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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SOUTHERN CALIFORNIA  
INSTITUTE OF LAW, a California  
corporation,

Plaintiff,

vs.

TCS EDUCATION SYSTEM, an  
Illinois corporation; DAVID J.  
FIGULI, an individual; GLOBAL  
EQUITIES, LTD. d/b/a HIGHER  
EDUCATION GROUP, a Colorado  
limited liability company,

Defendants.

CASE NO. **CV10-8026** <sup>PSG</sup>  
(ATW)

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES**

**JURY TRIAL DEMANDED**

1 Plaintiff, by and through its attorneys, based on its experiences, the  
2 investigation of counsel, and its information and belief, alleges as follows:

3 **NATURE OF THE CASE**

4 1. This action arises out of the blatantly anticompetitive conduct of TCS  
5 Education System, a multi-million dollar corporation engaged in the rapid  
6 acquisition of schools and colleges in California and elsewhere. Plaintiff is a  
7 small, State-Bar accredited, evening law school with a twenty-five year history of  
8 serving working class adults in the tri-county area of San Luis Obispo, Santa  
9 Barbara and Ventura Counties. Lured by the prospect of increasing its outreach to  
10 an underserved population of future law students, the plaintiff provided defendants  
11 with unfettered access to its Dean, faculty and confidential files in an effort to  
12 complete an acquisition transaction with the defendants. Instead, the defendants  
13 misappropriated plaintiff's most guarded secrets and information in violation of a  
14 binding confidentiality agreement and secretly used the information to affiliate  
15 with the plaintiff's sole competitor in the region. Armed with the stolen  
16 information, the defendants recently announced their "deal" which is calculated to  
17 kill off competition in the region, destroy the plaintiff's business and increase the  
18 cost of tuition. Plaintiff seeks as its primary remedy preliminary and permanent  
19 injunctive relief prohibiting defendants from taking further steps to complete their  
20 unlawful scheme.

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction over these claims pursuant  
23 to 15 U.S.C. § 4 and 28 U.S.C. § 1331. In addition to the claims alleged herein  
24 that arise under federal law, the Court has jurisdiction over plaintiff's state law  
25 claims under 28 U.S.C. § 1332(a) (because the parties are diverse and the amount  
26 in controversy exceeds \$75,000, exclusive of interest and costs) and/or 28 U.S.C. §  
27 1367(a) (because those claims are so related to the federal claims that they form  
28 part of the same case or controversy). Venue is proper in this District under 28  
U.S.C. § 1391 because defendants conduct business in this district and transacted

1 with plaintiff in this District. In addition, wrongful conduct by defendants took  
2 place in this District, and that conduct was intended to and did cause injury to  
3 plaintiff.

#### 4 **THE PARTIES**

5 3. Southern California Institute of Law (the "Law School") is a  
6 California corporation founded in 1986 with campuses in Santa Barbara and  
7 Ventura Counties. The Law School operates evening programs for the benefit of  
8 working adults who seek a rigorous academic environment that is affordable,  
9 flexible and offers small class sizes. Because of its dedicated administration and  
10 faculty, who receive very modest compensation, perhaps the lowest of any State  
11 Bar accredited school in California, the Law School maintains one of the lowest  
12 tuition rates among law schools in the state. Tuition rates are currently \$350 per  
13 unit whereas many comparable law schools charge in the range of \$800 or more  
14 per unit. Santa Barbara & Ventura Colleges of Law ("COL"), the only other law  
15 school in the tri-county area of San Luis Obispo, Santa Barbara and Ventura  
16 Counties, charges \$450 per unit. In 1996, after a decade of tremendous effort, the  
17 Law School was accredited by the Committee of Bar Examiners for the State of  
18 California. To put this accomplishment into perspective, there has been only one  
19 other California law school that received State Bar accreditation in the past 25  
20 years. That school was founded in 1927 and only received its accreditation this  
21 year. Currently, students may earn Juris Doctor ("J.D.") and Bachelor of Science  
22 in Laws degrees. The Law School is also accredited by the California Bureau of  
23 Private Postsecondary Education ("Bureau") and was approved by the Bureau to  
24 commence a paralegal program and Bachelor of Arts programs in Law  
25 Enforcement and Criminal Justice. In evening law schools, nearly all of the  
26 academic experience takes place in the classroom. Recognizing this fact, the Law  
School continuously re-evaluates and tests its teaching methodologies.

27 4. There are approximately one hundred students between the two  
28 campuses, thirty-one distinguished faculty members and an administrative staff

1 consisting of a Dean, Vice-Dean and Registrar. The Law School's seven-person  
2 Board of Directors has four members with Ph.D.s, three with J.D.s, two with  
3 M.B.A.s and five members hold multiple post-graduate degrees. Dean Stanislaus  
4 Pulle has a Ph.D. from King's College, University of London and was a post-  
5 doctoral Visiting Scholar at Yale Law School. He has taught for over forty years,  
6 including serving on the faculty of San Fernando Valley College of Law, COL,  
7 where he also served as Academic Dean, and at the Law School where he still  
8 teaches Constitutional Law. Dean Pulle founded the Law School with Dr. Carroll  
9 Gambrell, Board Chair, a former Dean of the School of Engineering at Mercer  
10 University, and Desmond O'Neill, Vice Dean, who holds an M.A. from the  
11 University of California, Santa Barbara, a J.D. from Boalt Hall School of Law and  
12 was twice president of the Santa Barbara County Bar Association. Members of the  
13 Law School's faculty have been rated as "superior" to "excellent" by State Bar  
14 Accreditation Consultants. Its faculty is drawn from top drawer law schools  
15 accredited by the American Bar Association ("ABA") who themselves excelled  
16 while in law school and from valedictorian law graduates of California accredited  
17 law schools. Over the past twenty-five years, the Law School has fostered a  
18 community among current students, alumni, faculty and staff. Leaders in the field  
19 of law have taken note of the high quality academics provided, the educational  
20 opportunities created for the working class and the overall positive community  
21 impact the Law School makes. Past keynote speakers at the Law School's  
22 commencement ceremonies include California Supreme Court Justice Ming Chin,  
23 presiding Justices of various divisions of the California Court of Appeal, including  
24 Justice Norman L. Epstein and Justice Paul Turner, former State Attorney General  
25 Bill Lockyer, Kenneth A. Starr, former United States Solicitor General, past  
26 Pepperdine University Law School Dean and current President of Baylor  
27 University, the governing president of the International Criminal Court, presiding  
28 judges of the local Superior Courts in Santa Barbara and Ventura, a President of  
the State Bar of California and members of the California legislature. The Law

1 School is honored to have as its keynote speaker at the June 2011 graduation  
2 ceremony California Supreme Court Chief Justice designee Tani Cantil-Sakauye.

3         5. Defendant TCS Education System ("TCS") is a private, not-for-profit,  
4 corporation organized under the laws of the State of Illinois with its corporate  
5 headquarters in Chicago. Rather than being a comprehensive university, TCS  
6 acquires or affiliates with specialized colleges with discrete professional  
7 disciplines. For non-profit schools and colleges, TCS creates *affiliations* because  
8 these institutions do not have an ownership structure like proprietary entities.  
9 Prior to its affiliation with COL, the TCS "system" included schools with  
10 disciplines in psychology, health and human services, and education; a foundation  
11 that provides support for the schools and colleges; an online services affiliate that  
12 assists the schools with developing and offering online coursework; and two  
13 preschool through eighth grade laboratory schools. According to its 2010 Annual  
14 Report, TCS affiliates had revenues of approximately \$71.8 million and net assets  
15 in excess of \$30 million. It has a corporate staff of approximately 175 people and  
16 hundreds more faculty and staff at its various schools and colleges. One of its  
17 institutions, The Chicago School of Professional Psychology, has 500 employees  
18 alone. There are over 4,000 students at TCS-affiliated campuses in Chicago,  
19 Washington, D.C., Los Angeles, Irvine, Pasadena, Santa Barbara and elsewhere.  
20 Although TCS is a non-profit, it prides itself on its innovative business structure  
21 and financial success. In many respects it operates more like a "for profit"  
22 business with a focus on market-oriented activity and sees itself as well poised to  
23 fill the void created by the cutbacks and lower enrollment in public higher  
24 education. TCS's "business model" is "built on the premise that business success  
25 and social impact need not be mutually exclusive" and it seeks to "[o]perat[e] as an  
26 effective, financially-sound, and fast-growing business," with a goal of  
27 "deliver[ing] truly significant returns for donors, investors, students, communities,  
28 and the world at large." The 2010 TCS Annual Report proclaims: "A rapidly  
changing and increasingly complex external environment—fueled by economic

1 uncertainties, changing student demographics, and mounting competition—has  
2 created new challenges for traditional higher education. Institutions have met with  
3 varying success in confronting these obstacles, some closing their doors, reducing  
4 services, or trimming programs and faculty ranks. Meanwhile, TCS Education  
5 System has crafted a business model that is intrinsically adaptive and that responds  
6 to today's realities, relying for growth and viability on a formula based on size,  
7 focus, diversification, and impact." TCS woos the colleges and schools it targets  
8 with the promise of business acumen, financial support and other tempting  
9 resources. Its dual "bottom-line" is "social impact" and "sophisticated business  
10 practices." TCS CEO Michael Horowitz recently elaborated on TCS's business  
11 strategy, stating in an interview:

12           Smaller institutions cannot get the technology, or fundraising,  
13           or administrative infrastructure that's required to be effective today.  
14           They may have to affiliate with a system like ours, or they are going  
15           to be acquired, bought by for-profits, or even go out of business....

16           [B]ecause the model is small, focused institutions, we can share  
17           resources more effectively. So even with respect to traditional  
18           fundraising, we have a foundation for grants, and philanthropy. We  
19           are sharing that among a number of colleges and schools because it is  
20           more efficient than duplicating that for each small college. So part of  
21           the model is to think creatively about resources and deploy them more  
22           effectively across institutions, so that we can direct more resources  
23           toward the core educational activity. Similarly, we've set up  
24           structures that in the future will allow investors to invest in projects  
25           that we couldn't do on our own, but require capital to expand and  
26           make the educational experience more excellent. That should allow  
27           us to take on new projects, and also not just to rely on tuition dollars.  
28           So between philanthropy, the potential for investor dollars, and

1           tuition, we create a much more energetic and dynamic base for  
2           funding.

3 (For the complete interview: [www.tcsedsystem.org/?page=AnnualReport](http://www.tcsedsystem.org/?page=AnnualReport)).

4  
5           6.       Defendant David J. Figuli ("Figuli") is a Colorado-based attorney with  
6           his principal place of residence in Evergreen, Colorado, a part of Jefferson County.  
7           On his law firm's Website, Figuli portrays himself as a leading lawyer in the  
8           "American higher education industry." *See* [www.figulilawgroup.com](http://www.figulilawgroup.com). He claims  
9           to have worked with hundreds of colleges, universities, educational associations,  
10          and education investment and management companies in his 33-year career. He  
11          previously served as General Counsel for the South Dakota Board of Regents and  
12          Chief Legal Counsel for the Montana University System. He also served as  
13          general counsel to several major universities and as a trustee for three colleges. He  
14          claims to be an expert in accreditation, licensing and regulatory matters, including  
15          those relating to federal financial aid programs, and a recognized writer and  
16          lecturer on higher education management and faculty employment matters. In his  
17          biography, he states that he has conducted seminars and keynote addresses for  
18          most of the major associations in American higher education including the  
19          American Council on Education, the American Association of State Colleges and  
20          Universities, the National Association of College and University Business Officers  
21          and the National Association of Student Financial Aid Administrators. Like TCS,  
22          Figuli sees himself as an innovator in the development of new business models for  
23          higher education, including strategic alliances, sponsorship arrangements,  
24          public/private and nonprofit/for profit ventures, international partnerships, mergers  
25          and acquisitions and investment relations. He offers his clients the following array  
26          of services, among others:

26               (i) transactional services that include assistance in negotiating and drafting  
27               conceptual documents, facilitating changes in corporate structure to achieve  
28               growth, raising capital, selling assets, divisions or equity, compliance with

1 regulatory requirements, formation of systems, conversions of a legal entity from  
2 one type to another, and redistribution of assets among various entities;

3 (ii) preparation and presenting applications for substantive change to  
4 institutional accrediting agencies and presenting changes of control to state  
5 licensing bodies and the U.S Department of Education ("DOE");

6 (iii) conceptualizing, forming and executing affiliations between tax-exempt  
7 entities, public and -private entities and non-profit and for profit enterprises with  
8 the goal of ensuring that tax-exempt status is not compromised and the appropriate  
9 level of control is created to satisfy institutional accrediting agencies;

10 (iv) providing legal and business advice to educational institutions and  
11 investors desirous of forming domestic and international ventures that combine  
12 core competencies, educational assets, investment capital, expertise and/or  
13 specialized services to achieve common goals with an emphasis on deal  
14 structuring, regulatory compliance and risk management; and

15 (v) conducting due diligence investigations in a wide range of transaction  
16 settings, ranging from the simple to complex and involving for-profit and nonprofit  
17 institutions and organizations engaged in all aspects of the post-secondary sector.  
18 Such services include "comprehensive investigation of corporate structures,  
19 litigation, contractual relationships, Title IV compliance [i.e., federally funded  
20 student financial aid programs], accreditation compliance, employment practices,  
21 faculty related issues, intellectual property, and owned and leased property. We  
22 investigate all potentially relevant and material aspects of a transacting party's  
23 business, compel all necessary disclosure, and recommend third-party  
24 investigations and reports as well as further action based upon our findings."

25 7. Defendant Global Equities, Ltd. ("Global Equities") is a Colorado  
26 limited liability company with its principal place of business in Evergreen,  
27 Colorado, which is part of Jefferson County. It also maintains a mailing address in  
28 Conifer, Colorado. Global Equities is owned and controlled by Figuli and  
transacts business under the trade name "Higher Education Group". For



1 convenience, Global Equities is referred to herein as "HEG." Figuli identifies  
2 himself as "CEO" of HEG. According to its Certificate of Assumed or Trade  
3 Name filed with Secretary of State for Colorado, HEG provides: "Consulting  
4 services to post-secondary educational institutions and associations; sale of  
5 products or services to the post-secondary educational market; training programs  
6 and materials for the post-secondary educational market". TCS retains Figuli and  
7 HEG to assist it in targeting potential acquisitions or affiliations with schools and  
8 colleges and structuring its deals.

### 9 **FACTUAL BACKGROUND**

10 8. Prior to 1986, COL was the only law school in the tri-county region  
11 spanning San Luis Obispo, Santa Barbara, and Ventura Counties. At that time, the  
12 only other State Bar accredited schools were miles away in either Monterey or  
13 Malibu. Neither of these options made sense for working adults, many of whom  
14 were single parents. Like the Law School, COL offers a part-time evening  
15 curriculum leading to a J.D. and is State Bar accredited. Neither the Law School  
16 nor COL is ABA accredited. In addition, neither school has accreditation from the  
17 Western Association of Schools and Colleges ("WASC"). Without these  
18 accreditations, neither the Law School nor COL can offer students federally funded  
19 loans. The chief reasons why these other accreditations cannot be sought and  
20 obtained is the lack of financial and human resources that would allow the Law  
21 School or COL to meet basic eligibility criteria.

22 9. For smaller institutions like the Law School and COL, obtaining ABA  
23 accreditation is too arduous and expensive a process to even consider. Obtaining  
24 WASC accreditation, while more feasible in theory, is still out of reach because the  
25 process consumes too many scarce resources. That is why no non-ABA accredited  
26 law school has WASC accreditation in Southern California.

27 10. WASC's Accrediting Commission for Senior Colleges and  
28 Universities (the "Commission") is responsible for the evaluation of the quality and  
effectiveness of colleges and universities offering the baccalaureate degree and

1 above in California, Hawaii, Guam and the Pacific Basin. Voluntary, non-  
2 governmental, institutional accreditation, as practiced by WASC and other regional  
3 commissions, is a unique characteristic of American education. Accreditation is  
4 granted at the completion of a peer review process, and assures the educational  
5 community, the general public, and other organizations that an accredited  
6 institution has met high standards of quality and effectiveness. While no  
7 institution in the United States is required to seek accreditation, it is highly coveted  
8 both in terms of institutional stature and the ability to qualify students for federally  
9 funded student loans under Title IV of the Higher Education Act. WASC is  
10 reviewed periodically by the DOE and the Commission is also periodically  
11 reviewed by the Council for Higher Education Accreditation.

12 11. Achieving WASC accreditation requires an applicant to endure a  
13 three-phase process costing tens of thousands of dollars or more and spanning as  
14 much as four years. WASC requires that any institution that it considers meet  
15 twenty-three eligibility criteria to achieve preliminary consideration for  
16 accreditation. The applicant must satisfy requirements such as showing that it has  
17 core faculty whose primary responsibility is to the institution, an adequate funding  
18 base and financial resources to ensure sustainability, and annual audits by a  
19 certified public accounting firm with two years of audited financial statements  
20 readily available. The next phase of WASC accreditation requires the institution  
21 to pay fees to cover WASC's site inspections, including travel, hotel and meal  
22 expenses of its visiting team members, any legal fees WASC incurs, and other  
23 expenses during this evaluative process. This second phase could cost a school the  
24 size of the Law School \$20,000 or more. The last phase occurs when the  
25 institution is granted the status of being a candidate and seeks initial accreditation.  
26 This phase can take two or three years according to WASC's Procedures Manual  
27 and the cost could easily exceed another \$20,000 for a school like the Law School.  
28 The applicant must demonstrate compliance with WASC's formal Standards of  
Accreditation ("Standards"). The Standards cover all financial, organizational, and

1 operational aspects of an institution and require the institution to show that it has or  
2 will meet numerous criteria and guidelines. Prior to initial accreditation, a multi-  
3 level review process ensues with the candidate institution preparing detailed  
4 written reports, receiving feedback from WASC committees and team members,  
5 responding to any evaluative concerns, undergoing several more site visits, and  
6 demonstrating that it meets both capacity and educational effectiveness standards.  
7 Like other aspiring institutions, the Law School contemplated a day when it might  
8 marshal sufficient resources to seek accreditation from WASC.

9       12. Over the past twenty-five years, the Law School and COL have  
10 competed for students and faculty. COL is much larger than the Law School and  
11 has approximately 250 students, thirty-seven faculty members and an  
12 administrative staff of nine. In spite of the fact that COL is larger and has more  
13 resources, the Law School established a strong presence in the tri-county region  
14 because of its willingness to keep tuition costs low while maintaining a strong  
15 faculty and academic program. This commitment has allowed many current and  
16 past students to afford to earn a law degree. The Law School has had a number of  
17 students who transferred in good academic standing from COL, citing the lower  
18 cost of tuition as a key factor. In the past three years, the few commercial banks  
19 like Wells Fargo and Bank of America that were willing to provide loans to  
20 students have ceased doing so. As a result, the Law School's commitment to  
21 maintaining low tuition costs is more important than ever. With a population of  
22 over five million people in the tri-county region, the loss of the Law School as a  
community resource would be tragic.

23       13. In mid-September 2009, Dean Pulle was approached by Figuli and  
24 George R. Haynes ("Haynes"), the former Vice President of Academic Affairs for  
25 the Santa Barbara Graduate Institute of Psychology (the "Institute"), regarding a  
26 potential acquisition by TCS. The Institute had just become affiliated with TCS on  
27 or about July 15, 2009, and Haynes, as a local educator and school administrator,  
28 made the introduction. The Institute was motivated in part to engage in the

1 affiliation due to the prospect of achieving WASC accreditation and gaining access  
2 to federal student loans. Figuli and Haynes explained that TCS was interested in  
3 acquiring a California law school. Dean Pulle and his colleagues at the Law  
4 School were told by Figuli and Haynes that they and HEG were authorized to act  
5 on behalf of TCS as its agents and advisors. Figuli stated that he had extensive  
6 background in strategic acquisitions in the education sector and that, through  
7 defendant HEG, he had been assisting TCS with identifying suitable acquisition  
8 candidates and structuring transactions. Figuli represented to Dean Pulle that he  
9 had facilitated the recent TCS affiliation with the Institute.

10 14. Dean Pulle shared with Figuli and Haynes that the Law School was  
11 approached in 2007 by a large university about a potential acquisition, but during  
12 the course of those discussions, the university experienced certain financial  
13 challenges and the discussions ended. Dean Pulle told Figuli and Haynes that he  
14 was encouraged by the prospect of an acquisition with TCS because it would allow  
15 the Law School to seek regional WASC accreditation, increase enrollment,  
16 establish new programs, extend educational opportunities to foreign students and  
17 leverage existing resources, such as using one or both of the school's campuses for  
18 daytime programs. From the outset, Figuli, Haynes and TCS knew that there were  
19 two State-Bar accredited law schools in the tri-county area, but Figuli stated that  
20 TCS was very interested in pursuing an acquisition of the Law School.

21 15. Dean Pulle represented to Figuli and Haynes that an integral part of  
22 the school's mission was to serve low and moderate income working adults and  
23 keep the total cost of the J.D. program in the range of \$30,000.00 over the course  
24 of the typical four year term. Further, Dean Pulle emphasized the commitment by  
25 his Board and faculty to reduce law school earnings if necessary to ensure that the  
26 program would remain affordable and accessible. Dean Pulle made it clear to  
27 Figuli and Haynes that the Law School was not interested in an affiliation if that  
28 would change the school's core mission or values, which included a focus on  
rigorous academic standards. As proof of the success of its approach, Dean Pulle

1 emphasized the Law School's increasing profile in the community as a high quality  
2 law degree program, its outstanding faculty and Board members and the many  
3 notable keynote speakers at its graduation ceremonies. Figuli agreed to the  
4 parameters set by the Law School.

5 16. On September 24, 2009, the Law School and TCS entered into a  
6 Confidentiality and Non-Disclosure Agreement ("NDA"). The NDA was prepared  
7 by TCS. Dean Pulle executed the NDA on behalf of the Law School. Jeff Keith  
8 ("Keith"), Senior Vice President of Finance and Administration and Chief  
9 Financial Officer for TCS, executed the NDA on behalf of TCS. Keith previously  
10 served as the vice president of finance and the chief financial officer for The  
11 Chicago School of Professional Psychology, which with more than 3,000 students  
12 is TCS's largest higher education affiliate. At TCS, Keith is responsible for finance  
13 and accounting, technology, human resources, real estate, online operations,  
14 mergers and acquisitions, legal affairs, and strategy. A copy of the NDA is  
15 attached hereto as Exhibit 1.

16 17. The preamble to the NDA states that the Law School was to provide  
17 "access to proprietary, trade secret and confidential information..., which may  
18 include, without limiting the generality of the foregoing, strategies and strategic  
19 plans, business opportunities, business plans, financial reports, statements and  
20 projections, trade names and marks, documents, programs, techniques, know-how,  
21 and specifications...." The NDA referred to the collective of the confidential and  
22 proprietary information, both orally conveyed and in documentary form, as  
23 "Information". The Information was to remain the property of the Law School  
24 and used solely for the purpose of "facilitating a transaction" between TCS and the  
25 Law School which the NDA referred to as "the 'Relationship'". NDA, preamble  
26 and ¶1. TCS, its employees and agents were commanded "not to use, reproduce, or  
27 directly or indirectly disclose or allow access to the [I]nformation except as  
28 required to facilitate the *Relationship*." *Id.* (emphasis added). To alleviate any

1 lingering concerns the Law School might have regarding the release of its  
2 Information to TCS, the NDA took the extraordinary step of mandating that:

3 "[TCS] shall protect the confidentiality of the Information from the date of  
4 its receipt hereunder with *at least the same diligence and care as would be*  
5 *required of [TCS] if it were a fiduciary of the [Law School], that is the*  
6 *utmost good faith and care for the interests of the [Law School]."* *Id.* ¶2  
7 (emphasis added).

8 18. TCS faithfully promised that it would not use the Information the Law  
9 School provided to "pursu[e] business opportunities or other arrangements or  
10 endeavors of any kind" in violation of the NDA. *Id.* ¶10. This non-competition  
11 covenant is proper because, *inter alia*, it is intended to prevent TCS from  
12 competing with the Law School after receiving the school's confidential  
13 Information. The NDA is governed by California law and "continue[s] until such  
14 time as any Information received by [TCS] hereunder is returned to the [Law  
15 School] or destroyed." *Id.* ¶7.

16 19. Figuli and TCS led the Law School to believe that TCS would be its  
17 strong ally and enable the Law School to compete against the larger, and better  
18 funded, COL. The manner in which an alliance with TCS would enable the Law  
19 School to grow and successfully compete with COL was discussed in great detail  
20 during September, October and November 2009. At no point during any of these  
21 discussions did Figuli or TCS suggest that the price the Law School had proposed  
22 was unreasonable or unacceptable. Instead, the discussions focused on marketing  
23 strategies, addition of new degree programs, initiation of internet based instruction,  
24 the use of TCS's WASC-accreditation and the corresponding ability to offer  
25 federally funded tuition loans to attract new students and other plans. In addition,  
26 issues of governance, structures of control, methods of securing expanded  
27 accreditation, and curriculum expansion were addressed.

28 20. Confident that it was working toward an acquisition, in early October  
2009, the Law School released its most guarded Information to Figuli, HEG and

1 TCS. Among the documents that Dean Pulle and the Law School's Board of  
2 Directors prepared and released was a document entitled "Acquisition Profile and  
3 Initial Strategy For Regional Accreditation" dated October 1, 2009 ("Acquisition  
4 Profile"). The Acquisition Profile set forth intimate details about the Law School's  
5 plans and strategy, competitive challenges, financial affairs, cash flows, debts,  
6 faculty matters, contractual obligations, capital stock structure and its proposed  
7 terms for the sale of the Law School, including what the Dean and the Law  
8 School's Board of Directors perceived as a fair price for the shares of common  
9 stock held by the Law School's shareholders. Pursuant to TCS's due diligence  
10 requests, the Law School provided the following:

- 11 (a) The Law School's By-Laws;
- 12 (b) Stockholder ledgers;
- 13 (c) Minutes of the Law School's Board of Director meetings;
- 14 (d) The Dean's Annual Report to the Law School's Board of Directors with  
15 detailed enrollment data for three years;
- 16 (e) An analysis of the Law School's financial condition with reference to the  
17 school's rent payments, cash on hand, ownership interests, and structure of  
18 administrative and faculty compensation (including actual dollar amounts);
- 19 (f) The Law School's Balance Sheet, including beginning and ending  
20 balances for the past three years, and the taxes paid on the school's revenues;
- 21 (g) Budgets and Profit & Loss Statements for 2009;
- 22 (h) Independent CPA Compilation Reports for fiscal years 2005, 2006, 2007  
23 and 2008;
- 24 (i) U.S. corporate tax returns for three years for 2007, 2008, and 2009;
- 25 (j) A report of cash balances as of August 31, 2010;
- 26 (k) A marketing plan, including a pricing and competition analysis;
- 27 (l) A detailed description of the Dean's Compensation Package, including  
28 his retirement plan;
- (m) Wage and salary information for staff and faculty;

- 1 (n) Employee contracts, including sample faculty contracts;  
2 (o) Personnel files and personal academic biographies on faculty and  
3 administrative staff;  
4 (p) Faculty and Student Policy Manuals;  
5 (q) The Law School's real estate leases;  
6 (r) State Bar Inspection Reports, including the Law School's responses to the  
7 comments made by the inspectors and follow-up correspondence with the  
8 State Bar; and  
9 (s) Comprehensive State Bar annual registration filings that covered  
10 academic standing of all students, a report on drop-out rates, a budget for a  
11 library acquisition, faculty grading charts, a self-study completed by the Law  
12 School.

13 21. Although the confidential nature of the foregoing documents is  
14 apparent, the importance of Dean Pulle's imprimatur on the materials and his frank  
15 discussion of everything he, the Board and faculty had considered -- past, present  
16 and future -- cannot be overstated. For example, the documents related to the  
17 school's most recent State Bar inspection report are perhaps a law school's most  
18 sensitive and guarded information. While somewhat less detailed, the Law  
19 School's annual registration filing with the State Bar also covers many of the same  
20 topics. These documents lay out, line by line, in elaborate detail, all the strengths  
21 and weaknesses (both real and perceived) of the Law School's operation, and give  
22 insight into an accrediting body's opinion on all facets of the school from basic  
23 curriculum to the governing Board's discharge of its solemn duties to the school's  
24 various constituencies. The materials include the Law School's responses to those  
25 inquiries, addressing all of the State Bar's compliments, criticisms and  
recommendations.

26 22. Dean Pulle candidly discussed with Figuli, Haynes and Keith, the Law  
27 School's strengths, weaknesses and strategic plans with an emphasis on how its  
28 partnership with TCS could be used to increase the Law School's competitive



1 advantage in the tri-county area. As the NDA demands, TCS and Figuli were  
2 charged with maintaining and using all of the foregoing Information with "at least"  
3 the same care as the Law School's most trusted fiduciary. The purpose of opening  
4 the Law School's books and granting unlimited access to TCS was to facilitate an  
5 acquisition of the Law School as the NDA expressly states. The Law School had  
6 no reason to supply the Information for the purpose of facilitating TCS's affiliation  
7 with the Law School's sole competitor. Had defendants even hinted at that  
8 possibility, the Law School would not have supplied the Information or candidly  
9 discussed its plans and strategy with TCS's representatives.

10 23. On November 17, 2009, Dean Pulle met with Figuli, Haynes and  
11 Keith at the Law School's Ventura campus. As part of meeting, the group toured  
12 the Santa Barbara campus, met with Vice Dean O'Neill and even a local Santa  
13 Barbara realtor regarding the potential purchase of the campus building. During  
14 those discussions, the parties addressed the reconfiguration of the Law School's  
15 Board of Directors, the establishment of Joint Advisory Boards, and the hiring of  
16 additional faculty and new law deans, among other topics. The gist of those  
17 discussions indicated that an acquisition of the Law School by TCS was imminent.  
18 Near the conclusion of the meeting, Haynes asked Keith, "What next..?" Keith  
19 replied, "We make an offer." Dean Pulle then asked Keith when he thought TCS  
20 would make an offer. Keith and Figuli responded that it would be sent to the Law  
21 School no later than mid-December 2009. Dean Pulle reported the results of the  
22 meeting, including the anticipated offer, to Vice Dean O'Neill and the Law  
23 School's Board of Directors.

24 24. Later in the evening on November 17, 2009, Dean Pulle e-mailed  
25 Figuli and Haynes suggesting that TCS and the Law School engage in a follow-up  
26 discussion to address a few specific topics related to the acquisition, including such  
27 issues as changing the Law School's name, the composition of the new board of  
28 directors, the role of the current Board, and whether or not Figuli should serve on  
the newly reconstituted board. On November 18, 2009, Figuli e-mailed Dean Pulle

1 thanking him for his thoughts and confirmed these suggestions would be taken into  
2 account.

3 25. The Law School did not receive any communication from TCS or  
4 Figuli in December 2009. On January 21, 2010, Dean Pulle sent an e-mail to  
5 Figuli, with copies to Haynes and Keith, requesting a “status report” on the process  
6 toward an acquisition. On January 22, 2010, Figuli e-mailed Dean Pulle, with  
7 copies to Haynes and Keith, stating as follows:

8 "Stan, we appreciate you keeping us in mind.

9 We were truly impressed with the remarkable accomplishments that  
10 you and your board have achieved in a very competitive environment.

11 We believe that the reality of the situation at SCIL is that the  
12 achievements have been largely fueled by some rather extraordinary  
13 sacrifices on your part. That has, in our opinion, and based on a very  
14 limited review, created a financial model that would be difficult to  
15 perpetuate.

16 If we were to recast the financial results of SCIL to reflect a  
17 sustainable administrative and operational model, the results would  
18 not provide a basis for the type of 'ask' that your board has made.  
19 Accordingly, it is our perception that an arrangement that would be  
20 acceptable to us would be very disappointing to your board.

21 As a result of that analysis, we think it would be best for TCS to take  
22 a pass on the SCIL opportunity *at this time.*”

(italics omitted; emphasis added).

23 26. TCS made no counter offer even though it received not only the price  
24 proposed by the Law School on or about October 1, 2009, but a written indication  
25 from Dean Pulle in that same communication and subsequently in the parties'  
26 discussions, that his Board would consider a lower amount and negotiate. Prior to  
27 Figuli's January 22, 2010 e-mail, no one from TCS, including Figuli, Haynes or  
28 Keith, suggested that the Law School's proposed price was unacceptable or

1 unreasonable. The last phrase in Figuli's e-mail that TCS would "pass on the  
2 SCIL opportunity at this time" left open the possibility that it was still considering  
3 a pending offer. Dean Pulle conveyed that impression to his Board and certain  
4 faculty who had been involved in the negotiations. This inference is further  
5 bolstered by the fact that paragraph 5 of the NDA obligates TCS upon termination  
6 of the "Relationship" to "promptly destroy" the Information and "certify" its  
7 destruction to the Law School. Paragraph 7 of the NDA, further provides that:  
8 "Unless otherwise agreed, the Agreement shall continue until such time as any  
9 Information received by TCS hereunder is returned to the [Law School] or  
10 destroyed." The Law School's documentary Information was neither destroyed nor  
11 returned and no certification of its destruction has been provided. The Law School  
12 made no request for the return of the documentary Information given its belief (and  
13 hope) that further discussions with TCS might ensue. Most fundamentally, it had  
14 no idea of defendants' intentions to misuse the Information and abuse the  
15 "Relationship" of trust and confidence created by the NDA and the parties' course  
16 of dealing.

17 27. In violation of the NDA, their fiduciary duties owed to the Law  
18 School and applicable federal and state law, the defendants made a calculated  
19 decision to misuse the Law School's Information, conveyed both in documents and  
20 orally by Dean Pulle and Vice Dean O'Neill, as a means for acquiring the Law  
21 School's longtime rival, COL. TCS, through its affiliation with COL, has now  
22 become the Law School's sole competitor with full knowledge of the Law School's  
23 most intimate and confidential information and trade secrets. Haynes recently  
24 confirmed to Dean Pulle in a telephone conversation in late September 2010, that  
25 Figuli is still in possession of the Law School's documentary Information and that  
26 Figuli was involved in facilitating TCS's acquisition of COL.

27 28. It may reasonably be inferred that defendants approached COL during  
28 the time they were engaged in discussions with the Law School or soon thereafter,  
but concealed their wrongful intent from the plaintiff. This inference is supported

1 by the large gap in time between the November 17, 2009 meeting and Figuli's  
2 January 22, 2010 e-mail sent only hours after Dean Pulle inquired about why he  
3 had not heard anything further from TCS. COL's Website confirms that TCS  
4 approached COL regarding the possible affiliation. The defendants further admit  
5 in documents on their Websites that COL and TCS obtained approval from the  
6 State Bar's Committee of Bar Examiners for their affiliation in July 2010. It takes  
7 a month or more to obtain such approval. When one considers the time needed to  
8 conduct due diligence and negotiate their affiliation, it is reasonable to infer that  
9 defendants' initial contact with COL occurred contemporaneously with or soon  
10 after their discussions with the Law School. The misuse of the Law School's  
11 Information is likewise apparent from these facts because defendants were bound  
12 to act with the highest of fiduciary standards toward the Plaintiff. NDA ¶2.  
13 Having gained access to plaintiff's Information, the NDA restricted the defendants  
14 from using the Information other than to "facilitat[e] a transaction" with the  
15 plaintiff and effectively barred defendants from becoming the Law School's  
16 competitor because to do so would violate their contractual and fiduciary  
17 obligations. *See* NDA ¶10 (TCS shall not "pursu[e] business opportunities or other  
18 arrangements or endeavors of any kind" in violation of the NDA).

19 29. In other words, defendants' misconduct is worse than a case involving  
20 the misappropriation of a plaintiff's trade secrets. The misconduct here is  
21 qualitatively different than using a stolen process or technology in another product,  
22 even a directly competing product or service. Instead, defendants' theft is  
23 incidental; the harm is really TCS's misuse of the information to eliminate the Law  
24 School's ability to compete and put it out of business. TCS effectively gave up the  
25 right to acquire COL once it obtained plaintiff's information in a fiduciary context.  
26 The NDA was drafted by TCS and it assumed the fiduciary role entirely on its own  
27 volition. The *sine qua non* of the Law School's release of its Information was  
28 TCS's fiduciary promise. The essence of fiduciary responsibility is *candor, loyalty*  
and *safeguarding trust*. Otherwise, deception and self-interest are likely outcomes

1 -- the antithesis of fiduciary law. In the legendary words of the Honorable  
2 Benjamin N. Cardozo: "Many forms of conduct permissible in a workaday world  
3 for those acting at arm's length, are forbidden to those bound by fiduciary ties. A  
4 trustee is held to something stricter than the morals of the market place. Not  
5 honesty alone, but the punctilio of an honor the most sensitive, is then the standard  
6 of behavior." *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928).

7 30. The Law School first learned of defendants' wrongful conduct through  
8 news reports on or about September 22, 2010. The press release, dated September  
9 21, 2010, jointly published by TCS and COL and carried on their respective  
10 Websites and by various news services, including *Reuters* and the *Pacific Coast*  
11 *Business Times*, confirmed that TCS and COL entered into an affiliation agreement  
12 effective October 1, 2010. Referring to COL as "the Central Coast's preeminent  
13 law school," the press release confirms that under its new leadership, COL, using  
14 TCS's expertise in regulatory affairs, plans to seek WASC accreditation which will  
15 bring access to federal student financial aid programs. In the September 21, 2010,  
16 press release, COL Dean Heather Georgakis, is quoted as saying, "This affiliation  
17 will strengthen the law school and its long-term growth potential by adding new  
18 resources, generating economies of scale and creating new opportunities for law-  
19 related education." Among the "new opportunities" planned by TCS and COL are  
20 adding online courses, additional law programs (as may be allowed by the State  
21 Bar), multi-disciplinary and joint programs in other disciplines within the expertise  
22 of TCS's affiliates, and access to advanced educational technology and academic  
23 support. As part of the agreement, TCS will also provide administrative and  
24 student support services, marketing assistance, accounting and human resources.  
25 COL will continue to be governed by a board of trustees, but as COL's supporting  
26 entity, TCS will join with the trustees to create a "fiduciary council" that will meet  
27 annually to decide on major budget and strategic issues, including plans for COL's  
28 expansion.

1           31. In spite of defendants' betrayal and the harm inflicted on the Law  
2 School, plaintiff is primarily seeking injunctive relief to prevent TCS from taking  
3 any further steps to pursue the affiliation with COL rather than monetary damages.  
4 The plaintiff's greatest concern is preserving the opportunity for an underserved  
5 population of current and future students to attend the Law School. Nearly twenty-  
6 five years of tireless efforts and sacrifice, as defendants themselves acknowledge,  
7 have yielded a wonderful community resource with an outstanding faculty, grateful  
8 and accomplished alumni, and a reputation of integrity and scholarship. All of this  
9 is now placed in jeopardy by making it unlikely that the Law School will survive  
10 due to the defendants' misuse of the confidential Information, unlawful competition  
11 and other wrongdoing. Until now, the Law School has successfully competed with  
12 rival COL by keeping its tuition low and offering what many view as the superior  
13 legal education. With TCS's vast resources, including its marketing savvy, the  
14 Law School has no chance of continuing to differentiate itself successfully. The  
15 defendants and COL have already begun marketing the affiliation as major  
16 advantage on their Websites and at Open Houses being held at COL's campuses  
17 during October and November of 2010. On COL's Website under a heading  
18 entitled, "Frequently Asked Questions About Affiliation Between the Colleges of  
19 Law and TCS ES," COL states:

20           "What will TCS ES bring to the Law School and its students?"

21           TCS ES will provide administrative support and services that are  
22 otherwise cost-prohibitive to a stand-alone institution the size of the  
23 Colleges. The Colleges will be able to update and streamline  
24 operations in a variety of areas, including student services, academic  
25 support, marketing, accounting and human resources. Students will  
26 benefit from the kind of improvements in campus technology that will  
27 allow them to mix onsite and online courses, learn in "smart"  
28 classrooms, use robust online course support software, and interact  
more easily with the Administration Office. TCS ES will also provide

1 dedicated expertise in regulatory affairs, regional accreditation, and  
2 Title IV Federal financial aid. And, through this affiliation the  
3 Colleges of Law will be better positioned to take our mission,  
4 expertise, and access to the study of law to new students as we expand  
5 our horizons and chart a course of growth and continued  
6 development."

7 32. COL's rivalry with the Law School is both long-lived and often  
8 intense. Only a few days ago, at an Open House held on October 19, 2010, COL's  
9 Assistant Dean Barbara Doyle emphatically discouraged prospective law students  
10 from attending the Law School exclaiming, "Oh no, no, no, that's our competitor,  
11 don't go there!" Assistant Dean Doyle's presentation focused on the "advantages"  
12 of attending COL from the perspective of cost and the relative value of the  
13 anticipated education, based in part on TCS's affiliation, and argued that COL  
14 compared favorably to several other California law schools. Notably absent from  
15 her presentation was any comparison to the Law School.

16 33. With the combined resources of COL and TCS, however, it will be  
17 much more difficult, if not impossible, for the small Law School to compete. With  
18 its present resources, the Law School cannot possibly offer the services promised  
19 by COL to current and prospective students or match TCS's likely administrative  
20 and technological innovations. In addition, TCS's affiliation with COL has  
21 reduced the likelihood to *nil* that the Law School might be perceived as an  
22 attractive acquisition candidate to another large education organization. This is so  
23 because competition in the tri-county area will be much more expensive and  
challenging.

24 34. Not only is TCS-COL wealthy and resource rich, they are armed with  
25 the Law School's misappropriated Information and best strategic thinking of its  
26 deans, faculty and Board placing the Law School at a distinct competitive  
27 disadvantage. To the extent the Law School's confidences reveal strengths, TCS  
28 and COL can now use the information to emulate the Law School's strengths. To

1 the extent the misappropriated Information reveals the Law School's weaknesses,  
2 they can direct their efforts at exploiting those weaknesses. Additionally, by  
3 unlawfully using its market power, TCS is in a position to poach on current and  
4 future students of the Law School through the promise of federally funded tuition  
5 loans. This is even more of a threat in light of the current tight credit market.

6 35. By contrast, had TCS sought to compete fairly, even with its wealth  
7 and resources, it would be a relatively weak competitor if it were to try and start a  
8 law school on its own. The barriers to entry in California for new law schools are  
9 considerable, including the likelihood of a decade or more of effort to achieve  
10 State Bar accreditation. In addition to the lesser status accorded unaccredited  
11 schools, first year students are required to take and pass the "Baby Bar" (formally,  
12 the "First Year Law Students' Examination-FYLSX") before they can move ahead  
13 in school. The pass rate on this exam is usually only 10 to 15 percent which can be  
14 devastating financially to a new law school given the high attrition rate. This is the  
15 main reason why TCS sought to acquire an existing school -- a key point Figuli  
16 and other TCS representatives discussed with Dean Pulle.

17 36. The Law School has competed successfully with COL for many years  
18 and welcomes increased opportunities for all students, particularly those who  
19 might benefit from access to student loans and improvements in the educational  
20 process. These are all good things in the abstract. But the law should not condone  
21 wrongdoing even if the wrongdoing may create social good for some. To do  
22 otherwise is Machiavellian. Without injunctive relief, the Law School will lose the  
23 ability to compete, suffer a downturn in its enrollment and may go out of business.  
24 Working class students and the Law School's dedicated faculty and administrative  
25 staff will all fall victim to defendants' wrongdoing masquerading as "social impact"  
26 and progress. Injunctive relief levels the playing field allowing TCS and COL to  
27 continue to do business as they did before TCS misappropriated all of the plaintiff's  
28 most closely guarded secrets to gain an unfair competitive advantage.



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1           44. TCS is breaching or threatens to breach the NDA in at least the  
2 following ways:

- 3           (a) Keeping the Information, as defined in the NDA, in its possession;  
4           (b) Misusing the Information, documentary and otherwise, to compare  
5 the Law School to COL, facilitate its affiliation transaction with COL  
6 and obtain an unfair competitive advantage over the plaintiff;  
7           (c) Refusing to certify the destruction of the Information;  
8           (d) Failing to protect the confidentiality of the Information in at least  
9 the same manner as a fiduciary of the Law School would do;  
10          (e) Violating its covenant not to compete against the Law School by  
11 using the Information it obtained pursuant to the NDA to pursue an  
12 affiliation with COL.

13          45. As a direct and proximate result of any one or all of these breaches,  
14 plaintiff has been injured and faces irreparable harm. Plaintiff is threatened with  
15 losing students, its competitive advantage, trade secrets and goodwill in amounts  
16 which may be impossible to determine, unless TCS is enjoined and restrained by  
17 order of this Court.

18          46. Alternatively, plaintiff has suffered actual damages in an amount that  
19 exceeds \$75,000, which plaintiff will prove at the time of trial. In addition,  
20 defendants have been unjustly enriched to the extent that they are profiting unfairly  
21 from their use of plaintiff's confidential Information and trade secrets and their  
22 violation of the non-competition covenant.

## 23                           **SECOND CLAIM FOR RELIEF**

### 24           **(Breach Of Implied Covenant Of Good Faith And Fair Dealing Against TCS)**

25          47. Plaintiff hereby repeats, realleges and incorporates by reference the  
26 allegations which are contained in paragraphs 1 through 46, above. This second  
27 claim for relief is alleged against defendant TCS.

28          48. By its express terms the NDA is governed under California law. As  
such, the NDA contains an implied covenant of good faith and fair dealing that

1 required TCS to do nothing to deprive the plaintiff of the benefits of the NDA.  
2 The implied covenant of good faith and fair dealing also obligated defendant to do  
3 everything that the NDA presupposes that it had to do to accomplish its purpose.

4 49. TCS breached the implied covenant of good faith and fair dealing  
5 when it failed to return or certify the destruction of the plaintiff's documentary  
6 Information and used such Information and the other confidential data and trade  
7 secrets plaintiff orally conveyed to it for the purpose of facilitating its affiliation  
8 transaction with TCS. In addition, TCS promised directly or indirectly that it  
9 would not pursue a transaction with plaintiff's competitor and in doing so breached  
10 the implied covenant.

11 50. Plaintiff fully performed all of its obligations under the NDA except  
12 for those that have been discharged or excused by defendant's prior breaches or  
13 other wrongful acts.

14 51. As a direct and proximate result of TCS's acts and breaches of the  
15 implied covenant of good faith and fair dealing implied in the NDA, plaintiff has  
16 been injured and faces irreparable harm. Plaintiff is threatened with losing  
17 students, its competitive advantage, trade secrets and goodwill in amounts which  
18 may be impossible to determine, unless TCS is enjoined and restrained by order of  
19 this Court.

20 52. Alternatively, plaintiff has suffered actual damages in an amount that  
21 exceeds \$75,000, which plaintiff will prove at the time of trial.

### 22 **THIRD CLAIM FOR RELIEF**

#### 23 **(Breach Of Fiduciary Duty and Aiding And Abetting Against All Defendants)**

24 53. Plaintiff hereby repeats, realleges and incorporates by reference the  
25 allegations which are contained in paragraphs 1 through 52, above. This third  
26 claim for relief is alleged against all defendants.

27 54. By reason of TCS's obligations under the NDA to act in a fiduciary  
28 capacity and the course of dealing between the parties whereby the plaintiff was  
encouraged to repose trust and confidence in the defendants, defendants owed

1 plaintiff fiduciary obligations of due care, candor, compliance, fidelity, trust,  
2 loyalty, obedience and good faith. Defendants, and each of them, occupied a  
3 special relationship to the plaintiff by virtue of the parties' contractual agreement  
4 and course of dealing. Defendants were privy to confidential and proprietary  
5 Information concerning the plaintiff, its operations, material contracts, future  
6 prospects and financial condition. Defendants were allowed access to plaintiff's  
7 confidential Information and secrets based on their solemn promise that they would  
8 exercise the utmost good faith and care in their dealings with the plaintiff.

9        55. In discharging their fiduciary duties, defendants were required to treat  
10 plaintiff in a fair, equitable and just manner and refrain from doing anything  
11 detrimental to the plaintiff's interests. In addition, having obtained the plaintiff's  
12 Information and secrets and committed to only using same for the purpose of  
13 acquiring plaintiff, defendants could not use the Information and secrets in a  
14 manner that would benefit themselves at plaintiff's expense. By virtue of the  
15 fiduciary duties owed to the plaintiff, defendants were precluded from competing  
16 with the plaintiff and/or affiliating with COL, plaintiff's longtime competitor.

17        56. Defendants breached these duties by misusing plaintiff's Information  
18 and secrets, engaging in unfair competition with the plaintiff and/or affiliating with  
19 plaintiff's rival.

20        57. In discharging their fiduciary duty of candor, the defendants were  
21 required to ensure that they were accurate and truthful and did not conceal or  
22 misstate material facts. Defendants breached their fiduciary duties of candor by  
23 concealing their dealings with COL and failing to negotiate with the plaintiff in  
24 good faith.

25        58. The defendants aided and abetted and rendered substantial assistance  
26 in the wrongs complained of herein. In taking such actions, each defendant acted  
27 with knowledge of the primary wrongdoing, substantially assisted the  
28 accomplishment of that wrongdoing and was aware of his or its overall  
contribution to and in furtherance of the wrongdoing.

1           59. As a direct and proximate result of defendants' breaches of their  
2 fiduciary duties of loyalty, good faith, due care and candor, and aiding and abetting  
3 those breaches, and other misconduct, plaintiffs has been injured and faces  
4 irreparable harm. Alternatively, plaintiff sustained and continues to sustain  
5 significant damages in an amount to be proven at trial.

6           60. In failing to properly discharge their fiduciary duties, the defendants,  
7 singly and in concert, engaged in the aforesaid misconduct in intentional breach  
8 and/or reckless disregard of their duties to the plaintiff.

9           61. Further, defendants pursued such course of conduct intentionally and  
10 maliciously with the intention of furthering their own economic interest at the  
11 expense of plaintiff. By reason of these wrongful acts, plaintiff is entitled to an  
12 award of punitive and exemplary damages against the defendants.

#### 13                   **FOURTH CLAIM FOR RELIEF**

##### 14                   **(Negligent Misrepresentation Against All Defendants)**

15           62. Plaintiff hereby repeats, realleges and incorporates by reference the  
16 allegations which are contained in paragraphs 1 through 61, above. This fourth  
17 claim for relief is alleged against all defendants.

18           63. From the moment they first made contact with the plaintiff,  
19 defendants knew that there were only two law schools in the tri-county region.  
20 From the outset of the parties' discussions, defendants represented to the plaintiff  
21 that they intended to become plaintiff's ally and compete with COL. The  
22 collaboration between TCS and the Law School was explored in depth with the  
23 specific goal of creating a strong competitive alliance against COL. Throughout  
24 the course of the parties' discussions, defendants represented that they intended to  
25 acquire the Law School. These affirmative representations carried an implied  
26 promise and representation that defendants would not pursue an affiliation with  
27 COL. In reliance on the defendants' expressed and implied representations, the  
28 Law School agreed to the NDA and provided defendants with complete access to  
its confidential Information and trade secrets, including, but not limited to, its

1 monthly bank statements, cash on hand, Profit and Loss statements, State Bar  
2 inspection reports, prior self-studies, Board of Directors Minutes, administrative  
3 and faculty compensation structures, strategies for new degree programs and  
4 curriculum development, student profiles, recruitment strategies, budgets and  
5 strategic plans.

6 64. Prior to obtaining plaintiff's confidential Information and secrets,  
7 defendants had a duty to disclose to the Law School that they might explore an  
8 acquisition of plaintiff's rival and would consider competing with plaintiff if an  
9 agreement to acquire the Law School was not reached. Defendants had a further  
10 duty to inform the plaintiff that they intended to open discussions with COL so that  
11 plaintiff could act to safeguard its rights and seek to prevent the affiliation.  
12 Instead, defendants concealed their true intentions and the foregoing material  
13 information from the plaintiff causing the plaintiff to suffer injury.

14 65. Defendants made the foregoing materially misleading statements and  
15 omissions without reasonable grounds for believing them to be true.

16 66. Defendants intended to induce and did induce the plaintiff to rely on  
17 their misrepresentations in agreeing to provide the confidential Information and  
18 secrets and refrain from taking action to protect its rights and business interests.

19 67. Plaintiff was unaware of the falsity of the foregoing misstatements  
20 and omissions and justifiably relied on them. Had plaintiff known the true facts, it  
21 would not have agreed to provide its confidential Information and secrets to  
22 defendants and would have brought suit to enforce its rights, including seeking  
23 appropriate injunctive and declaratory relief.

24 68. As a direct and proximate result of defendants' misrepresentations and  
25 omissions, plaintiff suffered injury and substantial damage. Plaintiff does not have  
26 an adequate remedy at law to protect its interests and therefore seeks preliminary  
27 and permanent injunctive relief.  
28

1 **FIFTH CLAIM FOR RELIEF**

2 **(Misappropriation Of Trade Secrets Against All Defendants)**

3 69. Plaintiff hereby repeats, realleges and incorporates by reference the  
4 allegations which are contained in paragraphs 1 through 68, above. This fifth  
5 claim for relief is alleged against all defendants.

6 70. At all relevant times, plaintiff was in possession of confidential and  
7 trade secret information as defined by California Civil Code §3426.1(d). The  
8 proprietary business information of plaintiff constitutes trade secrets because  
9 plaintiff derives independent economic value from that information, such  
10 Information is not generally known nor readily ascertainable by proper means by  
11 other persons who can obtain economic value from its disclosure or use, and  
12 because the information is the subject of reasonable efforts to maintain its secrecy.  
13 Plaintiff's confidential and proprietary trade secret information described herein is  
14 not and was not generally known to TCS, COL or any other actual or potential  
15 competitors.

16 71. Plaintiff is informed and believes and therefore alleges that defendants  
17 have actually misappropriated and/or threaten to misappropriate plaintiff's trade  
18 secrets without plaintiff's consent in violation of California's Uniform Trade  
19 Secrets Act ("CUTSA"), California Civil Code §3426, *et seq.* By affiliating with  
20 COL, TCS is now in a competitive relationship to the plaintiff and is using or will  
21 in the near future use plaintiff's trade secrets and confidential information. TCS  
22 cannot separate out plaintiff's trade secrets and confidential information in  
23 pursuing their affiliation with COL. As such injunctive relief, pursuant to Civil  
Code §3426.2(a) is appropriate.

24 72. Due to their contractual and fiduciary relationship with plaintiff,  
25 defendants gained access to plaintiff's most valuable trade secrets and confidential  
26 information. Defendants continue to have knowledge of that information,  
27 notwithstanding the fact that TCS is now affiliated with COL and is competing  
28 with plaintiff.

1           73. Plaintiff is informed and believes and thereon alleges that defendants  
2 intend to disclose plaintiff's trade secrets and confidential information to others,  
3 including persons employed by COL, in violation of the CUTSA and the NDA.

4           74. As a proximate result of defendants' actual and threatened  
5 misappropriation of plaintiff's trade secrets and confidential information, plaintiff  
6 has suffered, and will continue to suffer, actual damages in an amount to be proven  
7 at the time of trial, but which are substantial and in excess of the minimum  
8 jurisdictional amount of this Court. Defendants have further been unjustly  
9 enriched due to their ability to use the misappropriated confidential information  
10 and secrets as means of planning a marketing strategy with the goal of luring  
11 current and prospective students away from the plaintiff.

12           75. As a proximate result of defendants' wrongful conduct and threatened  
13 misappropriation, plaintiff has been injured, irreparably and otherwise, and is  
14 threatened with the loss of its competitive advantage, goodwill and confidential  
15 information and trade secrets in amounts which may be impossible to determine,  
16 unless defendants are enjoined and restrained by this Court. Unless restrained,  
17 defendants will continue to threaten to use, actually use, divulge, threaten to  
18 disclose, acquire and/or otherwise misappropriate plaintiff's trade secrets and  
19 confidential information.

20           76. Defendants' actual and threatened misappropriation is willful and  
21 malicious and their deliberate violation of the NDA's contractual obligations.  
22 Therefore, plaintiff is entitled to an award of exemplary damages and attorneys'  
23 fees and costs pursuant to California Civil Code §§3426.3(c) and 3426.4.

#### 24                           **SIXTH CLAIM FOR RELIEF**

#### 25                   **(Attempted Monopolization In Violation Of § 2 Of The Sherman Antitrust** 26                           **Act Against TCS)**

27           77. Plaintiff hereby repeats, realleges and incorporates by reference the  
28 allegations which are contained in paragraphs 1 through 76, above. This sixth



1 claim for relief is alleged against TCS for its attempted monopolization in violation  
2 of section 2 of the Sherman Antitrust Act of 1890 ("Sherman Act"), 15 U.S.C. § 2.

3 78. The relevant product and services market is evening law schools.  
4 Evening law schools affect interstate commerce in that, among other things, the  
5 schools use instrumentalities of interstate commerce to advertise and market  
6 themselves, enroll students who come to California from other states for the  
7 purpose of attending the schools and graduates from the schools sometimes pursue  
8 careers in other states. As alleged above, substantial barriers to entry exist in the  
9 relevant market, including the delay and expense in obtaining State Bar  
10 accreditation and the loss of revenue due to the attrition rate of students in  
11 unaccredited schools. There are no day time law schools in the relevant market  
12 and none exist in the relevant geographic region.

13 79. The relevant geographic market is the California tri-county region of  
14 San Luis Obispo, Santa Barbara and Ventura Counties, home to approximately five  
15 million people. The geographic market is based on, among other factors, the long  
16 commuting distance to other law schools in Northern and Southern California, the  
17 types of students who avail themselves of evening law school programs, and the  
18 tuition and other costs associated with obtaining a law school education.

19 80. Based on the approximate amount of current students attending COL  
20 and the Law School, COL has a current estimated market share of 71% and the  
21 Law School has 29%. Through their affiliation agreement, TCS and COL will  
22 have monopoly power in the relevant market and geographic area to control tuition  
23 prices and exclude competition.

24 81. As alleged above, TCS has committed various acts of wrongdoing in  
25 a deliberate attempt to drive the Law School out of the evening law school market.  
26 In meetings between the Law School and TCS, the issue of the Law School's low  
27 tuition was repeatedly discussed. The Law School maintained that it needs to keep  
28 its tuition low in order to accomplish its mission of providing students a law school  
education without financing a large sum of money and incurring high debt. An

1 affordable legal education, especially for those in the low and middle income  
2 economic brackets, is a paramount concern of the plaintiff's. During the parties'  
3 discussions, TCS inquired about increasing tuition, asked what the market would  
4 bear, and knew that tuition at the Law School was \$100 less per unit than at the  
5 COL. Upon information and belief, TCS and Figuli evaluated the confidential  
6 information and secrets they wrongfully obtained from the Law School and  
7 concluded that their ability to raise tuition would be vastly enhanced if they  
8 pursued an affiliation with COL and eliminated the Law School as a competitive  
9 threat using monopoly power. It did so intentionally with the goal of eliminating  
10 consumer choice of law schools and maximizing profits.

11 82. TCS's efforts to drive plaintiff from the evening law school market  
12 constitutes attempted monopolization in violation of §2 of the Sherman Act. TCS  
13 has combined and conspired with COL and others in furtherance of its efforts to  
14 monopolize the relevant market for evening law schools.

15 83. But for TCS's affiliation with COL and its other wrongdoing, plaintiff  
16 could have enhanced competition by offering more services and making other  
17 improvements while keeping its tuition prices low. As a result of the affiliation  
18 agreement between TCS and COL, the price of evening law school tuition in the  
19 tri-county region will increase. If the Law School goes out of business, students  
20 will have only one choice. The plaintiff has been injured in its business and  
21 property by the threat of losing current and prospective students. As direct result  
22 of TCS's anticompetitive actions, competition in the market for evening law school  
23 programs has been restrained.

24 84. Plaintiff requests that injunctive relief be granted preventing the TCS-  
25 COL affiliation from being pursued. Alternatively, plaintiff will seek actual  
26 damages in an amount to be proven at trial.  
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**SEVENTH CLAIM FOR RELIEF**

**(Monopolization In Violation Of §2 Of The Sherman Act Against TCS)**

85. Plaintiff hereby repeats, realleges and incorporates by reference the allegations which are contained in paragraphs 1 through 84, above. This seventh claim for relief is alleged against TCS for its monopolization in violation of section 2 of the Sherman Act, 15 U.S.C. § 2.

86. TCS has engaged in the wrongdoing alleged above in a deliberate attempt to drive the Law School from the market for evening law school services.

87. By virtue of its affiliation with COL, TCS has monopoly power in the market for evening law schools in the relevant geographic area. TCS's efforts to drive the Law School from the market constitutes monopolization in violation of §2 of the Sherman Act.

88. TCS willfully acquired, maintained and/or extended its monopoly in the evening law school market by its acts and practices described herein, including by implementing its affiliation with COL.

89. As a proximate result of TCS's unlawful conduct, plaintiff has sustained damages in an amount presently unknown. Plaintiff requests that injunctive relief be granted preventing the TCS-COL affiliation from being pursued. Alternatively, plaintiff will seek actual damages as may be proven at trial.

**EIGHTH CLAIM FOR RELIEF**

**(Conspiracy To Monopolize Against All Defendants)**

90. Plaintiff hereby repeats, realleges and incorporates by reference the allegations which are contained in paragraphs 1 through 89, above. This eighth claim for relief is alleged against defendants for their conspiracy to monopolize in violation of section 2 of the Sherman Act, 15 U.S.C. § 2.

91. Defendants, and each of them, consciously entered into and engaged in a contract, combination or conspiracy beginning at least as early as January 2010, to monopolize the evening law school market in the relevant geographic

1 area. Prior to the affiliation between TCS and COL, the Law School and COL  
2 were actual competitors in the evening law school market. Defendants conspired  
3 with specific intent, knowledge and purpose that their anticompetitive agreement  
4 would result in TCS willfully acquiring and maintaining a monopoly in the  
5 evening law school market. Defendants knew that the natural and probable  
6 consequence of the affiliation agreement between would be the monopolization of  
7 the evening law school market by TCS and COL. To effectuate their contract,  
8 combination or conspiracy, defendants did those things they combined and  
9 conspired to do, including misappropriating plaintiff's confidential information and  
10 trade secrets for the purpose of monopolizing the relevant market and entering into  
11 the affiliation agreement.

12 92. As a proximate result of TCS's unlawful conduct, plaintiff has  
13 sustained damages in an amount presently unknown. Plaintiff requests that  
14 injunctive relief be granted preventing the TCS-COL affiliation from being  
15 pursued. Alternatively, plaintiff will seek actual damages as may be proven at  
16 trial.

### 17 **NINTH CLAIM FOR RELIEF**

#### 18 **(Violation Of The Cartwright Act Against All Defendants)**

19 93. Plaintiff hereby repeats, realleges and incorporates by reference the  
20 allegations which are contained in paragraphs 1 through 92, above. This ninth  
21 claim for relief is alleged against defendants for their violation of the Cartwright  
22 Act, California Business & Professions Code §§ 16720, *et seq.*

23 94. Since in or before January 2010 and up to the present time, defendants  
24 conspired, and agreed and continue to combine, conspire and agree to  
25 unreasonably restrain and monopolize the evening law school market, in violation  
26 of the Cartwright Act, by signing, or causing TCS and COL to sign, the affiliation  
27 agreement.

28 95. As a direct consequence of the agreement, competition in the market  
has been restrained, suppressed and will likely be eliminated. Students have and

1 will be deprived of the benefit of a free, competitive marketplace for evening law  
2 schools in the relevant geographic area.

3 **TENTH CLAIM FOR RELIEF**

4 **(Violation Of The Unfair Competition Law Against All Defendants)**

5 96. Plaintiff hereby repeats, realleges and incorporates by reference the  
6 allegations which are contained in paragraphs 1 through 95, above. This tenth  
7 claim for relief is alleged against defendants for their violation of the Unfair  
8 Competition Law, California Business & Professions Code §§ 17200, *et seq.*

9 97. Defendants have engaged in and are still engaged in acts of unfair  
10 competition, as defined in California Business & Professions Code §§ 17200, *et*  
11 *seq.*, including, but not limited to violation of the Sherman Act, 15 U.S.C. §2,  
12 California's Uniform Trade Secrets Act ("CUTSA"), California Civil Code §3426,  
13 *et seq.*, and the Cartwright Act, California Business & Professions Code §§ 16720,  
14 *et seq.*, as alleged above.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff prays judgment against defendants, and each of  
17 them, as follows:

18 1. For a preliminary and permanent injunction enjoining defendants,  
19 their officers, directors, managers, employees, agents, affiliates and all persons  
20 acting under, in concert with, or for them:

21 (a) From taking any further steps to pursue or implement an affiliation with  
22 COL, including prohibiting them from taking any steps to obtain WASC  
23 accreditation, providing financial, administrative, technological or other  
24 forms of support to COL, ceasing any further marketing or publication of the  
25 affiliation, and removing the September 21, 2010 joint TCS-COL press  
26 release and any further reference to the affiliation from their Websites and in  
any publicly-available documents; and

27 (b) From using or disclosing, directly or indirectly, plaintiff's trade secrets  
28 and confidential information.

1           2.     That the affiliation agreement between TCS and COL be declared null  
2 and void and of no further effect;

3           3.     That the defendants be adjudged to have violated the Sherman Act,  
4 CUTSA, Cartwright Act and the Unfair Competition Law;

5           4.     For actual and compensatory damages in an amount to be proven at  
6 trial;

7           5.     For disgorgement of any unfair profits and/or unjust enrichment;

8           6.     For exemplary and/or punitive damages;

9           7.     For plaintiff's costs of suit including their reasonable attorneys' fees;

10          8.     For prejudgment and post judgment interest; and

11          9.     For such other and further relief as the Court deems just and proper.

12  
13 DATED: October 25, 2010

THE LAW OFFICES OF GEORGE A. SHOHET,  
A PROFESSIONAL CORPORATION

15 KREINDLER & KREINDLER LLP

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18 By: \_\_\_\_\_

  
GEORGE A. SHOHET  
Attorneys for Plaintiff  
Southern California Institute of Law

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**JURY TRIAL DEMAND**

Plaintiffs hereby demand a trial by jury in this matter.

DATED: October 25, 2010

THE LAW OFFICES OF GEORGE A. SHOHET,  
A PROFESSIONAL CORPORATION

KREINDLER & KREINDLER LLP

By: 

GEORGE A. SHOHET

Attorneys for Plaintiff

Southern California Institute of Law

## **EXHIBIT 1**



# **TCS EDUCATION SYSTEM**

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT** is made as of the 24th day of September, 2009,

**BETWEEN**

**TCS Education System**

**(hereinafter referred to as "TCS")**

**-and-**

**Southern California Institute of Law**

**(hereinafter referred to as "SCIL")**

**WHEREAS** for the purposes of facilitating a transaction (the "Relationship") between TCS and SCIL, the parties will provide access to proprietary, trade secret and confidential information to the other, which may include, without limiting the generality of the foregoing, strategies and strategic plans, business opportunities, business plans, financial reports, statements and projections, trade names and marks, documents, programs, techniques, know-how, and specifications (all such documents and items, including any copies, reproductions or derivations thereof or therefrom shall hereinafter be referred to as "Information").

**THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the Relationship and of the mutual covenants hereinafter contained, the parties hereto agree as follows;

1. The Information, and all rights, title and interest thereto, shall remain the property of the party providing it ("Disclosing Party"). The receiving party ("Receiving Party") shall not use, reproduce, or directly or indirectly disclose or allow access to the information except as required to facilitate the Relationship.
2. The Receiving Party shall protect the confidentiality of the Information from the date of its receipt hereunder with at least the same diligence and care as would be required of Receiving Party if it were a fiduciary of the Disclosing Party, that is the utmost good faith and care for the interests of the Disclosing Party.
3. The Receiving Party shall disclose the Information only to those of its own agents or employees who require the Information for the purpose of the Relationship. Prior to disclosing the Information to its own agents or employees, the Receiving Party shall issue appropriate instructions to satisfy its obligations under this Agreement. The Receiving Party, however, will remain fully liable for any breach of its obligations caused by the actions or omissions of any of its agents or employees.
4. The Receiving Party may provide to any of its subsidiaries or its parent, Information only upon obtaining the written consent of the subsidiary and/or parent to the same terms and conditions contained in this Agreement. The Receiving Party shall give to the Disclosing Party an executed copy of each such consent.
5. Upon termination, for any reason, of the Relationship, or upon the request of the Disclosing Party, the Receiving Party shall promptly destroy and certify the destruction to the Disclosing Party of all Information belonging to the Disclosing Party and copies thereof susceptible of being destroyed. To "destroy" in the case of electronic data shall mean to remove without the ability to recall or recover such data from all storage media under the control of the Receiving Party or any party to whom the Information was disclosed.

# TCS EDUCATION SYSTEM

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

6. Neither party shall be liable for disclosure of the Information upon the occurrence of one or more of the following events:

- (a) the Information enters the public domain other than through a breach of this Agreement;
- (b) the Information is subsequently lawfully obtained by the Receiving Party from a third party or parties under circumstances that do not involve a breach of this Agreement or the legal rights of the Disclosing Party; or
- (c) the Information is disclosed in compliance with any applicable law or regulation that mandates its disclosure, provided that the Disclosing Party is given prompt notice of such any demand for or required disclosure.

7. Unless otherwise agreed, this Agreement shall continue until such time as any Information received by Receiving Party hereunder is returned to the Disclosing Party or destroyed.

8. This Agreement shall be governed and interpreted in accordance with the laws applicable in the State of California.

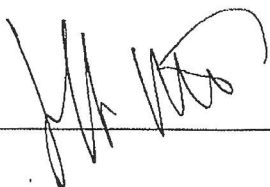
9. If any provision or any part of any provision of this Agreement is held to be unenforceable, invalid or illegal, then it shall be severable and deemed to be deleted and the remaining provisions shall remain valid and binding.

10. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be deemed to inhibit or prohibit either party from pursuing business opportunities or other arrangements or endeavors of any kind so long as the terms and provisions of this Agreement are maintained inviolate.

11. This Agreement supersedes and replaces all existing agreements between TCS and SCIL relating generally to the subject matter hereof. It may not be modified or terminated, in whole or in part, except in writing signed by both parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the date first above written.

**TCS EDUCATION SYSTEM**

BY:  \_\_\_\_\_

**SOUTHERN CALIFORNIA INSTITUTE OF LAW**

BY:  \_\_\_\_\_