

1 INSTITUTE FOR JUSTICE
KEITH E. DIGGS*
2 PAUL V. AVELAR*
398 S. Mill Ave. # 301
3 Tempe, AZ 85281
Telephone: (480) 557 8300
4 *Application for admission pro hac vice to be filed

5 BENBROOK LAW GROUP, PC
BRADLEY A. BENBROOK (SBN 177786)
6 STEPHEN M. DUVERNAY (SBN 250957)
400 Capitol Mall, Suite 1610
7 Sacramento, CA 95814
Telephone: (916) 447-4900
8 Facsimile: (916) 447-4904
brad@benbrooklawgroup.com
9 steve@benbrooklawgroup.com

10 Attorneys for Plaintiffs
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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15
16 PACIFIC COAST HORSESHOEING
SCHOOL, INC., a California corporation; BOB
17 SMITH, an individual; and ESTEBAN NAREZ,
an individual,

18 Plaintiffs,

19 v.

20 DEAN GRAFILO, in his official capacity as
21 Director of Consumer Affairs; and MICHAEL
22 MARION, in his official capacity as Chief of
the Bureau for Private and Postsecondary
23 Education,

24 Defendants.
25

Case No.:

COMPLAINT

1 1. This is a civil-rights complaint for declaratory and injunctive relief against the
2 enforcement of a California law, the California Private Postsecondary Education Act of 2009 (the
3 “Act”), CAL. EDUC. CODE §§ 94800 *et seq.*, which makes it illegal for a horseshoeing school to
4 teach a student without a high-school diploma how to become a farrier. This violates the freedom
5 of speech of both those who want to teach horseshoeing and those who want to learn it.

6 **JURISDICTION AND VENUE**

7 2. Plaintiffs bring this civil-rights action under the First and Fourteenth Amendments
8 to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory
9 Judgment Act, 28 U.S.C. § 2201.

10 3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

11 4. Venue is authorized in this judicial district by 28 U.S.C. § 1391(b)(1)–(2).

12 **PARTIES**

13 **I. Plaintiffs**

14 5. Plaintiff Pacific Coast Horseshoeing School, Inc. (“PCHS”), a California
15 corporation, is an internationally recognized, award winning vocational school for farriers located
16 in Plymouth, California.

17 6. Plaintiff Bob Smith, an individual, is a U.S. citizen who lives in Plymouth,
18 California. Bob is the founder and sole owner of PCHS.

19 7. Plaintiff Esteban Narez, an individual, is a U.S. citizen who lives in Watsonville,
20 California. Esteban wants to attend PCHS and become a farrier.

21 8. PCHS is subject to regulation under the Act. The Act, and regulations promulgated
22 thereunder, prohibit PCHS from admitting any student who has neither a high-school diploma, nor
23 its equivalent, nor a passing score on an “ability-to-benefit examination.”

24 9. Esteban has neither a high-school diploma, nor its equivalent, nor has he taken an
25 ability to benefit examination. It is therefore illegal under the Act for PCHS to enroll him.

26 **II. Defendants**

27 10. Defendant Dean Grafilo is California’s Director of Consumer Affairs. He is sued in
28 his official capacity only.

1 especially attractive to individuals without a high school diploma who may otherwise have limited
2 career options. A farrier can learn the trade and earn a good living whether or not he has graduated
3 high school.

4 **I. PCHS**

5 26. PCHS was founded in 1991 and has operated continuously in California ever since.

6 27. PCHS's founder, Plaintiff Bob Smith, has been shoeing horses professionally since
7 1974. Bob is well respected in the horseshoeing community and was inducted into the
8 International Horseshoeing Hall of Fame in 2010. Bob owns PCHS and is in charge of its
9 operations and instructional program.

10 28. PCHS offers its eight-week curriculum five times per year. Each week, students
11 divide their time between classroom sessions, practice using a forge, and hands-on work removing,
12 shaping, and applying horseshoes to horses.

13 29. Bob teaches and supervises the students. PCHS also contracts with a handful of
14 professional farriers to help Bob teach and supervise; in addition to Bob, there are usually two of
15 these farriers present on any given day of class.

16 30. The classroom portion focuses on horseshoeing theory, horse anatomy, movement,
17 and lameness, along with business advice on client management, self-employment, and how to
18 interact with barns, trainers, and veterinarians.

19 31. PCHS evaluates most of its students by written examination, but students may elect
20 to take their exams orally. This accommodates students who, for whatever reason, are not
21 proficient in written English. PCHS students have chosen this option and graduated in the past.

22 32. PCHS has taught students from all walks of life. A typical class has 12 to 14
23 students, usually a mix of hobbyists and aspiring professional farriers.

24 33. PCHS charges \$5,500 in tuition, which will increase to \$6,000 in 2018. This tuition
25 covers the cost of PCHS's taxes; regulatory compliance; special order farrier steel for making
26 horseshoes; propane fuel for the 12 forges PCHS makes available to students 13 hours a day, 7
27 days a week; tools loaned to each student individually during the course; and payments to the
28 professional farriers who contract with Bob to help him teach.

1 **A. The Private Postsecondary Education Act and Its Application to PCHS**

2 34. PCHS is subject to regulation under the California Private Postsecondary Education
3 Act of 2009 (the “Act”), CAL. EDUC. CODE §§ 94800 et seq.

4 35. The Act purports to regulate every “private postsecondary educational institution”
5 in California. No private postsecondary educational institution may do business without the
6 Bureau’s approval to operate. *Id.* § 94886.

7 36. The three defining features of a private postsecondary educational institution, all of
8 which must be met to trigger coverage under the Act, are: (1) a private entity with a physical
9 presence in California; (2) a publicly offered “curriculum . . . whose purpose is academic,
10 vocational, or continuing professional”; and (3) charging tuition. *See id.* § 94858 (“private
11 postsecondary educational institution”); *see also id.* § 94837 (“educational program”); *id.* § 94844
12 (“institutional charges,” i.e., tuition); *id.* § 94857 (“postsecondary education”).

13 37. The second criterion, teaching “postsecondary education”—a “curriculum . . .
14 whose purpose is academic, vocational, or continuing professional”—implicates First Amendment
15 interests. Teaching consists of communicating a message, and teaching for a vocational purpose
16 triggers coverage under the Act. *Id.* §§ 94857, 94858; *cf.* § 94874(a) (exempting from regulation
17 any “institution that offers solely avocational or recreational educational programs”).

18 38. PCHS meets all three criteria, including the fact that it teaches horseshoeing for a
19 vocational purpose, thus, PCHS is a private postsecondary educational institution as defined by the
20 Act. There are exemptions to coverage under the Act, but none of them apply to PCHS.

21 39. The Bureau may not approve any regulated, non-exempt institution to operate
22 unless the institution satisfies “minimum operating standards.” *Id.* § 94887.

23 40. The Act therefore requires Defendants, acting through the Bureau, to subject PCHS
24 to the Act’s minimum operating standards.

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1 **B. The Minimum Operating Standards Prohibit the Admission of Students**
2 **Without a High-School Diploma, a High-School Equivalent, or a Passing Score**
3 **on an Ability-to-Benefit Examination**

4 41. Under the minimum operating standards, it is illegal for a regulated institution to
5 admit a student who has neither (1) completed high school, (2) obtained a high-school equivalent
6 such as a GED, nor (3) passed a written examination demonstrating the student's "ability to
7 benefit" from the institution's curriculum.

8 42. A prospective student who has neither a high-school diploma nor its equivalent is
9 defined by statute as an "ability-to-benefit student." CAL. EDUC. CODE § 94811. No institution may
10 enroll an ability to benefit student unless the student passes a written exam approved by the U.S.
11 Department of Education. *Id.* § 94904(a).

12 43. The Bureau has also promulgated a regulation requiring "[e]ach student" admitted
13 to a regulated institution to "possess a high school diploma or its equivalent, or otherwise
14 successfully take and pass" an ability to benefit examination. 5 CAL. CODE REGS. § 71770(a)(1).

15 44. There are four federally recognized ability-to-benefit examinations, all of which are
16 created and administered by private organizations: the Wonderlic Basic Skills Test, which tests
17 math and language skills; the Spanish Wonderlic Basic Skills Test, a Spanish-language version of
18 the same; the CELSA, an exam for students whose native language is not English and which tests
19 only English language skills; and the ACCUPLACER, which tests reading comprehension,
20 language skills, and math. A fifth exam, which tests both reading comprehension and math in
21 Spanish, has provisional approval through March 1, 2018.

22 45. The Act allows the Bureau to approve alternatives to the federally approved ability-
23 to-benefit exams, CAL. EDUC. CODE § 94904(b)-(c), but the Bureau has not approved any such
24 alternatives.

25 46. None of the skills tested by the approved ability-to-benefit exams are necessary in
26 order to learn how to shoe a horse.

27 47. Vocational schools must purchase the ability to benefit exams from the private
28 organizations that develop them.

1 48. If PCHS purchased any ability-to-benefit exams, it would have to either absorb that
2 cost or pass it along to its students in order to teach horseshoeing.

3 49. The federal law under which the U.S. Department of Education approves these
4 “ability-to-benefit” exams is only designed to limit when the federal government may make
5 *federal funds*—typically, but not always, student loans—available to students who have neither a
6 high-school diploma nor its equivalent. *See* 20 U.S.C. § 1091(d)(1)(A).

7 50. Federal law does not constrain ability-to-benefit students from using their own
8 money to pay for education.

9 51. By contrast, the California Act applies even to ability-to-benefit students who want
10 to pay tuition at a regulated institution using their own money. The minimum operating standards
11 prohibit the admission of ability-to-benefit students, who have not taken and passed an ability-to-
12 benefit examination, whether or not the student is taking out loans to attend school.

13 **C. The Bureau Enforces the Minimum Operating Standards Against PCHS**

14 52. From its 1991 founding until recently, PCHS did not impose any educational
15 prerequisites to admission. No such prerequisites had ever been required under state law before the
16 Act went into effect in 2010, and in Bob’s opinion, none are necessary.

17 53. PCHS accepts no state or federal student loans.

18 54. Bob takes great care not to charge students who are unable to benefit from PCHS’s
19 curriculum. If, during the first week of class, a student or a PCHS staff member determine that
20 continuing the course is not in the student’s best interest, PCHS refunds all but \$250 of that
21 student’s tuition.

22 55. PCHS was first contacted by the Bureau for inspection in 2016.

23 56. During the inspection process, the Bureau told PCHS that PCHS’s admissions
24 standards were deficient under the Act because they did not require applicants, as a prerequisite to
25 admission, to either graduate high school, obtain its equivalent, or pass a written exam approved
26 by the U.S. Department of Education.

27 57. In a July 2016 email with a Bureau regulator, Bob asked whether the Bureau would
28 recognize his first-week refund program as an alternative to the ability-to-benefit exams approved

1 by the U.S. Department of Education. The Bureau said that it would not.

2 58. In February 2017, a different Bureau inspector contacted Bob to inform him that
3 PCHS's catalog was deficient under the Act because the catalog "d[id] not contain an admission[]s
4 policy th[at] requires students enrolled to have a high school diploma, GED, or its equivalent, or to
5 otherwise successfully take and pass an ability-to-benefit examination." Bob was required to add
6 such a requirement to PCHS's admissions standards in order to pass a Bureau inspection.

7 59. PCHS changed its admissions standards to comply with the Act, and was inspected
8 and approved by the Bureau on February 10, 2017.

9 60. These mandated standards have caused PCHS to turn away otherwise-qualified
10 students who would have benefited from learning the skills PCHS teaches.

11 **II. Esteban Narez**

12 61. Esteban Narez grew up and still lives in Watsonville, California, with his mother
13 and two older sisters. He is 26, which is past California's compulsory age of secondary education.

14 62. Esteban's father left the family when he was one year old. His mother worked
15 multiple jobs to raise Esteban and his sisters.

16 63. Esteban attended public school through the first semester of his senior year at
17 Pajaro Valley High School, when he tore his MCL playing football.

18 64. The injury forced him to withdraw from school to recover. His family could not
19 afford to pay for surgery, so Esteban let the injury heal naturally.

20 65. After he recovered, Esteban took a job at a golf course rather than finish high
21 school. He needed to contribute to his family's finances, which were burdened by the medical bills
22 from his MCL tear.

23 66. Esteban saved up and had surgery a few years later. The surgery necessitated
24 another recovery period which kept Esteban out of work (and out of a paycheck).

25 67. When he was again well enough to work, Esteban took a part-time job at a therapy
26 barn—the Monterey Bay Horsemanship & Therapeutic Center—where he helped special needs
27 children learn to socialize through contact with horses.

28 68. His job at the therapy barn sparked a passion for horses. He worked during the

1 three-hour sessions with kids in the morning, and then he would do odd jobs as a ranch hand in the
2 afternoons.

3 69. In 2016, Esteban left the therapy barn to work full time as a ranch hand at the
4 Willow Pond Ranch in the Santa Cruz Mountains north of Soquel, California. He now works there
5 seven days a week.

6 70. At Willow Pond, Esteban met a professional farrier named Cassidy Robyn, who has
7 a successful practice in the Santa Cruz area. When Esteban’s schedule allows, he shadows Cassidy
8 on client visits and helps with odd jobs.

9 71. Cassidy has been impressed with Esteban’s work ethic and would hire Esteban if he
10 were trained as a farrier.

11 72. Esteban wants to become a farrier. He has relevant experience in the horse industry
12 and believes in his ability to make a stable and satisfying career out of horseshoeing—if he only
13 had the right training.

14 73. PCHS, which is the only full-time farrier school in California, is the best way for
15 Esteban to learn the skills he needs to take a full-time job with Cassidy and build a horseshoeing
16 career.

17 74. Esteban learned about PCHS from Cassidy—a PCHS alum himself—and applied to
18 PCHS in spring 2017.

19 75. By that time, however, PCHS had been ordered to amend its enrollment application
20 to ask whether applicants “have a High School Diploma or GED.” Esteban checked “No.”

21 76. Esteban’s answer signified to PCHS that Esteban is an ability-to-benefit student
22 under the Act. PCHS was accordingly required by law to deny his application, even though PCHS
23 was willing to admit and teach him.

24 77. For PCHS to admit Esteban, Esteban would have to obtain a high-school diploma or
25 equivalent (a “GED”), or else pass an ability-to-benefit examination.

26 78. These options are not viable. Esteban works seven days per week to support himself
27 and his family, and he does not have the time to attend GED classes or prepare for an ability-to-
28 benefit examination.

1 79. Esteban would only consider leaving work—and thus forgoing income—if he
2 thought doing so would substantially advance him in the career he has chosen. Neither a GED nor
3 an ability-to-benefit examination will substantially advance Esteban’s skills or qualifications in
4 shoeing horses.

5 80. Esteban wants to attend PCHS because its curriculum would teach him the skills he
6 needs to advance his chosen career as a farrier.

7 81. But for Defendants’ enforcement of the Act, Esteban would apply again to PCHS,
8 would be accepted, and would learn how to shoe horses. Esteban would find work as a
9 professional farrier.

10 **INJURY TO PLAINTIFFS**

11 82. Defendants’ enforcement of the Act abridges PCHS’s and Bob’s First Amendment
12 right to teach horseshoeing.

13 83. Defendants’ enforcement of the Act also abridges Esteban’s First Amendment right
14 to learn horseshoeing.

15 84. But for Defendants’ enforcement of the Act, PCHS would have accepted Esteban’s
16 application and taught him how to shoe horses by now.

17 85. But for Defendants’ enforcement of the Act, Esteban would have enrolled at PCHS,
18 learned to shoe horses, and found work as a professional farrier with Cassidy Robyn by now.

19 86. But for Defendants’ enforcement of the Act, PCHS would be able to freely teach
20 horseshoeing to any student who wished to enroll, regardless of the student’s academic attainment.

21 87. But for Defendants’ enforcement of the Act, Esteban would apply again to PCHS,
22 PCHS would accept Esteban, Esteban would enroll at PCHS, and PCHS and Bob would teach
23 Esteban the skills he needs to become a professional farrier.

24 **CLAIM FOR RELIEF**

25 **(First Amendment – Declaratory and Injunctive Relief)**

26 88. Plaintiffs incorporate and re-allege paragraphs 1 through 87.

27 89. The Act abridges PCHS’s and Bob’s freedom of speech. Teaching horseshoeing
28 consists of communicating a message—meaning it is speech—and teaching horseshoeing as a

1 vocational skill triggers coverage under the Act.

2 90. The Act also abridges Esteban’s corollary First Amendment right to learn
3 horseshoeing. California’s regulation of PCHS’s and Bob’s speech adversely affects Esteban’s
4 constitutional rights as a would-be recipient of PCHS’s and Bob’s speech.

5 91. Because PCHS teaches a “curriculum . . . whose purpose is academic, vocational, or
6 continuing professional”—professional horseshoeing—it is regulated under the Act. CAL. EDUC.
7 CODE § 94857.

8 92. Because Esteban wants to learn a such a curriculum—professional horseshoeing—
9 but also never finished high school, the Act prevents Esteban from engaging a teacher unless he
10 obtains a high-school equivalent or passes an ability-to-benefit examination. *Id.* § 94904(a).

11 93. The Act’s differential treatment of vocational teaching, which is regulated, and
12 avocational teaching, which is not, is content-based. *Compare id.* § 94857 (subjecting any
13 “curriculum . . . whose purpose is academic, vocational, or continuing professional” to regulation),
14 *with* § 94874(a) (exempting from regulation any “institution that offers solely avocational or
15 recreational educational programs”).

16 94. The Act restricts PCHS and Bob from teaching students who never finished high
17 school—such as Esteban—how to shoe horses, unless the student first obtains a high-school
18 equivalent or passes an ability-to-benefit examination. CAL. EDUC. CODE § 94904(a); 5 CAL. CODE
19 REGS. § 71770(a)(1). This restriction affects PCHS, Bob, and Esteban.

20 95. Restricting PCHS and Bob (as the Act does) from teaching horseshoeing to students
21 who never finished high school—such as Esteban—unless the student first obtains a high-school
22 equivalent or passes an ability-to-benefit examination, substantially advances no compelling or
23 important government interest.

24 96. Preventing Esteban (as the Act does) from learning how to shoe horses at PCHS,
25 unless Esteban first obtains a high-school equivalent or passes an ability-to-benefit examination,
26 substantially advances no compelling or important government interest.

27 97. Restricting PCHS and Bob (as the Act does) from teaching horseshoeing to students
28 who never finished high school—such as Esteban—unless the student first obtains a high-school

1 equivalent or passes an ability-to-benefit examination, burdens more speech than is necessary to
2 serve any government interest.

3 98. Preventing Esteban (as the Act does) from learning how to shoe horses, unless
4 Esteban first obtains a high-school equivalent or passes an ability-to-benefit examination, burdens
5 his right to learn more than is necessary to serve any government interest.

6 99. The Act thus violates PCHS's, Bob's, and Esteban's rights under the First and
7 Fourteenth Amendments to the U.S. Constitution.

8 100. Unless Defendants' enforcement of the Act is declared unconstitutional and
9 enjoined, PCHS and Bob will suffer irreparable harm in being unable to teach students who never
10 finished high school—including Esteban—how to horseshoe without risking administrative action,
11 suspension or revocation of its approval to operate, fines, restitution, restraining orders,
12 receivership, injunctions, and/or convictions for public infractions.

13 101. Unless Defendants' enforcement of the Act is declared unconstitutional and
14 enjoined, Esteban will suffer irreparable harm in being unable, unless he either obtains a high-
15 school equivalent or passes an ability-to-benefit examination, to attend PCHS to learn the skills
16 necessary to advance in his chosen career as a farrier.

17 **PRAYER FOR RELIEF**

18 As remedies for the constitutional violations just described, Plaintiffs respectfully request
19 the following relief:

20 A. Entry of judgment declaring CAL. EDUC. CODE § 94904(a) and 5 CAL. CODE REGS.
21 § 71770(a)(1) unconstitutional to the extent that those provisions prohibit PCHS and Bob from
22 teaching its horseshoeing curriculum to students—including but not limited to Esteban—who
23 neither have a high-school diploma, nor who have obtained a high-school equivalent, nor who
24 have taken and passed an ability-to-benefit examination;

25 B. Entry of judgment declaring that PCHS may enroll and teach Esteban, subject to all
26 the provisions of the Act except for CAL. EDUC. CODE § 94904(a) and all Bureau regulations
27 except for 5 CAL. CODE REGS. § 71770(a)(1);

28 C. Entry of a preliminary and a permanent injunction prohibiting Defendants from

1 enforcing CAL. EDUC. CODE § 94904(a) and 5 CAL. CODE REGS. § 71770(a)(1) to the extent that
2 those provisions prohibit PCHS and Bob from teaching its horseshoeing curriculum to students—
3 including but not limited to Esteban—who neither have a high-school diploma, nor who have
4 obtained a high-school equivalent, nor who have taken and passed an ability-to-benefit
5 examination;

6 D. An award of attorneys’ fees, costs, and expenses in this action pursuant to 42
7 U.S.C. § 1988; and

8 E. Such further legal and equitable relief as the Court may deem just and proper.

9 Respectfully submitted,

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11 Dated: October 23, 2017

INSTITUTE FOR JUSTICE

12
13 By /s Keith E. Diggs
14 KEITH E. DIGGS
15 PAUL V. AVELAR
Attorneys for Plaintiffs

16
17 BENBROOK LAW GROUP, PC

18
19 By /s Bradley A. Benbrook
20 BRADLEY A. BENBROOK
Attorneys for Plaintiffs