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8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 Case No.

BC 6 57 8 2 5

12 ~~NEIL COGAN~~, an individual; WARREN H.
13 COHEN, an individual; THOMAS G. KELCH,
an individual; RACHANA (RADHA)
14 PATHAK, an individual; PETER L. REICH, an
individual; I. NELSON ROSE, an individual;
15 ELIZABETH ROSENBLATT, an individual;
and DAVID WELKOWITZ, an individual,

16 Plaintiffs,

17 v.

18 WHITTIER COLLEGE, a California domestic
non-profit corporation; BOARD OF
19 TRUSTEES OF WHITTIER COLLEGE, an
association; and DOES 1 through 10, inclusive,

20 Defendants.
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**PLAINTIFFS' EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION
SHOULD NOT BE ISSUED;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
WARREN H. COHEN, PETER L. REICH,
STEWART L. CHANG, JUDITH F. DAAR,
THOMAS G. KELCH, & RACHANA
(RADHA) PATHAK**

1 **EX PARTE APPLICATION**

2 Pursuant to Code Civ. Proc. § 527, Rule of Court 3.1150, and Rule of Court 3.1200 to
3 3.1207, Plaintiffs apply, on an *ex parte* basis, for a temporary restraining order, and an order
4 requiring Defendants, as well as all officers, directors, shareholders, members, employees and
5 agents, and all persons acting on their behalf, to show cause why a preliminary injunction should
6 not be issued pending trial in this action.

7 This application is based upon the attached memorandum of points and authorities, the
8 declarations of Peter L. Reich, Stewart L. Chang, Judith F. Daar, Thomas Kelch, and Radha Pathak,
9 the accompanying Request for Judicial Notice, the Complaint filed in this action, and upon such
10 further argument or evidence as maybe presented at the hearing on this Application.

11 **I. SUMMARY OF CASE**

12 Plaintiffs are forced to file this action and bring this *ex parte* application for a temporary
13 restraining order to prevent the irreparable damage that will ensue if Defendants proceed to
14 discontinue (close) Whittier Law School. Irreparable injury will also occur if Defendants announce
15 this Wednesday, April 19 (as they intend to do) that they will discontinue the law school.

16 This application is made pursuant to Code Civ. Proc. § 527 on the grounds that: (i) Plaintiffs
17 are likely to succeed on the merits of their claim for breach of contract; (ii) that unless the
18 temporary restraining order is granted, Plaintiffs will suffer irreparable injury; and (iii) that the
19 balance of hardships tips lopsidedly in Plaintiffs' favor.

20 **II. NOTICE OF APPLICATION**

21 Pursuant to Rule of Court 3.1204(b)(3), notice of this *ex parte* application was not provided
22 to Defendants. As set forth in the attached Declaration of Rachana (Radha) Pathak, Defendants, if
23 notified of a pending application, would make an announcement of discontinuance (closure) of
24 Whittier Law School before any noticed motion could possibly be heard. Such an announcement
25 would cause irreparable injury.

1 **III. REQUESTED RELIEF**

2 Plaintiffs request that this Court issue a temporary restraining order and an order to show
3 cause why a preliminary injunction should not be issued as follows:

4 Pursuant to Code Civ. Proc. § 527, Plaintiffs seek an order that Defendants appear in this
5 Court on a specific date and time, to show cause why they and their agents, employees,
6 representatives, and all persons acting in concert or participation with it or them, should not be
7 preliminarily:

8 enjoined from discontinuing the law school;

9 restrained and enjoined from taking any steps that attempt to effectuate discontinuance of
10 the law school, including but not limited to announcing the discontinuance of the law
11 program to any individual or entity, including but not limited to members of the media,
12 current students, prospective students, and members of the public;

12 Pursuant to Code Civ. Proc. § 527, Plaintiffs seek a further order that, pending the hearing
13 on the Order to Show Cause, Defendants and their agents, employees, representatives, and all
14 persons acting in concert or participation with it or them be hereby:


15 enjoined from discontinuing the law school;

16 restrained and enjoined from taking any steps that attempt to effectuate discontinuance of
17 the law school, including but not limited to announcing the discontinuance of the law
18 program to any individual or entity, including but not limited to members of the media,
19 current students, prospective students, and members of the public;

19 In the alternative, Plaintiffs seek such an order for 48 hours, or until such time as Plaintiffs
20 can have adjudicated an ex parte application—filed after notice to Defendants—for a temporary
21 restraining order and an order requiring Defendants, as well as all officers, directors, members,
22 employees, agents, and all persons acting on their behalf, to show cause why a preliminary
23 injunction should not be issued pending trial in this action.

1 Dated: April 18, 2017

STRIS & MAHER LLP

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4 Hanna Chandoo

5 *Attorneys for Plaintiffs*

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 In 1966, the Beverly College of Law ("BCL") was founded in Los Angeles. In 1974,
4 Whittier College (the "College") decided to acquire BCL. In 1975, BCL was merged into Whittier
5 and later became known as Whittier Law School (the "Law School"). Since 1985, the Law School
6 has been fully accredited by the American Bar Association (the "ABA").

7 In 1996, the College acquired a 14-acre campus in Costa Mesa on which the Law School has
8 operated continuously. Throughout that time, the Law School has remained a highly profitable part
9 of the College. The Law School tuition revenues have covered all of the Law School's operating
10 expenses, including servicing all debt on its 14-acre campus. And the lion's share of all residual
11 Law School tuition revenues has been appropriated each year by the College—purportedly to cover
12 overhead services allegedly provided by the College to the Law School.

13 Earlier this year, the College completed the sale of the Law School's 14-acre campus for a
14 net profit of nearly \$13 million. The College's representatives repeatedly assured the Law School's
15 faculty that the proceeds of the sale would be reinvested in the Law School and used to support its
16 future operations.

17 Days ago, however, a shocking turn of events took place. Judith Daar—the current Dean of
18 the Law School—was notified that the College's Board of Trustees (the "Board") had voted (by
19 phone) to immediately discontinue the Law School. The Board asked Dean Daar immediately to
20 schedule meetings at the Law School in order for the College to notify the Law School community,
21 including current students and staff. Dean Daar asked the Board to reconsider, or at least slow the
22 process. The Board reaffirmed its decision. A public announcement at the Law School was
23 scheduled for the morning of Wednesday, April 19.

24 This lawsuit is brought by tenured faculty of the Law School (the "Professors" or "Faculty")
25 against the College and its Board to enjoin the unlawful discontinuance of the Law School, and
26 corresponding termination of all Faculty. As discussed below, the proposed discontinuation of the
27 Law School violates both the substantive and procedural protections of the Faculty's employment
28

1 contracts with the College.¹ And an injunction is warranted because there is no adequate remedy at
2 law.

3 Before the Court today is an extremely limited *ex parte* motion. Specifically, the Faculty
4 seek a TRO enjoining Defendants from discontinuing (closing) the Law School, and also enjoining
5 Defendants from announcing, this Wednesday, April 19 (as they intend to do), that they will
6 discontinue the Law School. Emergency relief is warranted.

7 **II. STATEMENT OF THE FACTS**

8 **A. 1985-2004: For Two Decades After Receiving ABA Accreditation, The Law** 9 **School Is A Profitable Program Of The College.**

10 Whittier Law School is a law school located in Costa Mesa, California. Since the mid-
11 1970s, it has been owned by Whittier College, a liberal arts school located in Whittier, California.
12 Ex. 6 to RJN.

13 The Law School achieved provisional accreditation from the ABA in 1978, and full ABA
14 accreditation in 1985. Ex. 7 to RJN. It has remained accredited ever since. *Id.* In order to achieve
15 and maintain ABA accreditation, the Law School was and is required to comply with the specific
16 requirements promulgated by the ABA. Ex. 8 to RJN.

17 Although originally located in Los Angeles, the Law School relocated to Costa Mesa in
18 1997. Ex. 1 to RJN. This happened after the College purchased a 14-acre campus for the Law
19 School in order to allow the Law School to offer its services in the largely undeveloped Orange
20 County market. *Id.* The move made the Law School the first ABA accredited school in Orange
21 County. Ex. 7 to RJN. Over the following years, The Law School's revenue covered the debt service
22 on the loan associated with that property. Pathak Decl. ¶ 5. Over the two decades following its
23 accreditation, the Law School emerged as a profitable arm of the College.

24
25 ¹ To avoid irreparable harm, the Faculty had to put together their complaint (and TRO papers) in
26 a matter of hours. Given the time pressure, the Faculty prepared a single count complaint for breach
27 of contract—which is sufficient to warrant the TRO sought. That said, the College's conduct is
28 actionable on multiple grounds. For example, it likely constitutes a breach of the implied covenant
of good faith and fair dealing, breach of fiduciary duty, as well as fraud. The Faculty will amend
their complaint as soon as practicable.

1 **B. 2005-2008: The Law School Is Put On ABA Probation. In Response, The**
2 **College Buys Out Faculty Members And—As Found By A California Court—**
3 **Engages In Fraud.**

4 In 2005, the ABA placed the Law School's accreditation on probationary status due to low
5 bar passage rates. Ex. 2 to RJN (*Rose v. Whittier College*, 2011 WL 5223146 (Cal. App. 2d Nov. 3,
6 2011)). While the Law School was on probation, the College hired a consulting firm to advise it on
7 possible options to address the resulting financial concerns. *Id.*

8 To the College's disappointment, the consulting firm concluded:

9 1. That the College could not freeze tenured professor salaries. *Id.*

10 2. That the College could not abrogate the contracts of tenured professors based on
11 financial exigency. *Id.* (The College's own legal counsel concurred with this
12 conclusion. *Id.*)

13 The College did not disclose either of those conclusions to its tenured faculty. *Id.*

14 Instead, the College proceeded to offer its 20 full-time tenured law professors "a one time
15 incentive for tenure buyout." *Id.* When so doing, the College imposed a hard deadline on
16 acceptance of the offer of November 1, 2006, telling the professors that the deadline was solely for
17 budgetary reasons. *Id.* In reality, the deadline was chosen so that the professors' buyout decisions
18 had to be made before the summer bar exam results were known. *Id.* The College had reasoned that
19 if a higher percentage of students passed the exam, fewer professors would accept the buyout offer.
20 *Id.*

21 College administrators also threatened the prospect of a 50 to 100 percent increase in
22 workload for those professors who refused the buyout. *Id.* They also told the professors that their
23 tenure agreements could be abrogated based on financial exigency. *Id.* Their representations were
24 exactly opposite to what the College's consulting firm and legal counsel had found. *Id.*

25 A number of Law School faculty members accepted the buyout offer. *Id.* After learning that
26 the Law School's bar passage rate was 20 points higher than the previous year and that no tenured
27 professor who rejected the offer had experienced an increased course load (and that tenured
28 professors even received an across-the-board 3 percent raise), one of those professors sued

1 (successfully) for fraud. *Id.* On appeal, a California appellate court affirmed the fraud
2 determination. *Id.*

3 C. **2009-2014: The Law School Rebounds And Continues As A Profitable Program**
4 **Of The College.**

5 By mid-2008, the ABA had officially removed the Law School from its probationary status.
6 Over the next five years, the Law School rebounded to again be a profitable arm of the College. The
7 Law School achieved bar passage rates approaching, and in one year (2012) exceeding, the
8 California ABA accredited school average for July exam-takers. The Law School attracted many
9 new students each year. It also attracted significant alumni contributions, including funds to build a
10 \$2-million law school courtroom at the Law School campus. Ex. 3 to RJN. And it continued to
11 service the debt on the multi-million dollar real property on which the institute rests that that the
12 College and the Law School had purchased during the 1990s. Pathak Decl. ¶ 5.

13 In 2010, the nationwide market for law schools began to decline. Ex. 4 to RJN. The Law
14 School was no exception to this trend, but although applications declined gradually in the ensuing
15 years (for all law schools), the Law School remained profitable, producing both realized and
16 unrealized (on the real property) gains for the College.

17 The ABA Accreditation Committee conducted its most recent routine “site visit” to the Law
18 School in March, 2013. Pathak Decl. ¶ 4. Following that site visit, Penelope Bryan then Dean of the
19 Law School, described her exit interview with the ABA team as “very successful.” Pathak Decl. Ex
20 A. She explained that the team found the school to be “appropriately and strongly staffed” and
21 “complimented the teaching of [the school’s] full-time faculty.” *Id.* In February, 2014, the ABA
22 Accreditation Committee issued a report on the visit, which Dean Bryan described as a “very
23 positive evaluation of the law school.” Pathak Decl. Ex. B.

24 D. **2015-2016: Facing A Contracting Legal Market, The College Again Buys Out**
25 **Law School Faculty Promising To Support A Smaller Program.**

26 The downturn in the law school market, which had continued for half a decade, meant that
27 the Law School became less of a profit-center for the College in 2015. At that point, the College
28

1 represented to the Law School faculty that as a result of reduced Law School enrollment, the Law
2 School's payroll and operating costs would create a budgetary deficit for the Law School program if
3 allowed to continue. On December 17, 2015, after the Fall semester had ended, the College decided
4 once again to offer buy outs to tenured and tenure-track professors to reduce payroll costs. Pathak
5 Decl. ¶ 6 & Ex. C. The College described the buy-out offer as a "Voluntary Separation Program"
6 ("VSP"). The Faculty were given a deadline of January 31, 2016 to decide whether to accept the
7 offer. *Id.* In other words, they were given only six weeks, which included the winter holidays, to
8 decide whether to give up their tenured positions. *Id.*

9 In conjunction with the VSP offer, the College promised the Faculty that its intention was to
10 continue to support a smaller Law School program for the long term. In January, 2016, Members of
11 the College administration, including Whittier College President Sharon Herzberger and Vice
12 President James Dunkelman, held Question-and-Answer sessions regarding the VSP. At these
13 sessions, College representatives presented the VSP as a way of improving the law school's
14 finances for the long term, and as an alternative to more drastic measures. The strong implication of
15 these sessions was that the VSP was designed to protect the long-term future of the law school. At
16 that time, the College expressed that it was aware of the standards for financial exigency and
17 program discontinuation. At the College's behest, the Law School continued to admit students for
18 Fall 2016 throughout the VSP period. In other words, while the College suggested that it needed to
19 reduce its faculty size to meet student demand, it repeatedly assured its faculty that it was seeking to
20 ensure the long-term sustainability of the law school.

21 **E. 2017: The College Sells The Law School Campus—Whose Debt The Law School**
22 **Serviced For Years—For A \$13 Million Profit And Informs The Law School**
23 **Dean That It Will Announce Discontinuance Of The Law School Tomorrow**
Morning.

24 In early 2016, members of the College administration informed the Faculty that the real
25 property on which the Law School rests would be offered for sale. Kelch Decl. ¶ 4. In January,
26 2017, the Faculty learned that a deal had been struck to sell the property. Kelch Decl. ¶ 5. They
27 were also informed that a separate agreement was being negotiated to turn over Law School
28

1 operations to an entity connected to the buyer of the real estate, though that agreement did not
2 materialize. Kelch Decl. ¶ 5. Plaintiffs understand that the College’s approximate profit from the
3 sale of the real property was **\$13 million**. Ex. 5 to RJN.

4 Throughout this process, College representatives consistently led the Faculty to believe that
5 the proceeds of the real property sale would be reinvested in the Law School. Kelch Decl. ¶ 6. For
6 example, in a meeting on April 22, 2016, the President of the College informed the Faculty that it
7 would “invest” in the Law School. *Id.* Similarly, in a meeting on January 10, 2017, a member of the
8 College’s Board of Trustees stated that funds from the Law School sale would be made available to
9 the Law School. *Id.* And again, an email from the College’s President reassured the Faculty that the
10 funds would be used to support future operation of the law school. *Id.* ¶ 7. The email stated for
11 example that “we are serious about focusing all attention on improving outcomes, so serious that we
12 will incur more deficit than expected to achieve this aim,” and that “the profit from the sale of the
13 property as with other equity is being placed in a separate fund, invested, and then will be used to
14 help fund deficit budgets during this transition.” *Id.*

15 Notwithstanding those assurances, on April 13, 2017, the College’s Board voted to shut
16 down the Law School. Daar Decl. ¶¶ 4-6. The Law School’s Dean was told that the Board desired
17 to announce their decision to the community as soon as possible. *Id.* After the Law Schools’ Dean
18 pleaded for an accommodation to her travel schedule so that she could be present at the
19 announcement, the College scheduled it to occur on April 19—i.e., tomorrow. *Id.* ¶¶ 7-8.

20 **III. ARGUMENT**

21 In deciding whether to issue a temporary restraining order, courts must assess “two
22 interrelated factors.” *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251
23 (2002) (citations omitted). The first is “the likelihood that the plaintiff will prevail on the merits at
24 trial,” and the second is “the interim harm that the plaintiff is likely to sustain if the [restraining
25 order] were denied as compared to the harm that the defendant is likely to suffer if the [restraining
26 order] were issued.” *Id.* These two factors balance each other out, such that “[t]he more likely it is
27 that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if
28

1 the injunction does not issue.” *Right Site Coalition v. Los Angeles Unified School Dist.*, 160 Cal.
2 App. 4th 336, 338-39 (2008). As a result, “if the party seeking the injunction can make a
3 sufficiently strong showing of likelihood of success on the merits” or “that the balance of harms tips
4 in [the party’s] favor,” the trial court has discretion to issue the injunction. *Common Cause v. Board*
5 *of Supervisors*, 49 Cal. 3d 432, 441-42 (1989).

6 **A. The Faculty Is Likely To Obtain An Injunction Preventing The College’s**
7 **Attempt To Loot And Discontinue The Law School.**

8 **1. The College’s attempt to loot and then immediately discontinue the Law**
9 **School is unlawful.**

10 Under California law, a cause of action for breach of contract requires “(1) the contract, (2)
11 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting
12 damages to plaintiff.” *Reichert v. Gen. Ins. Co. of Am.*, 68 Cal. 2d 822, 830 (1968).

13 Here, all Faculty have detailed written contracts with the College embodied in, *inter alia*,
14 the Whittier College Faculty Handbook (the “Handbook”). Reich Decl. Ex. C. Exhibit 8 of the
15 Handbook is the American Association of University Professors’ “Recommended Institutional
16 Regulations on Academic Freedom and Tenure.” *See id.* (Tenure Rules).

17 Tenure is, of course, a critically important term of employment for professors. And the
18 Tenure Rules make clear that the Faculty, by virtue of having received tenure, can only be
19 terminated under extraordinarily limited circumstances. *Id.* These limited circumstances *may*
20 include discontinuance of the professor’s program or department. *Id.* But the Tenure Rules impose
21 strict limits on such discontinuance. For example, they make clear that there are only two grounds
22 on which a program or department may be discontinued: financial or educational. *See id.* As
23 discussed next, neither exists here.

24 **Financial exigency.** One ground on which a program or department may be discontinued is
25 financial exigency. *Id.* But the Handbook makes clear that only “a demonstrably bona fide financial
26 exigency” will justify discontinuance. *Id.* And Regulation 4.c. defines “a demonstrably bona fide
27 financial exigency” as “a severe financial crisis that fundamentally compromises the academic
28 integrity of the institution as a whole and that cannot be alleviated by less drastic means.” *Id.* Of

1 course, no such crisis exists at the College. As explained above, the Law School has almost never
2 suffered an operating loss, and the College recently sold the Law School campus for a profit of \$13
3 million.

4 The Handbook also sets forth procedural protections that must accompany any attempt to
5 discontinue a program or department on the grounds of financial exigency. *Id.* Regulation 4.c states
6 that:

7 Each institution in adopting regulations on financial exigency will need to decide
8 how to share and allocate the hard judgments and decisions that are necessary in
9 such a crisis. As a first step, there should be an elected faculty governance body,
10 or a body designated by a collective bargaining agreement, that participates in the
11 decision that a condition of financial exigency exists or is imminent and that all
12 feasible alternatives to termination of appointments have been pursued, *including expenditure of one-time money or reserves as bridge funding*, furloughs, pay
cuts, deferred-compensation plans, early-retirement packages, deferral of
nonessential capital expenditures, and cuts to noneducational programs and
services, including expenses for administration.

13 *Id.* (emphasis added). It is undisputed, however, that no elected faculty governance body has ever
14 been asked to participate in a decision about whether a financial exigency at the College exists or is
15 imminent, or whether there are feasible alternatives to discontinuance of the Law School.

16 **Educational considerations.** The only other permissible basis on which the Law School
17 might be discontinued is “educational considerations.” *Id.* But the Handbook provides that “The
18 decision to discontinue formally a program or department of instruction will be based essentially
19 upon educational considerations, as determined primarily by the faculty as a whole or an
20 appropriate committee thereof.” *Id.*^[2] And, here, no faculty member has determined that the
21 educational mission of the College as a whole will be enhanced by the discontinuance of the Law
22 School. In fact, precisely the opposite has occurred. At the direction of President Herzberger, a
23 Task Force of committees comprised of faculty from both the Law School and the College
24 considered whether discontinuance would be educationally appropriate. Reich Decl. ¶¶ 2-4 Both
25 committees recommended against discontinuing the Law School for educational reasons. Reich

26
27 ^[2] These “[e]ducational considerations . . . must reflect long-range judgments that the
28 educational mission of the institution as a whole will be enhanced by the discontinuance.” *Id.* Such
considerations “do not include cyclical or temporary variations in enrollment.” *Id.*

Decl. ¶¶ 3-4 & Ex. A, B. The College committee's report to the Task Force discussed synergies between the Law School and College and issued several recommendations for long-term collaborations that would enhance both the College and Law School. Reich Decl. ¶ 4 & Ex. B. It concluded that "If the Law School were to be discontinued it would eliminate the potential for collaboration that would enrich our faculty, the Law School faculty, and our students on both campuses who are the ultimate beneficiaries." Reich Decl. Ex. B at 8. The Law School committee's report concluded that "the Law School's prospects for educational improvement are very favorable, and that discontinuing the program would be highly detrimental to the overall institution." Reich Decl. ¶ 3 & Ex. A. In sum, the College cannot sustain an argument that its "faculty as a whole or an appropriate committee thereof" determined that educational considerations would support discontinuance of the Law School.

Therefore any attempt to base discontinuance of the Law School on either financial exigency or educational considerations would be in violation of the AAUP guidelines, and therefore of the Professors' employment contracts. As financial exigency and educational considerations are the only two grounds on which the College can legitimately terminate the employment of its tenured faculty, and the College cannot establish either at this time, any discontinuance of the Law School at this time would constitute breach the contracts of its tenured faculty.

2. The Faculty will be entitled to a permanent injunction.

By incorporating the AAUP guidelines into its Faculty Handbook, the College has bound itself to follow the AAUP's Tenure Rules. Tenure represents not only permanent employment, but also academic freedom: the ability to study and advocate as scholars without threat of ideological or capricious termination, or termination for mere business reasons. The promises of tenure, as guaranteed by the AAUP's Tenure Rules and ratified by the College's Faculty Handbook, are not solely financial and cannot be redressed solely by damages. If the College does, indeed, wish to terminate the employment of tenured faculty by discontinuing the Law School Program, it should

1 be required to comply with the AAUP's Tenure Rules. Unless and until the College complies with
2 the procedures for discontinuing an academic program, it should be enjoined from doing so.

3 In addition, the College has an equitable duty to the Faculty of the Law School that cannot
4 be satisfied without an injunction. As described above, Law School revenues have been servicing
5 the mortgage on the Costa Mesa property on which the Law School resides. Now that land has been
6 sold at a profit of \$13 million. Despite the College's assurances that that surplus would be used to
7 invest in the future of the Law School program, it now seeks to "cut and run" with the money it
8 gained from the sale. That is inequitable and would call for disgorgement. In this case, however,
9 there is no one to receive disgorgement. The only, and proper, remedy for the College's inequitable
10 looting of the Law School property is the use of the funds to operate the Law School, and the
11 College should be required to do so.

12 **B. Unless the College Is Enjoined From Announcing Its Unlawful Plans Tomorrow,**
13 **The Faculty Will Suffer Irreparable Harm.**

14 The primary purpose of a temporary restraining order is to preserve the status quo and avoid
15 irreparable harm. *See Dodge, Warren & Peters Ins. Servs., Inc. v. Riley*, 105 Cal. App. 4th 1414,
16 1418 (2003). Irreparable harm includes harms arising from wrongs of "continuing character" and
17 wrongs that cannot be righted through monetary compensation. *See People ex rel. Gow v. Mitchell*
18 *Brothers' Santa Ana Theater*, 118 Cal. App. 3d 863, 870-71 (1981); *Wind v. Herbert*, 186 Cal. App.
19 2d 276, 285 (1960). Examples of irreparable harm include the continuous publication of injurious
20 media and damage to reputation. *Gow*, 118 Cal. App. 3d at 870-71; *Regents of Univ. of Cal. v. Am.*
21 *Broad. Cos.*, 747 F.2d 511, 520 (9th Cir. 1984).

22 ***Tomorrow morning***, representatives from the College will announce their plan to
23 discontinue the Law School at meetings with faculty, staff, and students. Daar Decl. ¶ 8. Allowing
24 that announcement to go forward would spell disaster for the Law School and its Faculty. News of
25 this sort does not stay quiet. It will inevitably spread like wildfire throughout public forums such as
26 the ABA News, Law School Transparency, Above the Law, Facebook, Twitter, and law school
27 applicant message boards.

1 The spread of this information will come at a particularly damaging time, when prospective
2 Law School students are deciding what law school to attend, and current Law School students are
3 deciding whether to transfer away. April is the very start of the admissions-deposit season for Law
4 School, whose matriculating class has historically grown considerably between the first deposit
5 opportunity on April 1 and the first day of classes in mid-August. In fact, more than half of entering
6 Law School students usually make the decision to attend after mid-April. Chang Decl. ¶ 3. The law
7 school admissions market is competitive, and students are frequently admitted to multiple schools.
8 Chang Decl. ¶ 11. When confronted with the possibility that the school they are considering may
9 cease to exist, prospective students will not take a “wait and see” attitude. They will deposit
10 elsewhere.

11 Moreover, many current Law School students will decide to transfer to other schools. Every
12 year, some Law School students consider transferring to other institutions after completing their
13 first year. When Law School students decide to stay after considering transfer, they often base that
14 decision on a sense that they feel supported by the institution. In contrast, when students do not feel
15 supported by the institution, they leave. In June, 2016, the College informed students that it had
16 signed a land-sale agreement that might relocate the Law School and that market conditions might
17 eventually lead to the discontinuance of the Law School entirely. The message to students assured
18 them that the Law School would be leading an effort to operate a sustainable school and that the
19 College planned to “ensure that both current and incoming students have an opportunity to
20 complete their legal education in a timely fashion.” Chang Decl., Ex. B, p. 3. Still, students
21 immediately began exploring transfer opportunities, and despite considerable efforts to retain
22 students, transfers rose considerably. Pathak Decl. ¶ 10. The impact of a more definitive
23 announcement would inevitably cause a student exodus.

24 **C. The Balance Of Equities Tips Lopsidedly In Favor Of The Professors.**

25 The Faculty seek a *two-day* delay of any announcement—just enough time to make a
26 noticed Motion for a Temporary Restraining Order. For the reasons described above, an immediate
27 announcement by the College would cause severe and irreparable harm to the Law School and its
28

1 Faculty. In stark contrast, it is inconceivable that a two-day delay would cause any prejudice to the
2 College.

3 Indeed, the Faculty are informed by Dean Daar that the College's only purported
4 justification for an immediate announcement is a desire to give admitted students the opportunity to
5 pursue enrollment in other law schools. But no Law School admitted student would be prejudiced in
6 any way by a two-day delay. Students who have already deposited at the Law School have, by
7 doing so, declared that the Law School is their top choice; muddying their waters with an
8 announcement does them more harm than good. And students who have not yet deposited at the
9 Law Schools can apply to other law schools just as effectively after a two-day wait; the schools to
10 which they would apply accept applications on a rolling basis through the Summer.

11 In any event, the object of the College's haste (i.e., encouraging the Law School's admitted
12 students to pursue enrollment in other law schools) is *precisely* the type of irreparable harm to the
13 Law School and its Faculty that warrants a TRO.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this *ex parte*
16 application and enter the requested temporary restraining order and order to show cause why a
17 preliminary injunction should not be issued pending trial in this action.

18 Dated: April 18, 2017

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