

1 **RYAN C. GRIFFITH (SBN #286060)**
2 **RYAN GRIFFITH LAW, PC**
3 1566 35th Avenue
4 San Francisco, California 94122
5 Tel: (510) 564-8552
6 Email: rgriffith@rgriffithlawpc.com
7 Attorney for Plaintiffs

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/22/2024
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

STEPHEN DOWNS, NATHAN)
LIMCOLIOC; YVONNE ULIBARRI,)
DANIELLE MORVAN; GOLDEN GATE)
UNIVERSITY ALUMNI ASSOCIATION)
)
)
Petitioner,)
)
v.)
)
)
DAVID J. FIKE; GOLDEN GATE)
UNIVERSITY, a California Non-Profit)
organization; and DOES 1-50, inclusive,)
)
)
Respondents.)

Case No.: CGC-24-612353

**REPLY TO GOLDEN GATE
UNIVERSITY'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
INJUNCTIVE RELIEF**

Date: July 30, 2024
Time: 9:30 a.m.
Dept. 302
Honorable: Richard Ulmer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. PLAINTIFFS' REPLY INTRODUCTION

In another bizarre twist, in the sudden and inexplicable closure of Golden Gate University's "GGU" 123-year-old law school, the only supporting evidence to oppose the Plaintiffs' injunction comes from a Sacramento Attorney named Andrew Shaw. Shaw's declaration makes no mention of his connection to GGU. Therefore, it is unclear how Shaw even has personal knowledge of the matters contained in his declaration.

A glaring omission from GGU's opposition is that not a single member of GGU's board of trustees, its President David Fike, or even its law school Dean Mark Yates, provide any evidence to oppose this injunction. In fact, GGU could not get a single employee, student or alumni to provide a declaration to oppose this injunction. Furthermore, nobody from the American Bar Association "ABA," American Association of Law School "AALS," has submitted any support for GGU's plan.

One of the most concerning things about GGU's opposition is that nothing from either the University of San Francisco "USF" or Mitchell Hamline "MH," the schools where GGU students are set to transfer in a month, has verified anything GGU states in its opposition. This means that GGU law students have no guarantee that they will be accommodated under GGU's alleged plan, which still has not been shared with students. GGU's omission of any documentation from the successor schools in its opposition is critically important because a university is **not** required to abide by a predecessor's university's promise to its students. (*Kashmiri v. Regents of California* (2007) 156 Cal. App. 4th 809, 836.) Therefore, neither the USF nor MH is obligated to honor GGU's promises to its students. Since the teach-out plan for either school remains unshared, no documentation from either USF or MH has been provided. As a result, if injunctive relief is not granted, the Plaintiffs will be required to deal with the rigors of law school while having no idea how they will be treated at their new schools.

1 In summary, nobody with any decision-making power or the ability to protect plaintiffs has
2 provided any evidence or supporting information to justify the closure of a 123-year-old institution. As
3 discussed, the current closure will require students to move from San Francisco to Minnesota in a
4 month with no plan. MH and USF’s silence on this injunction verifies GGU’s lack of a plan.

5 Andrew Shaw is the only person explaining GGU Law’s closure. However, Shaw has no
6 knowledge of what is happening at GGU, as displayed by the numerous conclusory claims that provide
7 no information in his declaration. For example, at ¶ 7 of Shaw’s declaration, he states that
8 “*considerable due diligence was conducted.*” There is no explanation of who was involved in this “*due*
9 *diligence,*” what this “*due diligence*” consisted of, or even when this “*due diligence*” was conducted.
10 In ¶ 8 of Shaw’s declaration, he declares that “*GGU hired consultants to assist in developing strategies*
11 *to improve its two-year pass rate and employed an additional bar pass rate professional to this end.*”
12 Again, there is no identification of what these strategies were, who these consultants were, or any
13 information on how Shaw has personal knowledge of anything stated in his declaration.
14

15 Finally, to show how bizarre this whole situation is at ¶ 9, Mr. Shaw discusses ABA Rule 316,
16 which requires ABA schools to have 75% of its students pass a bar exam within two years of
17 graduation. (See ¶8 of Shaw’s Declaration.) GGU achieved 75% in 2017. (See ¶8 of Shaw’s
18 Declaration.) Mr. Shaw’s declaration then explains GGU’s plan to improve bar passage rates in 2022
19 was to admit highly qualified applications by giving them free tuition. (Shaw Dec at ¶9.) The plan to
20 admit highly qualified students was executed in 2022. This means these highly qualified students
21 cannot take the bar until 2025. However, GGU law is shutting down in 2024; before these highly
22 qualified students even take the bar, why not wait until they take the bar exam?
23
24
25
26

1 It is simply nonsensical to have offered free tuition to students who were designed to improve
2 bar passage and then quit on them before they even had the chance to take the bar exam. GGU's
3 opposition states the injunction would be a pyrrhic victory because GGU cannot obtain bar passage of
4 75% as required by the ABA, but this is false. GGU has reached 75% as recently as 2017. Bar passage
5 at GGU then hovered around 75% in 2018 and 2019, then for reasons unknown no information for
6 GGU's bar passage in 2020, 2021, 2022, or 2023 is provided in Shaw's Declaration. (See ¶ 8 of Shaw's
7 Declaration.) Furthermore, the "highly qualified" students have not even had the chance to take the
8 2025 bar, which was part of GGU's plan in 2022. In summary, if GGU's unspecified plan is allowed
9 to go through, its law students will have lost their chance to perform as GGU advertised they would be
10 able to in promotional materials GGU provided to law students such as Plaintiffs, and others that were
11 admitted as recently as August 2023.

14 Furthermore, in 2023 the ABA granted GGU a three-year extension to comply with the R316
15 requirements, which means GGU has until 2026 to comply. (Shaw Declaration at ¶4.) Therefore, why
16 is the school shutting down in 2024? Furthermore, the entire R316 rule may be moot in the next few
17 years. Many states, such as Oregon, are getting rid of the bar exam entirely¹. As recently as November
18 2023, California has been exploring getting rid of the bar exam requirement.² If California rids itself
19 of the bar exam requirement, it will render GGU's entire argument moot. It seems that GGU is not
20 telling the full story, and, for unknown reasons, GGU is trying to find any way to shut its law school
21 down. GGU's suspicious behavior is one of the many reasons why an injunction is necessary.

24 _____
25 ¹ <https://www.legal.io/articles/5450956/No-Bar-Exam-Required-to-Practice-Law-in-Oregon-Starting-Next-Year>

26 ² <https://www.reuters.com/legal/government/bar-exam-alternative-proposed-california-gets-rocky-public-reception-2023-11-13/#:~:text=Under%20the%20Portfolio%20Bar%20Exam,experienced%20California%20attorney%20over%20a>

1 Finally, ¶ 16 of Shaw’s declaration, states GGU will lose its goodwill, public relationships, and
2 student loyalty if an injunction is granted. However, no evidence to support these vague claims is
3 provided. It bears repeating that not a single alumnus, student, or GGU employee provides a declaration
4 to support Shaw’s position. However, common sense can be used to determine that closing a 123-year-
5 old law school via blast email and sending current students 2,000 miles without a real plan to finish
6 their education will harm GGU’s goodwill, not help it. Additionally, every GGU Alumni Board
7 member is against closing the law school and has explicitly stated they have zero confidence in Fike’s
8 leadership. (Hyppolite Declaration at ¶ 19.) In fact, the GGU Alumni Board believes Fike, who has
9 already bankrupted the last two universities he led, will destroy GGU if he is not stopped. (Hyppolite
10 Declaration at ¶ 19-20.)
11

12
13 It is simply unclear why GGU is so determined to misstate evidence to close its law school.
14 This is a motion for injunction in a superior court, but still GGU refuses to provide any factual support
15 for their decisions other than from an attorney in Sacramento who will not even disclose his relationship
16 with GGU. GGU’s opaqueness is transparent and concerning, which is why an injunction to conduct
17 discovery to determine the extent of malfeasance GGU leadership has engaged in is necessary.
18

19 It is also bizarre that accreditation issues are suddenly the primary focus of GGU’s injunction
20 when fiscal exigency has repeatedly been claimed. However, despite repeated requests to obtain the
21 actual deficit from GGU even in this injunction motion, no answer is provided. A university’s failure
22 to respond to its students, adhere to its own guidelines, and be as opaque as GGU has been here cannot
23 be tolerated. As numerous courts have held, neither a university nor any organization can ignore its
24 own rules and guidelines because by doing so, university and organization rules would be nothing more
25
26

1 than a meaningless mouthing of words. (*Tedeschi v. Wagner College* (1980) 49 N.Y. 2d 652, 662; see
2 also *United States v. Chen* (1988) 854 F.2d 622, 627.)

3 4 **II. LEGAL ARGUMENT**

A. STANDARD FOR INJUNCTIVE RELIEF

5 The factors for injunctive relief were outlined by the United States Supreme Court in 2008 in (*Winter*
6 *v. Natural Resources Defense Council* (2008) 555 U.S. 7, 20.) In *Winter*, the factors for injunctive
7 Relief are as follows: (a) likelihood of success on the merits; (b) irreparable harm; (c) balance of harms
8 tips in Plaintiff's favor; (d) that injunctive relief is in the public interest. (*Winter* at 20.)

B. LIKELIHOOD OF SUCCESS ON THE MERITS

10 Beginning on page 13 of the GGU's opposition, it claims that the Plaintiffs have a near zero chance
11 of prevailing because the Plaintiffs cannot identify any contract or promise that GGU made. As with
12 everything in this case, it is hard to understand how, for example, GGU's admission letter, which states
13 the following does not constitute a promise, "*When you enroll with us this fall, you will join a dynamic*
14 *law school community that is committed to helping you achieve your educational and professional*
15 *goals.*" (See Morvan Dec. at ¶ 3; see also Morvan Dec at Exhibit 1.) This same letter also states that
16 Danielle Morvan will receive a value worth over \$153,000. (*Id.*) The letter goes on to state, "*We know*
17 *you are a right fit for GGU Law as you are a leader with the potential to become an exceptional lawyer*
18 *and socially responsible member of the global legal community.*" (*Id.*) How none of these express
19 statements by GGU constitutes a contract is a puzzling position for GGU to take.
20
21
22

23 As it relates to Stephen Downs, a promise was made to him and the U.S. Department of Veteran
24 Affairs that the law school would remain open until 2025. (Stephen Downs Dec. at ¶ 8; see also Downs
25 Dec at Exhibit 1.) Relying on this false and unkept promise, GGU took \$153,000 from the United
26

1 States Federal Government under false pretenses, which GGU does not deny in its opposition.

2 Yvonne Ulibarri is a currently enrolled and **paving** student who was promised a great education at
3 GGU. These promises were so great that she has been commuting from New Mexico to GGU and to
4 date she has paid \$143,025 to GGU and has no idea where her money went or how this plan to move
5 to Minnesota is supposed to work. Furthermore, she does not have a scholarship to be honored, and it
6 is unclear if she is expected to continue to pay tuition. Finally, the law student handbook specifically
7 states that a financial contract exists between each student and the university. Even without this
8 overwhelming evidence that an express and implied contract not to shut down a 123-year-old law
9 school existed, caselaw specifically recognizes that mere matriculation into a university constitutes a
10 contract. (*Kashmiri v. Regents* (2007) 156 Cal. App. 4th 809, 924).

11
12
13 Once the contract is formed by a student's matriculation, a university is required to act in good
14 faith and fair dealing pursuant to the contract. (*Kashmiri* at 836.) Neither good faith nor fair dealing
15 are found anywhere in GGU's opposition or Shaw's Declaration. This is because even GGU knows
16 collecting \$100,000 from students and promising that they will transform legal education by enrolling
17 and then closing the school via blast email is not good faith. Furthermore, GGU's actions in no way
18 comply with the implied duty of good faith required in all California Contracts at Civil Code 1636; see
19 also *Kashmiri* at 842.)

20
21 These actions do not constitute good faith and fair dealing and establish a valid claim for
22 Promissory fraud. Promissory fraud is a subspecies of the action for fraud and deceit. Promissory fraud
23 occurs because a promise to do something necessarily implies the intention to perform; hence, where
24 a promise is made without such intention, there is an implied misrepresentation of fact that may be
25 actionable fraud. (*Lazar v. Superior Court* (1996) 12 Cal. 4th 631, 638; see also Cal Civ. Code § 1710.)

1 When a student matriculates to a university, they do not expect to be forced to move 2,000 miles away
2 to finish their education because the University President sent a blast email halfway through their
3 educational program.

4 GGU's opposition thinks this is entirely normal because nothing in their documentation expressly
5 says that the law school will be open in 2025. (See GGU's Opposition at Pg 15: Lines 3-15.) However,
6 common sense tells us that it is implied that a school you enroll in will not close before you graduate
7 absent extraordinary circumstances. Furthermore, GGU expressly told the Department of Veteran
8 Affairs it would be open through 2025. (See Downs Dec. at ¶ 8; see also Exhibit 1.)

9
10 The case GGU cites to support its position is irrelevant. (*Cornell University in Espejo v. Cornell*
11 *Univ.* (N.D.N.Y) 2021 523 F. Supp. D 228, 239.) In this case, Cornell students were not allowed to use
12 many of Cornell's amenities during COVID, which was a problem throughout the world and was
13 completely unforeseeable. (*Id.* at 244.) In that case, neither Cornell nor any other University knew a
14 worldwide pandemic would be occurring and Cornell did not stop instruction and tell students to go
15 2,000 miles away to another University via blast email. GGU, however, if it even is in a fiscal exigency,
16 either knew or should have known of its situation, and forcing students to move 2,000 miles away
17 without any plan is nothing like the *Espejo* case where amenities, not education, were denied.
18

19
20 As to the Promissory Estoppel claim, GGU's Opposition contradicts itself because the opposition
21 is now claiming a contract exists and that consideration was present. (Opposition at Page 16: Lines 1-
22 3.) More importantly, GGU states that the students should not have expected the law school to remain
23 open when they were admitted. (Opposition at Page 16: Lines 6-12) Nothing in Morvan's admission
24 letter mentions anything about closure, and in fact, videos discussing how the students could transform
25 legal education were shared. (Morvan Dec. at ¶4.) GGU also expressly told the Department of Veteran
26

1 Affairs that it would stay open through 2025 to obtain over \$153,000 from Stephen Downs’s GI Bill.
2 (Downs Dec at ¶8; see also Exhibit 1). Therefore, the Plaintiffs have a valid promissory estoppel claim.

3 Finally, as to the unlawful business practices cause of action the Complaint alleges that GGU
4 engaged in both promissory fraud at Cal. Civ. Code 1710 and false advertising at Business and
5 Professions Code § 17500. These are both violations of law that constitute unlawful business practice.
6 Promissory Fraud occurs when a party necessarily implies the intention to perform; hence, where a
7 promise is made without such intention, there is an implied misrepresentation of fact that may be
8 actionable fraud. (*Lazar v. Superior Court* (1996) 12 Cal. 4th 631, 638; see also Cal Civ. Code § 1710.)
9 When GGU encouraged Morvan to enroll with inspirational videos and a Presidential scholarship
10 without ever mentioning that it was at risk of closing, it was Promissory Fraud. Promissory Fraud also
11 occurred when GGU marketed to Ulibarri in New Mexico and provided materially false information to
12 the United States Government to collect \$153,000 from Stephen Downs G.I. Bill.

13
14
15 The actions described above also meet the criteria for false advertising under Business and
16 Professions Code § 17500, which requires a false or misleading statement. False advertising is looked
17 at through the reasonable consumer standard. (*McGinity v. Proctor Gamble Company* (2023) 69 F.4th
18 1093, 1097.) The actions of promising a transformative and free education and then not allowing the
19 student to finish their degree based on alleged “*fiscal exigency*” constitute false advertising, which is
20 an unlawful business practice. Plaintiffs have a strong likelihood of success on their false advertising
21 claim and a strong likelihood of success on the merits of every cause of action plead in their complaint.
22
23

24 C. IRREPARABLE HARM WILL OCCUR AND THE PUBLIC FAVORS INJUNCTION

25 California Courts have specifically recognized the great harm that occurs when education is
26 disrupted. (*American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal. App. 4th
27

1 258, 264.) In this case, preliminary injunctive relief was upheld to preserve the status quo of the
2 student’s education because interrupting education constitutes irreparable harm. (*Id.*) In the Plaintiffs’
3 case, Downs and Limcolioc have collectively spent over \$340,000 to graduate from GGU, and before
4 they have even had the chance to become licensed attorneys and seek employment, their law school is
5 closing without explanation. Furthermore, Morvan and Ulibarri will now be forced to move to
6 Minnesota to finish their education without any plan on how this will work being shared. Certainly,
7 neither Morvan nor Ulibarri can rely on anything GGU promises, as seen by GGU’s outright inability
8 to accept accountability for the admissions letter it wrote to Morvan less than two years ago. For all
9 these reasons, injunctive relief is necessary.
10

11
12 The public interest also favors maintaining a 123-year-old school in the heart of downtown San
13 Francisco, which has struggled mightily since COVID. Furthermore, courts have found that when it
14 comes to injunctive relief, the public interest favors enjoining the party that does not play the rules.
15 (*K Mart Corporation v. Oriental Plaza, Inc.* 875 F. 2d 907, 916 (1st. Cir. 1989). In this case, Fike and
16 the GGU have made numerous misrepresentations to the students, taken no accountability for these
17 misrepresentations, and ignored student requests at every turn. Allowing GGU’s behavior to be
18 rewarded at the expense of hurting vulnerable law students does not favor the public interest.
19

20 D. **BALANCE OF HARMS TIPS IN PLAINTIFF’S FAVOR**


21 The final *Winters* factor is that the balance of harms must tip in Plaintiff’s favor. As discussed,
22 the Plaintiffs will be irreparably harmed if the law school closes their ability to be licensed is impacted,
23 and Morvan and Ulibari are forced to move to Minnesota with no plan in place. Conversely, it is unclear
24 what harm GGU will suffer by operating as it has done for the past 123 years. There is no detail of
25 what GGU’s alleged “fiscal exigency” is in its opposition and the only hardship claimed in Shaw’s
26

1 declaration is numerous vague claims such as “loss of goodwill, public relationships, and student
2 loyalty.” (Shaw ¶ at 17). Again, not one student, alumni, employee, or even Board Member has come
3 forward to support these claims that GGU will lose goodwill if the JD program continues. In fact, the
4 entire Alumni Board, consisting of alumni from every school at GGU, has come forward opposing
5 GGU’s plan. Furthermore, President Fike has repeatedly informed the press that law school is **NOT**
6 closing.³ Therefore, it is entirely unclear what harm GGU will suffer by keeping its JD program.
7

8 **III. CONCLUSION**

9 President Fike and GGU have engaged in unlawful business practices by misleading students
10 and have avoided answering any questions for months. They now claim the contracts they enriched
11 themselves through are invalid and that any promise they make is not worth the paper it is written on.
12 As a result of this egregious behavior, students will be irreparably harmed by having to move 2,000
13 miles away without any plan to finish their legal education while jeopardizing their ability to be
14 licensed to practice law. This situation is ripe for injunctive as Plaintiffs have a strong likelihood of
15 prevailing on the merits, plaintiffs will be irreparably harmed if injunctive relief is not granted, and the
16 balance of harms tips in the Plaintiffs' favor, as does the public interest. If an injunction is not the
17 appropriate remedy, this is certainly a situation where no adequate remedy at law exists, and this court
18 sitting in equity has broad discretion to dispense justice in the best way it sees fit. (*Navajo Academy,*
19 *Inc. v. Navajo United Methodist Mission School, Inc.* (1990) 109 N.M. 324, 329)
20
21

22 Dated: July 22, 2024

23 By  _____
24 Ryan Griffith
25 Attorney for Plaintiffs

26 ³ <https://www.law.com/therecorder/2024/02/16/golden-gate-law-school-sued-over-sunsetting-jd-program/>

1 **PROOF OF SERVICE**

2 (C.C.P. §§ 1010.6, 1013a, 1013b, 2015.5; CRC 2.251)

3 I, the undersigned, say:

4 I am now and at all times herein mentioned have been over the age of 18 years, am employed with a
5 law firm in San Francisco, California, and not a party to the within action or cause. My firm’s
6 business address is 1566 35th Avenue, San Francisco, California 94122.

7 I am readily familiar with this firm’s business practice for collection and processing of
8 correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery
9 via messenger service, transmission by facsimile machine, and transmission by electronic mail. On
10 the date of my signature, below, I served each of the following documents:

11 REPLY TO GOLDEN GATE UNIVERSITY’S OPPOSITION TO INJUNCTION

12 By the following methods:

13 X BY ELECTRONIC SERVICE: My electronic service address is rgriffith@rgriffithlawpc.com. I
14 transmitted the documents to the persons by electronic mail at the electronic mail addresses listed
15 below. I did not receive, within a reasonable time after the transmission, any electronic message or
16 other indication that the transmission was unsuccessful. On each of the following persons, using the
17 service addresses indicated:

18 Rene Gamboa, Esq. 19 Gordon, Rees, Scully, Mansukhani 20 275 Battery St, Ste 2000, 21 San Francisco, CA 94111-3367 22 Email: rgamboa@grsm.com 23 Attorney for Defendants	18 Robert E. Fleming III 19 Gordon, Rees, Scully, Mansukhani 20 275 Battery St, Ste 2000, 21 San Francisco, CA 94111-3367 22 Email: rfleming@grsm.com
18 Nadine E. Williams 19 Gordon, Rees, Scully, Mansukhani 20 1111 Broadway, Suite 1700 21 Oakland, CA 94607 22 Legal Secretary to Rene Gamboa 23 Email: nwilliams@grsm.com	18 Mark Posard 19 Gordon Rees Scully Mansukhani, LLP 20 315 Pacific Ave, 21 San Francisco, CA 94111-1701 22 Email: mposard@grsm.com

23 I certify (or declare) under penalty of perjury under the laws under the laws of the State of
24 California that the foregoing is true and correct, and that this Declaration was executed on July 22,
25 2024.

26 /s/Ryan Griffith/s/
27 Ryan Griffith, Esq.
28 Attorney for Plaintiffs