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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1004073

13 **HOLBERTON INC.**
14 **972 Mission Street – 1st Floor**
15 **San Francisco, CA 94103**
16 **Approval to Operate a Non-accredited**
Institution, Code No. 47845455,

FIRST AMENDED ACCUSATION

17 Respondent.

18
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 (Bureau),
22 Department of Consumer Affairs.

23 2. On or about July 11, 2018, the Bureau issued an Approval to Operate a Non-
24 accredited Institution, Code No. 47845455, to Holberton Inc. (Respondent). This approval to
25 operate was in full force and effect at all times relevant to the charges brought in this first
26 amended accusation and will expire on July 11, 2023, unless renewed.

27 **JURISDICTION**

28 3. This first amended accusation is brought before the Director of the Department of

1 Consumer Affairs (Director) for the Bureau under the authority of the following laws. All section
2 references are to the Education Code unless otherwise indicated.

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

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

11 5. Section 94875 states:

12 “The Bureau for Private Postsecondary Education, as established by Section 6 of Chapter
13 635 of the Statutes of 2007, is continued in existence and shall commence operations. This
14 chapter establishes the functions and responsibilities of the bureau, for the purposes of Section 6
15 of Chapter 635 of the Statutes of 2007. The bureau shall regulate private postsecondary
16 educational institutions through the powers granted, and duties imposed, by this chapter. In
17 exercising its powers, and performing its duties, the protection of the public shall be the bureau’s
18 highest priority. If protection of the public is inconsistent with other interests sought to be
19 promoted, the protection of the public shall be paramount.”

20 6. Section 94877 states in part:

21 “(d) The bureau shall establish a program to proactively identify unlicensed institutions,
22 identify material or repeated violations of this chapter and regulations implementing this chapter,
23 and take all appropriate legal action.”

24 **STATUTORY PROVISIONS**

25 7. Section 94841 states:

26 “‘Faculty’ means the instructional staff of an institution, whether these persons are
27 employees or independent contractors.”

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8. Section 94886 states:

“Except as exempted in Article 4 (commencing with Section 94874) or in compliance with the transition provisions in Article 2 (commencing with 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.”

9. Section 94893 states:

“If an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in subdivision (a) of Section 94896, if the institution makes the substantive change without prior bureau authorization, the institution’s approval to operate may be suspended or revoked.”

10. Section 94894 states in part:

“The following changes to an approval to operate are considered substantive changes and require prior authorization:

...

“(g) A significant change in the method of instructional delivery.”

11. Section 94897 states in part:

“An institution shall not do any of the following:

...

“(b) Promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation.

...

“(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information..... ”

12. Section 94909 states in part:

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

1 ...

2 “(5) A description of the programs offered and a description of the instruction provided in
3 each of the courses offered by the institution, the requirements for completion of each program,
4 including required courses, any final tests or examinations, any required internships or
5 externships, and the total number of credit hours, clock hours, or other increments required for
6 completion.”

7 13. Section 94911 states in part:

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

9 ...

10 “(c) In underlined capital letters on the same page of the enrollment agreement in which
11 the student’s signature is required, the total charges for the current period of attendance, the
12 estimated total charges for the entire educational program, and the total charges the student is
13 obligated to pay upon enrollment.”

14 14. Section 94917 states:

15 “A note, instrument, or other evidence of indebtedness relating to payment for an
16 educational program is not enforceable by an institution unless, at the time of execution of the
17 note, instrument, or other evidence of indebtedness, the institution held an approval to operate.”

18 15. Section 94920 states in part:

19 “An institution that does not participate in the federal student financial aid programs shall
20 do all of the following:

21 ...

22 “(d) The institution shall have a refund policy for the return of unearned institutional
23 charges if the student cancels an enrollment agreement or withdraws during a period of
24 attendance. The refund policy for students who have completed 60 percent or less of the period
25 of attendance shall be a pro rata refund.

26 “(e) The institution shall pay or credit refunds within 45 days of a student’s cancellation or
27 withdrawal.”

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1 for whom the instruction is intended and the expected outcomes for graduates.”

2 20. California Code of Regulations, title 5, section 71710, states in part:

3 “In order to meet its mission and objectives, the educational program defined in section
4 94837 of the Code shall be comprised of a curriculum that includes:

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

7 . . .

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

11 . . .

12 “(3) length of the educational program

13 . . .

14 “(f) evaluation by duly qualified faculty of those learning outcomes.”

15 21. California Code of Regulations, title 5, section 71720, states in part:

16 “(b) Instructors in an Educational Program Not Leading to a Degree.

17 “(1) An institution shall employ instructors who possess the academic, experiential and
18 professional qualifications to teach, including a minimum of three years of experience, education
19 and training in current practices of the subject area they are teaching. If an instructor does not
20 possess the required three years of experience, education and training in the subject area they are
21 teaching, the institution shall document the qualifications the instructor possesses that are
22 equivalent to the minimum qualifications.”

23 22. California Code of Regulations, title 5, section 71730, states in part:

24 “(f) The institution shall employ administrative personnel who have the expertise to
25 ensure the achievement of the institution’s mission and objectives and the operation of the
26 educational programs.”

27 23. California Code of Regulations, title 5, section 71800, states in part:

28 “In addition to the requirements of section 94911 of the Code, an institution shall provide

1 to each student an enrollment agreement that contains at the least the following information:

2 . . .

3 “(d) Date by which the student must exercise his or her right to cancel or withdraw, and
4 the refund policy, including any alternative method of calculation if approved by the Bureau
5 pursuant to section 94921 of the Code.”

6 **COST RECOVERY**

7 24. Business and Professions Code section 125.3 states that the Bureau may request
8 the administrative law judge to direct a licentiate found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
11 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
12 may be included in a stipulated settlement.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Operating Before Approval)

15 25. Respondent has subjected its approval to operate to discipline under section 94886
16 for opening, conducting, or doing business as a private postsecondary educational institution
17 without obtaining an approval to operate. Respondent enrolled students into its program before
18 the Bureau issued its approval to operate on July 11, 2018.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Prohibited Business Practices)

21 26. Respondent has subjected its approval to operate to discipline under section 94897,
22 subdivision (j), for making untrue or misleading statements. The Bureau approved Respondent to
23 offer a two-year, 4331 hour, Full-Stack software engineer program. However, Respondent
24 encouraged students to leave the program after nine months of education and pursue employment
25 during their second year. After finding and maintaining employment for six months, Respondent
26 requested that students have their employers write letters to verify that the students had completed
27 six months of employment and were in good standing. Based on those letters, Respondent gave
28 students credit for 15 months of education which the students had not completed, and issued

1 graduation certificates to those students.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Obtaining Approval to Operate by Fraud)

4 27. Respondent has subjected its approval to operate to discipline under section 94937,
5 subdivision (a)(1), for obtaining an approval to operate by fraud. As a condition of the Bureau
6 granting Respondent an approval to operate, Respondent agreed to not offer an income share
7 agreement (ISA) to students as a method of paying for their education and had removed all
8 mention of ISAs from its school catalog and enrollment agreement before it received its approval
9 to operate. An ISA allows students to defer paying their tuition at the beginning of their
10 education program in exchange for paying the institution a percentage of their income for a
11 number of years after graduating. However, Respondent offered ISAs to students after it received
12 an approval to operate on July 11, 2018.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Failing to Develop Curriculum to Achieve Educational Objectives)

15 28. Respondent has subjected its approval to operate to discipline under California
16 Code of Regulations, title 5, section 71710, subdivisions (a) and (c)(3), for failing to develop a
17 curriculum that achieves the educational objectives of the program. Respondent's mission
18 statement states, "Holberton School offers a two-year higher-education certificate program during
19 which students train to become highly skilled full stack software engineers. Our curriculum,
20 created in partnership with over 100 industry experts, is designed for dedicated, open-minded and
21 passionate students." Respondent's objective statement states, "The primary objective of
22 Holberton School is to develop in each student the skills needed to succeed in a career as full
23 stack software engineers." However, Respondent encouraged students to leave the program after
24 nine months of education and pursue employment during their second year. After finding and
25 maintaining employment for six months, Respondent requested that students have their employers
26 write letters to verify that the students had completed six months of employment and were in
27 good standing. Based on those letters, Respondent gave students credit for 15 months of
28 education which the students had not completed, and issued graduation certificates to those

1 students.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 (Unqualified Faculty Designing, Organizing, and Evaluating Materials and Outcomes)

4 29. Respondent has subjected its approval to operate to discipline under California
5 Code of Regulations, title 5, section 71710, subdivisions (c) and (f), for failing to have duly
6 qualified faculty design and organize its course materials, and evaluate its learning outcomes.
7 Respondent's content producers include an employee who was hired from Respondent's school
8 before she graduated the program, who has a bachelor's degree in chemical engineering, and
9 tutored high school students for six months; and another employee who was hired from
10 Respondent's school before she graduated the program, who earned an associate degree in
11 graphic design, and worked as a senior graphic designer for ten years. Respondent's curriculum
12 manager is an employee who was hired from Respondent's school before she graduated the
13 program and has no verifiable prior experience in the field.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 (Failing to Obtain Authorization for Significant Change in Instructional Delivery)

16 30. Respondent has subjected its approval to operate to discipline under section 94893
17 and California Code of Regulations, title 5, section 71600, subdivision (a), for failing to obtain
18 authorization for a significant change in its method of instructional delivery. Respondent's
19 license application stated that its program is delivered by direct classroom instruction, and the
20 Bureau has not approved Respondent to conduct distance education. However, Respondent offers
21 students the opportunity to remotely complete the last months of studies and attend daily
22 meetings.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 (Unqualified Administrators)

25 31. Respondent has subjected its approval to operate to discipline under California
26 Code of Regulations, title 5, section 71730, subdivision (f), for failing to employ administrators
27 who have requisite expertise. The facts are set forth in paragraph 29 above.

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EIGHTH CAUSE FOR DISCIPLINE

(Failing to Include Right to Cancel Date on Enrollment Agreement)

32. Respondent has subjected its approval to operate to discipline under California Code of Regulations, title 5, section 71800, subdivision (d), for failing to include on its enrollment agreement the date by which a student must exercise his or her right to cancel.

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements Related to Employment)

33. Respondent has subjected its approval to operate to discipline under section 94897, subdivisions (b) and (j), for making untrue or misleading statements related to employment. Respondent advertised on its website and Facebook page that all its graduates have an employment opportunity within three months. However, these figures are inflated because Respondent encouraged students to leave the program after nine months of education and pursue employment during their second year. After finding and maintaining employment for six months, Respondent requested that students have their employers write letters to verify that the students had completed six months of employment and were in good standing. Based on those letters, Respondent gave students credit for 15 months of education which the students had not completed, and issued graduation certificates to those students. Once students finds full-time employment meeting Respondent’s criteria and stay with that employment for a period of time, Respondent considers them a graduate.

TENTH CAUSE FOR DISCIPLINE

(Failing to Describe Programs in School Catalog)

34. Respondent has subjected its approval to operate to discipline under section 94909, subdivision (a)(5), for failing to describe its programs and the requirements for completion of the program in its school catalog. Respondent’s 2018 and 2019 school catalogs do not state that students may use employment experience as a substitute for their second year of education or that students must fulfill cleaning duties at the school.

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ELEVENTH CAUSE FOR DISCIPLINE

(Signature on Incorrect Page of Enrollment Agreement; Failing to Underline Charges)

35. Respondent has subjected its approval to operate to discipline under section 94911, subdivision (c), for failing to have students sign enrollment agreements on the same page as 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. The enrollment agreement also does not have its charges underlined.

TWELETH CAUSE FOR DISCIPLINE

(Failing to Issue Pro Rata Refunds and Failing to Issue Refunds Within 45 Days)

36. Respondent has subjected its approval to operate to discipline under section 94920, subdivisions (d) and (e), for failing to issue pro rata refunds when students complete 60 percent or less of the course, and for failing to issue refunds within 45 days of a student’s cancelation or withdrawal. Students who arranged to pay for their program with an ISA, which typically would be 17 percent of their income for 3.5 years to a cap of \$85,000, and who completed 60 percent or less of the course received a pro rata reduction of the cap amount but not a pro rata reduction of the percent of income paid or the 3.5 year payment term. Also, Respondent did not issue refunds within 45 days, but reduced a portion of the ISA which typically would be paid in 3.5 years.

THIRTEENTH CAUSE FOR DISCIPLINE

(Operating Before Approval; Obtaining Approval to Operate by Fraud; False or Misleading Claims: Assessing Payments Before Approval to Operate)

37. Respondent has subjected its approval to operate to discipline under sections 94886, 94937, subdivision (a)(1) and (2), and 94917 for assessing payments from students before it obtained its approval to operate. Respondent stated in its licensing application to the Bureau that it would not assess tuition or any fees to students before it received its approval to operate. However, Respondent required students to pay their ISAs before it received its approval to operate on July 11, 2018.

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FOURTEENTH CAUSE FOR DISCIPLINE

(False or Misleading Claims or Advertising: Mentors)

38. Respondent has subjected its approval to operate to discipline under section 94937, subdivision (a)(2), for making false or misleading claims or advertising. Respondent stated in its licensing application and on its website that mentors regularly interact with students, train students for interviews, and train and coach students. However, mentors only were available through a software program and Respondent discouraged students from contacting them.

FIFTEENTH CAUSE FOR DISCIPLINE

(False or Misleading Claims or Advertising: Median Salary)

39. Respondent has subjected its approval to operate to discipline under section 94937, subdivision (a)(2), for making false or misleading claims or advertising. Respondent stated in its Facebook webpage that the median salary for San Francisco graduates is \$107,600 as of June 19, 2019. However, the median salary for those graduates is approximately \$102,000.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this first amended accusation, and that following the hearing, the Director of the Department of Consumer Affairs issues a decision:

- 1. Revoking or suspending Approval to Operate a Non-accredited Institution, Code No. 47845455, issued to Respondent;
- 2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case under Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: "6/9/2020"

"Original signature on file"
DR. MICHAEL MARION, JR.
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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