

GORDON REES SCULLY MANSUKHANI, LLP  
315 PACIFIC AVENUE  
SAN FRANCISCO, CA 94111

1 MARK S. POSARD, Bar No. 208790  
mposard@grsm.com  
2 RENE I. GAMBOA, Bar No. 136166  
rgamboa@grsm.com  
3 ROBERT J. FLEMING, III, Bar No. 335725  
rfleming@grsm.com  
4 GORDON REES SCULLY MANSUKHANI, LLP  
315 Pacific Avenue  
5 San Francisco, California 94111  
Telephone: (415) 986-5900  
6 Facsimile: (415) 986-8054  
7 Attorneys for Defendant  
8 GOLDEN GATE UNIVERSITY

**FILED**  
San Francisco County Superior Court  
SEP 16 2024  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

12 STEPHEN DOWNS, NATHAN LIMCOLIOC;  
13 YVONNE ULIBARRI; DANIELLE  
14 MORVAN; GOLDEN GATE UNIVERSITY  
ALUMNI ASSOCIATION,

15 Plaintiffs,

16 v.

17 DAVID J. FIKE; GOLDEN GATE  
UNIVERSITY, a California non-profit  
18 organization; and DOES 1-50, inclusive,

19 Defendants.

Case No. CGC-24-612353  
UNLIMITED JURISDICTION  
~~PROPOSED~~ ORDER DENYING  
PLAINTIFFS' MOTION FOR  
INJUNCTIVE RELIEF AND/OR  
SPECIFIC PERFORMANCE

Date: September 13, 2024  
Time: 1:30 p.m.  
Dept.: 302

21 On September 13, 2024, at 1:30 p.m., the Motion for Injunctive Relief filed by plaintiffs  
22 STEPHEN DOWNS, NATHAN LIMCOLIOC; YVONNE ULIBARRI; DANIELLE MORVAN;  
23 GOLDEN GATE UNIVERSITY ALUMNI ASSOCIATION ("Plaintiffs") came on for regularly  
24 for hearing in the above-entitled court.

25 After consideration of the moving, opposing, and reply papers filed by the parties, all papers  
26 filed in connection thereto, having heard the oral argument of the parties, and good cause appearing,  
27 the Court rules as follows:

28 ///

1 Plaintiffs Stephen Downs, Nathan Limcolioc, Yvonne Ulibarri, Danielle Morvan and  
2 Golden Gate Alumni Association’s motion for a preliminary injunction and/or specific performance  
3 is denied.

4 On May 31, 2023, Golden Gate University (GGU) declared a state of “financial exigency”  
5 in its law school. (Yates Dec. 10:4-17, Ex. 4.) On November 30, 2023, GGU announced its juris  
6 doctor program would end with the 2023-24 school year. In a “teach-out” plan, GGU offered  
7 students the ability to continue studies at two other law schools – University of San Francisco and  
8 Hamline – for the same tuition. On February 14, 2024, plaintiffs sued GGU, which filed a demurrer  
9 that was sustained with leave to amend. Plaintiffs filed a first amended complaint (FAC) on August  
10 7, 2024 and now seek an extraordinary pretrial order “to prevent” GGU “from shutting down its  
11 law school.” (Not. Mot. 1:1-9.)

12 In ruling on a preliminary injunction motion, a court weighs (1) the relative interim harms  
13 to the parties from issuance or nonissuance of the injunction and (2) the likelihood that the moving  
14 party will ultimately prevail on the merits. (SB Liberty, LLC v. Isla Verde Assn., Inc. (2013) 217  
15 Cal.App.4th 272, 280.) Mandatory preliminary injunctions are extraordinary remedies only  
16 permitted where the right thereto is clearly established. (Edmon & Karnow, California Practice  
17 Guide: Civil Procedure Before Trial (TRG) 9:525.1, 9:532, 9:534; Brown v. Pacifica Foundation,  
18 Inc. (2019) 34 Cal.App.5th 915, 925.) An injunction is mandatory if, as here, it would compel  
19 performance of an affirmative act. (Edmon & Karnow, 9:530-31.)

20 Interim Harm

21 Plaintiffs seek a mandatory injunction requiring GGU “to offer J.D. classes for the academic year  
22 of 2024-2025.” (Prop. Order.) Such an injunction would upend GGU’s agreements with USF and  
23 Hamline, force GGU to immediately employ faculty, administrators and support staff, and disrupt  
24 students. (Yates Dec. 7:1-17.) Indeed, many GGU students are already taking USF and Hamline  
25 classes. (Id.) In contrast, plaintiffs proffer speculative harm. (See, e.g., Memo. 9:18-24.) General  
26 statements without factual support are insufficient to support an injunction. (Volpicelli v. Jared  
27 Sydney Torrance Memorial Hosp. (1980) 109 Cal.App.3d 242, 266-67.) Moreover, even had  
28 plaintiffs established some harm, their unjustified delay undermines them. (See 38 Cal.Jur.3d

1 (2024) Injunctions, 51; Rankin v. DeBare (1928) 205 Cal. 639.) Plaintiffs’ counsel told GGU in  
2 December 2023 he would sue “to enjoin the foreclosure [sic] of the law school.” (Fleming Dec.  
3 2:1-8, Ex. 1.) But plaintiffs waited two months to file their complaint and then another four to  
4 move for injunctive relief, while GGU continued on with its closure and teach-out plans. This  
5 inordinate and unreasonable delay weighs heavily against plaintiffs.

6 Likelihood of Success

7 The FAC purports to plead six causes of action, but plaintiffs are unlikely to prevail on any  
8 of them. First, plaintiffs refer to clips from the GGU Handbook, a press release, a video and an  
9 admission letter to support their breach of contract claim. (FAC 7:5-8:5.) This is insufficient to  
10 support breach of an express contract, and even if an implied contract claim survived demurrer,  
11 nothing demonstrates that GGU made specific promises to provide unconditional full-tuition  
12 scholarships or to stay open despite its financial woes. (Kashmiri v. Regents of University of  
13 California (2007) 156 Cal.App.4th 809, 833.) Absent a live breach of contract claim, the implied  
14 covenant of good faith and fair dealing claim fails too. (Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th  
15 317, 349.) And the vague statements cannot give rise to a promissory estoppel claim, which  
16 requires clear and unambiguous promises. (Aceves v. U.S. Bank N.A. (2011) 192 Cal.App.4th  
17 218, 225.) Similarly, plaintiffs’ promissory fraud and false advertising claims would fail for lack  
18 of a clear and unambiguous promise. (Id. at 231; CACI 1902.) Plaintiffs’ claim under Business  
19 and Professions Code 17200 (UCL) also fails. The UCL’s “unlawful” prong requires violation of  
20 a separate statute, which the FAC does not plead. (Korea Supply Co. v. Lockheed Martin Corp.  
21 (2003) 29 Cal.4th 1134, 1143.) Moreover, the FAC pleads only conclusions that GGU’s acts were  
22 “unfair,” which is insufficient. (Graham v. Bank of Am., N.A. (2014) 226 Cal.App.4th 594, 611,  
23 613.) The “fraud” claim under the UCL statute’s third prong is likely to founder on lack of scienter.

24 Finally, specific performance is an equitable remedy granted only when a contract exists  
25 and there is no adequate remedy at law. (Darburn Enterprises v. San Fernando Community Hospital  
26 (2015) 239 Cal.App.4th 399, 409.) The contract must be definite and certain in its material terms.  
27 (Lister v. Sorge (1968) 260 Cal.App.2d, 333, 341.) As shown, it is unlikely that plaintiffs will be  
28

1 able to establish a claim for breach of express or implied contract, so specific performance is  
2 unavailable.

3  
4 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Injunctive Relief is **DENIED** <sup>and/or specific performance</sup> without  
5 prejudice. — (rb)

6 **IT IS SO ORDERED.**

7  
8 Dated: 9/16/24

Ulmer  
9  
10 JUDGE OF THE SUPERIOR COURT  
11 RICHARD B. ULMER

GORDON KEES SCULLY MANSUKHANI, LLLP  
315 PACIFIC AVENUE  
SAN FRANCISCO, CA 94111

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CGC-24-612353

STEPHEN DOWNS ET AL VS. DAVID J. FIKE ET AL

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on September 16, 2024, I served the foregoing on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: September 16, 2024

By: JACQUELINE ALAMEDA

A handwritten signature in black ink, appearing to be 'JACQUELINE ALAMEDA', written over the printed name.

Rene I. Gamboa, Esq.  
Mark S. Posard, Esq.  
Gordon Rees Scully Mansukhani LLP  
315 Pacific Avenue  
San Francisco, CA 94111

Ryan C. Griffith, Esq.  
Ryan Griffith Law, P.C.  
1566 35th Avenue  
San Francisco, CA 94122