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11 Alumnae Association of Mills College, Dr. Viji Nakka-Cammauf,  
12 individually and in her capacity as trustee of Mills College, and  
13 Tara Singh, individually and in her capacity as former trustee of  
14 Mills College

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

12 ALUMNAE ASSOCIATION OF MILLS  
13 COLLEGE, a California nonprofit public benefit  
14 corporation, DR. VIJI NAKKA-CAMMAUF, an  
individual and trustee, and TARA SINGH, an  
individual and former trustee,

15 Plaintiffs,

16 v.

17 DR. ELIZABETH HILLMAN, an individual,  
18 KATIE SANBORN, an individual, MARIA  
19 CAMMARATA, an individual, RENEE  
20 JADUSHLEVER, an individual, ERIC ROBERTS,  
21 an individual, DR. MARILYN SCHUSTER, an  
individual, ELIZABETH PARKER, an individual,  
22 OPHELIA BASGAL, DR. KAREN MAY, an  
individual, and DOES 1 through 20, inclusive,

23 Defendants

24 -and-

25 MILLS COLLEGE, a California nonprofit public  
26 benefit corporation,

27 Nominal Defendant.  
28

CASE NO. RG21101875

[Hon. Stephen Pulido, Dept. 517]

**PLAINTIFF VIJI NAKKA-CAMMAUF'S *EX*  
*PARTE* APPLICATION FOR:**

- (1) **TEMPORARY RESTRAINING ORDER;**
- (2) **ORDER TO SHOW CAUSE RE: CONTEMPT FOR NONCOMPLIANCE WITH PRELIMINARY INJUNCTION;**
- (3) **ORDER TO SHOW CAUSE RE FURTHER AFFIRMATIVE RELIEF AND PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES**

**REMOTE APPEARANCE**

[Filed concurrently with Declarations of Dr. Viji Nakka-Cammauf (conditionally under seal), Jeffrey Brandlin (conditionally under seal), John C. McBride (conditionally under seal), and Lisa McCurdy; [Proposed] TRO and OSC]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Plaintiff Viji-Nakka-Cammauf will and does hereby apply to  
3 the Court on an *ex parte* basis, in Department 517 of the above-entitled Court, located at 24405 Amador  
4 Street, Hayward, CA 94544, pursuant to Code of Civil Procedure sections 526,527, and 1211, Rules 3.1150  
5 and 3.1200 *et seq.* of the California Rules of Court, and Corporations Code sections 1602 and 6334, for the  
6 following relief:

7 (1) **an urgent, further temporary restraining order** preventing Defendants from making further  
8 decisions and taking further definitive action (including any vote on entering any new contracts or financial  
9 commitments, whether with Northeastern University or otherwise) related to the future of the College  
10 (including requesting that the Board take action on such matters, but not precluding discussions or  
11 negotiations; and ordering immediate production of the balance of the requested materials in an organized  
12 and usable file format, OR certification by all Defendants in writing and under penalty of perjury that no  
13 additional responsive documents exist;

14 (2) an order to show cause why a civil contempt order for willful disobedience of a court order  
15 should not issue against Defendants Elizabeth Hillman (“Dr. Hillman”), Katie Sanborn (“Ms. Sanborn”),  
16 Maria Cammarata, Renee Jadushlever, Eric Roberts, Dr. Marilyn Schuster, Elizabeth Parker, Ophelia  
17 Basgal, Dr. Karen May, and nominal defendant Mills College (the “College,” a California nonprofit public  
18 benefit corporation with its principal place of business in the County of Alameda), collectively “Defendants”  
19 for failure to comply with the Court’s August 18, 2021 Order; and

20 (3) an order to show cause re a preliminary injunction regarding (a) affirmative production of further  
21 materials necessary for any trustee to make a fully-informed decision regarding the future of the College  
22 and the proposed acquisition of Mills College by Northeastern University (and all terms of such acquisition);  
23 specifically including those identified in the Declaration of Jeffrey Brandlin (incorporated herein by  
24 reference), and (b) for injunctive relief pending production and review of such records.

25 **Should the Court be inclined to require a hearing on the initially-requested relief of a further**  
26 **temporary restraining order, Dr. Nakka-Cammauf requests that the Court set the hearing for August**  
27 **30, 2021, at 2:30 p.m., and in no event later than September 2, 2021, at 2:30 p.m., in light of the**  
28 **urgency of this matter and Defendants’ stated plan to move forward with a vote on September 3, 2021**

1 **regarding a proposed partnership/acquisition/merger with Northeastern University, despite their**  
2 **knowing violation of the Court’s August 18 Order.**

3 \* \* \*

4 Plaintiff has complied in full with all obligations imposed on her by the Court’s order, including  
5 preparation and filing of the Order, posting of a bond, and agreeing to terms of confidentiality. This second  
6 *ex parte* application is necessitated solely by Defendants’ **egregious and inexcusable failure to comply**  
7 with the clear directives of this Court’s August 18, 2021 Order, requiring a full and complete production of  
8 the materials identified in the Order on or before close of business on August 18, 2021. To date, Defendants  
9 have made only a partial production of records. Yet, Defendants are barreling toward a **September 3, 2021**  
10 **vote** on a “partnership” (or, more accurately, acquisition/merger/takeover) between the College and  
11 Northeastern University, giving rise to the urgency here, *without* having provided Trustee Nakka-Cammauf  
12 with the complete records to which this Court already found her entitled.<sup>1</sup> **While we now sit a mere week**  
13 **away from a proposed vote, not only have Defendants failed to provide the materials identified in the**  
14 **Court’s Order, they have yet to provide trustees with even a complete draft merger plan (instead**  
15 **providing just one portion (Article VI) of a draft).** (See Declaration of Viji Nakka-Cammauf (“Nakka-  
16 Cammauf Decl.”), ¶ 6, filed conditionally under seal.)<sup>2</sup> This is not a vote on whether Mills College should  
17 sell a rare book (which, by all accounts, would be afforded far more time for meaningful, informed  
18 consideration than this sale of the entire College institution.) Here, Trustees are expected to review,  
19 question, understand and vote on this complex, complicated transaction that will potentially determine the  
20 fate of the College in less than a week’s time with an incomplete, draft agreement as a framework. It is  
21 astounding that a proposed transaction of this scope, magnitude and far-reaching, historic significance is  
22 being treated by Defendants as something deserving of little more attention than a rubber stamp.

23 The relief sought here is commensurate with the gravity of the situation (the potential loss of Mills  
24 College), the magnitude of Defendants’ refusal to comply with the Court’s Order with utter nonchalance,

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants made clear during the hearing on August 16, 2021 that they plan to notice the vote on a  
27 merger with Northeastern to take place on the evening of September 3, 2021, and have since confirmed  
28 that a vote will take place on that date. (Declaration of Viji Nakka-Cammauf, ¶ 5.)

<sup>2</sup> Undoubtedly, Northeastern has been provided with a complete version of the draft merger plan, in which  
case the document is directly responsive to multiple requests in the Court’s Order, including items 1 and  
2.

1 and the false “prejudice” that Defendants have attempted to manufacture by telling this Court (without proof  
2 or even evidence) that a vote cannot wait, while *providing no evidence of imminent risk of harm* and  
3 simultaneously defying the order of production and failing to provide basic materials that should have been  
4 supplied long ago.<sup>3</sup>

5 *In keeping with the confidentiality requirements imposed by Defendants, Dr. Nakka-Cammauf*  
6 *does not disclose in this Application the content of the records that is contained in the produced records.*  
7 *Rather, the focus of this Application is on what Defendants failed to provide, and other publicly-available*  
8 *information.* As explained further below, and as set forth in the accompanying Declarations of Dr. Nakka-  
9 Cammauf, Jeffrey Brandlin, and John McBride,<sup>4</sup> the relief sought here is appropriate and critical because,  
10 despite having been represented by counsel at the August 16, 2021 hearing, and served with the Court’s  
11 Order, Defendants have violated this Court’s August 18, 2021 Order requiring that twenty-one (21) requests  
12 for documents be produced forthwith to Trustee Nakka-Cammauf. Instead of complying, Defendants did  
13 nothing more than provide a piecemeal production, which is wholly incomplete in at least 11 of these  
14 categories and omits basic, relevant information altogether. *Entire categories of information were excluded*  
15 *from production, including (among others) complete term sheets provided to/negotiated with*  
16 *Northeastern, current/updated financials for the College, confirmed and publicly-disclosed recent asset*  
17 *sales (e.g. the Shakespeare First Folio discussed herein) current conflict of interest disclosures, and*  
18 *meeting minutes.*

19 Moreover, Defendants took affirmative measures to stymie Dr. Nakka-Cammauf’s review by  
20 producing 955 individual and unlabeled files comprising 21,000+ pages, each of which must be individually  
21 opened for review, and which contain certain entirely irrelevant and duplicative materials (e.g. multiple  
22 pictures of flowering trees on campus, document Nos. 1338 and 1339). Notwithstanding Defendants’  
23 transmittal letter suggesting they organized the records (which, in their words, “are or may be responsive”)  
24 by individual request, the organization of the material is so poor that it amounts to a bad faith effort to make

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25 <sup>3</sup> Plaintiffs Tara Singh and the Alumnae Association of Mills College (“AAMC”) support this application,  
26 but are not applicants here, as the Court’s prior order was for production of records specifically to Dr.  
27 Nakka-Cammauf.

28 <sup>4</sup> Out of an abundance of caution, all declarations submitted in support hereof, with the exception of the  
declaration of Lisa McCurdy, are being filed *conditionally under seal* in respect of the confidentiality  
terms agreed to by Dr. Nakka-Cammauf, and the Court’s August 18, 2021 Order.

1 a coherent review of the materials virtually impossible. The assessment presented here is, therefore, not  
2 based on a complete review of complete records, but nonetheless demonstrates why additional time is  
3 needed in advance of any vote and why a further order of production is required. The granting of this  
4 Application is imperative if this Court's August 18, 2021 is to have the intended effect of providing College  
5 trustees with information relevant to their deliberations and decision-making *before* a vote takes place.

6 Accordingly, Dr. Nakka-Cammauf specifically prays as follows.

- 7 (1) For a temporary restraining order and further order requiring Defendants' immediate production  
8 of the balance of the requested materials in an organized and usable file format, OR certification  
9 in writing and under penalty of perjury that no additional responsive documents exist;
- 10 (2) For an order to show cause re contempt based on Defendants' failure to comply with the August  
11 18, 2021 Order;
- 12 (3) For a further order to show cause why Defendants should not be required to further provide Dr.  
13 Nakka-Cammauf with the additional records identified by forensic accountant Jeffrey Brandlin  
14 as essential to understanding the financial status of the College and, thus, essential to evaluating  
15 any proposed partnership terms; and
- 16 (4) For a further order to show cause why Defendants (specifically, the College through its Board,  
17 Board committees and/or Dr. Hillman and other College officers) should not be further enjoined  
18 from making further decisions and taking further definitive action (including entering any new  
19 contracts or financial commitments, whether with Northeastern University or otherwise) related  
20 to the future of the College (including requesting that the Board take action on such matters)  
21 **until at least sixty (60) days**<sup>5</sup> after the requested information and documents are provided in  
22 full and the Defendants have certified full and complete compliance (such relief *not* precluding  
23 ongoing negotiations and discussions).

24 The purpose of the requested order is to preserve the status quo vis-à-vis the future of the College  
25 and to provide Dr. Nakka-Cammauf (and the other trustees) with the information and documentation to  
26 which they are entitled as trustees of the College, which will form the basis of meaningful discourse

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27  
28 <sup>5</sup> Defendants' misconduct demonstrates that a much greater period of review time is required than what  
was previously ordered by this Court.

1 regarding the future of the College, and which *the Court ordered Defendants to produce*.<sup>6</sup> As discussed  
2 during the prior hearing, without the complete information sought and an injunction to temporarily halt  
3 actions being taken regarding the future of the College so that the information and documentation can be  
4 reviewed, Plaintiff and the College itself will face immediate and irreparable harm in the form of an  
5 uninformed and misinformed decision about the continued existence of Mills College. (See McCurdy Decl.,  
6 ¶ 2.) Conversely, there is not a stitch of actual evidence to suggest that the request for an informed vote,  
7 aided by the benefit of time sought here, will either harm the College as it stands or harm its partnership  
8 prospects (in fact, all evidence is to the contrary).

9 \* \* \*

10 As set forth in the accompanying Declaration of Lisa McCurdy, the only other related application  
11 was the ex parte application underlying the Court's August 18, 2021 Order; the relief requested here is not  
12 duplicative, but instead seeks a related order of compliance and additional relief. (See Cal. Rules of Court,  
13 rule 3.1150(e).)

14 Pursuant to Rule 3.1202(a) of the California Rules of Court, the attorneys known to be representing  
15 the College and individual defendants on this matter are:

16 Stephanie Yonekura  
17 Stephanie Gold  
18 Harmony Gbe  
19 Thomas Connally  
20 1999 Avenue of the Stars, Suite 1400  
21 Los Angeles, CA 90067  
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23 As set forth in the accompanying Declaration of Lisa McCurdy, notice of this *Ex Parte* Application  
24 was timely provided to the College before 10:00 AM on August 26, 2021. (See Cal. Rules of Court, rule  
25 3.1204(a)-(b).)

26  
27  
28 <sup>6</sup> As the Court will recall, Ms. Nakka-Cammauf has, at the College's insistence, agreed in writing not to  
share information and documents provided, on certain terms.

This *Ex Parte* Application is based on this Application, the attached Memorandum of Points and Authorities, the supporting declarations, and any other evidence and oral argument as may be presented at the time of the hearing.

Respectfully submitted,

DATED: August 26, 2021

GREENBERG TRAURIG, LLP

By /s/ Lisa McCurdy

Lisa McCurdy

Attorneys for Plaintiffs

Alumnae Association of Mills College, Dr. Viji

Nakka-Cammauf and Tara Singh

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 As this Court is aware, Dr. Viji Nakka-Cammauf is a current, voting trustee of Mills College. As  
4 such, she is charged with reviewing, analyzing, deliberating and ultimately voting on matters of College  
5 governance. Recognizing her role as trustee, on August 16, 2021, this Court granted Dr. Nakka-Cammauf's  
6 initial application seeking information regarding decisions being made about the future of Mills College  
7 (order entered on August 18, 2021), and ordered Defendants to produce documents in response to twenty-  
8 one categories of requests. Although Defendants produced documents on August 18, 2021, that production  
9 was *woefully and willfully incomplete and obstructionist*. In fact, the manner in which Defendants  
10 produced records (and failed to produce others) ensures that Dr. Nakka-Cammauf will continue to be  
11 uninformed at the time of the vote, and precluded from having full and meaningful dialogue with her co-  
12 trustees, both at the time of the vote and leading up to it.

13 Therefore, Plaintiff comes to this Court requesting an order of contempt for Defendants' knowing  
14 failure to comply with the August 18, 2021 Order, further order of production, and additional time to review  
15 the further materials that must be provided for the remedy ordered by this Court to be meaningful. Again,  
16 to be clear, this request for relief is solely the result of Defendants' misconduct.

17 Plaintiffs have been seeking information regarding radical decisions being made about the very  
18 future of Mills College and investigating how to best protect their interests as fiduciaries and the best  
19 interests of the College as a historic, degree-granting institution for many months. But nothing, not even a  
20 Court Order, has convinced the College to provide Plaintiff with the information to which she is  
21 unequivocally entitled,<sup>7</sup> *clearly demonstrating that there is information that Defendants do not want*  
22 *Plaintiff to see*. One cannot help but assume that something untoward is driving Defendants' intransigence.

23 As described above and further herein and in the declarations submitted herewith, Dr. Nakka-  
24 Cammauf has not been provided the documents and information to which she is entitled and that this Court  
25 ordered to be produced. At the same time, the vote on Mills being acquired by Northeastern University  
26 looms nigh and has been scheduled for the moment the TRO issued by this Court expires on September 3,

27 <sup>7</sup> To remind the Court, the College Bylaws, Article 12.2, provide that members of the Board of Mills  
28 College, including Plaintiff and applicants here, shall have *the "absolute right" to inspect the books,*  
*records and documents "of every kind" of the College.* (Complaint, Ex. 2.)

2021; thus, further injunctive relief is both imperative and urgent if the Order of this Court are to have any effect or meaning.

## **II. STATEMENT OF FACTS**

The Court already is familiar with the facts and background of this action leading up to the Court's August 18, 2021 Order. Thus, instead of repeating those facts here, we refer to and incorporate by reference the previously submitted materials in connection with Plaintiffs' ex parte application, filed on July 22, 2021, the reply materials filed on August 13, 2021, and the Court's related order to show cause, which was heard on August 16, 2021. Suffice to say, this Application concerns Dr. Viji Nakka-Cammauf's efforts to obtain materials relevant to an upcoming (September 3, 2021) vote regarding the future of Mills College. At the last August 16, 2021 hearing on this matter, Defendants falsely contended that Dr. Nakka-Cammauf had been provided (or provided *access*) to the requested materials. But as the Court recognized, the restrictions placed on that access by Defendants had rendered Defendants' offer of review meaningless.

Defendants' efforts to interfere with Dr. Nakka-Cammauf's review rights have not abated. As described herein and in the accompanying declarations, Defendants have done nothing more than provide a piecemeal, perfunctory production, which is wholly incomplete. Moreover, Defendants took steps to stymie Dr. Nakka-Cammauf's review by producing 955 individual and unlabeled files comprising 21,000+ pages, each of which must be individually opened for review, and containing entirely irrelevant and duplicative materials (e.g. multiple pictures of flowering trees on campus, document Nos. 1338 and 1339). Notwithstanding Defendants' transmittal letter suggesting they organized the records (which, in their words "are or may be responsive") by individual request, the organization of the material is so poor that it amounts to a bad faith effort to make a coherent review of the materials virtually impossible.

Specifically, an unreasonable number of the documents produced were wholly non-responsive, irrelevant, and distracting, in a clear attempt to prevent Plaintiff from obtaining a fulsome picture of not only the details of the acquisition by Northeastern, but the financial state of the College as a whole, which is a fundamental prerequisite to any informed decision as to whether the College needs to or should enter into any kind of "partnership" to begin with *and* on what substantive terms (which largely remain a mystery). (See Brandlin Decl., ¶ 13.) As some of the most egregious examples, we note the following. A

more complete picture of Defendants' non-responsiveness to each of the below categories can be found in supporting declarations filed conditionally under seal herewith (in other words, there is much more):

- **Request number 1** requested "A copy of materials provided to each of the potential Mills partners, including but limited to UC Berkeley and Northeastern." But in the review of the documents "responsive" to this Request, Plaintiff was unable to find complete Mills College documentation related to the following, which one would expect to have been provided to any potential partner or acquirer (particular at this stage with Northeastern, where a vote is one week away):  
1) **No complete merger plan and term sheets, even in draft form;** 2) approved budgets for 2021 and beyond; 3) internal financial statements for the interim months, and for the year ended June 30, 2021; 4) internal financial statements for the year ended June 30, 2021, re-casted with current fair market values; 5) financial projections beginning with fiscal year 2022 through 2026, presented in formats consistent with the College's annual financial statements, complete with balance sheets, statements of activities and cash flows with appropriate footnotes and related assumptions; 6) annual cash flows, broken down into 13-week increments (i.e., quarterly period presentations), reconciled to the annual cash flow projections for the year ending June 30, 2022 through 2026; 7) analysis of historical & current enrollment, enrollment trends, tuition discounts, retention rate, and academic models, and any online programs to produce revenue; 8) analysis of auxiliary enterprises, i.e., dorm utilization, room & board revenue, etc.; 9) copy of the most recent accreditation reports from WASC (Western Association of Schools and Colleges) or knowledge regarding any concerns with respect to Mills College accreditation, financial viability, etc.; 10) copies of the minutes of all Board meetings 11) copies of current loan agreements with First Republic Bank including any modifications, waivers through the current date and computations of covenant compliance; 12) a copy of the most recent covenant calculations for CSCDA (bonds) and waivers, as applicable; 13) copies of all analyses, budgets projections, etc., considering the proposed merger of the College into any other institution; and 14) copies of all analyses, budgets projections, etc., considering and rejecting the proposed merger of the College into any other potential merger partners. (Brandlin Decl., ¶ 14.)
- **Request number 3** requested "A timeline of interactions and communications with Northeastern and any other potential partners," but despite touting a potential partnership with UC Berkeley through March, April, and May of this year, these documents did not include **any** communications or interactions with UC Berkeley. (Brandlin Decl., ¶ 15.)
- **Request number 7** requested "Weekly or monthly cashflow projections for Fiscal Years 2022, 2023, and 2024, adjusted for 7% endowment payout and \$15 million endowment loan." The College provided only the projections themselves, but failed to provide the underlying assumptions. (McBride Decl., ¶ 4.) Additionally, despite the fact that the fiscal year ended months ago on June 30, 2021, the College failed to provide a fiscal year 2021 internal or audited financial statement; failed to provide a fiscal year 2021 cash flow statement; failed to provide fiscal year 2022 cash flow assumptions; failed to provide a fiscal year 2021 budget vs. actual results; failed to provide a fiscal year 2022 Budget; failed to provide weekly or monthly cashflow projections for fiscal years 2023 and 2024; failed to provide a long-term forecast (i.e., 5-year projections) and the Selected Endowment Review / portfolio was provided only as of June 30, 2020. (Brandlin Decl., ¶ 16.)
- **Request number 8** asked for "Bank statements form the last 3 years," but the bank statements provided for fiscal years 2018, 2019, 2020 & 2021 were wholly incomplete, the Bank of the West production only contained statements from July 2018 to October 2020, and the First Republic Bank production only contained statements from July 2019 to June 2020. (Brandlin Decl., ¶ 17.)
- **Request number 9** requested "Recent communications with First Republic Bank," but the responsive production did not reflect any expected efforts to negotiate existing credit line terms, loan

1 modifications / restructuring or default cures (e.g., collateral offering), communications regarding  
2 debt solutions, nor any evidence that solicitations were made to other traditional or non-traditional  
3 lenders regarding new financing sources. (Brandlin Decl., ¶ 18.)

- 4 • **Request number 10** asked for “Detailed projections of insurance monies due, HEERF draw down,  
5 and other assistance either already granted to available to the College.” But the responsive  
6 production only consisted of 4 files, and did not include *any* information related to PPP loans, the  
7 HEERF draw down, Employee Retention Credits, or any other Assistance under Federal, State,  
8 Local, Private or other programs. (Brandlin Decl., ¶ 19.)
- 9 • **Request number 11** sought a “Comprehensive List of Mills Assets and Valuations.” But none of  
10 the documents produced were actually responsive to this request. Rather, the entire batch consists  
11 of property insurance and excess property insurance policies. (McBride Decl., ¶ 5.) The production  
12 contained multiple copies of the same policy, sometimes as many as four. (*Id.*) ***None of the policies***  
13 ***listed any Mills College assets.*** (*Id.*) Moreover, the policies are almost all for the period March 1,  
14 2020 through March 1, 2021, begging the question: in addition to failing to provide responsive  
15 records, why didn’t Defendants provide Plaintiff with the current policies? Moreover, there were  
16 no comprehensive lists of assets as enumerated in this Request. (Brandlin Decl., ¶ 20.)
- 17 • **Request number 12** asked for “any correspondence with Christie’s in relation to estimating a  
18 financial value of Mills’ assets.” While some responsive information was provided, the production  
19 failed to note that the College actually sold its First Folio edition of Shakespeare’s works (the  
20 “Shakespeare Folio”) for ***almost \$10 million in October 2020.*** This information, instead, was  
21 ascertained through the diligence of counsel and an internet search. (McBride Decl., ¶ 6.) Bottom  
22 line, this withholding tells us 1) the College’s document production strategy is to bury Plaintiff with  
23 paper so that they cannot determine what is and what is not important; 2) the College has no  
24 compunction about excluding material information responsive to a particular request; and 3) the  
25 College appears to have received a massive amount of cash in October 2020.
- 26 • **Regarding Request number 16**, “Conflict of Interest Statements,” the most recent information  
27 produced was as of October 2020 (well before the contemplated partnerships were disclosed), and  
28 the College failed to produce any updated information regarding conflicts of interest, despite the fact  
that this is a very pertinent issue, particularly in light of the College’s ongoing insistence to withhold  
responsive data from one of its Trustees. (*Id.*, ¶ 7.)
- **Similarly, as to Request number 18**, “Details of Transactions in Mills Portfolio Accounts Since  
Hall Capital Took Over in 2010,” the College failed to provide a June 30, 2021 statement, which it  
should have at this point in time. (*Id.*, ¶ 8.)
- **In response to Request number 19**, “Minutes, Board Packets and Other Notes from the  
Subcommittee on Negotiations,” the College failed to provide materials distributed to Board  
members at the meetings, ***and also failed to provide minutes of the meetings.*** (*Id.*, ¶ 9.) The Request  
could not be clearer or simpler, but the College just failed to comply with it in express violation of  
the Court’s Order.

These examples are not exhaustive, but clearly depict the Defendants’ wrongful withholding of  
documents that this Court expressly ordered them to produce.

1 **III. LEGAL DISCUSSION**

2 **A. A Further TRO and Preliminary Injunction Are Appropriate Here.**

3 When deciding whether to grant a request for preliminary injunctive relief, a trial court evaluates  
4 two interrelated factors: (1) the likelihood that the moving party will prevail on the merits at trial; and  
5 (2) the harm that the moving party is likely to sustain if the requested injunctive relief is not granted, as  
6 compared to the harm that the responding party is likely to suffer if the injunctive relief is granted.  
7 (*Langford v. Superior Court* (1987) 43 Cal.3d 21, 28 [quotation omitted].) The court's determination must  
8 be guided by a "mix" of these two factors; the greater the showing on one, the less that must be shown on  
9 the other to support injunctive relief. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678 [quotation  
10 omitted].)

11 Here, the correct merits inquiry does not center on whether Plaintiff ultimately will prevail on all  
12 aspects of the Complaint (e.g. whether Defendants, or any of them, have breached a fiduciary duty); rather,  
13 Plaintiff need only demonstrate that she is entitled to the information she seeks and that injunctive relief is  
14 required so that the provision of information and documentation is meaningful. The Court has already  
15 decided that Plaintiff is entitled to the same, and thus no further analysis is necessary. (See *McCurdy Decl.*,  
16 *Ex. 1*.) But for the sake of providing a complete picture, the same conclusion is supported by the College  
17 Bylaws and the California Corporations Code and not reasonably subject to dispute. As already discussed  
18 in depth in Plaintiffs' original *ex parte* application and at the hearing on August 16, 2021, the College  
19 Bylaws entitle the College's Trustees to the information sought here. Likewise, Corporations Code section  
20 6334, applicable to public benefit corporations, provides that "[e]very director shall have the absolute right  
21 at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect  
22 the physical properties of the corporation of which such person is a director."<sup>8</sup> This includes the right to  
23 use agents as necessary to make the right of inspection effective. (*Dandini v. Superior Court of Alameda*  
24 *County* (1940) 38 Cal.App.2d 32, 35 ["a director has the right to summon such assistance as may be  
25

26  
27 <sup>8</sup> "Further, the California Constitution provides for 'the right of access to information concerning the  
28 conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public  
officials and agencies shall be open to public scrutiny.' (Cal. Const., art. 1, § 3, subd. (b)(1).)" (*Choi v.*  
*Orange County Great Park Corp.* (2009) 175 Cal.App.4th 524, 532.)

1 reasonably necessary to make his right of inspection effective”]; *see also Mihanpajouh v. Rico*, 2012 Cal.  
2 Super. LEXIS 732.)

3 Accordingly, Plaintiff has demonstrated a high likelihood of success on the merits on at least the  
4 Declaratory Relief and Breach of Contract Causes of Action. Given the risk of harm to Plaintiff and the  
5 College, the requested relief should issue even if the Bylaws did not require it and the Court had not already  
6 ruled in Plaintiff’s favor. Here, they do, and the Court has. Accordingly, Plaintiff readily meets both  
7 requirements for injunctive relief.

8 **B. No Further Bond Should Be Required.**

9 Plaintiff has already posted a bond in the amount of \$2,500 as ordered by this Court. No further  
10 bond should be required, as Plaintiff’s request for relief here is simply that the College comply with the  
11 Court’s August 16, 2021 Order; the circumstances have not otherwise changed. Further, the Code of Civil  
12 Procedure does not require a bond for a TRO. (See 6 Witkin, Cal. Proc. 5th Prov. Rem. § 366 (2008).) Nor  
13 is there any reason to require one here because, there is no risk of harm to the College or Defendants; indeed,  
14 in its dozens of opposition papers to Plaintiffs’ July 22, 2021 application, Defendants did not provide a  
15 shred of evidence that they would be harmed by any injunctive relief, and further failed to articulate any  
16 such harm at the August 16, 2021 hearing. (See McCurdy Decl., ¶ 4.) All that is required here is for the  
17 Court to direct and enforce compliance with the terms of the College Bylaws and its own Order and maintain  
18 the status quo for an interim period of time. Nor would a TRO or preliminary injunction pending final  
19 resolution on the merits prejudice the College or Defendants, as Plaintiff is merely seeking to enforce rules  
20 and procedures already established by the College’s foundational documents and ordered by this Court.

21 **C. An OSC Re: Contempt Should Issue.**

22 Disobedience of any lawful, judgment, order, or process of the Court and any abuse of the process  
23 or proceedings of the Court constitute contempt of the authority of the Court. (See Code Civ. Proc., § 1209,  
24 subd. (a)(4)-(5).) California courts have inherent power to punish for contempt and to control proceedings  
25 before the Court. (See Code Civ. Proc., § 128, subd. (a)(4)-(5).)

26 When the contempt is not committed in the immediate view and presence of the Court, an affidavit  
27 must be presented to the Court with the facts constituting the contempt. (See Code Civ. Proc., § 1211, subd.  
28 (a).) For this kind of indirect contempt, California Code of Civil Procedure section 1212 allows proceeding



1 by way of an OSC as to why the Court should not hold the party in contempt. Thus, if the affidavit is  
2 sufficient, the OSC should issue.

3 The elements of contempt include “(1) a valid order, (2) knowledge of the order, (3) ability to comply  
4 with the order, [and] (4) willful failure to comply with the order.” (*Wanke, Industrial, Commercial,*  
5 *Residential, Inc. v. Keck* (2000) 209 Cal.App.4th 1151, 1168; see also *Conn v. Superior Court* (1987) 196  
6 Cal.App.3d 774, 785 [“The substantive issues involved in a contempt proceeding are (1) the rendition of a  
7 valid order, (2) actual knowledge of the order, (3) ability to comply, and (4) willful disobedience.”].) If  
8 these elements are met, the Court may find the disobedient party in contempt of court. (*Conn*, 196  
9 Cal.App.3d at p. 786.) “A prima facie showing . . . should be sufficient to satisfy [the] rule with respect to  
10 any particular element of contempt which might be under consideration.” (*Crawford v. Workers’ Comp.*  
11 *Appeals Board* (1989) 213 Cal.App.3d 156, 170.)

12 All elements of contempt are satisfied here, as discussed below.

13 **1. A valid Order of the Court**

14 This Court issued a valid Order on August 18, 2021 compelling Defendants to produce certain  
15 documents and information and temporarily restraining them from acting. (McCurdy Decl., Ex. 1.)

16 **2. Knowledge of the Order**

17 Not only did Plaintiff serve Defendants with the Court’s August 18, 2021 Order, Defendants’  
18 counsel were present at the August 16, 2021 hearing at which the Court made its ruling, and proposed edits  
19 to the Proposed Order that the Court ultimately entered. (McCurdy Decl., ¶ 5.) Thus, Defendants’  
20 knowledge of the Order cannot be disputed.

21 **3. Ability to comply**

22 In *Conn*, 196 Cal.App.3d at p. 784, the Court of Appeal held that a party had the ability to comply  
23 with a court’s order requiring the parties to produce documents by simply surrendering the documents; no  
24 further “ability” was required or needed to be shown. Here, like the party subject to the court’s order in  
25 *Conn*, Defendants also have the ability to comply with the Court’s Orders in this case by simply producing  
26 all documents responsive to Plaintiff’s June 17, 2021 Request. Further, Defendants are represented by a  
27 large and sophisticated law firm, with at least four attorneys representing them. Defendants ability to  
28 comply cannot be overstated.

1                   **4. Willful failure to comply**

2           The California Supreme Court holds that when an individual is aware of a Court order and has the  
3 ability to comply with that order but fails to do so, his failure is willful, and that willful failure constitutes  
4 contempt. (*In re Riordan* (2002) 26 Cal.4th 1235, 1237; see also *In re Aguilar* (2004) 34 Cal.4th 386, 389-  
5 90 [holding that when one had the ability to appear, “his failure or neglect to appear was willful, i.e., with a  
6 purpose or willingness to commit the act, or make the omission.”].) Similarly, as one Court of Appeal put  
7 it when holding that a party’s failure to appear at deposition hearings and a pretrial conference was a willful  
8 failure to comply with the Court’s orders, “[a] conscious or intentional failure to act, as distinguished from  
9 accidental or involuntary noncompliance, is sufficient to invoke a penalty.” (*Alliance Bank v. Murray*  
10 (1984) 161 Cal.App.3d 1, 11.)

11           As applied here, Defendants were served with the Court’s Order and had the ability to comply with  
12 it, but failed to do so, thereby establishing a prima facie showing that their failure was willful. Indeed, the  
13 limited records they *did* provide demonstrate that the cumbersome and incomplete production was  
14 deliberate, particularly when viewed in light of the information ascertained by Plaintiff from other sources  
15 and when one considers the documents that necessarily *must* exist for a proposed transaction of this kind  
16 (but that were not provided). Of course, we do know from course of conduct that Defendants have  
17 vehemently opposed giving Plaintiff any of the documents and information she has requested. That  
18 resistance evidently holds more sway over Defendants than an order of this Court.

19 **IV. CONCLUSION**

20           Defendants’ violation of this Court’s Order demonstrates that further assistance from this Court is  
21 required. The Court should grant this application for a TRO and issue an OSC re preliminary injunction as  
22 follows:

- 23           (1) **an urgent, further temporary restraining order** preventing Defendants from making further  
24 decisions and taking further definitive action (including any vote on entering any new contracts  
25 or financial commitments, whether with Northeastern University or otherwise) related to the  
26 future of the College (including requesting that the Board take action on such matters, but not  
27 precluding discussions or negotiations; and ordering immediate production of the balance of the  
28

1 requested materials in an organized and usable file format, OR certification by all Defendants in  
2 writing and under penalty of perjury that no additional responsive documents exist;

3 (2) For an order to show cause re contempt based on Defendants' failure to comply with the August  
4 18, 2021 Order;

5 (3) For a further order to show cause why Defendants should not be required to further provide Dr.  
6 Nakka-Cammauf with the additional records identified by forensic accountant Jeffrey Brandlin  
7 as essential to understanding the financial status of the College and, thus, essential to evaluating  
8 any proposed partnership/acquisition terms (see Declaration of Jeffrey Brandlin, incorporated  
9 herein by reference); and

10 (4) For a further order to show cause why Defendants (specifically, the College through its Board,  
11 Board committees and/or Dr. Hillman and other College officers) should not be further enjoined  
12 from making further decisions and taking further definitive action (including entering any new  
13 contracts or financial commitments, whether with Northeastern University or otherwise) related  
14 to the future of the College (including requesting that the Board take action on such matters)  
15 **until at least sixty (60) days** after the requested information and documents are provided in full  
16 (including those requested in (1) and (3) above, and the Defendants have certified full and  
17 complete compliance in writing (such relief *not* precluding ongoing negotiations and  
18 discussions)).

19 Additionally, if the Court finds Defendants in contempt, it may by statute fine them \$1,000, imprison  
20 them, or both, for each act of contempt. (Civ. Proc. Code, § 1218, subd. (a).) In this circumstance, Plaintiff  
21 respectfully submits that the appropriate relief would be a forward-looking, monetary fine that is coercive  
22 in nature, such that Defendants are incentivized to comply with the Court's Order and can release themselves  
23 from contempt by simply doing so. Further, the Code of Civil Procedure provides that anyone who is  
24 "adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the  
25 contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the  
26 contempt proceeding." (*Id.*) Thus, Plaintiff additionally requests a modest award of \$10,000 against  
27 Defendants to reimburse Plaintiff for her fees incurred in preparing this Application and the supporting  
28 papers and attending the hearings on the same, which sum should be paid by the individual defendants and

1 not be paid by the College. (See McCurdy Decl., ¶¶ 8-9.)

3 Respectfully submitted,

4 DATED: August 26, 2021

GREENBERG TRAURIG, LLP

5  
6 By /s/ Lisa McCurdy  
7 Lisa McCurdy  
8 Attorneys for Plaintiffs Alumnae Association of Mills  
9 College, Dr. Viji Nakka-Cammauf and Tara Singh  
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