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ROBERTS, DR. MARILYN SCHUSTER,
13 ELIZABETH PARKER, OPHELIA BASGAL, and
DR. KAREN MAY
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

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

18 Plaintiffs,

19 v.

20 DR. ELIZABETH HILLMAN, et al.,

21 Defendants

22 -and-

23 MILLS COLLEGE, a California nonprofit
24 public benefit corporation,

25 Nominal Defendant.
26
27
28

Case No. RG21101875

**SUPPLEMENTAL 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 the Supplemental
Declaration of Dr. Elizabeth Hillman and the
Declaration of Dr. Marilyn Schuster]

The Hon. Stephen M. Pulido

DATE: August 16, 2021
TIME: 2:30 p.m.
DEPT.: 517

Complaint filed: June 7, 2021

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SUPPLEMENTAL DECLARATION OF ERIC ROBERTS

I, Eric Roberts, declare and state as follows:

1. The facts set forth herein are true of my own personal knowledge and, if called upon to testify thereto, I could and would competently do so.

2. I submit this supplement to my declaration in support of Defendants’ Opposition to Plaintiffs’ *Ex Parte* Application for Affirmative Relief, Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction, and do so in order to protect and preserve the best interests of the College.

3. As addressed in detail below, absent an agreement with Northeastern University, present scenarios and projections indicate that the College could very well run out of unrestricted cash by November or December 2021. Under any scenario the College’s current path is not sustainable, and without the immediate financial support that the proposed alliance with Northeastern would provide, the College would run out of cash and be unable to pay its debts, including its bank loans, by February 2022.

4. I graduated from the University of California, Berkeley (“UCB”) in 1967 with a Bachelor of Science, and received a Master of Business Administration degree from UCB the following year.

5. After obtaining my MBA, I worked at Deloitte beginning in 1968 until 1997 when I retired as a partner of the firm. In the 1980s, I was head of Deloitte’s Higher Education Practice, with clients such as the University of California System, University of Arizona, and many others. I subsequently became the head of Deloitte’s Northern California Litigation Support and Bankruptcy Practice. While at Deloitte, I became a Certified Public Accountant and a Certified Fraud Examiner. I later became Certified in Financial Forensics by the American Institute of Certified Public Accountants.

6. In 1998, I joined Morrison & Foerster LLP as a forensic accounting consultant, and later served as a Director of Forensic Accounting Services beginning in March 2000 until my retirement in mid-July 2021. At Morrison & Foerster, I provided financial and accounting expertise

1 on securities litigation and corporate and SEC investigations as well as identifying and overseeing
2 financial experts on those matters.

3 7. I am a voting member of the Board of Trustees (the “Board”) of Mills College (the
4 “College”)—a role I have held continuously since 2013 after previously serving on the Board from
5 1997 to 2006. I currently serve or have served on the following committees and subcommittees
6 during the fiscal years noted:

- 7 a. Audit Committee (2015)
- 8 b. Audit and Enterprise Risk Committee (2020-present)
- 9 c. Executive Committee (2016-present)
 - 10 i. Subcommittee on Negotiations (spring 2021-present)
- 11 d. Finance Committee (2014-2019; chair 2016-2019)
- 12 e. Investment Committee (2014)
- 13 f. Resources and Sustainability Committee (2020-present; chair 2020-present)

14 8. The College’s audited financial statements are available for public viewing on Mills’
15 website. A review of the College’s financial statements by the untrained eye or someone unfamiliar
16 with higher education financing may result in an incomplete picture. That said, virtually all the
17 information below comes directly from or is easily derived from the audited financial statements.

18 9. For example, the College’s unrestricted changes in net assets from operations—the
19 equivalent of a commercial company’s net loss from its operations—from 2014-2020 was \$31.2
20 million. FY 2020 was the only year showing a “profit.” Do not be misled by the term profit,
21 however. Had it not been for the sale of campus assets in 2020 *and* the receipt of emergency federal
22 COVID-19 funds, 2020 would have resulted in a loss of \$6.1 million and not a “profit” of \$2.4
23 million. This more complete calculation would have pushed the College’s overall losses since 2014
24 to \$39.7 million.

25 10. Cash used by operations totaled negative \$68.9 million over the past seven years
26 and would have exceeded negative \$78 million had it not been for the sale of campus assets and
27 the aforementioned federal funds. The College has limited assets to sell and the receipt of COVID-

1 19 emergency funding was a temporary aid that the College cannot and should not use as a basis to
2 forecast financial stability.

3 11. Although FY 2020 shows that Mills has a cash balance at the end of the year of \$3.2
4 million, that includes the \$3.1 million from the sale of campus assets and the \$6.6 million in
5 COVID-19 funds. Without those two *one-time* cash streams, there would have been a negative
6 cash balance of \$6.5 million. And Mills had no real borrowing capacity to transition the cash
7 position from negative to positive.

8 12. The College needs a successful partnership with another institution—most likely
9 Northeastern University—to pay its bills. While characterizations of certain auditor statements
10 regarding the College’s status as a “going concern” (i.e., having the ability to pay its bills through
11 the next year) through January 2022 have been referenced by outsiders challenging the decisions
12 of the College’s Trustees, those challenges are misinformed. These auditor statements say nothing
13 as to the College’s financial picture *beyond* January 2022—which, without Northeastern
14 University, is pressing. This was explained in writing in May 2021 in response to questions posed
15 by Trustee Tara Singh, and the response was provided to all Trustees. *See* Declaration of Dr.
16 Elizabeth L. Hillman, Ex. 27 at 4-5.

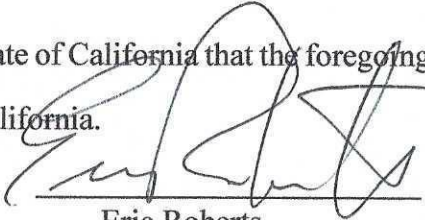
17 13. Current scenario projections estimate that the College will run out of money by
18 November or December 2021, absent an agreement with Northeastern (or another institution).
19 Under any scenario, without the immediate financial support that the proposed alliance with
20 Northeastern would provide, the College would run out of cash and be unable to pay its debts,
21 including its bank loans, by February 2022. This path would result in a cash deficit in excess of
22 \$20 million by June 2022 and place Mills in default on its bank loans, which are secured by the
23 campus land and buildings.

24 14. As described in the Supplemental Declaration of President Hillman, filed herewith,
25 without the immediate financial support that the proposed alliance with Northeastern would
26 provide: students unsure of their ability to obtain a degree from, or even attend classes at, the
27 College, will likely decline to return to the College, resulting in enrollment declines and further
28 loss of revenue; faculty and staff could leave, threatening the operation of the College; and creditors

1 (who have responded favorably to the proposed Northeastern alliance) may take more aggressive
2 action. All of this could precipitate a cash crisis in which the College runs out of funds as early as
3 November 2021.

4 15. Filing for bankruptcy is not an option for the College, because doing so would make
5 the College irrevocably ineligible to participate in federal student aid programs, which are
6 necessary for the College's continued operations in any form or partnership, and the bank would
7 have claim to the campus.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed on August 12, 2021 at Tiburon, California.



Eric Roberts

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