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ELIZABETH PARKER, OPHELIA BASGAL, and
DR. KAREN MAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

DR. VIJI NAKKA-CAMMAUF, *et al.*,

Plaintiffs,

v.

DR. ELIZABETH HILLMAN, *et al.*,

Defendants,

-and-

MILLS COLLEGE, a California nonprofit
public benefit corporation,

Nominal Defendant.

Case No. RG21101875

**DECLARATION OF ERIC ROBERTS IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' EX
PARTE APPLICATION FOR
AFFIRMATIVE RELIEF, TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION**

Filed concurrently with Declarations of Dr.
Elizabeth Hillman, Kathleen Sanborn, Lyn
Flanigan, and N. Thomas Connally;
Memorandum of Points and Authorities

The Hon. Stephen M. Pulido

DATE: July 26, 2021

TIME: 2:30 p.m.

DEPT.: 517

Complaint filed: June 7, 2021

1 b. Audit and Enterprise Risk Committee (2020-present)

2 c. Executive Committee (2016-present)

3 i. Subcommittee on Negotiations (spring 2021-present)

4 d. Finance Committee (2014-2019; chair 2016-2019)

5 e. Investment Committee (2014)

6 f. Resources and Sustainability Committee (2020-present; chair 2020-present)

7 7. The Finance Committee oversaw the College's finances and budgeting until July 1,
8 2019, when these responsibilities were transferred to the Resources and Sustainability Committee
9 in connection with a restructuring of the Board's committees. The Resources and Sustainability
10 Committee assesses and monitors the College's fiscal stability and long-term economic health,
11 including net enrollment revenues; invested assets, including endowment, planned giving, and
12 employee retirement plans; and campus and physical assets and technologies.

13 8. Since the onset of the COVID-19 pandemic, all Board meetings, including the
14 Resources and Sustainability Committee meetings, have been held virtually to ensure access to the
15 meetings and information to all Board members.

16 9. During my initial tenure on the Board, it was apparent to me that the College
17 suffered from cash flow issues caused by declining enrollment. Simply put, the College's cost
18 structure was too large relative to the amount of revenue being brought in. The situation I saw
19 impending in the late 1990s/early 2000s came to a head not long after my return to the Board in
20 2013.

21 10. In May 2017, facing a budget deficit in excess of \$9 million, the Board declared a
22 financial emergency for the College. Since that time, the Board made continuing efforts to improve
23 the College's financial position, including through:

24 a. adopting a financial stabilization plan;

25 b. restructuring academic programs, including the elimination of certain degree
26 programs;

27 c. reducing expenses, such as by laying off tenured professors, halting raises for faculty
28 and staff, and pausing contributions to employee-benefit plans;

- d. monetizing assets, such as by selling real estate, IP addresses, and treasures of the College (including rare books and manuscripts);
- e. pursuing philanthropic support from foundations and individuals; and
- f. collaborating with a variety of public and private organizations.

11. It is a clear policy of the Board that all Trustees have the right and opportunity to attend not only meetings of the Board, but the meetings of any committee—with the exception of the Executive Committee—and to ask questions while in attendance. To my knowledge, at no time during her five-year tenure on the Board prior to the initiation of this litigation did Plaintiff Dr. Viji Nakka-Cammauf raise any concerns regarding insufficient financial information at a meeting of the Board or its committees while these dramatic steps were being taken, and had made no request for information that was unmet.

12. It is also a policy that all Board materials, including materials for the Board's committees, are posted on the Board's intranet page and made available to all Trustees—regardless of whether or not they sit on a particular committee. The sole exception to this policy is Executive Committee materials, but minutes of the Executive Committee meetings are made available on the Board's intranet page. This includes information sought by Plaintiff Nakka-Cammauf, such as reports regarding Hall Capital Partners (the College's portfolio manager) performance.

13. Unfortunately, all of the actions taken since May 2017 failed to remedy the College's structural deficit, and enrollment continued to decline approximately 30%—with 50% of the decline occurring since the onset of the COVID-19 pandemic. Thus, on March 4, 2021, after considering the financial condition and market opportunities of the College and in consultation with the College's advisors and administration, the Board determined that the College was suffering from a severe financial crisis that made long-term operations in the current form unsustainable. It was clear the College was running out of cash, and quickly.

14. Given the severe financial crisis, the Board declared the College to remain in a state of financial emergency and announced that it expects to begin an orderly teach-out process of all of its academic programs beginning in academic year 2021-2022, with the undergraduate class

1 enrolled for that academic year to be the last first-year class enrolled at the College, and a related
2 wind-down of operations directly related to those academic programs (the “Teach Out”).

3 15. While a plan for the Teach Out had not yet been fully developed at the time of the
4 March 4, 2021 meeting, the Board authorized officers of the College, at the direction of President
5 Elizabeth Hillman, to communicate to faculty, staff, students, prospective students, and other
6 stakeholders the nature of the College’s situation and the expectation that the College would not
7 continue to be a degree-granting institution. It was clear to me from the plain words of the
8 resolution what was being proposed and voted upon.

9 16. Further, at the March 4, 2021 meeting, the Board determined that, in order to sustain
10 the mission of the College beyond its status as a degree-granting institution, a Mills Institute was
11 to be designed to advance the educational legacy and vision of the College, including its embrace
12 of gender and racial justice, academic excellence, and creative, community-engaged teaching and
13 learning. In connection thereto, the Board authorized officers of the College, at the direction of
14 President Hillman, to develop for the Board’s consideration a mission, vision, and proposed
15 operating plan for the Mills Institute, and discuss and negotiate with UCB—who had previously
16 discussed the idea of a Mills Institute with representatives from the College—and the University of
17 California System with respect to the proposed plans for the Mills Institute and integration with
18 UCB. No contract between the College and UCB or the University of California System regarding
19 a Mills Institute would be made without further action by the Board.

20 17. On March 17, 2021, pursuant to the authority granted to her by the Board, President
21 Hillman announced in a public letter the College’s continuing financial crisis, the Teach Out, and
22 the expected transition to the Mills Institute.

23 18. Following this announcement of the situation at the College and the expectation that
24 the College would not continue to be a degree-granting institution, other educational institutions
25 provided inbound interest in potential transactions with the College. In connection therewith, and
26 the previously authorized discussions and negotiations with UCB and the University of California
27 System with respect to the proposed plans for the Mills Institute, the Executive Committee formed
28 the Negotiations Subcommittee—of which I was and am a member—to direct and advise President

1 Hillman as the College's officers negotiated with potential institutional partners and navigated its
2 transition. The Negotiations Subcommittee was charged by the Executive Committee with
3 examining critical issues, assessing strategies, and considering short- and long-term advantages and
4 risks, as well as the suitability and sustainability of potential partnerships, recognizing the
5 imperative of alignment with the College's mission and core values and financial sustainability. In
6 my experience, such a subcommittee is consistent with the way corporations and related
7 organizations structure the pursuit of potential partners.

8 19. Over the coming months, representatives of the College and, in some instances,
9 representatives of the Executive Committee met with institutions that had expressed interest in a
10 transaction and continued to engage in discussions with UCB. The Negotiations Subcommittee
11 requested expressions of interest from those institutions that had indicated an interest in a potential
12 transaction with the College—which was to specifically address topics related to the College's
13 mission, people, campus, legacy, and transition. The Negotiations Subcommittee received a
14 number of such expressions of interest, and engaged in further discussions with certain of those
15 institutions. To evaluate these expressions of interest, the Negotiations Subcommittee established
16 a rubric, which was shared with the Executive Committee and the Board, and received feedback
17 from Trustees on the rubric.

18 20. The Negotiations Subcommittee also considered the perspectives provided by
19 relevant stakeholders, including those shared in multiple town hall meetings and those shared with
20 President Hillman and directly with the Board, and received presentations from the "Save Mills
21 College Coalition" and "UC Mills" regarding their respective proposals. After careful
22 consideration of, among other things, this information, the factors set forth in the rubric, and
23 discussions with and feedback from the Executive Committee and the Antiracism Working Group,
24 the Negotiations Subcommittee determined that the expression of interest provided by Northeastern
25 University (the "Northeastern Expression of Interest") provided the most viable path for sustaining
26 the legacy of the College.

27 21. The Negotiations Subcommittee recommended to the Executive Committee and the
28 Board that the College continue discussions with Northeastern University to further develop and

1 refine the Northeastern Expression of Interest; develop and enter into a letter of intent, or similar
2 document, with Northeastern University to formalize the intention of the parties to pursue a
3 combination of the College with Northeastern University consistent with the Northeastern
4 Expression of Interest; and cause to be prepared definitive transaction documents for further
5 consideration by the Board consistent with the foregoing. The Executive Committee endorsed and
6 adopted this recommendation.

7 22. At its meeting on June 10, 2021, the Board reviewed and discussed the
8 Northeastern Expression of Interest, and discussed other proposed paths for the College,
9 including expressions of interest from other institutions and the proposals from the “Save Mills
10 College Coalition” and “UC Mills.” Further, between the Board’s meetings on June 10 and June
11 17, 2021, the Board scheduled a “study session” for members of the Board to further discuss the
12 Northeastern Expression of Interest and considerations relevant to proposals received by the
13 College, and the Board reviewed a draft operating budget provided by the College administration
14 for academic year 2021-2022 that showed significant and increasing operating deficits. I led
15 one of these study groups.

16 23. Following these considerations, the Board authorized the officers of the College, at
17 the direction of President Hillman, to continue discussions with Northeastern University consistent
18 with the Negotiations Subcommittee’s recommendation. No letter of intent or term sheet could be
19 entered into between the College and Northeastern University without approval of the Executive
20 Committee, and no definitive transaction documents would be entered into without approval of the
21 Board. Further, the Board voted to ratify all prior actions of the College in connection with the
22 resolution.

23 24. Throughout the entire process described above, and during my entire tenure on the
24 Board, the Board has worked, and continues to work, diligently in its efforts to act in the best
25 interest of the College. The Board has continually been apprised of the state of the College’s
26 financial affairs such that all decisions have been fully informed.

27 25. In addition to the efforts of the Board, the Board’s committees have also been
28 diligent in reviewing the copious information provided by the College. For example, the Resources

1 and Sustainability Committee reviewed a report provided by the College's Vice President of
2 Finance for each meeting, and is afforded the opportunity to ask questions and request additional
3 information that would be provided by the Vice President. Despite the availability of this
4 information and discussions with the Vice President, I am not aware of Plaintiff Nakka-Cammauf
5 exercising her right to attend any meeting of the Resources and Sustainability Committee.

6 26. Based on the financial information I reviewed, it was clear to me that the College
7 could not continue upon the current path—and a strategic alliance with another institution was
8 critically necessary for the ongoing operation of the College. While offers from other institutions
9 came in and were considered, the opportunity provided by Northeastern University is undoubtedly,
10 in my opinion, the best option for the College to continue its legacy under the circumstances.

11 27. While characterizations of certain auditor statements regarding the College's status
12 as a "going concern" (*i.e.*, having the ability to pay its bills through the next year) through January
13 2022 have been made to suggest the College is on steady financial ground, these are misinformed.
14 These auditor statements say nothing as to the College's financial picture *beyond* January 2022—
15 which, without Northeastern University, is pressing. This fact regarding the auditor statements was
16 explained in a May 2021 clarification written in response to questions posed by certain Trustees,
17 and such clarification was provided to all Trustees.

18 28. At no meeting of the Board during this process did Plaintiff Nakka-Cammauf
19 opine that the Board was insufficiently apprised of the College's financial affairs and not once, to
20 my knowledge, did she ever request any additional information through the ordinary and
21 customary channels available to the Board. That she has only now chosen to object through
22 this litigation suggests to me that she is acting not in the best interest of the College, but in the
23 interest of the Alumnae Association of Mills College ("AAMC")—of which she is the President.

24 29. My suspicion is bolstered by the fact that much of the documents and information
25 sought by Plaintiffs' *Ex Parte* application is not typical of the material the Board would consider
26 or find materially beneficial to its decision-making process. The Board relies on summary
27 information provided by its committees and the College to obtain a full and complete perspective
28

1 to make decisions—which it has received. The granular and particularized data demanded, such as
2 bank statements, correspondences, and “comprehensive lists,” does not offer the perspective the
3 Board requires to make its decisions and fulfill its fiduciary duties. There are 23 voting Trustees,
4 and 9 honorary non-voting Trustees, currently on the Board. Many of these Trustees are highly
5 sophisticated and have significant experience on this and other boards—yet only one of them is
6 claiming to have insufficient information.

7 30. Given the ample information the Board has received and reviewed, the absolute
8 necessity of a strategic alliance given the College’s financial affairs, and the strong support for the
9 partnership with Northeastern University among the vast majority of Trustees, it is my ardent belief
10 that no additional information the College could provide would change the outcome of an upcoming
11 vote on the matter, and that no one Trustee should be allowed to hold up a vote on the proposed
12 transaction with Northeastern University.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed on July 25, 2021 at Tiburon, California

15 ERIC ROBERTS
16 Eric Roberts
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