

FILED

2011 OCT 17 PM 3:52

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

ORIGINAL

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

George A. Shohet SBN 112697
LAW OFFICES OF GEORGE A. SHOHE,
A PROFESSIONAL CORPORATION
245 Main Street, Suite 310
Venice, CA 90291-5216
Tel.: (310) 452-3176
Fax: (310) 452-2270

Gretchen M. Nelson SBN 112566
KREINDLER & KREINDLER LLP
707 Wilshire Blvd, Suite 4100
Los Angeles, CA 90017
Tel.: (213) 622-6469
Fax: (213) 622-6019

Attorneys for Plaintiff
Southern California Institute of Law

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; and GLOBAL
EQUITIES, LLC d/b/a HIGHER
EDUCATION GROUP, a Colorado
limited liability company,

Defendants.

CASE NO.: CV10-8026 JAK (AJWx)
[Assigned to Hon. John A. Kronstadt]

**SECOND AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF AND
DAMAGES**

Action Filed: Oct. 25, 2010

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 small,
7 State-Bar accredited, evening law school with a twenty-five year history of serving
8 working class adults in the tri-county area of San Luis Obispo, Santa Barbara and
9 Ventura Counties. Lured by the prospect of increasing its outreach to an
10 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 with
15 the plaintiff's sole competitor in the region. Armed with the stolen information, the
16 defendants announced their "deal" which is calculated to kill off competition in the
17 region, destroy the plaintiff's business and increase the cost of tuition. Plaintiff
18 seeks injunctive relief prohibiting defendants from taking further steps to complete
19 their unlawful scheme and damages for harming its business and future prospects.

20 **JURISDICTION AND VENUE**

21 2. This Court has subject matter jurisdiction over plaintiff's state law
22 claims under 28 U.S.C. § 1332(a) (because the parties are diverse and the amount in
23 controversy exceeds \$75,000, exclusive of interest and costs). Venue is proper in
24 this District under 28 U.S.C. § 1391 because defendants conduct business in this
25 district and transacted with plaintiff in this District. In addition, wrongful conduct
26 by defendants took place in this District, and that conduct was intended to and did
27 cause injury to plaintiff.

THE PARTIES

1
2 3. Southern California Institute of Law ("SC Law") is a California
3 corporation founded in 1986 with campuses in Santa Barbara and Ventura Counties.
4 SC Law operates evening programs for the benefit of working adults who seek a
5 rigorous academic environment that is affordable, flexible and offers small class
6 sizes. Because of its dedicated administration and faculty, who receive very modest
7 compensation, perhaps the lowest of any State Bar accredited school in California,
8 SC Law maintains one of the lowest tuition rates among law schools in the state.
9 Tuition rates are currently \$350 per unit whereas many comparable law schools
10 charge in the range of \$800 or more per unit. Santa Barbara & Ventura Colleges of
11 Law ("COL"), the only other law school in the tri-county area of San Luis Obispo,
12 Santa Barbara and Ventura Counties, charges \$450 per unit. In 1996, after a decade
13 of tremendous effort, SC Law was accredited by the Committee of Bar Examiners
14 for the State of California. To put this accomplishment into perspective, there has
15 been only one other California law school that received State Bar accreditation in
16 the past 25 years. That school was founded in 1927 and only received its
17 accreditation this year. Currently, students may earn Juris Doctor ("J.D.") and
18 Bachelor of Science in Laws degrees. SC Law is also accredited by the California
19 Bureau of Private Postsecondary Education ("Bureau") and was approved by the
20 Bureau to commence a paralegal program and Bachelor of Arts programs in Law
21 Enforcement and Criminal Justice. In evening law schools, nearly all of the
22 academic experience takes place in the classroom. Recognizing this fact, SC Law
23 continuously re-evaluates and tests its teaching methodologies.

24 4. There are approximately one hundred students between the two
25 campuses, thirty-one distinguished faculty members and an administrative staff
26 consisting of a Dean, Vice-Dean and Registrar. SC Law's seven-person Board of
27 Directors has four members with Ph.D.s, three with J.D.s, two with M.B.A.s and
28

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

1 5. Defendant TCS Education System ("TCS") is a private, not-for-profit,
2 corporation organized under the laws of the State of Illinois with its corporate
3 headquarters in Chicago. Rather than being a comprehensive university, TCS
4 acquires or affiliates with specialized colleges with discrete professional disciplines.
5 For non-profit schools and colleges, TCS creates *affiliations* because these
6 institutions do not have an ownership structure like proprietary entities. Prior to its
7 affiliation with COL, the TCS "system" included schools with disciplines in
8 psychology, health and human services, and education; a foundation that provides
9 support for the schools and colleges; an online services affiliate that assists the
10 schools with developing and offering online coursework; and two preschool through
11 eighth grade laboratory schools. According to its Web site (last accessed on
12 October 17, 2011), TCS had projected revenues of over \$90 million in fiscal year
13 2011, ending May 31, 2011. It has a staff of approximately 467 people across all of
14 its affiliates. There are over 4,400 students at TCS-affiliated campuses in Chicago,
15 Washington, D.C., Los Angeles, Irvine, Pasadena, Santa Barbara and elsewhere.
16 Although TCS is a non-profit, it prides itself on its innovative business structure and
17 financial success. In many respects it operates more like a "for profit" business with
18 a focus on market-oriented activity and sees itself as well poised to fill the void
19 created by the cutbacks and lower enrollment in public higher education. TCS's
20 "business model" is "built on the premise that business success and social impact
21 need not be mutually exclusive" and it seeks to "[o]perat[e] as an effective,
22 financially-sound, and fast-growing business," with a goal of "deliver[ing] truly
23 significant returns for donors, investors, students, communities, and the world at
24 large." The 2009-2010 TCS Annual Report proclaims: "A rapidly changing and
25 increasingly complex external environment—fueled by economic uncertainties,
26 changing student demographics, and mounting competition—has created new
27 challenges for traditional higher education. Institutions have met with varying
28

1 success in confronting these obstacles, some closing their doors, reducing services,
2 or trimming programs and faculty ranks. Meanwhile, TCS Education System has
3 crafted a business model that is intrinsically adaptive and that responds to today's
4 realities, relying for growth and viability on a formula based on size, focus,
5 diversification, and impact." TCS woos the colleges and schools it targets with the
6 promise of business acumen, financial support and other tempting resources. Its
7 dual "bottom-line" is "social impact" and "sophisticated business practices." In the
8 2009-2010 Annual Report, TCS CEO Michael Horowitz is quoted as stating:

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

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

27 (Available at: http://www.tcsedsystem.edu/About_TCS_ES/Annual_Report).

28

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

23 (i) transactional services that include assistance in negotiating and drafting
24 conceptual documents, facilitating changes in corporate structure to achieve growth,
25 raising capital, selling assets, divisions or equity, compliance with regulatory
26 requirements, formation of systems, conversions of a legal entity from one type to
27 another, and redistribution of assets among various entities;

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

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

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

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

23 7. Defendant Global Equities, LLC ("Global Equities") is a Colorado
24 limited liability company with its principal place of business in Evergreen,
25 Colorado, which is part of Jefferson County. Global Equities is owned and
26 controlled by Figuli and transacts business under the trade name "Higher Education
27 Group". For convenience, Global Equities is referred to herein as "HEG." Figuli
28

1 identifies himself as "CEO" of HEG. According to its Certificate of Assumed or
2 Trade Name filed with Secretary of State for Colorado, HEG provides: "Consulting
3 services to post-secondary educational institutions and associations; sale of products
4 or services to the post-secondary educational market; training programs and
5 materials for the post-secondary educational market".

6 8. TCS retains Figuli and HEG to assist it in targeting potential
7 acquisitions or affiliations with schools and colleges, evaluating the business
8 opportunities and negotiating the affiliations and acquisitions. In this capacity,
9 Figuli and HEG serve as brokers or "deal makers" for TCS.

10 **FACTUAL BACKGROUND**

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

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

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

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

1 being a candidate and seeks initial accreditation. This phase can take two or three
2 years according to WASC's Procedures Manual and the cost could easily exceed
3 another \$20,000 for a school like SC Law. The applicant must demonstrate
4 compliance with WASC's formal Standards of Accreditation ("Standards"). The
5 Standards cover all financial, organizational, and operational aspects of an
6 institution and require the institution to show that it has or will meet numerous
7 criteria and guidelines. Prior to initial accreditation, a multi-level review process
8 ensues with the candidate institution preparing detailed written reports, receiving
9 feedback from WASC committees and team members, responding to any evaluative
10 concerns, undergoing several more site visits, and demonstrating that it meets both
11 capacity and educational effectiveness standards. Like other aspiring institutions,
12 SC Law contemplates a day when it might marshal sufficient resources to seek
13 accreditation from WASC.

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

26 14. In August 2009, Figuli retained one George R. Haynes ("Haynes") to
27 assist him in identifying and facilitating the acquisition or affiliation of schools or
28

1 colleges for TCS. Figuli offered Haynes a share of the monies he would receive
2 from TCS if an acquisition or affiliation deal was consummated. Figuli told Haynes
3 that among the types of schools that TCS was looking to affiliate with or acquire
4 were law schools.

5 15. Haynes became acquainted with Figuli when Figuli and Jeff Keith
6 ("Keith"), the former Senior Vice President of Finance and Administration and
7 Chief Financial Officer for TCS, negotiated TCS's acquisition of the Santa Barbara
8 Graduate Institute of Psychology (the "Institute"). At the time, Haynes was the
9 Institute's Vice President of Academic Affairs and Chief Operating Officer. Keith
10 previously served as the Vice President of Finance and Chief Financial Officer for
11 The Chicago School of Professional Psychology, TCS's largest higher education
12 affiliate with more than 3,000 students. At TCS, Keith was responsible for finance
13 and accounting, technology, human resources, real estate, online operations, mergers
14 and acquisitions, legal affairs, and strategy. The acquisition of the Institute was
15 consummated on or about July 15, 2009.

16 16. By mid-August 2009, Figuli and Haynes had identified SC Law and
17 COL as potential TCS candidates. Haynes and Figuli approached both law schools
18 simultaneously without telling the plaintiff that they were doing so. Plaintiff was
19 led to believe by Figuli, Haynes and Keith that TCS was seriously interested in
20 acquiring SC Law. Without plaintiff's knowledge, defendants and Haynes held
21 discussions with both SC Law and COL throughout the fall and winter of 2009.

22 17. Figuli and Haynes represented to the plaintiff that they and HEG were
23 authorized to act on behalf of TCS as its agents and advisors. Dean Pulle
24 understood that Figuli had an extensive background in strategic acquisitions in the
25 education sector and that, through defendant HEG, he had been assisting TCS with
26 identifying suitable acquisition candidates and structuring transactions, including
27 facilitating TCS's acquisition with the Institute.

28

1 18. From the outset of the parties' discussions, Dean Pulle insisted that the
2 non-public information and documents it shared with defendants and Haynes be
3 treated confidentially. Defendants and Haynes agreed to treat SC Law's information
4 and documents confidentially. On September 24, 2009, SC Law and TCS entered
5 into a Confidentiality and Non-Disclosure Agreement ("NDA"). On information
6 and belief, the NDA was drafted by Figuli and is the form used by defendants in
7 connection with TCS acquisitions and affiliations. Dean Pulle executed the NDA on
8 behalf of SC Law. Keith executed the NDA on behalf of TCS. A copy of the NDA
9 is attached hereto as Exhibit 1.

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

25 "[TCS] shall protect the confidentiality of the Information from the date of its
26 receipt hereunder with *at least the same diligence and care as would be*
27 *required of [TCS] if it were a fiduciary of the [Law School], that is the*
28

1 *utmost good faith and care for the interests of the [Law School].*" *Id.* ¶2
2 (emphasis added).

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

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

21 22. Confident that it was working toward an acquisition, SC Law released
22 its most guarded Information to Figuli, HEG and TCS. Figuli, HEG and Haynes
23 had actual knowledge of the NDA and, as TCS agents, were required to comply with
24 its terms. Among the documents that Dean Pulle and SC Law's Board of Directors
25 prepared and released was a document entitled "Acquisition Profile and Initial
26 Strategy For Regional Accreditation" dated October 1, 2009 ("Acquisition Profile").
27 The Acquisition Profile set forth intimate details about SC Law's plans and strategy,
28

1 competitive challenges, financial affairs, cash flows, debts, faculty matters,
2 contractual obligations, capital stock structure and its proposed terms for the sale of
3 SC Law, including what the Dean and SC Law's Board of Directors perceived as a
4 fair price for the shares of common stock held by SC Law's shareholders. On
5 October 8, 2010, pursuant to TCS's due diligence requests, SC Law mailed the
6 following documents to Figuli:

- 7 (a) SC Law's Articles of Incorporation, By-Laws, and accreditation license
8 from the California Bureau for Private Postsecondary and Vocational Education and
9 its Organizational Chart;
- 10 (b) Stockholder ledgers;
- 11 (c) The President's Annual Report to the SC Law's Board of Directors, dated
12 June 12, 2009 ("President's Report");
- 13 (d) Annual Financial Reports, Balance Sheets, Reports of Capital
14 Expenditures and Past Operating Results for 2006, 2007 and 2008;
- 15 (e) Prospective Income Statements for 2005, 2006, 2007, 2008, and 2009;
- 16 (f) Budgets and Profit and Loss Statements for 2008 and 2009;
- 17 (g) Independent CPA Compilation Reports for fiscal years 2005, 2006, 2007
18 and 2008;
- 19 (h) Cash Flow Statements for 2007, 2008 and 2009;
- 20 (i) U.S. corporate tax returns for 2005, 2006, 2007 and 2008;
- 21 (j) A cash balance statement as of September 30, 2009;
- 22 (k) Employee contracts with Dean Pulle and Registrar Sara Fenton;
- 23 (l) Certain faculty contracts with salary information;
- 24 (m) Resumes and/or biographies for SC Law's Board of Directors, Dean Pulle
25 and current teaching faculty;
- 26 (n) Faculty and Student Policy Manuals;

1 (o) The financial terms of and other excerpts from the real estate leases for the
2 Santa Barbara and Ventura campuses;

3 (p) The November 2005 CBE Inspection Report;
4 (q) SC Law's detailed February 2006 response to the CBE Inspection Report;
5 (r) SC Law's General State Bar Pass Rates from 2004 through 2009 with the
6 Dean's analysis;

7 (s) SC Law's General Bar Exam pass rates for the previous five years with
8 the Dean's analysis; and
9 (t) the Acquisition Profile.

10 23. The President's Report and Acquisition Profile candidly discuss the
11 plaintiff's plans and strategy, competitive challenges, financial affairs, cash flows,
12 debts, faculty matters, contractual obligations, capital stock structure and its
13 proposed terms for the sale of the plaintiff, including what SC Law's Dean and
14 Board of Directors perceived as a fair price for the shares of common stock held by
15 the plaintiff's shareholders.

16 24. Certain of the documents provided to defendants are ones that are
17 treated as confidential by the CBE, including the plaintiff's financial records and
18 personal information about instructors. *Accredited PLAINTIFF Rules, Rules of the*
19 *State Bar of California*, Title 4, Div. 2 (January 1, 2009) ("Rules"), Rule 4.108.

20 25. The documents related to the school's 2005 CBE inspection and the
21 plaintiff's responses thereto are highly sensitive and confidential. These documents
22 compare and contrast many facets of SC law's academics, operations, regulatory
23 competency and competitive strategies, including new curriculum, teaching
24 methods, ways of attracting high quality faculty, advertising strategies and cost
25 containment policies. The documents provide insight into CBE's opinion on all
26 facets of the school from basic curriculum to the governing Board of Director's
27 discharge of its duties to the school's various constituencies.

1 26. Dean Pulle, who has a forty year history in law school education,
2 discussed their content with Figuli, Keith and Haynes, providing further insight into
3 the plaintiff's strengths, weaknesses, and strategic plans as well as methods for
4 structuring a partnership with TCS that would increase the school's competitive
5 advantage and benefit TCS.

6 27. Plaintiff carefully guards its financial, regulatory and strategic
7 information to avoid unintended disclosure. Although certain entities, such as CBE
8 inspectors, tax authorities and government regulators may have had access to certain
9 documents from time-to-time, only a very few individuals, all of whom were
10 associated with the plaintiff, had full access to all of the information and documents,
11 prior to plaintiff's sharing and transmittal of the Information to defendants.

12 28. Plaintiff's Board of Directors and Dean Pulle spent years planning and
13 implementing strategies that have allowed the school to become successful and gain
14 stature. These efforts have allowed plaintiff to compete successfully against COL
15 for the past 25 years.

16 29. As the NDA demands, TCS and Figuli were charged with maintaining
17 and using all of the foregoing Information with "at least" the same care as SC Law's
18 most trusted fiduciary. The purpose of opening SC Law's books and granting
19 unlimited access to TCS was to facilitate an acquisition of SC Law as the NDA
20 expressly states. SC Law had no reason to supply the Information for the purpose
21 of facilitating TCS's affiliation with SC Law's sole competitor. Had defendants even
22 hinted at that possibility, SC Law would not have supplied the Information or
23 candidly discussed its plans and strategy with TCS's representatives.

24 30. On November 17, 2009, Dean Pulle met in person with Figuli, Haynes
25 and Keith. As part of meeting, the group toured the Ventura and Santa Barbara
26 campuses, met with Vice Dean Desmond O'Neill and even a local Santa Barbara
27 realtor regarding the potential purchase of the Santa Barbara campus building.
28

1 During those discussions, Dean Pulle addressed the following topics, including (i)
2 the financial terms of TCS's acquisition of SC Law; (ii) plaintiff's willingness to be
3 flexible on the purchase amount and term of payment; (iii) the prospect of starting a
4 day time law school; (iv) the restructuring of plaintiff's Board of Directors; (v)
5 creating a Joint Advisory Board with TCS; (vi) obtaining regulatory approval from
6 CBE for a major change; (vii) the last CBE inspection in 2005 and the SC Law's
7 strengths and weaknesses as addressed in the inspection report; (viii) what would be
8 needed to obtain WASC accreditation; (ix) staffing needs related to WASC and how
9 Dean Pulle proposed to keep the costs down; (x) hiring Vice Dean O'Neill as a full-
10 time Dean and faculty member; (xi) the terms of the leases at both of plaintiff's
11 campuses; and (xii) the type of advertising the plaintiff had done and what it would
12 like to do if the resources were available, such as advertising on buses. Certain of
13 plaintiff's financial documents were discussed and examined by Figuli, Haynes and
14 Keith, including the revenue and expense projections prepared by SC Law's
15 accountant.

16 31. Near the conclusion of the November 17, 2009 meeting, Haynes asked
17 Keith, "What next..?" Keith replied, "We make an offer." Dean Pulle then asked
18 Keith when he thought TCS would make an offer. Keith and Figuli responded that
19 it would be sent to SC Law no later than mid-December 2009. Dean Pulle reported
20 the results of the meeting, including the anticipated offer, to Vice Dean O'Neill and
21 SC Law's Board of Directors.

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

1 board. On November 18, 2009, Figuli e-mailed Dean Pulle thanking him for his
2 thoughts and confirmed these suggestions would be taken into account.

3 33. On or about November 17, 2009, Keith, Haynes, Figuli and Daniel
4 Pianko, a financial consultant who works with Figuli, met with COL's Dean
5 Georgakis and visited both COL's Santa Barbara and Ventura campuses. At or
6 about this time, Haynes or Figuli had informed Dean Georgakis that TCS was in
7 discussions with SC Law. Haynes asked Dean Georgakis if COL would be willing
8 to work with SC Law if TCS entered into transactions with both schools. Dean
9 Georgakis stated that the COL Board of Trustees would be unwilling to do so.

10 34. In mid-December 2009, Dean Georgakis and COL Board President
11 Mary J. Miller attended a meeting in Chicago at TCS's headquarters. Over the past
12 three months, Ms. Miller had participated in meetings and discussions with Figuli
13 and Haynes. Among the attendees at the mid-December meeting were TCS CEO
14 Horowitz, Keith, Richard Grunsten, the Chairman of TCS's Board of Trustees, and
15 Figuli.

16 35. As alleged above, SC Law was kept in the dark about the
17 contemporaneous meetings and discussions between COL, defendants and Haynes.
18 Plaintiff did not receive any proposed offer from TCS in December 2009 as Keith
19 and Figuli had promised.

20 36. On January 21, 2010, Dean Pulle sent an e-mail to Figuli, with copies
21 to Haynes and Keith, requesting a "status report" on the process toward an
22 acquisition. On January 22, 2010, Figuli e-mailed Dean Pulle, with copies to
23 Haynes and Keith, stating as follows:

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

25 We were truly impressed with the remarkable accomplishments that
26 you and your board have achieved in a very competitive environment.
27
28

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

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

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

13 (italics omitted; emphasis added).

14 37. TCS made no counter offer even though it received not only the price
15 proposed by SC Law on or about October 1, 2009, but also written and oral
16 indications from Dean Pulle that the SC Law Board of Directors would consider a
17 lower amount and negotiate. Prior to Figuli's January 22, 2010 e-mail, no one from
18 TCS, including Figuli, Haynes or Keith, suggested that SC Law's proposed price
19 was unacceptable or unreasonable. The last phrase in Figuli's e-mail that TCS
20 would "pass on the SCIL opportunity at this time" left open the possibility that it
21 was still considering a pending offer. Dean Pulle conveyed that impression to his
22 Board and certain faculty who had been involved in the negotiations. This inference
23 is further bolstered by the fact that paragraph 5 of the NDA obligates TCS upon
24 termination of the "Relationship" to "promptly destroy" the Information and
25 "certify" its destruction to SC Law. Paragraph 7 of the NDA, further provides that:
26 "Unless otherwise agreed, the Agreement shall continue until such time as any
27 Information received by TCS hereunder is returned to the [Law School] or
28

1 destroyed." SC Law's documentary Information was neither destroyed nor returned
2 and no certification of its destruction was provided. SC Law made no request for
3 the return of the documentary Information given its belief (and hope) that further
4 discussions with TCS might ensue. Most fundamentally, it had no idea of
5 defendants' intentions to misuse the Information and abuse the "Relationship" of
6 trust and confidence created by the NDA and the parties' course of dealing.

7 38. In violation of the NDA and applicable law, the defendants made a
8 calculated decision to misuse SC Law's Information, conveyed both in documents
9 and orally by Dean Pulle, as a means for acquiring SC Law's longtime rival, COL.
10 This misconduct occurred, *inter alia*, through defendants' use of plaintiff's
11 Information to compare COL and SC Law when they were obligated only to use the
12 Information for the good of SC Law and facilitate a transaction with it.

13 39. TCS, through its affiliation with COL, has now become SC Law's sole
14 competitor with knowledge of SC Law's most intimate and confidential information
15 and trade secrets. Defendants were bound to act with the highest of fiduciary
16 standards toward the Plaintiff. NDA ¶2. Having gained access to plaintiff's
17 Information, the NDA restricted the defendants from using the Information other
18 than to "facilitat[e] a transaction" with the plaintiff and effectively barred defendants
19 from becoming SC Law's competitor because to do so would violate their
20 contractual and fiduciary obligations. *See* NDA ¶10 (TCS shall not "pursu[e]
21 business opportunities or other arrangements or endeavors of any kind" in violation
22 of the NDA).

23 40. SC Law first learned of defendants' wrongful conduct through news
24 reports on or about September 21, 2010. The press release, dated September 21,
25 2010, jointly published by TCS and COL and carried on their respective Websites
26 and by various news services, including *Reuters* and the *Pacific Coast Business*
27 *Times*, confirmed that TCS and COL entered into an affiliation agreement effective
28

1 October 1, 2010. Referring to COL as "the Central Coast's preeminent law school,"
2 the press release confirms that under its new leadership, COL, using TCS's expertise
3 in regulatory affairs, plans to seek WASC accreditation which will bring access to
4 federal student financial aid programs. In the September 21, 2010, press release,
5 COL's Dean Georgakis, is quoted as saying, "This affiliation will strengthen SC
6 Law and its long-term growth potential by adding new resources, generating
7 economies of scale and creating new opportunities for law- related education."
8 Among the "new opportunities" planned by TCS and COL are adding online
9 courses, additional law programs (as may be allowed by the State Bar), multi-
10 disciplinary and joint programs in other disciplines within the expertise of TCS's
11 affiliates, and access to advanced educational technology and academic support. As
12 part of the agreement, TCS will also provide administrative and student support
13 services, marketing assistance, accounting and human resources. COL will continue
14 to be governed by a board of trustees, but as COL's supporting entity, TCS will join
15 with the trustees to create a "fiduciary council" that will meet annually to decide on
16 major budget and strategic issues, including plans for COL's expansion.

17 41. Until now, SC Law has successfully competed with rival COL by
18 keeping its tuition low and offering what many view as the superior legal education.
19 With TCS's vast resources, including its marketing savvy, SC Law has no chance of
20 continuing to differentiate itself successfully. The defendants and COL began to
21 immediately market the affiliation as major advantage on their Web sites and at
22 Open Houses being held at COL's campuses during October and November of 2010.
23 On COL's Website under a heading entitled, "Frequently Asked Questions About
24 Affiliation Between the Colleges of Law and TCS ES," COL stated:

25 "What will TCS ES bring to SC Law and its students?

26 TCS ES will provide administrative support and services that are
27 otherwise cost-prohibitive to a stand-alone institution the size of the
28

1 Colleges. The Colleges will be able to update and streamline operations
2 in a variety of areas, including student services, academic support,
3 marketing, accounting and human resources. Students will benefit
4 from the kind of improvements in campus technology that will allow
5 them to mix onsite and online courses, learn in "smart" classrooms, use
6 robust online course support software, and interact more easily with the
7 Administration Office. TCS ES will also provide dedicated expertise in
8 regulatory affairs, regional accreditation, and Title IV Federal financial
9 aid. And, through this affiliation the Colleges of Law will be better
10 positioned to take our mission, expertise, and access to the study of law
11 to new students as we expand our horizons and chart a course of growth
12 and continued development."

13 42. All of the advantages identified in paragraph 41 were ones that SC Law
14 proposed and/or discussed with Figuli, Haynes and Keith in confidence during the
15 parties' meetings and correspondence. The defendants and Haynes have taken the
16 Information SC Law provided, some of which constitutes trade secrets, and is using
17 it to compete against SC Law. COL's rivalry with SC Law is both long-lived and
18 often intense. At an Open House held on October 19, 2010, COL's Assistant Dean
19 Barbara Doyle emphatically discouraged prospective law students from attending
20 SC Law exclaiming, "Oh no, no, no, that's our competitor, don't go there!" Assistant
21 Dean Doyle's presentation focused on the "advantages" of attending COL from the
22 perspective of cost and the relative value of the anticipated education, based in part
23 on TCS's affiliation, and argued that COL compared favorably to several other
24 California law schools. Notably absent from her presentation was any comparison
25 to SC Law.

26 43. Not only is TCS-COL wealthy and resource rich, they are armed with
27 SC Law's misappropriated Information and best strategic thinking of its deans,
28

1 faculty and Board placing SC Law at a distinct competitive disadvantage. To the
2 extent SC Law's confidences reveal strengths, TCS and COL can now use the

3 Information to emulate SC Law's strengths. To the extent the misappropriated
4 Information reveals SC Law's weaknesses, they can direct their efforts at exploiting
5 those weaknesses.

6 44. On or about December 14, 2010, Haynes became a member of COL
7 Board of Trustees. He recently testified that he is active on the COL Board and
8 does not believe that he is bound by the NDA. As alleged above, Haynes
9 participated in the parties' discussions where SC Law's strategies and other
10 confidences were candidly discussed. In addition, during the meetings, Haynes was
11 shown certain of plaintiff's financial records, including CPA-prepared projected
12 earnings and SC Law's stock ledger.

13 45. COL's Dean Georgakis is now a member of TCS's Executive Council.

14 46. With its present resources, SC Law cannot possibly offer the services
15 promised by COL to current and prospective students or match TCS's likely
16 administrative and technological innovations. TCS is in a position to poach on
17 current and future students of SC Law through the promise of federally funded
18 tuition loans. This is even more of a threat in light of the current tight credit market.
19 In addition, TCS's affiliation with COL has eliminated any likelihood that SC Law
20 might be perceived as an attractive acquisition candidate to another large education
21 organization. SC Law lost competitive advantage and business opportunities as a
22 result of defendants' wrongful use of its confidential information and trade secrets.

23 47. By contrast, had TCS sought to compete fairly, even with its wealth
24 and resources, it would be a relatively weak competitor if it were to try and start a
25 law school on its own. The barriers to entry in California for new law schools are
26 considerable, including the likelihood of a decade or more of effort to achieve State
27 Bar accreditation. In addition to the lesser status accorded unaccredited schools,
28

1 first year students are required to take and pass the "Baby Bar" (formally, the "First
2 Year Law Students' Examination-FYLSX") before they can move ahead in school.

3 The pass rate on this exam is usually only 10 to 15 percent which can be devastating
4 financially to a new law school given the high attrition rate. This is the main reason
5 why TCS sought to acquire an existing school -- a key point Figuli and other TCS
6 representatives discussed with Dean Pulle.

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

19 **AGENCY ALLEGATIONS**

20 49. Each of the defendants was the agent of the other defendants in regard
21 to all events and actions described herein and acted within the course and scope of
22 such agency at all relevant times.

23 **CONSPIRACY ALLEGATIONS**

24 50. Defendants, and each of them, agreed and knowingly and willfully
25 conspired to facilitate and enter into the COL affiliation.

26 51. In order to further and effectuate this conspiracy, defendants, and each
27 of them, misused and misappropriated plaintiff's Information and trade secrets,
28

1 concealed and misrepresented material facts, engaged in unfair competition and
2 committed other unlawful acts. Defendants' wrongdoing is continuing as they move
3 forward with the COL affiliation.

4 52. Defendants' acts were done with the full knowledge and consent of
5 each of them and caused injury to the plaintiff, including, the imminent threat of
6 irreparable harm.

7 **FIRST CLAIM FOR RELIEF**

8 **(Breach Of Contract Against TCS)**

9 53. Plaintiff hereby repeats, realleges and incorporates by reference the
10 allegations which are contained in paragraphs 1 through 52, above. This first claim
11 for relief is alleged against defendant TCS.

12 54. The NDA is a valid and enforceable contract. The fiduciary obligations,
13 confidentiality covenants and other provisions contained therein were and are
14 reasonably necessary to protect plaintiff's legitimate interests in safeguarding its
15 trade secrets, confidential information, financial data, faculty and employee
16 relationships and competitive standing.

17 55. Plaintiff fully performed all of its obligations under the NDA except for
18 those that have been discharged or excused by defendant's prior breaches or other
19 wrongful acts.

20 56. TCS is breaching or threatens to breach the NDA in at least the
21 following ways:

- 22 (a) Keeping the Information, as defined in the NDA, in its possession;
23 (b) Misusing the Information, documentary and otherwise, to compare
24 SC Law to COL, facilitate its affiliation transaction with COL and
25 obtain an unfair competitive advantage over the plaintiff;
26 (c) Refusing to certify the destruction of the Information;

1 (d) Failing to protect the confidentiality of the Information in at least
2 the same manner as a fiduciary of SC Law would do;

3 (e) Violating its covenant not to compete against SC Law by using the
4 Information it obtained pursuant to the NDA to pursue an affiliation
5 with COL.

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

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

16 **SECOND CLAIM FOR RELIEF**

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

18 59. Plaintiff hereby repeats, realleges and incorporates by reference the
19 allegations which are contained in paragraphs 1 through 58, above. This second
20 claim for relief is alleged against all defendants.

21 60. At all relevant times, plaintiff was in possession of confidential and
22 trade secret information as defined by California Civil Code §3426.1(d). The
23 information and documents SC Law provided to TCS, Figuli, HEG and Haynes as
24 set forth in paragraphs 22, 23 and 25, above, are carefully guarded by SC Law to
25 avoid disclosure. In the regular course of business, the only persons who have
26 unlimited access to the information and documents supplied are SC Law's Board of
27 Directors, Dean Pulle, Vice Dean O'Neill, and SC Law's Registrar. CBE inspectors,
28

1 tax authorities, government regulators and SC Law's accountants may also on
2 occasion gain access to certain of the Information SC Law provided. Even SC
3 Law's faculty members are not privy to the Information SC Law turned over, except
4 certain discrete documents such as their own employment contracts. Plaintiff's
5 confidential and proprietary trade secret information is not and was not generally
6 known to TCS, COL or any other actual or potential competitors before defendants
7 wrongfully induced plaintiff to release the information to them.

8 61. Paragraph 22, above, identifies items such as (i) the President's Report
9 to SC Law's Board of Directors; (ii) documents reveling information conveyed in
10 CBE annual registration filings covering academic standing of all students, drop-out
11 rates, library acquisition budget, faculty grading charts, self-evaluation studies; (iii)
12 marketing plans, including a pricing and competition analysis; (iv) CBE Inspection
13 Reports, including SC Law's responses to and correspondence with inspectors and
14 CBE; (v) Dean Pulle's analysis of the Law School's General Bar Exam pass rates for
15 the previous five years.; and (vi) the Acquisition Profile.

16 62. The forgoing documents candidly compare and contrast many facets of
17 SC Law's academics, operations, regulatory competency and competitive strategies.
18 For example, topics include: new curriculum that is popular with prospective
19 students; techniques for avoiding grade inflation; teaching methods that work for
20 English-as-a second-language students; strategies for identifying and attracting
21 quality faculty, including compensation levels and administrative support;
22 affordable and effective advertising expenditures; methods for reducing drop our
23 rates; and cost-containment strategies. To the extent that SC Law received criticism
24 from regulators, its actual or planned responses are set forth in certain of these
25 documents. The ideas and strategies expressed in such responses reflect the
26 strategic thinking of SC Law's Board of Directors, Deans, and Registrar. Keeping
27 that Information confidential allows SC Law to work on any perceived
28

1 shortcomings and minimize the risk that COL will exploit any weakness to its own
2 advantage. SC Law discussed with Figuli, Haynes and Keith the regulatory findings
3 and responses, interdisciplinary programs, the use of increased technology, and the
4 potential for creating a day time SC Law program, among other topics.

5 63. Another category of documents set forth in paragraph 22, above, are
6 those reflecting SC Law's financial reports and analysis. These documents provide
7 details about SC Law's operational budget, cash flow and expense projections, and
8 compensation analysis for the Deans, Registrar and faculty. This information is
9 what SC Law's Board of Directors uses to determine that academic, operational and
10 marketing strategies it can afford and what must be deferred. In addition, the
11 salaries and benefits of the Deans and Registrar and the compensation paid to part-
12 time faculty are carefully structured in light of the Law School's cash flows and
13 reserves. SC Law's flexibility and creativity in structuring the salaries and
14 compensation is proprietary and a key reason the school has been able to adapt to
15 changing regulatory and economic conditions over the years. Allowing a competitor
16 like COL to gain access to this information, particularly in conjunction with the
17 other strategic documents set forth above, reduces SC Law's ability to innovate and
18 compete.

19 64. Dean Pulle has approximately thirty-five years of experience with law
20 school education in the tri-county region and a detailed knowledge of the regulatory
21 landscape. Plaintiff knows of no other educator in the region that has that level of
22 experience. SC Law's Board of Directors has spent years planning and
23 implementing strategies that have allowed SC Law to become successful and gain
24 stature. Many of the documents shared with Figuli, Haynes and Keith contain the
25 Board and Dean Pulle's best thinking on how to differentiate SC Law from other
26 State Bar accredited SC Laws, most particularly COL. In addition, as alleged
27 above, Figuli, Haynes and Keith received the benefit of detailed discussions at the
28

1 meetings the parties' conducted, including strategies for completing WASC
2 accreditation in an economic and reasonably prompt manner. This strategic
3 information contained in the Acquisition Profile is something SC Law developed for
4 the purpose of facilitating its acquisition or alignment with a larger educational
5 institution.

6 65. The information summarized in paragraphs 22, 23, 25 and 61 through
7 64, above, constitutes trade secrets because plaintiff derives independent economic
8 value from maintaining the confidentiality of the information, such information is
9 not generally known nor readily ascertainable by proper means by other persons
10 who can obtain economic value from its disclosure or use, and because the
11 information is the subject of reasonable efforts to maintain its secrecy. In the
12 current tough economy with declining enrollment, the efforts of SC Law to position
13 itself as an academically superior institution that offers affordable education is
14 critical to its ability to differentiate itself from COL and other law schools. Its
15 academic, operational, financial and regulatory strategies are the means to this end
16 and were shared with the defendants based on the plaintiff's belief that the
17 defendants would honor their commitment to maintain the plaintiff's confidences
18 and use the information for the purpose of TCS's acquisition of SC Law.

19 66. Defendants have actually misappropriated and/or threaten to
20 misappropriate plaintiff's trade secrets without plaintiff's consent in violation of
21 California's Uniform Trade Secrets Act ("CUTSA"), California Civil Code §3426, *et*
22 *seq.* Defendants used the trade secret and confidential information obtained from
23 the plaintiff to compare SC Law with COL. This constitutes a misappropriation
24 because such use was precluded by the NDA. By affiliating with COL, TCS is now
25 in a competitive relationship to the plaintiff. It is using and will continue to use
26 plaintiff's trade secrets and other confidential information to advance COL's
27 interests and compete unfairly against the plaintiff.

1 67. Haynes, who recently joined the Board of Trustees of COL, was privy
2 to all of the discussions and information SC Law revealed. He gained access to
3 information that only SC Law's Deans, Registrar and Board of Directors typically
4 review and consider, assisted in bringing about the TCS-COL affiliation and is now
5 capable of using the plaintiff's information to develop strategies to compete against
6 SC Law.

7 68. In addition to the press releases, open houses and Internet-based
8 announcements proclaiming the TCS-COL affiliation and the many advantages it
9 offers prospective students, SC Law is experiencing increased competition from
10 COL through marketing strategies that SC Law proposed to TCS, Figuli, and
11 Haynes. For example, during the parties' meetings, Dean Pulle expressed SC Law's
12 plans for increased marketing in the Santa Barbara area, including advertising on
13 buses. COL recently embarked on an advertising campaign that increased the
14 intensity of marketing in the Santa Barbara area and is advertising on buses. SC Law
15 proposed the marketing campaign to carefully target the fewer potential students in
16 the Santa Barbara area. This strategy is now being used against SC Law to reduce
17 its enrollment.

18 69. Due to their contractual and fiduciary-like obligations, defendants
19 gained access to plaintiff's most valuable trade secrets and confidential information.
20 Defendants continue to have knowledge of that information, notwithstanding the
21 fact that TCS is now affiliated with COL and is competing with the plaintiff.

22 70. As a proximate result of defendants' actual and threatened
23 misappropriation of plaintiff's trade secrets and confidential information, plaintiff
24 has suffered, and will continue to suffer, actual damages in an amount to be proven
25 at the time of trial, but which are substantial and in excess of the minimum
26 jurisdictional amount of this Court. Defendants have further been unjustly enriched
27 due to their ability to use the misappropriated confidential information and secrets as
28

1 means of planning a marketing strategy with the goal of luring current and
2 prospective students away from the plaintiff.

3 71. As a proximate result of defendants' wrongful conduct and threatened
4 misappropriation, plaintiff has been injured, irreparably and otherwise, and is
5 threatened with the loss of its competitive advantage, goodwill and confidential
6 information and trade secrets in amounts which may be impossible to determine,
7 unless defendants are enjoined and restrained by this Court. Unless restrained,
8 defendants will continue to threaten to use, actually use, divulge, threaten to
9 disclose, acquire and/or otherwise misappropriate plaintiff's trade secrets and
10 confidential Information.

11 72. Defendants' actual and threatened misappropriation is willful and
12 malicious and a deliberate violation of the NDA's contractual obligations.
13 Therefore, plaintiff is entitled to an award of exemplary damages and attorneys' fees
14 and costs pursuant to California Civil Code §§3426.3(c) and 3426.4.

15 **THIRD CLAIM FOR RELIEF**

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

17 73. Plaintiff hereby repeats, realleges and incorporates by reference the
18 allegations which are contained in paragraphs 1 through 72, above. This third claim
19 for relief is alleged against defendants for their violation of the Unfair Competition
20 Law, California Business & Professions Code §§ 17200, *et seq.*

21 74. Defendants have engaged in and are still engaged in acts of unfair
22 competition, as defined in California Business & Professions Code §§ 17200, *et*
23 *seq.*, including, but not limited to violation of the California's Uniform Trade Secrets
24 Act ("CUTSA"), California Civil Code §3426, *et seq.*

25 75. Plaintiff seeks restitution and/or injunctive relief pursuant to California
26 Business & Professions Code § 17203.

1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiff prays judgment against defendants, and each of
3 them, as follows:

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

7 (a) From taking any further steps to pursue or implement an affiliation with
8 COL, including prohibiting them from taking any steps to obtain WASC
9 accreditation, providing financial, administrative, technological or other
10 forms of support to COL, ceasing any further marketing or publication of the
11 affiliation, and removing any further reference to the affiliation from their
12 Web sites and in any publicly-available documents; and

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

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

17 3. That the defendants be adjudged to have violated CUTSA and the
18 Unfair Competition Law;

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

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

22 6. For restitution;

23 7. For exemplary and/or punitive damages;

24 8. For plaintiff's costs of suit including their reasonable attorneys' fees;


25 9. For prejudgment and post judgment interest; and

26 10. For such other and further relief as the Court deems just and proper.
27
28

1 DATED: October 17, 2011

2 THE LAW OFFICES OF GEORGE A. SHOHEK,
3 A PROFESSIONAL CORPORATION

4 KREINDLER & KREINDLER LLP

5 
6 By: _____

7 George A. Shohet
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury in this matter.

DATED: October 17, 2011

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

KREINDLER & KREINDLER LLP

By: _____



George A. Shoheit
Attorneys for Plaintiff

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

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.

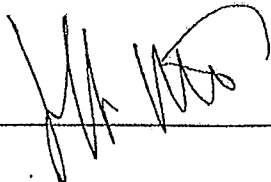
10. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be deemed to inhibit or prohibit either party from pursuing business opportunities or other arrangements or endeavors of any kind so long as the terms and provisions of this Agreement are maintained inviolate.

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: _____

