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Corinthian Colleges, Inc., Corinthian Schools, Inc.,  
10 Sequoia Education, Inc., Career Choices, Inc.,  
MJB Acquisition Corporation, Titan Schools, Inc.,  
11 Rhodes Colleges, Inc., Florida Metropolitan  
University, Inc. and Everest College Phoenix, Inc.  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SAN FRANCISCO  
15

16 **THE PEOPLE OF THE STATE OF**  
**CALIFORNIA,**

17 Plaintiff,  
18

v.

19 **HEALD COLLEGE, LLC; CORINTHIAN**  
**COLLEGES, INC.; CORINTHIAN**  
20 **SCHOOLS, INC.; SEQUOIA EDUCATION,**  
**INC.; CAREER CHOICES, INC.; MJB**  
21 **ACQUISITION CORPORATION; TITAN**  
22 **SCHOOLS, INC.; RHODES COLLEGES,**  
**INC.; FLORIDA METROPOLITAN**  
23 **UNIVERSITY, INC.; EVEREST COLLEGE**  
24 **PHOENIX, INC.; and DOES 1 through 100,**  
**INCLUSIVE,**

25 Defendants.  
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ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**JUN 26 2014**

Clerk of the Court

BY: ROMY RISK

Deputy Clerk

) Case No. CGC-13-534793  
)

) Assigned to Hon. Curtis E.A. Karnow  
) Department 304  
)

) **THE SCHOOL'S OPPOSITION TO THE**  
) **GOVERNMENT'S EX PARTE**  
) **APPLICATION FOR ORDER**  
) **SHORTENING TIME**

) Ex Parte Hearing: June 26, 2014  
) Time: 2:00 p.m.  
) Trial Date: April 20, 2015  
) Action Filed: October 10, 2013

1 Defendants Heald College, LLC; Corinthian Colleges, Inc.; Corinthian Schools, Inc.;  
2 Sequoia Education, Inc.; Career Choices, Inc.; MJB Acquisition Corporation; Titan Schools, Inc.;  
3 Rhodes Colleges, Inc.; Florida Metropolitan University, Inc.; and Everest College Phoenix, Inc.  
4 (collectively “the School”), respectfully submit this Opposition to Plaintiff’s *Ex Parte* Application  
5 For Order Shortening Time and Memorandum in support thereof (together, the “*ex parte*  
6 application”).

7 **I. INTRODUCTION**

8 In the last two weeks, Defendant Corinthian Colleges, Inc. (“Corinthian”) has entered a  
9 liquidity crisis as a result of the Department of Education’s (“ED”) delay in the distribution of  
10 federal funds to the School based upon an alleged failure to respond quickly enough to a document  
11 request.<sup>1</sup> The School has negotiated an interim solution with ED that allows the School to remain  
12 operational and serving its students. A final plan will be decided between the School and ED by  
13 July 1, 2014. The School has communicated extensively with both its students and employees  
14 about this situation and has submitted numerous public filings explaining the events. The School  
15 is engaged in around-the-clock negotiations with ED and also with potential buyers for its assets.  
16 Without a meaningful discussion prior to filing, the Government will, with this *ex parte*  
17 application and the promise of a TRO, derail the School’s attempts to secure a deal to save its  
18 campuses, students and employees. The Government took these actions unilaterally, without once  
19 reaching out to the School to seek a solution to its supposed concerns short of a court filing. There  
20 is no good cause to grant this *ex parte* application.

21 On June 23, 2014, Corinthian filed a Form 8-K announcing that it had entered into a  
22 memorandum of understanding (“MOU”) with ED. This filing received extensive press coverage.  
23 The MOU, as disclosed in the Form 8-K, provided that Corinthian would finalize an Operating  
24 Agreement, including a plan for selling certain of its campuses to new owners and for closing  
25 (“teaching-out”) certain of its remaining campuses to ED by July 1. (Shobaki Decl. Ex. 1.) The  
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27 <sup>1</sup> The School hired ten full-time employees to work on this production in light of its  
28 breadth and magnitude and has dedicated an excess of nearly 400 employees to respond to the  
demand, resulting in a rolling production of significant quantity. In short, the delay in Title IV  
funding was imposed based upon a non-substantive pretext.

1 MOU also provided that Corinthian would continue new student enrollments until ED approved  
2 Corinthian’s plan; at that point, Corinthian would discontinue enrollments and provide notice to  
3 students in the teach-out schools of the intent to teach out those schools. (*Id.* at Ex. 10.1, p. 4.)  
4 Both the School and ED recognize that it is important that the School’s students “be given an  
5 opportunity to complete their education without material interruption, change, or additional cost,”  
6 which requires that the plan “consider the value of the schools for students, employees, and  
7 taxpayers.” (*Id.* at Ex. 10.1, p. 1.) In short, the School and ED (unlike the Government here)  
8 understand that no one benefits if the School is forced to close down before it is able to make  
9 provisions for its students.

10         Rather than wait six days to see what the July 1 plan would entail, the Government charged  
11 forward by lodging a motion to file a proposed supplemental complaint (“PSC”) and an *ex parte*  
12 application to shorten the notice period for the motion to just four court days. The School  
13 understands that the Government is in regular contact with ED. Indeed, the Government asked the  
14 School for consent to allow ED to participate in the June 30 mandatory settlement conference, and  
15 identified as a participant one of the individuals from ED involved in negotiations with the School.  
16 Nonetheless, the Government did not try to work out a stipulation with the School, either for its  
17 PSC or to shorten the notice period for its motion. Nor did the Government contact the School  
18 about this matter until June 25, just hours before it filed its papers. (Shobaki Decl. ¶ 3& Ex. 2.)  
19 The PSC alleges that because the School has not—in the three days since it filed its Form 8-K  
20 announcing the MOU—changed all of its outreach to potential students to reflect the information  
21 in the Form 8-K, the School is misleading consumers (even though the MOU with ED does not  
22 require such notice at this point). The Government’s *ex parte* application seeks a shortened notice  
23 period on the theory that the unchanged websites are causing “irreparable harm” to consumers.  
24 Rather than adhere to a regular briefing schedule, the Government insists that the School file its  
25 opposition to the PSC on June 30 (the date of the parties’ Mandatory Settlement Conference  
26 before Judge McBride, at which ED will be present), and that this Court hear the motion to file the  
27 PSC on July 1—the same date Corinthian will present its plan to ED.

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1 The Government’s *ex parte* application lists its intent to file a temporary restraining order  
2 and / or a preliminary injunction, and the inchoate need to “protect the people from irreparable  
3 harm,” as the purported bases for shortening the notice period. (Plaintiff’s Mem. at 4.) But the  
4 Government’s *ex parte* application fails on at least two grounds. First, the Government does not  
5 need to file its PSC before seeking a preliminary injunction; it can do so on the basis of affidavits  
6 alone. Cal. Civ. Code § 527. And even if its PSC were necessary, the Government cannot show  
7 “good cause” for the order: the Government’s ultimate goal of restraining or enjoining the conduct  
8 it alleges would do far more “irreparable harm” to the people of California than if the Government  
9 allows the School and ED to work out an orderly plan—which will address the very concerns,  
10 unfounded as they may be, raised by the Government—to take care of the School’s students. The  
11 Court should therefore deny the Government’s application.

## 12 **II. ARGUMENT**

13 The Government is not entitled to a shortened notice period on its motion to file a PSC  
14 unless it can show “good cause” for the rush. Cal. Rules of Court Rule 3.1300. To do so, the  
15 Government must show that, in light of all the circumstances, the shortened time is warranted.  
16 *Laraway v. Sutro & Co., Inc.*, 96 Cal. App. 4th 266, 274 (2002). The Government must also show  
17 that its reasons for seeking the shortened period are “reasonably related to legitimate needs, goals,  
18 and purposes” and not “trivial . . . [or] capricious.” *Id.* The Government has failed to do so.

### 19 **A. The Government Does Not Have Good Cause To Shorten The Notice Period** 20 **Because The Government Does Not Need To File A PSC To Seek A Temporary Restraining** 21 **Order Or Injunctive Relief, If That Is Really What It Plans To Do.**

22 The Government’s *ex parte* application argues that time is of the essence because, without  
23 filing a PSC, the Government will not be able to request a temporary restraining order and / or  
24 preliminary injunction to force the School to revise its websites before it works out a plan with  
25 ED. (Plaintiff’s Mem. at 4.) The Government is wrong. A party can seek a temporary restraining  
26 order or preliminary injunction on the basis of a verified complaint or affidavits. Cal. Civ. Code  
27 § 527(a) & (c)(1). As the discussion below makes clear, the balance of harms here weighs heavily  
28 in favor of the School—making preliminary injunctive relief on the matters identified in the

1 Government’s filing improper. The Government’s plan to file a PSC before seeking preliminary  
2 injunctive relief is unnecessary and seemingly just an attempt to garner publicity and distract the  
3 School as it negotiates with ED, further depleting already-thin School resources. As a matter of  
4 law, an expedited hearing on the Government’s motion to file a PSC will not speed up the  
5 Government’s right to obtain the relief it seeks because the Government already has that right.<sup>2</sup>  
6 There is therefore no reason, much less a reason “reasonably related to legitimate needs, goals, and  
7 purposes,” to shorten the notice period for the Government’s motion to file its PSC. The  
8 Government has therefore failed to show good cause for its application and it should be rejected  
9 outright for that reason alone.

10 **B. The Government’s Interference With The School And ED’s Plan Will Cause**  
11 **Irreparable Harm To The Students.**

12 The School and ED are in the middle of a delicate and complex process of restructuring  
13 Corinthian and teaching-out or selling schools. This outcome is preferable to an immediate  
14 closure of the School because of the protections sale or teach-out affords students, taxpayers, and  
15 employees. Because the School and ED recognize the paramount importance of protecting these  
16 constituencies, the MOU does not demand that the School cease enrollments or immediately  
17 notify students and potential students of the situation.<sup>3</sup> (Shobaki Decl. Ex. 1 at Ex. 10.1.) Both  
18 the School and ED realize that, if the School is to succeed in selling campuses so that its students  
19 can continue their education, the School has to remain a viable going concern. It is important to  
20 remember that schools are bought, sold and taught out with frequency. Accreditors and state  
21 departments of education have well established regulations and practices to address these  
22 situations and the concerns expressed by the Government. There is no need for the Government to  
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24 <sup>2</sup> If the Government wishes the subject matter of the PSC to be part of its allegations in the  
25 case going forward, it would of course need to move for and obtain leave to file its PSC. But the  
26 Government cited no urgent need—and there is none—to expedite the notice period simply to add  
27 new underlying facts to the FAC.

28 <sup>3</sup> In order to keep students in school and to attract a qualified buyer (as will be determined  
by ED), a flow of students is necessary. Protections are in place for these students through  
existing accreditor and state regulations, federal law and the MOU should the campus be taught  
out. Once a campus is identified for teach-out, enrollments immediately stop. If a campus is sold,  
educational services are provided in the ordinary course.

1 recreate the wheel or add an additional layer of bureaucratic oversight. In fact, during the course  
2 of this investigation, four California campuses have been sold without incident; Heald itself was  
3 bought and sold twice in the last seven years, rescuing it from insolvency as a non-profit.

4 During a June 25, 2014 call initiated by the School after the Government filed its papers,  
5 the Government proposed a potential stipulated injunction that would require, among other things,  
6 a prominent “bold faced, underlined, not small” disclosure to students on every web page and in  
7 every written document, among other things, that the School is financially unstable and could  
8 collapse at any time. (Shobaki Decl. ¶ 6.) This kind of disclosure is unprecedented, alarmist and  
9 confuses a liquidity crisis with insolvency. Indeed, when does any business have to make such  
10 disclosures? The proposed notice would almost certainly drive away the vast majority of students  
11 considering enrollment and thus potential buyers, ultimately harming students, employees and  
12 taxpayers. The Government appears to think that students will be best served by causing  
13 immediate panic and destroying any chance the School has of selling its campuses to buyers who  
14 will responsibly operate them.

15 The School attempted to explain the sensitivity of the situation on the June 25 conference  
16 call with Messrs. Akers, Campins and Jones. During that call, William Calhoun, Vice President  
17 and Deputy General Counsel for the School, explained to the Government that:

- 18 • As part of the discussions with ED, the School is considering selling campuses to  
19 new owners who would continue to operate them.
- 20 • This sale would protect student and taxpayer interests by keeping the campuses in  
21 operation as is ED’s stated goal in the MOU.
- 22 • The Government’s poorly-timed PSC and the threat of draconian injunctive relief  
23 could drive away buyers, scuttling potential campus sales.
- 24 • The School’s failure would unnecessarily harm students because they would have  
25 no access to academic records, assistance with transition or transfer, or any other  
26 services that a school in teach-out can provide.
- 27 • The School’s failure would unnecessarily harm taxpayers.

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- 1           ○ The federal government would be forced to forgive in excess of
- 2                     \$1,200,000,000 in student loans and
- 3           ○ Similarly, the School estimates that its students in California, and other
- 4                     states, would completely deplete the Student Tuition Recovery Fund.
- 5           • The School’s failure would unnecessarily harm the thousands of individuals who
- 6                     work at the School.

7           Despite the many reasons set forth to delay or obviate the current motion practice, the  
8 Government remained intransigent that the *ex parte* application, the PSC and the hypothetical  
9 TRO were necessary. (Shobaki Decl. ¶ 6.) The Government would not agree to withdraw the  
10 filing, but agreed to the School’s request for a follow-up call on the morning of June 26 to discuss  
11 whether it might change its stance. (Shobaki Decl. ¶ 6.) Unsurprisingly, the Government refused  
12 to change course, and insisted on pressing forward with the *ex parte* application. (Shobaki Decl.  
13 ¶ 7.) The Government’s demand that the School take time away from its planning with, and  
14 voluminous responses to ED in order to address any issues that the Government deems necessary,  
15 on the Government’s pell-mell schedule, is “capricious” and not good cause to shorten the notice  
16 period. *Laraway*, 96 Cal. App. 4th at 274. Indeed, in the totality of the circumstances, the  
17 Government’s *ex parte* application is a request to accelerate the Government’s ability to derail the  
18 School’s plan for a smooth transition for its students. The Government does not have a  
19 “legitimate need[], goal[], [or] purpose[]” to prevent the School and ED from protecting the  
20 School’s students from harm. *Id.* The Government has not shown good cause for its *ex parte*  
21 application.

22           **C.       The Government’s Interference is Unnecessary to Protect Students During the**  
23 **Brief Transition Period in the MOU or During any Sale or Teach-Out.**

24           There are numerous safeguards already in place to protect students during the sale or  
25 orderly closure of a school or program. For example, the Western Association of Schools &  
26 Colleges (“WASC”), which accredits Heald College, has a series of procedures that govern the  
27 transfer of ownership of schools or the teach-out of programs. The same is true for the Everest  
28 and Wyotech campuses and their accreditors. The procedures include notice to students. Changes

1 of ownership are common. Indeed, Heald College has been sold twice in the last seven years.  
2 Such changes of ownership must be approved by WASC (and in order to receive Title IV funding,  
3 by ED), and the approval process requires institutions to submit a proposal that provides an  
4 “analysis of how the change will affect the institution’s capacity to deliver quality programs in  
5 terms of the impact on academic programming, faculty qualifications, student learning outcomes  
6 at both the program and course level, and infrastructure (particularly regarding technology).” (*See*  
7 *Shobaki Decl. Ex. 3* (“Appropriate Level of Review of Proposed changes in Mission, Legal Status,  
8 Ownership, or Control Policy”), *Ex. 4* (“Template: Changes in Mission, Ownership, or Form of  
9 Control”).)

10 In the case that a WASC school closes or teaches-out programs, its plans “must provide for  
11 the equitable treatment of students by ensuring that the institution has the necessary experience,  
12 resources, and support services to provide an educational program that is of acceptable quality and  
13 reasonably similar in content, structure, and scheduling, and to meet all obligations to its existing  
14 students.” (*Shobaki Decl. Ex. 5* (“Teach-Out Plans and Agreements Policy”). ED has similar  
15 requirements that schools provide and adhere to teach-out plans that provide continuity for  
16 students enrolled at the time of teach-out. *See* 34 C.F.R. § 668.14(b)(31). These safeguards are  
17 overseen by WASC and ED, agencies that are subject-matter experts in education, and whose  
18 objectives and goals are focused squarely on protecting students and providing for good education  
19 outcomes.

20 If the School fails to sell assets and collapses due to a lack of liquidity, students will be  
21 robbed of these protections of WASC and ED, which provide for an orderly transition when a  
22 campus is closed or sold. Rather than serve the interests of the taxpayers or consumers (students)  
23 that it purports to be protecting during this brief period of transition as the School works with ED,  
24 the Government is creating a situation that all but ensures that the School will cease to exist in a  
25 traumatic, harmful, and tragic manner.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the School respectfully requests that this Court deny the  
3 Government's *ex parte* application to shorten the notice period for its motion to file its PLC.

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5 Dated: June 26, 2014

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By: /s/ Andra B. Greene  
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