for Private Postsecondary Education issued an Approval to Operate (Branch) Sunny College (No. 3604971) to Devdat Maheshwari, 50% Owner, and Vidhya Maheshwari, 50% Owner. The Approval to Operate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION

- 4. This First Amended Accusation is brought before the Bureau for Private Postsecondary Education (hereinafter "Bureau"), Department of Consumer Affairs under the authority of the following laws. All section references are to the Education Code (Code) unless otherwise indicated.
 - 5. Section 94932 provides:

The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing an investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate actions pursuant to this article.

- 6. Section 94937 provides:
 - (a) As a consequence of an investigation, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:
 - (2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement that resulted in harm to the student....
- 7. Section 477 of the Business and Professions Code provides in pertinent part: As used in this division:

- (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
- (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.
 - 8. Section 480 of the Business and Professions Code states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or
- "(3)(A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (B) "The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.
- 9. Section 490 of the Business and Professions Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
 - 10. Section 493 of the Business and Professions Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been

convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

- 11. Education Code section 94851 defines "owner" as an individual in the case of a sole proprietorship, partners in a partnership, members in a limited liability company, or shareholders in a corporation.
- 12. Education Code section 94856 defines "person in control" as a person who, by his or her position's authority or conduct, directs the management of an institution.
 - 13. Title 5, California Code of Regulations, section 71730, subdivision (g) states:
 - The institution shall not employ or continue to employ any administrative personnel who were adjudicated in a judicial or administrative proceeding as having violated any provision of the Act or this chapter or as having committed any act that would constitute grounds for the denial of a license under Section 480 of the Business and Professions Code.
 - 14. Title 5, California Code of Regulations, section 75060, states:

In determining whether any of the grounds for denial set forth in Section 480 of the Business and Professions Code exist, a crime or act shall be considered substantially related to the qualifications, functions, or duties of any owner, corporate director or member of the governing board, officer, or administrator under any of the following circumstances:

- (a) The crime or act involves any violation of the Act or this chapter, Title IV of the federal Higher Education Act of 1965 (20 U.S.C. § 1070, et.seq.), the closure of an institution, fraud or misrepresentation, breach of fiduciary duty, any type of forgery or theft, or any type of dishonesty causing any financial loss.
- (b) The crime, to a substantial degree, evidences present or potential unfitness to perform the functions and duties authorized or required by the Act or this chapter in a manner consistent with the public health, safety, or welfare, including a crime prohibited by Title 8 (commencing with Section 187) or Title 9 (commencing with Section 261) of the Penal Code.

COST RECOVERY

15. Business and Professions Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a

violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16. Education Code section 94937 provides, in pertinent part, that the Bureau may seek reimbursement of costs of investigation and enforcement pursuant to section 125.3 of the Business and Professions Code but that an institution shall not be required to pay the cost of investigation to more than one agency.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime)

- Business and Professions Code section 490 and Title 5, California Code of Regulations, section 71730, subdivision (g), in conjunction with Business and Professions Code section 480, in that on or around April 23, 2009, Devdat Maheshwari was convicted of one felony count of violating Insurance Code section 1871.4(a)(2) (Present False or Fraudulent Statement) in the Superior Court of California (County of San Diego Central Division) in a case entitled *The People of the State of California v. Devdat Uttamchand Maheshwari*, Case No. CD219106.
- 18. The circumstances surrounding the conviction are that between August 1, 2008 and February 20, 2009, Devdat Maheshwari knowingly and unlawfully presented and caused to be presented a false and fraudulent written material statement in support of a claim for compensation for the purpose of obtaining compensation. As a result of the conviction, Devdat Maheshwari was sentenced to three years of formal probation with 180 days in county jail, ordered to pay \$200 in civil fines, \$800 in criminal fines, and to perform 320 hours of community service.

 Devdat Maheshwari also paid between \$30,400-\$56,397 in restitution to the State Compensation Insurance Fund at the time of sentencing.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Bureau for Private Postsecondary Education issue a decision:

1. Revoking all approvals to operate for Devdat and Vidhya Maheshwari, Owners of Sunny College, including Approval to Operate No. 3604261, Sunny College (545 N. Mountain