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

18 SOUTHERN CALIFORNIA
 19 INSTITUTE OF LAW, a California
 20 corporation,

21 Plaintiff,

22 vs.

23 TCS EDUCATION SYSTEM, an
 24 Illinois corporation; DAVID J.
 25 FIGULI, an individual; and GLOBAL
 26 EQUITIES, LLC d/b/a HIGHER
 27 EDUCATION GROUP, a Colorado
 28 limited liability company,

Defendants.

CASE NO.: CV10-8026 JAK (AJWx)

[Assigned to Hon. John A. Kronstadt]

JOINT RULE 16(b) REPORT

Action Filed: Oct. 25, 2010

Date: June 30, 2011

Time: 8:30 a.m.

Courtroom: 750

1 Pursuant to Fed. R. Civ. P. 26 (“Rule 26”), Local Rule 26-1 and the Court’s
2 Order Setting Rule 16(b) Scheduling Conference, filed June 7, 2011, counsel for
3 plaintiff Southern California Institute of Law (“plaintiff” or “SC Law”) and
4 counsel for defendants TCS Education System (“TCS”), David J. Figuli (“Figuli”)
5 and Global Equities, LLC (“Global”) held a teleconference on June 16, 2011.
6 Participating in the call were Gretchen M. Nelson and George A. Shohet, counsel
7 for the plaintiff, Nicholas W. Sarris, counsel for TCS, and Maurice Fitzgerald and
8 Aaron A. Hayes, counsel for Figuli and Global. Thereafter, plaintiff’s counsel
9 prepared a draft of this report and circulated it to defense counsel for comments.
10 The parties respectfully submit this Joint Rule 16(b) Report (“Joint Report”) in
11 connection with the upcoming scheduling conference:

12 **A. STATEMENT OF THE CASE**

13 This case arises out of a contemplated transaction between plaintiff SC Law
14 and defendant TCS. SC Law is a small State-Bar accredited, evening law school
15 with a twenty-five year history of serving working class adults in the tri-county
16 area of San Luis Obispo, Santa Barbara and Ventura Counties. TCS is a non-profit
17 corporation that acquires and affiliates with specialized schools and colleges
18 providing the schools with financial support and other resources. Defendant Figuli
19 is a Colorado-based attorney who has an extensive background in strategic
20 acquisitions in the education sector and, through defendant Global, he identifies
21 suitable acquisition candidates and assists in structuring transactions for TCS.
22 Figuli was one of the representatives for TCS in connection with the contemplated
23 SC Law transaction.

24 In mid-September 2009, a TCS representative approached SC Law regarding
25 a potential acquisition by TCS. To foster negotiations, SC Law allegedly provided
26 TCS with access to SC Law’s Dean, faculty and certain confidential files. TCS and
27 SC Law executed a “Confidentiality and Non-Disclosure Agreement” (the
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1 “NDA”). The NDA was allegedly drafted by Figuli. Figuli denies that he drafted
2 the NDA.

3 Upon entering into the NDA, and pursuant to TCS’s due diligence requests,
4 SC Law allegedly provided to TCS and Figuli numerous documents that it alleges
5 are confidential or contain trade secret information, such as SC Law’s tax returns,
6 balance sheet, personnel files, strategic and marketing documents and accreditation
7 materials. In addition, SC Law's Dean participated in meetings during September
8 and November of 2009, during which TCS’s possible purchase of SC Law was
9 discussed. Allegedly, SC Law competed against nearby Santa Barbara and
10 Ventura Colleges of Law ("COL"), a much larger State Bar accredited evening law
11 school, for students and faculty. SC Law's ability to compete against COL is
12 allegedly due to, among other factors, SC Law's low tuition rates and strong
13 faculty.

14 After the second meeting between TCS’s and SC Law’s representatives,
15 TCS ceased communicating with SC Law. When, in January 2010, SC Law's
16 Dean contacted Figuli, Figuli, on behalf of TCS, responded via e-mail that “an
17 arrangement that would be acceptable to [TCS] would be very disappointing to
18 your board. As a result . . . we think it would be best for TCS to take a pass on the
19 [purchase] at this time.” In September 2010, it was announced that instead of
20 affiliating with SC Law, TCS obtained approval from the California State Bar
21 Committee of Bar Examiners to affiliate with COL. SC Law contends that
22 defendants misappropriated its confidential information and strategic plans in
23 violation of the NDA in order to affiliate with COL.

24 SC Law filed this case on October 25, 2010. On April 5, 2011, the Court
25 granted, in part, and denied, in part, TCS's motion to dismiss. On May 23, 2011,
26 SC Law filed a First Amended Complaint alleging claims for: (1) breach of
27 contract against TCS; (2) negligent misrepresentation against TCS; (3)
28 misappropriation of trade secrets against all defendants; (4) tortious interference

1 with contract against Figuli and Global; and (5) violation of California's Unfair
2 Competition Law against all defendants. Although SC Law seeks monetary
3 damages, the primary relief requested is a permanent injunction enjoining the
4 defendants from taking any further steps to pursue or implement an affiliation
5 between TCS and COL. Defendants deny these claims and dispute plaintiff's
6 allegations of wrongdoing and injury.

7 **B. SUBJECT MATTER JURISDICTION**

8 The Court has subject matter jurisdiction over plaintiff's claims under 28
9 U.S.C. § 1332(a) because the parties are diverse and plaintiff alleges that the
10 amount in controversy exceeds \$75,000, exclusive of interest and costs.

11 **C. BRIEF DESCRIPTION OF KEY LEGAL ISSUES**

12 The parties believe that the key legal issues in the case relate to (i) the
13 interpretation and application of the NDA to defendants' conduct; (ii) whether or
14 not the information the defendants obtained from SC Law constitutes trade secrets
15 as defined by California Civil Code § 3426.1(d) and, if so, whether a
16 misappropriation occurred; (iii) whether or not TCS owed the plaintiff a duty to
17 disclose its intention to pursue a potential affiliation with COL; (iv) whether or not
18 Figuli and Global knowingly caused TCS to breach the NDA and interfere with
19 plaintiff's contractual rights; (v) whether the wrongdoing alleged by the plaintiff
20 constitutes a violation of California Business & Professions Code §§17200, *et seq.*;
21 and (vi) if plaintiff proves some or all of its claims, what is the appropriate remedy.

22 **D. PARTIES AND NON-PARTY WITNESSES**

23 The following are potential witnesses known to the parties at this time:
24 Stanislaus Pulle; Desmond O'Neill; Carroll Gambrell; Dennis Rasmussen; Sara
25 Fenton; Eric Pommer; David J. Figuli; Michael Horowitz; Jeff Keith; George
26 Haynes; Heather Georgakis; and Barbara Doyle.

27
28 SC Law has no subsidiaries, parents or affiliated entities. TCS is currently

1 unaware of any subsidiaries, parents or affiliates with a financial interest in the
2 outcome of this case. Global does not have any subsidiaries, parents or affiliated
3 entities.

4 **E. REALISTIC RANGE OF PROVABLE DAMAGES**

5 Plaintiff seeks, *inter alia*, injunctive relief, actual damages, statutory
6 damages, attorney's fees, costs, and pre- and post-judgment interest. Plaintiff
7 believes that its damages may be based on lost profits due to decreased enrollment
8 and higher marketing and advertising costs and the destruction or diminished value
9 of its business. Plaintiff estimates damages ranging from hundreds of thousands of
10 dollars to over \$3 million.

11 **F. WHETHER THERE IS INSURANCE COVERAGE**

12 TCS has insurance coverage through a general liability policy.

13 **G. MOTIONS ADDING PARTIES, AMENDING THE PLEADINGS OR**
14 **TO TRANSFER VENUE**

15 Defendants intend to file a motion to dismiss challenging certain of the
16 claims in plaintiff's First Amended Complaint. If granted in whole or in part,
17 plaintiff may be required to amend its complaint. The parties do not anticipate
18 adding any new parties, claims or seeking leave to transfer venue.
19

20 **H. MANUAL FOR COMPLEX LITIGATION**

21 The parties do not believe that utilizing the procedures set forth in the
22 Manual would be helpful in this case.

23 **I. STATE OF DISCOVERY**

24 Due to the extensive settlement discussions that occurred during the first
25 three months of this case, the parties agreed to defer formal discovery. In the last
26 two months, TCS retained new counsel and defendants Figuli and Global were
27 served. Figuli and Global retained their counsel during the past week. The parties
28 anticipate that they will initiate formal discovery promptly. The parties have

1 discussed the Rule 26 Initial Disclosures. To facilitate those disclosures, plaintiff
2 provided a form of protective order to the defendants for their consideration.

3 **J. DISCOVERY PLAN**

4 The parties anticipate that document discovery (document requests and third
5 party subpoenas) will begin within the next 30 to 60 days. Certain written
6 discovery (interrogatories and requests for admissions) may follow thereafter.

7 Within the next 120 to 150 days, the parties anticipate that depositions will
8 commence. The witnesses in Section D., above are likely deponents. The parties
9 do not believe that there is a need to change the Rule 26(a) disclosures or phase or
10 limit discovery in any manner. Subjects to be covered include, among others: the
11 parties' discussions related to TCS's potential acquisition of SC Law; the
12 preparation of the NDA; defendants contacts with COL related to the TCS-COL
13 affiliation; defendants or COL's contacts with the State Bar and other accrediting
14 bodies related to the affiliation; the use, if any, of SC Law's confidential
15 information by defendants or COL; and the financial impact, if any, of the TCS-
16 COL affiliation on SC Law.

17 **K. PROPOSED DISCOVERY CUT-OFF**

18 The parties propose a non-expert discovery cutoff of March 6, 2012,
19 including resolution of all discovery motions.

20 **L. EXPERT DISCOVERY**

21 The parties propose the date of March 13, 2012 for initial expert disclosure;
22 April 10, 2012 for rebuttal expert disclosure; and an expert discovery cut-off of
23 May 1, 2012.

24 **M. DISPOSITIVE MOTIONS**

25 As stated above, defendants anticipate filing a motion to dismiss on or about
26 June 30, 2011. The parties cannot anticipate which issues may be resolved through
27 a motion for summary judgment or a motion *in limine* at this stage of the
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1 proceedings.

2 **N. SETTLEMENT**

3 At the outset of this case, plaintiff and TCS extensively discussed the
4 potential settlement of this case. Drafts of a memorandum of terms were
5 exchanged, including a process by which SC Law would be valued and acquired
6 by TCS. A few issues prevented the parties from successfully completing their
7 discussions, including the future involvement by certain SC Law personnel in law
8 school education in the tri-county region. In April 2011, TCS retained new
9 counsel. After filing the First Amended Complaint, plaintiff made a settlement
10 proposal to TCS which TCS is now considering. The parties are open to
11 considering any of the settlement procedures authorized by Local Rule 16-15.4.

12 **O. TRIAL ESTIMATE**

13 The parties estimate an eight (8) day trial. A jury trial is presently selected,
14 but the parties are willing to further discuss having the case tried by the Court.
15 Plaintiff anticipates calling approximately nine (9) witnesses. TCS anticipates
16 calling ten (10) witnesses. Figuli and Global contemplate calling Jeff Keith,
17 George Haynes, and Heather Georgakis.

18 **P. TRIAL COUNSEL**

19 Plaintiff's trial counsel will be Gretchen M. Nelson and George A. Shoheit.
20 TCS's trial counsel will be Nicholas W. Sarris and Jeffrey S. Whittington. Figuli
21 and Global's trial counsel will be Maurice Fitzgerald.

22 **Q. INDEPENDENT EXPERT OR MASTER**

23 The parties do not believe that there is any need for a Master or independent
24 expert.

25 **R. TIMETABLE**

26 Exhibit A to this Joint Report is the parties' proposed Schedule of Pretrial
27 and Trial Dates.
28

1 **S. OTHER ISSUES**

2 There are no other management issues the parties need to address.

3 **T. PATENT CASES**

4 This is not a patent case.

5 **U. MAGISTRATE**


6 The parties do not wish to have a Magistrate Judge preside over all of the
7 proceedings in this action.

8 Respectfully submitted,

9 THE LAW OFFICES OF GEORGE A. SHOJET

10 KREINDLER & KREINDLER LLP

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12
13 DATED: June 23, 2011

14 By: 

15 George A. Shojet

16 Attorneys for Plaintiff Southern California
17 Institute of Law

18 Nicholas W. Sarris, Esq.

19 KAUFMAN BORGEEST AND RYAN LLP

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24 Email: nsarris@kbrlaw.com

25
26
27 DATED: June 23, 2011

28 By: _____ /s/

Nicholas W. Sarris

Attorneys for Defendant TCS Education
System

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7 DATED: June 23, 2011

8 By: _____/s/
9 Maurice Fitzgerald
10 Attorneys for Defendants David J. Figuli
11 and Global Equities, LLC
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EXHIBIT A

SCHEDULE OF PRETRIAL AND TRIAL DATES


Case No.:	LA CV10-08026 JAK (AJWx)
Case Name:	Southern California Institute of Law v. TCS Education System, et al.

Matter	Plaintiff(s) Request	Defendant(s) Request	Court Order	
<input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Court Trial: (Tuesday at 9:00 a.m.) Duration Estimate: 8 Days	6/26/2012	6/26/2012		
Status Conference re Exhibits: (Friday at 3:00 p.m.) Friday before the trial date	6/22/2012	6/22/2012		
Final Pretrial Conference: (Monday at 1:30 p.m.) 2 weeks before the trial	6/11/2012	6/11/2012		
Status Conference re Settlement: (Monday at 1:30 p.m.) 30 days before the cut-off date	4/2/2012	4/2/2012		
Matter	Weeks Before Trial	Plaintiff(s) Request	Defendant(s) Request	Court Order
Last Date to Amend Pleadings/Add Parties	40	9/13/2011	9/13/2011	
Non-Expert Discovery Cut-Off	16	3/6/2012	3/6/2012	
Expert Disclosure (initial)	15	3/13/2012	3/13/2012	
Expert Disclosure (rebuttal)	11	4/10/2012	4/10/2012	
Last Date to Conduct Settlement Conference	10	4/17/2012	4/17/2012	
Expert Discovery Cut-Off	8	5/1/2012	5/1/2012	
Last Date to Hear Motions	8	5/1/2012	5/1/2012	

Settlement Procedure Selection (ADR-01): 1. Magistrate Judge 2. Attorney Settlement Officer Panel 3. Outside ADR/Non-Judicial	1, 2, or 3	1, 2, or 3	
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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that all counsel of record who have
3 consented to electronic service are being served with a copy of the foregoing
4 document via Central District of California CM/ECF system on June 23, 2011.

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6 By: 
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8 George A. Shohet
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