Nos. 14-15621, 14-16032
(Consolidated Appeals)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL O'CONNOR and CELIA RUMANN,

Appellants,

vs.

PHOENIX SCHOOL OF LAW, LLC, and
INFILAW HOLDINGS, LLC,

Appellees.

Appeal from the United States District Court
for the District of Arizona, No. 2:13-cv-01107-SRB
Hon. Susan R. Bolton, presiding

APPELLEES' RESPONSE BRIEF

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FRAP 26.1 DISCLOSURE STATEMENT

Appellate Court No.: 14-15621, 14-16032

Short Caption: **Michael O'Connor and Celia Rumann v. Phoenix School of Law, LLC and InfiLaw Holdings, LLC**

(1) The full name of every party that the attorney represents in the case:

Phoenix School of Law, LLC - Quarles & Brady LLP

InfiLaw Holdings, LLC - Quarles & Brady LLP

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Quarles & Brady, LLP

(3) If the party or amicus is a corporation:

(a) Identify all its parent corporations, if any:

InfiLaw Corporation is the parent corporation of Phoenix School of Law, LLC (now known as Summit School of Law)

(b) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Ares Capital Corporation (a public company) is part of a group of entities owing 100% of certain units of **InfiLaw Holding**, LLC, giving it a preferential return of capital that is equal to more than 10% of the current fair market of InfiLaw Holding. In addition, Ares Capital also owns other units of InfiLaw Holding with certain protective rights.

Dated: November 14, 2014

Respectfully submitted,

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JURISDICTIONAL STATEMENT

I. District Court Jurisdiction

Plaintiffs' brief fails to establish diversity jurisdiction under 28 U.S.C. § 1332 for each defendant. As will be shown below, only the first defendant is diverse and the second defendant is not. And as a result, under settled Supreme Court precedent, the nondiverse defendant should be dismissed in order to preserve subject matter jurisdiction to review the judgment in favor of the first defendant.

A. Phoenix School of Law is a diverse party.

Plaintiffs, Michael O'Connor and Celia Rumann are both citizens of Arizona. Defendant Phoenix School of Law, LLC (now known as Arizona Summit Law School) is a Delaware limited liability company (LLC) and it will be referred to in this brief as the "school." For the purposes of diversity jurisdiction, an LLC is a citizen of every state in which any one of its members is a citizen at the time that the action is commenced. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (an LLC is a citizen of every state of which its members are citizens). When plaintiffs filed this action, the members of this LLC were Phoenix School of Law (AZ), Inc. and Phoenix School of Law B Corp, Inc. Both these entities

are citizens of Delaware and Florida, because they are Delaware corporations with their principal place of business in Florida.

B. The first alter ego defendant, InfiLaw Corporation, was also diverse.

Plaintiffs' original complaint and their first amended complaint also named the school's corporate parent, InfiLaw Corporation, as a defendant on an alter ego claim.[1] Supp. R. at 2, 34. InfiLaw Corporation is a Delaware corporation with its principal place of business in Florida. Thus, there was complete diversity between plaintiffs and defendants when the case was filed.

In addition, the damages alleged in the initial complaint, as well as the first and second complaints (exclusive of interest and costs) are in excess of the jurisdictional amount of $75,000.00. Supp. R. at 3, 35; R. vol. II, at 59, ¶ 5. As a result, diversity jurisdiction existed when the case was begun.

[1] Unless otherwise noted, the references to the record are to the two volumes of Appellants' Joint Excerpt of Record (Doc. 24-4), abbreviated as "R. vol. I" or "R. vol. II." In addition, defendants have filed a Supplemental Excerpt of Record, "Supp. R."

C. InfiLaw Holding is nondiverse and should be dismissed

After the district court dismissed both the school and InfiLaw Corporation, the plaintiffs filed a second amended complaint that dropped InfiLaw Corporation, and added the school's corporate grandparent, InfiLaw Holding, LLC, also as an alter ego defendant. R. vol. II at 59.

InfiLaw Holding, LLC, is a Delaware limited liability company. Plaintiffs had the burden of establishing subject matter jurisdiction, including the citizenship of any new defendant that it added. *Kokkonen v. Guardian Life Ins.*, 511 U.S. 375, 377 (1994) (plaintiff has burden of establishing subject matter jurisdiction); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857-58 (9th Cir. 2001)(party invoking diversity jurisdiction must affirmatively allege citizenship of all parties); *see also Delay v. Rosenthal Collins Group, LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009)(diversity jurisdiction for LLC requires knowing the citizenship of each "sub-member").[2] Yet when adding InfiLaw Holding as a party, the plaintiffs did not identify any of its members. And neither the district court nor the defendants raised that omission.

[2] Although plaintiffs are proceeding *pro se* in this court, in the district court, they were represented by counsel.

A lack of subject matter jurisdiction, including the absence of complete diversity of citizenship, may be raised at any time, even on appeal, and cannot be waived. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) (presence of non-diverse defendant "automatically destroys original jurisdiction," and cannot be waived and cannot be ignored).

When analyzing the different levels of membership for InfiLaw Holding in preparing this jurisdictional statement, defendants have learned that, among its many members, at least one is a citizen of Arizona. Specifically, the school's dean, Shirley Mays, has owned Class C Units of InfiLaw Holding, since before the lawsuit was first filed until the present. Supp. R. at 250 (Verified Statement of Shirley Mays). Ms. Mays' domicile is in Phoenix, Arizona (*id.*) and she is therefore a citizen of that state.[3] Because InfiLaw Holdings includes this nondiverse member, that destroys diversity jurisdiction.

In such a situation, the Supreme Court has instructed that a court of appeals may dismiss a dispensable nondiverse defendant in order to

[3] InfiLaw Holding also has institutional investors that are themselves LLCs with potentially thousands of members that have Arizona citizens. But since the analysis of complete diversity here requires only that there be one nondiverse member, it is unnecessary to address any other nondiverse members.

preserve jurisdiction as to the diverse defendant. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836-37 (1989). When dismissing such a nondiverse party, a court of appeals "should carefully consider whether the dismissal of a non-diverse party will prejudice any of the parties in the litigation." *Id.* at 838. *See also Galt G/S v. JSS Scandinavian*, 14 F.3d 1150, 1154-55 (9th Cir. 1998) (applying *Newman-Green*, court affirms dismissal of nondiverse parties).

In particular, when the underlying claims against a diverse corporate defendant have already been dismissed, a nondiverse, alter-ego defendant such as InfiLaw Holding is not an indispensable party. *Kunica v. St. Jean Fin., Inc.*, 63 F. Supp. 2d 342, 350 (S.D.N.Y. 1999) (applying *Newman-Green*, nondiverse alter ego defendant dispensable). The nondiverse defendant then should be dismissed to preserve jurisdiction over a judgment in favor of the diverse defendant. *Id.* Dismissal of the nondiverse defendant alone is "particularly appropriate" when the parties have proceeded to a final judgment before the jurisdictional defect is discovered. *Id.* (citing *Newman-Green* and *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 75 (1996) ("once a diversity court case has been tried in federal court... consideration of finality, efficiency, and economy become overwhelming")).

Dismissing InfiLaw Holding would create no unfair prejudice to any party. Here, diversity jurisdiction existed when plaintiffs originally brought this case in federal court. It was only when plaintiffs filed a second amended complaint adding InfiLaw Holding, and without alleging its citizenship, that this amended complaint eliminated diversity jurisdiction. Because plaintiffs have always sought to pursue this dispute in federal court, they would not be prejudiced if the judgment in favor of the school is now decided on the merits in this appeal.

On the other hand, the school would suffer significant prejudice if the entire action were dismissed. After a substantial expenditure of judicial resources in deciding this case and substantial expenditures by the school in defending it, it would be nothing short of a windfall for the plaintiffs if the judgment in favor of the school was vacated for lack of subject matter jurisdiction. *See Kunica*, 63 F. Supp. 2d at 350 (diverse defendant would "suffer substantial prejudice" if judgment in its favor vacated and it would have to make the same motions in state court). This is especially so when it is plaintiffs who added a new nondiverse defendant without alleging its citizenship. InfiLaw Holding should be dismissed as a nondiverse

defendant and the court should decide the merits of this appeal as to the school.

Finally, the dismissal of InfiLaw Holding should be with prejudice. In a case similar to this one, the First Circuit dismissed the nondiverse defendant with prejudice. In *Gorfinkle v. U.S. Airways*, 431 F.3d 19, 22 (1st Cir. 2005), the plaintiff in a personal injury suit filed an amended complaint adding a nondiverse corporation. The case then proceeded to a judgment in favor of both defendants without either the parties or the district court noticing the jurisdictional defect. *Id.* Because the nondiverse defendant had participated in the case and faced the prospect of having to relitigate the case in state court after having a judgment entered in its favor, the First Circuit decided to "resolve this problem by dismissing [the nondiverse defendant] with prejudice." *Id.* at 23. In doing so, the First Circuit relied on *Newman-Green* where the Seventh Circuit panel had also dismissed the nondiverse defendant with prejudice to avoid forcing it to litigate in another forum. The Supreme Court stated that the Seventh Circuit's dismissal with prejudice was "entirely appropriate" to avoid the "waste of time and resource ... engendered by remanding to the District Court or by forcing these parties to begin anew." 490 U.S. at 838. The

reasoning for the dismissals with prejudice in *Gorfinkle* and *Newman-Green* applies equally to this case, since InfiLaw Holding has already participated in this case and has had a judgment rendered in its favor.

II. Appellate Jurisdiction

This court has jurisdiction of these consolidated appeals under 28 U.S.C. § 1291. The district court issued a final judgment dismissing this action on March 19, 2014 and a notice of appeal was filed March 31, 2014. *Id*. at 44. The district court later issued a final judgment awarding defendants attorneys' fees on May 20, 2014 and a notice of appeal was filed on May 27, 2014. *Id*. at 1.

ISSUES PRESENTED

Plaintiffs in this case, Michael O'Connor and Celia Rumann, are husband and wife, who became tenured professors at the school; they are referred to as the "professors" here. The rights of tenured faculty at the school are set out in its Faculty Handbook, which states that those rights do not "exist apart" from a separate tenure contract. For the 2013-2014 academic year, the school sent appointment letters to its entire faculty incorporating the tenure rights in the handbook and stating that the offer must be accepted by a certain date. As with all other tenured faculty, the letters offered the professors tenure positions. But the professors refused to

sign the letters. Instead, they presented the school with contracts that they had drafted and which the school declined to accept.

These issues are presented for review:

1. Did the school breach its contracts with the professors by offering them a tenured position with the appointment letters?

2. Did the school breach any implied covenant of good faith and fair dealing by offering the professors a tenured position with the appointment letters?

3. Did the district court abuse its discretion by awarding defendants a portion of their requested attorney fees?

STATEMENT OF THE CASE

Tenure rights are established in the handbook and tenure contract.

The Phoenix School of Law was founded in 2004 and since 2010 has been accredited by the American Bar Association. R. vol. II at 59, ¶ 7. The school is part of a consortium of ABA-approved independent, community-based law schools with a commitment to underserved communities. Supp. R. at 77, ¶ 1.1 and 1.1.4.4.

In April 2007, the school's faculty approved a Faculty Handbook as the official statement of the policies, responsibilities, and rights of its

faculty. Supp. R. at 65. The handbook has two chapters. Chapter I details the school's mission, organization, and corporate governance and states that it is part of the InfiLaw System of law schools. *Id.* at ¶ 1.1.1. Chapter II describes the responsibilities and rights of the faculty. R. vol. II at 111.

Section 2.2.4 of Chapter II (*id.* at 120), titled "Tenure," describes tenure rights in two sentences. The first sentence explains that the school will provide a "tenure contract" which gives the "contractual right to be reemployed" each year and which only exists "from academic year to academic year." This sentence states in full:

> A tenure contract is for an academic year and gives the faculty member the contractual right to be re-employed for succeeding academic years until the faculty member resigns, is discharged for adequate cause, is terminated pursuant to a reduction in force, becomes disabled, or dies, but subject to the terms and conditions of employment which exist from academic year to academic year.

The second sentence of Section 2.2.4 again refers to the "tenure contract" and states that "tenure status" as found in the handbook does not "exist apart" from that contract: "Tenure status is defined by the terms of this Faculty Handbook and a tenure contract and does not exist apart from a legally subsisting contractual agreement."

The next section, 2.2.5, titled "Contract Form," states that "[t]he contract for the employment of faculty at the School shall be in the following form and style." It then provides a form contract entitled "Faculty Contract of Employment," with blank spaces for the date of the contract, the dates of the academic year and rank or title (¶ 1), salary (¶ 2), whether the contract is for a tenured faculty member, or for a non-tenured, referred to as "tenure-track" member (¶ 3), and the minimum number of days for an employee to give notice of termination (¶ 5).

The form contract also states that "Any changes of any kind in the employee's acceptance of this Contract shall constitute a counter-offer and shall automatically nullify the offer extended herein." *Id.* at ¶ 11. The form contract concludes that it must be accepted by a date certain, stating that it "shall not be binding upon the School unless it is signed by the Employee within ___ calendar days of the date of presentation hereinafter set forth." *Id.* at ¶ 12.

The professors receive tenure and a tenure contract.

The school hired Professor O'Connor in 2007 and promoted him to a professor with tenure in August 2010. R. vol. II at 67 ¶ 46. It hired Professor Rumann in 2008 and promoted her to a professor with tenure in

August 2011. *Id*. For the 2012-13 academic year, Professors O'Connor and Rumann both signed identical tenure contracts tracking the form contract in the handbook which ran from August 1, 2012 until May 31, 2013. *Id*. at 106, 108. As provided in the form contract, both contracts stated that any changes in the acceptance of the contract would constitute a "counteroffer" that would "automatically nullify the offer" and that the contract would not be binding on the school unless it was accepted within 14 days. *Id*. at ¶ 18, 19. Professor O'Connor signed his contract on August 2, 2012 and Professor Rumann signed hers on August 1 and both contracts were accepted by the school.

The professors criticize proposed changes at the school.

This is a breach of contract case. But the professors' complaint includes some 90 paragraphs detailing their many criticisms and grievances about how the school was being run and how they were treated. R. vol. II at 64-82, ¶¶ 17-44, 60-127. Among other things, the complaint alleges that the professors and other faculty members objected to proposed changes to the school's curriculum and faculty evaluations and compensation. *Id*. at 74-82. The complaint describes how in December 2012, Professor O'Connor challenged the school administration about these

proposed changes and voiced his disagreement with the proposals, which the school eventually adopted. *Id*. at 77-82.

The school renews the professors' tenure contract.

Though the professors allege that the school was hostile to them after they criticized the new proposals in December 2012, some five months later, in May 2013, the school once again offered them tenure contracts. On May 3, 2013, the school sent an email to all faculty members explaining that "[e]ffective with the 2013-2014 school year, Phoenix School of Law will be issuing appointment letters for returning faculty rather than lengthy contracts." R. vol. II. at 187. The e-mail stated that this step would "simplify the process and eliminate redundancies. The appointment letter does not contain any fewer protections, rights, and responsibilities than the previous contracts issued to returning faculty." The next sentence states that "[t]he condensed employment letter incorporates Chapter II of the Faculty Handbook, which is where the key contract provisions are located."

As provided in the handbook's form contract, the email also stated that the signed appointment letters must be returned no later than a certain date. Specifically, just as with the contracts the professors signed the year before, the email stated that the letters had to be returned within 14 days:

"The appointment letters have been placed in your mailboxes today. Please sign your appointment letter and return it to Human Resources by May 17, 2013." *Id.*

The professors both received appointment letters which were identical, except for their salary. *Id.* at 190 & 192. The letters were signed by the school's dean and began, "I am pleased to appoint you to the position of Professor of Law for the 2013-2014 Academic Year, which extends from August 19, 2013 to June 19, 2014. This will be a full time 'tenure position.'" Professor O'Connor's salary was set at $131,700. And Professor Rumann's was set at $127,864. The letters stated that any additional merit increase in salary would be retroactive to August 1, 2013.

The letters also incorporated all of the terms of Chapter II of the handbook: "The provisions of Chapter II of the Faculty Handbook, as they may be modified from time to time, are applicable to your appointment and are incorporated into this agreement."

Finally, the letters contained a sentence applying to non-tenured faculty: "Please let me know if you do not want to be reappointed to your tenure-track position for the 2013-2014 academic year." As noted, the professors had already been tenured since 2010 and 2011, and the first

paragraph of the letters stated the professors were appointed in the coming year as "Professors of Law" with "tenured positions," and there was no indication in the letters that their status as tenured faculty had changed.

Immediately after the professors received the letters, they indicated that they would not sign them. R. vol. II at 189 & 191. As a result, still on that same day, May 3, the school's director of human resources sent the professors another letter asking them again to sign the letters and again reaffirming that they had been appointed to "tenured positions": "We understand you have elected not to sign the attached appointment letter. However, we are resending the letter to you confirming your appointment to a tenured faculty position for the 2013-2014 academic year." *Id.* It concluded, "Please contact Dean Mays or Stephanie Lee if you are not agreeable to this appointment."

Without signing the letters,
the professors present their own contracts.

A week after receiving the letters, the professors each sent the director of human resources a letter on May 10 claiming that the appointment letters did not provide the same protections as the Faculty Handbook and enclosing contracts of their own. R. vol. II at 194-201. In their cover letter, the professors did not contend that the school's offer

repudiated any right or privilege that they had under their 2012-2013 contracts. Instead, they contended that "Section 2.2.5 of the Faculty Handbook contains the required form employment contract. Certain material terms -- such as paragraphs 1, 5, and 10 -- are left blank in the form contract and therefore not incorporated by the appointment letter." In their letters, the professors also acknowledged that the deadline to finalize their contracts was May 17, but directed that their own contracts be signed by that date instead. *Id.*

The professors' contracts differed from the terms in the appointment letters. Their proposed contracts altered the date by which any new salary would be retroactive, from August 1, 2013 to August 19, 2013. Both also indicated that the minimum time to give notice of resignation was 120 days, rather than the 90 days in the handbook. *Id*. at 196, ¶ 5, 200, ¶ 5; *cf*. Handbook at 2.8.2.

Twelve days after receiving the appointment letters, on May 15, the professors' own attorney wrote the school demanding that it sign and return their proposed contracts by the May 17 deadline. Their counsel did not, however, complain that the school failed to offer the professors full-time, tenured positions or contend that the appointment letters repudiated

any earlier contract rights. Supp. R. 158-59. Instead, the professors' counsel argued only that certain terms (*e.g.*, dates of employment and title and rank) were omitted from the Chapter II form contract and that the proposed contracts filled in those blanks. *Id.*

The school withdraws its offer and the professors' employment expires.

By the May 17 deadline, the professors had still refused to accept the appointment letters. And on May 20, the school informed them by letter that it was withdrawing its offer: "We received your written communications indicating that you do not accept the offer of employment made to you. For this reason, the offer of a position for the 2013-2014 academic year is withdrawn." Supp. R. at 28-31. The letter continued that "[i]n light of your rejection of our offer of continued employment for the 2013-2014 academic year, your employment at the Phoenix School of Law will end on May 31, 2013 as that is the last day of the term of your contract."

The district court dismisses the first amended complaint.

On May 31, 2013, the professors brought suit against the school alleging a breach of contract and an implied covenant of good faith and fair dealing. Supp. R. at 1. In their First Amended Complaint, the professors alleged that the appointment letters breached their contractual tenure

rights because they incorporated the Faculty Handbook by reference, rather than providing them the actual form contract set out in the handbook. *Id*. at 50. They also alleged a breach of an implied covenant of good faith from, among other things, the school not signing a form contract as described in the handbook and not informing the professors before the May 17 deadline that their proposed contracts were not acceptable. *Id*. at 56-57. The complaint also added a claim against the school's parent corporation, InfiLaw Corporation, because of its "significant control" of the school's operations. *Id*. at 34.

The school and its parent moved to dismiss under Fed. R. Civ. P. 12(b)(6) and the district court granted that motion.[4] The court first rejected the professors' argument that the school breached its contract by providing appointment letters, rather than the form contract in the handbook. The court reasoned that those letters "either expressly contained the terms found in the Section 2.2.5 form contract or incorporated them by reference." R. vol. II, at 258. The court stated:

> The [appointment] letters explained that Plaintiffs were being offered full-time tenured positions as professors for the 2013-

[4] The form contract at Section 2.2.5 (¶ 6) of the handbook states that Arizona law applies. The court applied Arizona law which the parties agree governs here.

> 2014 academic term, and the letters included the proposed dates of Plaintiffs' employment as well as their salary, which was to be paid over a twelve-month period. Other terms were supplied through Chapter 2 of the Handbook, such as the timeframe for the post-tenure review and the amount of notice Plaintiffs would have needed to provide had they wished to terminate their contracts.

Id. at 258.

The court also rejected the professors' argument that certain "pre-existing contract rights" from their 2012-2013 were omitted from the appointment letters:

> Plaintiffs have not identified any difference in the terms between the 2012-2013 contracts and the appointment letters. Because Plaintiffs were offered full-time tenured positions through the appointment letters, they were clearly offered "tenure contracts" for the 2013-2014 academic term. Plaintiffs 2012-2013 contracts also provided that "[t]he Contract and the Employee's employment with the School are *subject also to the provisions of Chapter II of the Faculty Handbook*."

Id. at 259. (emphasis added).

The court noted that the professors had identified two differences between the appointment letters and their 2012-2013 contracts: (1) the start dates of the terms, August 1 to May 31 for 2012-2013, and August 19 to June 19 for 2013-2014, and (2) resignation-notice of 120 days for 2012-2013 and 90 days for 2013-2014. *Id.* at 259. But the court pointed out that "the Handbook itself contemplates that tenure contracts may vary from

year to year." Moreover, these differences "did not provide Plaintiffs with any fewer protections than under the 2012-2013 contracts," since the academic years remained the same, and any resignation notice was actually 30 days shorter. *Id.* at 259.

The court concluded that the contracts proposed by the professors were counteroffers that the school was not required to accept: "Because Plaintiffs did not unequivocally accept the terms of the appointment letters in their May 10, 2013 letter (including those governing the retroactive application of salary increases and resignation-notice provisions), the completed contracts included with those letters were counteroffers and [the school] was not required to accept them." *Id.* at 260.

The court also dismissed the professor's claim that the school breached an implied covenant of good faith. It cited the established rule that such covenants prevent one party from denying the other the "benefits and entitlements of the agreement." And since the court had already concluded that the professors' proposed contracts were counteroffers that the school did not have to accept, the professors "fail[ed] to show that [the school] prevented them from receiving benefits that they were otherwise entitled from the 2013-2014 appointment letters." *Id.* at 260.

Finally, the court ruled that the professors failed to state a claim against the school's corporate parent, InfiLaw Corporation. The allegations that InfiLaw prepared the Faculty Handbook and provided administrative services did not plausibly show that it controlled the school to such an extent that it was a "mere instrumentality" of InfiLaw and that its corporate form should be disregarded to avoid a fraud or injustice. *Id.* at 261.

The district court dismisses the second amended complaint.

After the court dismissed the first amended complaint, the professors filed a second. In this complaint, they attempted to identify additional terms in the appointment letters that differed from their 2012-2013 contracts. R. vol. II at 57. They also substituted the school's corporate grandparent, InfiLaw Holdings as a new party, again with an alter ego claim. *Id.* at 59.

Again, the defendants moved to dismiss under Rule 12(b)(6), and again, the court dismissed the entire complaint, this time with prejudice, noting that it "agrees with Defendants' characterization of the [Second Amended Complaint] as a motion for reconsideration in the guise of an amended complaint." R. vol. I at 13. The court began its analysis with this observation: "Plaintiffs' breach of contract claim is still premised on

identifying purported differences between their 2012-2013 contracts and what was offered through the appointment letters." *Id*. at 11.

The court noted that the professors advanced three new differences, namely, that the appointment letters (1) incorporated school policies that were not part of their 2012-2013 contracts, (2) did not include the longer five-year tenure review period, and (3) extended the number of teaching days by one day, from 304 days to 305 days. *Id*. at 11. But the court concluded that none of these supposed differences could be material breaches when—as it had already found in its first opinion—the appointment letters incorporated the terms of the Faculty Handbook which was also incorporated in the earlier 2012-2013 contracts. *Id*. at 11-12.

The court also disagreed with the professors' new argument that the phrase "terms and conditions of employment" in Section 2.2.4 was ambiguous.[5] The court noted that the professors offered no interpretation of their own and failed to explain how in particular this phrase was ambiguous. *Id*. at 12, n.2.

[5] The full phrase is that the tenure contract is "subject to the terms and conditions of employment which exist from academic year to academic year." Handbook, § 2.2.4.

In addition to the newly alleged differences between the appointment letters and the 2012-2013 contracts, the professors alleged another new theory that the school breached the Faculty Handbook by reducing the contributions to their retirement accounts during the 2012-2013 contract term. *Id*. at 12:10-12. The court rejected this claim because the handbook expressly states that any benefits are "subject to change from time to time" and that the school may in its "sole discretion, expand or reduce these benefits." *Id*. at 3.

As to the claim of breach of the covenant of good faith, this too was dismissed. The court stated that "Plaintiffs include[d] no new allegations or additional arguments" as to this cause of action. *Id*. at 13.

The court also dismissed InfiLaw Holdings. Since it had dismissed the underlying action against the school, it found no need to reach the issue of whether there was a claim to pierce the corporate veil. *Id*. at 13.

The court awards attorney fees.

After the action was dismissed, the school moved for attorneys' fees in the amount of $59,404.50 under an Arizona statute permitting fees for the prevailing party in a contract action. Supp. R. at 152. After the professors

filed a brief in opposition (*id*. at 187) , the court granted this request in part and denied it in part.

It found that the claims arose out of contract and the defendants were the prevailing parties. It then found that five of the six factors for assessing fees under Arizona law weighed in favor of awarding them here. In particular, it stated that (1) the professors' claims were not meritorious, (2) the professors' proposed contracts were not attempts to resolve the dispute, but counteroffers, (3) defendants prevailed on all the relief sought, (4) the case did not involve novel legal issues, and (5) an award of fees would not discourage parties from bringing other tenure-related claims. R. vol. I at 3-4. The court also found that though the professors had offered evidence that paying fees would impose a financial hardship, on balance, all the other factors weighed in favor of the award. *Id*. at 3-4. The court then reduced the request by $8,027 for excessive time and an additional ten percent for insufficient billing descriptions, for a total award of $41,739.75. *Id*. at 5-8.

SUMMARY OF THE ARGUMENT

This case is not about the professors being discharged for exercising academic freedom. Some five months after they voiced their grievances about the school's policies, the school gave them the same offer that it gave

all other tenured faculty, a tenure contract for the coming year. And as such, this case turns not on issues of academic freedom, but on the standard rules of contract formation, offer and acceptance—and the professors' rejecting a valid offer of tenure with their own counteroffer.

The Faculty Handbook defines tenure rights and states that those rights do not "exist apart" from a separate tenure contract. Here, the school provided such a contract with appointment letters offering the professors tenure positions that included all the rights of tenure found in the handbook. The professors now strain to interpret the letters in a way that would deny them tenure. But one fact remains unavoidable: the letters state plainly that the professors were offered full-time tenure positions with all the tenure benefits set forth in the handbook.

Arizona law follows the "mirror image" rule for contract acceptance. This means that an offer must be accepted unequivocally. If it is not, then it is a counteroffer—which the offeror may accept or decline. And that is what happened here. After receiving an offer protecting all their existing tenure rights, the professors responded with their own counteroffers which the school had no obligation to accept. The district court thus properly dismissed the breach of contract claim.

The claim for breach of an implied covenant of good faith fares no better. Such a covenant only ensures that one party does not impair any benefits owed to the other. Because the school offered the professors all the benefits of tenure that they were entitled to under the handbook, the district court correctly concluded that the school did not breach any implied covenant of good faith by declining the professors' counteroffer.

Finally, when awarding attorney fees, the district court properly weighed all the factors required by Arizona law. And its conclusion that the school should be awarded approximately 70% of its fees was not an abuse of discretion.

ARGUMENT

I. The grant of a Rule 12(b)(6) motion is reviewed *de novo*.

This court reviews the grant of a motion under Fed. R. Civ. P. 12(b)(6) *de novo*. *Block v. Ebay, Inc.*, 747 F.3d 1135, 1138 (9th Cir. 2014) (affirms dismissal of contract claim under *de novo* standard). Here, when granting the motions to dismiss the first and second amended complaints, the district court described the standard of review for a Rule 12(b)(6) motion to dismiss. R. vol. II at 255-56; R. vol. I at 10-11. This included considering all well-pleaded factual allegations in the light most favorable to the plaintiff.

Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710 F.3d 946, 956 (9th Cir. 2013).

At the same time, the district court also stated that any "non-conclusory 'factual content' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). It also stated that dismissal is proper if the complaint fails to state a claim on its face, and quoted the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), that a complaint requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." R. vol. II. at 256.

In this case, deciding the merit of the professors' claims centered on interpreting four documents: (1) the Faculty Handbook, (2) the professors' 2012-2013 contracts, (3) the appointment letters, and (4) the professors' proposed contracts in response to the letters. Interpreting the language in those documents involved no factual dispute. *See Nat'l Bank of Arizona v. Schwartz*, 283 P.3d 41, 42 (Ariz. Ct. App. 2012) (contract interpretation is a matter of law).

II. The professors' breach of contract claim fails because they refused a tenure position with their own counteroffer.

A. As the Faculty Handbook states, tenure does not "exist apart" from a tenure contract.

The professors maintain that "Tenure status confers no rights until a tenure contract in the form and style required by the Faculty Handbook ("Handbook") is executed." Br. at 12. The school agrees. The rights of tenure described in the handbook are conditioned upon a faculty member signing a separate tenure contract. The handbook itself makes this plain by stating that tenure rights are "subject to the terms and conditions of employment which exist from academic year to academic year." R. vol. II at 120, ¶ 2.2.4. The handbook also reinforces that any of its terms do not "exist apart from a legally substituting contractual agreement." *Id*. The form of that contract is set out in the next section, 2.2.5, with a number of blank spaces to be filled in for each new tenure contract.

Tenure rights for some teaching positions may be set by statute, for example in public institutions. But here, any tenure rights for the school as a private institution were established by contract alone. And the rights set out in the handbook, do not "exist apart" from a separate tenure contract.

B. The appointment letters unambiguously offered all of the tenure rights in the handbook.

For the 2012-2013 academic year, the professors signed, without objection, a tenure contract that tracked the form contract in the handbook. R. vol. II at 106-09. For the 2013-2014 academic year, the school sent all faculty members an email stating that it would be issuing "appointment letters," rather than contracts to "simplify the process and eliminate redundancies." *Id.* at 187. The email also stated that the letters did not contain "any fewer protections, rights, and responsibilities" than were in the previous contracts, and in fact, incorporated Chapter II of the handbook. *Id.* at 187. When the professors refused to sign the letters on the day they were presented, the school sent them another letter repeating that the appointment letters included no fewer protections than previous contracts. *Id.* at 189.

And the letters stated that the professors were appointed to the "position of Professor of Law," and that this would be "a full-time 'tenure' position." *Id.* at 190. The letters stated that they incorporate "the provisions of Chapter II of the Faculty Handbook, as they may be modified from time to time." *Id.* Incorporation by reference is a common and accepted practice in establishing contract rights. *See Nazaire v. Kingsbrook Jewish Med.*

Ctr., 2006 WL 2504380, at *3 (S.D.N.Y. Aug. 28, 2006) ("[u]nder general principles of contract law, a contract may incorporate another document by making clear reference to it and describing it in such terms that its identify may be ascertained beyond doubt") (quoting *New Moon Shipping Co., Ltd. v. MAN B&W Diesel AG*, 121 F.2d 24, 30 (2d. Cir. 1997); *see also* WILLISTON ON CONTRACTS § 30.25 (4th. ed. 2014) (so long as the reference is clear, parties may incorporate documents by reference).

Here, the appointment letters identified Chapter II of the handbook and incorporated it by reference—which would include the tenure terms in Section 2.2.4 and the form contract at Section 2.2.5. But the professors now argue that the letters breached their tenure rights in "a myriad of ways." Br. at 29. Actually, they claim only five ways in their brief in which the appointment letters breached their tenure rights: (1) the letters could not be a contract because they do not use the word "contract," (2) the word "appointment" can only apply to non-tenured faculty, (3) any reference to non-tenured faculty in the letters meant that the professors had been stripped of tenure, (4) the letters should have expressly mentioned an extra year for post-tenure review that was already in the handbook, and (5) a mention of non-faculty staff policies in the letters eliminated their tenure

rights. The district court correctly determined that none of these reasons was convincing.

1) A contract need not use the word "contract" to be a contract.

The professors argue that their rights of tenure were compromised because the appointment letters do not use the word "contract." Br. at 35-36. In particular, they complain that the form contract uses the word "contract" 21 times, but "the appointment letters themselves *never used the word 'contract*.'" *Id.* at 36 (emphasis in text). Yet contract formation has never hinged on the use of particular words—even the word "contract." Contract formation looks not to form, but the substance of the parties' intent. *See Needham v. Innerpac, Inc.*, 2007 WL 4218958, at *4 (N.D. Ind. Nov. 29, 2007) (contract formation is a mater of substance, not form, there are no "magic words"). A contractual offer need not be in any particular form; it is only necessary that it be a clear "manifestation of willingness to enter into a bargain." *See* RESTATEMENT (SECOND) OF CONTRACTS § 24 (1981). Here, the appointment letters made an unambiguous offer of a full-time tenure position, even if the word "contract" was not used.

2) The word "appointment" applies to tenured faculty.

The professors next argue that the appointment letters could not be offers of tenure because the word "appointment" applies only to non-tenured faculty. Br. at 37-38. For this, they point to another section of the handbook, 2.7.2, dealing with *eligibility* for tenure and pluck out the word "appointed" referring to the time for the beginning of a seven-year probationary period for a faculty member to be considered for tenure. Br. at 37; R. vol. II at 131. From there, they skip over to Section 2.8.3 which deals with "non-reappointment" of non-tenured ("Tenure Track") faculty and claim that this must mean that their appointment letters were not offering them tenured positions. Br. at 37; R. vol. II at 135. This is far-fetched. It is undisputed that Professor O'Connor received tenure in 2010 and Professor Rumann received tenure in 2011. Both the cover letters of May 3 and the appointment letters themselves state in the clearest possible terms that they were being offered a "tenured position." Isolating variations of the word "appoint" in other parts of the handbook dealing with non-tenured faculty does not change the obvious—the appointment letters offered the professors tenured positions.

3) A reference to non-tenured faculty did not strip the professors of tenure.

The professors similarly argue that a sentence in the letters asking any non-tenured faculty if they did not want to be reappointed for the coming year, could mean that *they* were not being offered tenured positions. Br. at 40-42. But this argument fails for essentially the same reason as the last one; it ignores the obvious. The professors had been tenured faculty at the time that they received the letters and were plainly offered renewed tenured positions. The reference to other tenure-track faculty in a general letter to all faculty could not reasonably be read to mean that they were being stripped of tenure.

Words in a contract must be read to give effect to the parties' apparent purpose. 11 WILLISTON ON CONTRACTS § 32.9 (4th ed. 2014). To give effect to that purpose, at times, particular words may need to yield so as not to override the obvious purpose. *Id.* Here, the obvious purpose of the offer was to provide the professors with a tenured position; the letters cannot be read as an oblique way to demote them to non-tenured status.

4) Any supposed extra year for post-tenure review was incorporated by reference.

The fourth reason the professors give for why appointment letters compromised their tenure rights only came to light with their Second

Amended Complaint. They argue in their brief here that the letters supposedly "omitted the post-tenure review provisions applicable only to tenured faculty." Br. at 43. What they are referring to is that the letters do not specifically mention what they claim was an amendment to extend the time for post-tenure review—from the four years stated in their 2012-2013 contract (¶ 30)—to five years. In dismissing the Second Amended Complaint, the district court rejected this argument because the Faculty Handbook states that any tenure contract itself is "subject to the terms and conditions of employment which exist from academic year to academic year." R. vol. I at 12. Thus, court continued, even if this alleged change were true (and the school denies that it is), it still "would not be considered a material breach[] of the 2012-2013 contracts." *Id*. The letters expressly incorporate all the existing terms of Chapter II of the handbook which would include any supposed extension of time for post-tenure review.[6]

[6] Another of the professors' alleged differences between the appointment contracts and their 2012-2013 contracts raised for the first time in their Second Amended Complaint is that the school was reducing their contribution to their retirement accounts in violation of the Faculty Handbook. The district court dismissed this claim as well. R. vol. I at 12. The professors have not raised this argument in their brief in this appeal and therefore it is waived.

5) Any mention of non-faculty policies still did not eliminate the rights of tenure.

The professors' fifth argument for why the appointment letters prejudiced their tenure rights is that they supposedly contained an "unprecedented insertion" of policies and procedures relating to non-faculty staff. Br. at 44-47. The professors contend that these terms for dismissal differ from those for tenured faculty in the handbook. But what the professors are actually complaining about here is one sentence in the appointment letters: "Additionally, Phoenix School of Law policies and procedures relating to faculty employment and staff employment, currently in place or as modified during the term of this appointment, [are] incorporated into this agreement." R. vol. II at 190 and 192.

Once again, the district court rejected this argument since the professors' 2012-2013 contracts state that "[t]he Contract and [the professors'] employment with the School are subject also to the provisions of Chapter II of the Faculty Handbook." *Id.* at 259: 6-8. And the appointment letters do the same by incorporating the protections for tenure found in Chapter II, even if the letters also mention policies and procedures relating only to non-faculty. *Id.* at 259: 8-10. Again, like the mention of non-tenured faculty, when the professors were already tenured and

expressly offered a tenured position with all the tenure rights in the handbook, pulling out one sentence mentioning non-faculty cannot reasonably be read as eliminating tenure rights. Such a strained interpretation need not be given effect. Further, a specific reference to incorporating tenure rights in the handbook would control over any general reference to non-faculty. *See Brady v. Black Mt. Inv. Co.*, 459 P.2d 712, 714 (Ariz. 1969) (when a contract contains inconsistent provisions, the specific "qualifies" the meaning of the general and "controls over the general").

Finally, the professors invoke the rule of construing a contract against the drafter. Br. at 47-50. But that rule only applies if certain terms are in fact ambiguous. *California Cas. Ins. Co. v. Am. Family Mut. Ins. Co.*, 94 P.3d 616, 618 (Ariz. Ct. App. 2004) (construing against the drafter only applies if provision "actually ambiguous"). Here, the professors claim that a single phrase is ambiguous: "terms and conditions of employment which exist from academic year to academic year." Br. at 47-50. The district court properly found no ambiguity here, since the professors gave no explanation as to why the phrase would be ambiguous or offered their own reasonable interpretation. R. Vol. I 12 at 3, n. 2 (citing *Phillips v. Flowing Wells United Sch. Dist. No. 8*, 669 P.2d 969, 970 (Ariz. Ct. App. 1983) ("Language used

in a contract is ambiguous only when it can reasonably be construed to have more than one meaning.”))

Moreover, there is nothing about the words “terms and conditions of employment” that is ambiguous in a general sense or in the specific context of how it is used here. Indeed, it would be unreasonable for a single mention of policies for non-faculty to eclipse an unambiguous statement that the professors were offered tenured positions with all the tenure rights from the handbook. *See Bouwman v. RBC Mortg. Co.*, 336 Fed. Appx. 621, 622 (9th Cir. 2009) (“no ambiguity in the words ‘existing terms’ that would prevent the formation of a contract”). Further, simply claiming that a phrase is “ambiguous” doesn’t make it so. *See Technical Equities Corp. v. Coachman Real Estate Inv. Corp.*, 701 P.2d 13, 14 (Ariz. Ct. App. 1985) (merely because one party claims a different meaning, does not create ambiguity). A conclusory assertion that “terms and conditions” is ambiguous cannot override the obvious and reasonable reading of the letters that the professors’ tenure rights remained intact.

C. Arizona law requires a “mirror image” acceptance and the counteroffer here was not that.

As discussed above, none of the professors’ five arguments that tenure rights were impaired by the letters have any validity. This section addresses

the next question—whether the professors rejected the offer of a tenured position by proposing their own counteroffer. This question turns on the law of contract formation, and in particular, on that of offer and acceptance.

Arizona law requires an acceptance to be the "mirror image" of the offer. As the court explained in *Dollar Tree Stores, Inc. v. Bayless Investment & Trading Co.*, "Arizona follows the traditional common law rule, which requires a mirror image acceptance of an offer in order to consummate an agreement." 2011 WL 6032966, at *3 (D. Ariz. Dec. 1, 2011) (citing *Clark v. Compania Ganadera de Cananea, S.A.*, 385 P.2d 691, 697 (Ariz. 1963)). As the Arizona Supreme Court stated in *Clark*, an acceptance "must be unequivocal" and therefore "[a]n acceptance must comply exactly with the requirements of the offer, omitting nothing from the promise or performance." 385 P.2d at 697. If the offeree adds additional or materially different terms, it will be considered to have rejected the offer and made a counteroffer. *Dollar Tree*, 2011 WL 60326643, at *3. The offeree then becomes the offeror and the new offeree may accept or reject the

counteroffer. *Id.*[7] Here, both the form contract in the handbook at Section 2.2.5 and the professors' 2012-2013 contracts caution that "[a]ny changes of any kind in the employee's acceptance of the Contract shall constitute a counteroffer and shall immediately nullify the extended offer herein." R. vol. II at 107 (¶18); 109 (¶21); 121-22 (¶ 11).

The district court concluded that because the professors failed to unequivocally accept the terms of the appointment letters, their proposed contracts were "counteroffers" and the school "was not required to accept them." R. vol. II at 260:1-6. In particular, the court noted that the professors' proposed contracts varied from the appointment letters. These differences included different dates for any retroactive salary increases (August 1 for the appointment letters and August 19 for the proposed contracts), and different periods for resignation notice—90 days in the handbook, (§ 2.8.2), and 120 days in the proposed contracts (¶ 5). *Id.* Though these differences are arguably less favorable to the professors, the school was not required to accept them, because they varied the terms of

[7] The mirror image rule has been eliminated under Article 2 of the Uniform Commercial Code, § 207, involving the sale of goods. See *Idaho Power Co. v. Westinghouse Elec. Corp.*, 596 F.2d 924, 926 (9th Cir. 1979). But since this case does not involve a sale of goods, the common law mirror image rule applies.

the appointment letters. The school had a legitimate interest in having uniform terms for all faculty members, especially to avoid the problems that may arise from allowing different terms or certain exceptions to some, but not others.

Not only did the professors' proposed contracts vary terms from the appointment letters, the professors failed to timely accept the offer. Both the form contract in Section 2.2.5 and the 2012-2013 contracts state that the contracts will "not be binding" unless signed by the date specified in the offer. *Id.* at 107 (¶ 19), 109 (¶ 22), 122 (¶ 12). It is a basic rule of contract formation that the time specified to accept an offer may not be viewed as a suggestion or merely aspirational. The Corbin treatise explains, "If the time for acceptance of an ordinary offer is expressly limited by the offeror, acceptance must take place within that time or not at all, time is of the essence." 6A CORBIN ON CONTRACTS § 273, at 5888 (1962). Similarly, the Williston treatise states that "if no acceptance within that time, the power of acceptance necessarily expires." 1 WILLISTON ON CONTRACTS, § 5.5 (4th ed. 2006). Thus, an attempt to accept an offer past the deadline set by the offeror is a counteroffer which the original offeror is free to decline or accept. *Hernandez v. AFNI, Inc.*, 428 F. Supp. 2d 776, 781 (N.D. Ill. 2006).

Here, the professors counter-proposed contracts, which on their face, failed to unequivocally accept the school's offer. In fact, the whole point of the professors submitting their own contracts was because they differed from the appointment letters. *See Walsworth v. Chesapeake La., L.P.*, 128 So. 3d 1266, 1269-70 (La. Ct. App. 2013) ("Plaintiff, in making this counteroffer, deemed these terms material, and it is not for this court to say they were immaterial"). Here, when the appointment letters offered the professors tenure positions with specific terms and the professors did not unequivocally and timely accept those offers, then their proposed contracts were counteroffers which the school was free to reject. And having rejected their tenure contract with this counteroffer, the professors could no longer be employed by the school.

D. Of the cases cited for "context," none deal with rejecting a valid tenure contract with a counteroffer.

The school and the professors do agree as to this much—tenure serves an important purpose of ensuring academic freedom and enhancing economic security, and a tenured faculty member cannot be dismissed without cause. At the same time, however, the tenure rights in this case—as the Faculty Handbook makes clear—are not independent of their tenure contract. And because the professors rejected offers for a tenure position

with counteroffers, their employment expired by its own terms, and the school did not discharge them for cause.

The professors argue that the district court failed to appreciate the "context" of tenure's importance and how tenure may not be terminated unilaterally. Br. at 30-33. In doing so, they cite a number of cases discussing the importance of tenure and how a professor with tenure may not be terminated without cause. Though these cases discuss how tenure promotes academic freedom and economic security, none of them undermines the district court's ruling. That decision turns on the specific contractual terms of this case, and the professors rejecting offers of tenure with their own counteroffers.

The professors first cite *Perry v. Sinderman*, 408 U.S. 593 (1972) for the general proposition that tenure may not be terminated without cause Br. at 30. Yet this decision is limited to its ruling that a teacher at a state college, though without formal tenure, had a due process right to prove his entitlement to tenure. *Id.* at 602-03. It does not apply to professors at a private institution who already have tenure.

The professors also cite *Otero-Burgos v. Inter American University*, 558 F.3d 1 (1st Cir. 2009). Though this decision mentions that tenure rights

cannot be terminated unilaterally, it also deals with a different question of whether the tenure contract at issue was for a "fixed term," as opposed to one "without a fixed term" so as to fit within a statutory cap on damages. *Id.* at 11.

The professors next offer a lengthy quote from *Katz v. Georgetown University*, 246 F.3d 685 (D.C. Cir. 2001), concluding with a statement that the faculty at Georgetown would be "stunned" if they thought their tenure could be "nullified" if the university failed to provide an annual notice of reappointment. *Id.* at 689. But *Katz* involved a tenured professor who had been discharged as a result of the university's financial difficulties arguing that he fit within the definition of "ordinary" non-tenured faculty, so he could receive a year's severance. *Id.* at 688. This is far removed from rejecting an offer providing full rights of tenure with a counteroffer. Similarly, the decision in *McConnell v. Howard University*, 818 F.2d 58 (D.C. Cir. 1987)(cited in *Katz* and also relied on by the professors) turned on the court ruling that the termination of tenured faculty is governed by the parties' contractual terms, rather than a more deferential arbitrary or irrational basis standard. *Id.* at 68-70.

Finally, the professors quote from *Ohio Dominican College v. Krone*, 560 N.E.2d 1340 (Ohio Ct. App. 1990) to argue that tenure rights "cannot be extinguished by initial disagreement over yearly terms." Br. at 22. But a closer look at the *Ohio Dominican* case shows that if anything, it serves as an example of what this case is not. In *Ohio Dominican*, the court found that the college's offer of employment to a tenured professor contradicted an express term of the faculty handbook limiting an ordinary teaching load to three courses per semester. *Id.* at 1343-44. When the college insisted that the professor teach *five* courses per semester, the court concluded that "by the standards set forth in the Faculty Handbook," the offer was "unreasonable." *Id.* at 1344. Thus, it was the unreasonableness of the college's offer requiring the professor to teach five courses that breached the contract.[8]

But *Ohio Dominican* does not stand for the proposition that tenured faculty are free to reject reasonable terms in tenure contracts with counteroffers of their own—and still continue teaching. Unlike *Ohio*

[8] When the *Ohio Dominican* case returned to the Court of Appeals after a remand, the court repeated that the breach of contract arose from the unreasonableness of the demand. *Ohio Dominican College v. Krone*, 1992 WL 10298, at *2 (Ohio App. Jan. 23, 1992) (offer requiring teaching five courses breached the contract).

Dominican, in this case, the district court concluded that the school's offer *was* reasonable because it did not compromise existing tenure rights; in fact, the offer incorporated all the rights in the handbook. In sharp contrast, in *Ohio Dominican*, the college's offer hinged on violating the very teaching-load standard in its own handbook.[9]

Though the cases cited by the professors in this section recognize the general importance of tenure, none can be read to mean that tenure status exempts a professor from complying with established rules of offer and acceptance for a tenure contract. To be sure, a tenured professor cannot be dismissed during the course of a tenure contract without adequate cause. But when tenure rights do not exist independently from the tenure contract, then faculty, tenured or untenured, must abide by the same rules of offer and acceptance for continued employment. Status as a tenured faculty member is not a license to demand terms that differ from other tenured faculty. When the school has made an offer that does not

[9] Ohio courts follow the same general rule that "[w]hen an acceptance to a contract for employment does not meet and correspond with the offer in every respect, no contract is usually formed." *Foster v. Ohio State Univ.*, 534 N.E.2d 1220, 1222 (Ohio Ct. App. 1987) (citing RESTATEMENT (SECOND) OF CONTRACTS § 58).

compromise any tenure rights, then it has no obligation to accept counteroffers.

III. When the school offered the professors their full tenure rights, there was no breach of an implied covenant of good faith.

In the alternative, the professors claim that the school breached an implied covenant of good faith and fair dealing. Br. at 51. Though Arizona law implies such a covenant for every contract, it is not open-ended and is designed so that one party may not keep another "from receiving the benefits and entitlements of the agreement." *Wells Fargo Bank v. Ariz. Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 28 (Ariz. 2002). In *Wells Fargo*, the Arizona Supreme Court explained that good faith in exercising contractual rights turns on whether performance is consistent with the "justified expectations of the other party." *Id*. at 30 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 205 cmt a (1981)). Here, the district court, citing *Wells Fargo*, dismissed this claim. It did so because the school had already offered the professors the full benefit of their contract, and it was the professors' own counteroffer, not the breach of any implied covenant that resulted in them no longer having a tenure contract. R. vol. II at 260.

In their brief, the professors argue that the school breached the implied covenant in 11 different ways, which they number (i) to (xi). Br. at 53-54. These 11 reasons may be grouped together, but individually or collectively, they have no merit. For the reasons (i) to (v), the professors complain that the appointment letters prejudiced their tenure rights or were a "pretext" for denying them; however, as discussed already, the district court properly concluded that the appointment letters incorporated all of the professors' tenure rights and did not compromise any rights found in the Faculty Handbook or their 2012-2013 contracts.

Reasons number (vi) to (x) are complaints that the school either did not tell the professors that the May 17, 2013 due date for signing the appointment letters was a "hard" deadline or that the terms of the appointment letters were not negotiable. Br. at 54. The professors contend that the absence of a "time is of the essence" clause in the appointment letters excused a timely acceptance of the offer. Br. at 18. But they have misconstrued this concept. A time-is-of-the-essence clause relates to contract *performance*, not formation. Such a clause, usually found in real estate contracts, "operates only to give a minor breach as to timely performance . . . the legal effect of a material breach." *Found. Dev. Corp. v.*

Loehmann's, Inc., 788 P.2d 1189, 1200 (Ariz. 1990). As discussed above, it is settled law that an offeror may rely on an offer expiring on a clearly stated date. The law has never required that the offeror include words such as "time is of the essence" to ensure that the offer expires when it says it expires.

As to the professors' complaint that the school did not tell them that the terms of the appointment letters were non-negotiable, they cite no case law (and there is none) that an offeror must include language that its offer is "non-negotiable" or risk facing liability under an implied covenant if it rejects a counteroffer. What is more, the parties' "justified expectations" in this case included the form contract (¶ 11) and the 2012-2013 contracts (¶¶ 18, 21), both indicated that the school's offer should not be viewed as negotiable. Each states that "[a]ny changes of any kind in the employee's acceptance of this Contract shall constitute a counter-offer and shall automatically nullify the offer extended herein." Such language makes it clear that the school's offer was not a mere invitation to negotiate further.

The professors' eleventh reason to find bad faith is that the school accepted appointment letters after the May 17 deadline. Br. at 54. But again, they overlook that under the settled law, the school was free to accept

or reject *their* counteroffer. How the school may have dealt with other special cases has no bearing on whether the school could reject the professors' own counteroffer. This case does not involve any sort of statutory discrimination claim. Rather, it turns on standard contract law for accepting an offer. And when the professors rejected an offer for tenure with their own counteroffer, then the inquiry need not go beyond that.

Finally, the professors contend their proposed contracts "were not really counteroffers at all," but were responses to anticipatory breaches of contract. Br. at 57-58. The two cases cited by the professors show that this argument is wide of the mark. In both *Kammert Brothers Enterprises, Inc. v. Tanque Verde Plaza Co.*, 428 P.2d 678, 683-84 (Ariz. 1967) and *United California Bank v. Prudential Insurance Co. of America*, 681 P.2d 390, 433 (Ariz. Ct. App. 1983), the courts simply applied the basic rule that if one party repudiates a contract before performance is due, then the other party may urge performance without waiving any of its rights.

But of course, this case does not deal with the school repudiating a contract before performance is due. The school offered the professors their complete tenure rights; it was not repudiating performance of anything. Again, the issue here is not that of contract performance, but of formation.

And as to that, the professors' proposed contracts were counteroffers for all the reasons identified by the district court. Further, the professors never argued in the district court that their proposed contracts were not counteroffers, but merely responses to an anticipatory breach. Because the professors never raised this argument, the district court never addressed it, and it has not been preserved for appeal and has been waived. *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1007 (9th Cir. 2008) (failure to raise issue before district court waives it for appeal).

None of these eleven reasons are valid. An offeror's right to accept or decline a counteroffer is a fundamental principle and an essential part of the predictability and stability of contract law. An implied covenant of good faith does not change that basic principle. *See Best v. Miranda*, 274 P.3d 516, 519 (Ariz. 2012) (contractual duty of good faith does not require offeror to accept terms that differ from original offer). Here, when the school made an offer, not compromising any tenure rights, it did not breach an implied covenant by simply declining a counteroffer.

IV. The district court's ruling on attorney fees was proper.

A. The district court did not wrongly shift the burden, and properly exercised its discretion in weighing each factor.

Under Arizona law, as the professors acknowledge, attorney fees may be awarded to the prevailing party in a contract action. *See* A.R.S. § 12-341.01. In doing so, Arizona law instructs courts to consider these six factors, among others:

1. The merits of the claim or defense presented by the unsuccessful party;

2. Whether the litigation could have been avoided or settled and whether the successful party's efforts were completely superfluous in achieving the result;

3. Whether assessing fees against the unsuccessful party would cause an extreme hardship;

4. Whether the successful party prevailed with respect to all the relief sought;

5. Whether the legal question presented was novel, and whether such claim had been previously adjudicated in the jurisdiction; and

6. Whether an award of fees would discourage other parties with tenable claims from litigating legitimate contract issues for fear of incurring liability for substantial amounts of attorney's fees.

Associated Indem. Corp. v. Warner, 694 P.2d 1181, 1184 (Ariz. 1985).

The trial court has broad discretion in fixing the amount of the fee. *Id*. Moreover, "[a]lthough the award of attorney's fees under A.R.S. § 12-341.01(A) and (B) is discretionary, it is the clear intent of the statute that under ordinary circumstances the successful party in an action which falls under the statute is entitled to recover reasonable attorney's fees." *G & S Invs. v. Belman*, 700 P.2d 1358, 1368 (Ariz. 1984). Thus, this court has held that a fee award under A.R.S. § 12-341.01 is reviewed for an abuse of discretion. *Chevron U.S.A. Inc. v. Schirmer*, 11 F.3d 1473, 1480 (9th Cir. 1993) ("We review a fee decision under this section for abuse of discretion.").

The professors argue that the district court applied the "wrong legal standard" for the first of the six *Warner* factors. Br. at 67. In particular, they contend that when considering the question of whether the claims had "merit," the court improperly equated "success with merit." Br. at 68. But the district court never stated that only successful claims are "meritorious." It simply stated that the first factor weighed in favor of awarding fees, because "[b]oth motions to dismiss were resolved in Defendants' favor." R. vol. I at 3. It could not be legal error, much less an abuse of discretion, for

the court to conclude that the professors' claims were without merit when they were twice dismissed on the pleadings.

Next, the professors assert that the district court shifted the burden to them as to three of the *Warner* factors: (2) whether the litigation could have be avoided or settled, (5) the novelty of the question, and (6) whether an award would discourage other parties. Br. at 68. But when examining the specifics of the professors' arguments, they fail to show any improper burden shifting.

As to the second factor—whether the case could have been settled—the professors maintain that the district court improperly shifted the burden of proof to them when the court concluded that the professors had "provided 'no support' for their assertion that they attempted to resolve this case before litigation." Br. at 69. But there was no evidentiary burden to shift as to this issue. The court simply read the professors' May 10 letters and found that they were "not attempts to resolve any dispute, but rather, counteroffers concerning their employment contract." R. vol. I at 3. The court did not shift any evidentiary burden by simply reading words on a page.

As to the fifth factor, the professors concede that the issues in this case "may not have been novel," but then they claim that the district court's ruling was itself "both 'novel' and unprecedented." Br. at 69. This factor, however, does not turn on how one party characterizes a ruling, but whether the legal question at issue was in fact novel. And the professors essentially concede that it was not. Here, the district court disposed of the issue primarily on the language in the letters and the handbook by applying well-settled principles of contract law. The lack of novelty was apparent to all and there was no improper burden shifting.

As to the sixth factor, the professors quote at length from a survey comment after their termination that people at the school were "afraid to say anything." Br. at 72. Not only is this single quote from one unidentified person of no evidentiary value, it relates to a question of academic freedom. Though the professors' complaint contains page after page of allegations chronicling their grievances against school policies, their lawsuit is still based on a breach of contract; it is not a retaliation claim for exercising academic freedom. The professors' employment ended because they rejected the school's offer with their counteroffer. In fact, the school offered them tenured positions months *after* they exercised the academic freedom

alleged in their complaint. The district court's ruling reflected this reality—that the essence of the professors' case was a breach of contract: "There is no indication that an award of attorneys' fees *in this breach of contract case* would discourage other tenured professors from bringing claims related to their employment contracts." R. vol. I at 3-4 (emphasis added). In recognizing this point, the court did not shift any evidentiary burden, and such a finding was not an abuse of discretion.

B. The district court did not abuse its discretion when reducing the award.

The school requested an award of $59,404.50 in attorney fees. The court reduced that amount to $41,739.75, almost 30% less than requested. One component of that 30% reduction was a 10% reduction based on billing entries that, consistent with the Local Rules in Arizona, had been redacted to protect attorney-client and work-product privileged information. Supp. R. at 181-86.

The professors argue that the district court abused its discretion by not reducing the award more for insufficient billing entries. Br. at 72-74. Yet they overlook all the lengthy pleadings that they filed in this case. At the outset, this case required the school's counsel to digest and defend against a 26-page complaint. Supp. R. at 33-66. Counsel had to research, draft, and

file a motion to dismiss and a reply in support of that motion. Docs. 13, 19. Counsel then presented oral argument on that motion. After that motion was successful, the professors then pursued a Second Amended Complaint (now increased to 47 pages), but which the district court deemed to be a motion to reconsider its dismissal of the first complaint. R. vol. I at 13. Counsel again had to research and draft a new motion to dismiss and reply. Docs. 29, 32.

The school's counsel also corresponded with the professors' counsel and consulted with its own clients along the way. The billing entries that the school submitted reflected each of these activities. The district judge, Hon. Susan Bolton, who has almost 40 years of experience in the Arizona legal market, reviewed and analyzed those billing entries and the general nature of the case and determined that a $41,000 fee award was reasonable. Her decision was not an abuse of discretion.

CONCLUSION

1. Based on the Supreme Court's decision in *Newman-Green*, this court should dismiss InfiLaw Holding, LLC as a nondiverse defendant to avoid destroying diversity jurisdiction and decide the merits of the appeal as to the school. This dismissal should be with prejudice.

2. The district court's judgment dismissing the professors' claims against the school for breach of contract and breach of an implied covenant of good faith should be affirmed.

3. The court's judgment awarding fees should also be affirmed.

Dated: November 14, 2014

Respectfully submitted,

Phoenix School of Law, LLC, and InfiLaw Holdings, LLC

By: */s/ E. King Poor*
One of their attorneys

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PROOF OF SERVICE

I, E. King Poor, one of appellees' counsel, certify that I have this day electronically filed the Appellees' Response Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. I also certify that the parties in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 14, 2014

/s/ E. King Poor
E. King Poor

CERTIFICATE OF COMPLIANCE FOR TYPE AND VOLUME LIMITATIONS

I, E. King Poor, one of appellees's counsel, certify under Fed. R. App. P. 32(a)(7)(C) that:

The brief's type size and type face comply with Fed. R. App. P. 32(a)(5)and (6). In addition, the brief is 11,881 words, excluding the portions exempted by Fed. R. App. P.32(a)(7)(B)(iii).

/s/ E. King Poor
E. King Poor

CIRCUIT RULE 28-2.6. STATEMENT OF RELATED CASES

There are no related cases pending before this court.

/s/ E. King Poor
E. King Poor

Nos. 14-15621, 14-16032
(Consolidated Appeals)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL O'CONNOR and CELIA RUMANN,

Appellants,

vs.

PHOENIX SCHOOL OF LAW, LLC,
and INFILAW HOLDING, LLC,

Appellees.

Appeal from the United States District Court
for the District of Arizona, No. 2:13-cv-01107-SRB
Hon. Susan R. Bolton, presiding

APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD

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INDEX TO SUPPLEMENTAL RECORD

Appellees submit the following supplemental excerpts of record under Circuit Rule 30-1.7.

Dated: November 14, 2014

Respectfully submitted,

Phoenix School of Law, LLC, and Infilaw Holding, LLC

By: */s/ E. King Poor*
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I, E. King Poor, one the counsel for appellees, certify that I have this day electronically filed the Appellees' Supplemental Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. I also certify that the appellants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 14, 2014

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident, Plaintiffs, vs. Phoenix School of Law, LLC, a Delaware limited liability company, InfiLaw Corporation, a Delaware corporation, Defendants.	No. **Complaint**

Plaintiff Michael O'Connor, an Arizona resident, and Plaintiff Celia Rumann, an Arizona resident, for their Complaint against Defendant Phoenix School of Law, LLC, a Delaware limited liability company, and Defendant InfiLaw Corporation, a Delaware corporation, allege as follows:

Nature of the Action

1. This action is brought because Defendants Phoenix School of Law, LLC and InfiLaw Corporation terminated Plaintiffs, Professors O'Connor and Rumann, who are highly respected, tenured professors, in violation of their employment contract, the governing Faculty Handbook, and the ABA Standards and Rules of Procedure for Approval of Law Schools. Among other things: (i) Professors O'Connor and Rumann

opposed initiatives presented by Defendants' administration that placed corporate profits above the articulated purpose, mission, values and organization of the Phoenix School of Law; (ii) Professors O'Connor and Rumann objected to Defendants' systematic program to undermine and, in some cases ignore, the role of faculty in the governance of the Phoenix School of Law, including an attempt to reduce or eliminate the ability to attain tenure, and to reduce or eliminate the faculty's role in setting admission standards; and (iii) Professors O'Connor and Rumann objected to Defendants' proposed curriculum changes that would reduce students' abilities to transfer to schools that the students perceive to provide better opportunities for job placement (described by Dean Shirley Mays as "building a better mousetrap"). This protected conduct caused Defendants to retaliate against Professors O'Connor and Rumann and refuse to renew the employment contracts to which Professors O'Connor and Rumann are entitled.

The Parties, Jurisdiction, and Venue

2. Plaintiff Michael O'Connor and Plaintiff Celia Rumann are Arizona residents and husband and wife. Their claims are asserted on their own behalf and on behalf of their marital community.

3. Defendant Phoenix School of Law, LLC ("PhoenixLaw") is a Delaware limited liability company that is authorized to, and doing, business in Arizona. Specifically, along with Defendant InfiLaw Corporation, PhoenixLaw operates the Phoenix School of Law, a private, for-profit law school in Phoenix, Arizona.

4. Defendant InfiLaw Corporation ("InfiLaw") is a Delaware corporation that, through a number of corporate entities, owns and operates three for-profit law schools, including the Phoenix School of Law (through Defendant PhoenixLaw). InfiLaw retains significant control of all the operations of the for-profit schools within its "consortium," including owning and administering core non-academic functions, and providing support

for academic programs and processes for the "consortium" of law schools, including the Phoenix School of Law.

5. This Court has jurisdiction over the claims set forth below by virtue of 28 U.S.C. § 1332 because Defendants and Plaintiffs are citizens of different states and the amount in controversy exceeds $75,000.

6. Venue in this judicial district and the exercise of personal jurisdiction over PhoenixLaw and InfiLaw by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) because, among other reasons, (i) Defendants are doing business in Arizona; (ii) Defendants employed Plaintiffs in Arizona; (iii) Plaintiffs' employment contracts contain an Arizona choice of venue clause and Plaintiffs and PhoenixLaw consented to personal jurisdiction in Arizona; and (iv) Defendants engaged in conduct that substantially gives rise Plaintiffs' claims in this District.

General Allegations

7. InfiLaw owns and administers core non-academic functions, provides support for academic programs and processes for a "consortium" of for-profit law schools, including PhoenixLaw's Phoenix School of Law.

8. PhoenixLaw was founded in 2005 and its Phoenix School of Law (the "School") received full ABA accreditation on June 11, 2010.

9. PhoenixLaw hired Professor O'Connor as an Associate Professor of Law effective August 1, 2007, and Professor O'Connor was promoted to Professor of Law with Tenure effective August 1, 2010.

10. PhoenixLaw hired Professor Rumann as an Associate Professor of Law effective August 1, 2008, and Professor Rumann was promoted to Professor of Law with Tenure effective August 1, 2011.

11. Professors O'Connor and Rumann remained tenured faculty members until Defendants' terminated their employment effective May 31, 2013, in violation of the employment contracts.

12. As described by PhoenixLaw, "Tenure is a keystone moment in a professor's career. It is the granting of a continuous employment status to a faculty member. At [PhoenixLaw], it reflects the faculty member's achievement of excellence in scholarship, teaching and leadership abilities, as well as their [sic] commitment to serving their [sic] community."

13. PhoenixLaw has adopted a Faculty Handbook that is a contract between PhoenixLaw and its faculty.

14. Pursuant to Chapter II of the Faculty Handbook, Section 2.2.4, tenure contracts are for an academic year and "give[] the faculty member[s] the contractual right to be re-employed for succeeding academic years until the faculty member resigns, retires, is discharged for adequate cause, is terminated pursuant to a reduction in force, becomes disabled, or dies, but is subject to the terms and conditions of employment, which exist from academic year to academic year."

15. Chapter II of the Faculty Handbook, Section 2.5.6, as amended on October 12, 2012, provides in part:

> **Post-Tenure Review.** Once a faculty member has attained tenure, the faculty member shall be presumed to continue in that position. In order to assure that the tenured faculty member continues to contribute to the School, the tenured faculty member's record shall be reviewed in the fifth full academic year after grant of tenure and every five years after each extension of tenure. * * * In the event the Board does not grant the candidate an extension of tenure, the candidate will receive a detailed report setting forth the basis for such determination. In such a case, the candidate shall be granted not less than one, nor more than two, academic years to cure the failure. Failure to achieve compliance in the time allotted will result in the loss of tenure and termination of the

> employment relationship one academic year after the compliance deadline has passed.

16. Pursuant to Chapter II of the Faculty Handbook, PhoenixLaw and its faculty are required to execute a "contract for the employment of faculty at the School" in the "following form and style" dictated by Section 2.2.5 of the Faculty Handbook.

17. Professors O'Connor and Rumann, from the start of their employment to the 2012-2013 academic year, had been presented with the form and style of employment contract set forth and required in Section 2.2.5 of the Faculty Handbook and Professors O'Connor and Rumann, respectively, and Defendants' representative executed the employment contracts.

18. As in years past, Professors O'Connor's and Rumann's 2012-2013 Faculty Contract of Employment, Tenured Contract, states that the contract "is a tenure contract, as that term is defined in the Faculty Handbook." The 2012-2013 Faculty Contract of Employment, Tenured Contract, is hereafter referred to as the "Tenure Contract."

19. The Tenure Contract allows Professors O'Connor and Rumann to terminate it by giving written notice 120 days prior to the beginning of the contract term or at the end of an academic term provided that written notice is given at least sixty calendar days prior to the final scheduled day of the academic term.

20. The Tenure Contract states that the Tenure Contract and Professors O'Connor's and Rumann's employment are "subject to the provisions of Chapter II of the Faculty Handbook, and applicable laws of the State of Arizona and the United States, in force and effect during the Contract Term, all of which may be modified from time to time and are applicable as modified."

21. The Tenure Contract state that "Changes to Chapter II of the Faculty Handbook may be made applicable as changes to this Contract if approved by the Faculty and the School in accordance with established governance processes."

22. On May 3, 2013, Professors O'Connor and Rumann were presented *not* with an employment contract for the 2013-2014 academic term that complied with the contract forth in Section 2.2.5 of the Faculty Handbook but a "letter of appointment," a document that is not described or recognized in the Faculty Handbook.

23. No changes were made to Chapter II of the Faculty Handbook from the start date of the Tenure Contract (August 1, 2012) except to the provisions governing and extending the contractual rights of tenured faculty and post-tenure review.

Defendants' Hostility Toward Faculty Governance

24. Defendant InfiLaw prepared the Faculty Handbook for PhoenixLaw, including the express contractual provisions that granted tenured faculty "contractual right to be re-employed for succeeding academic years" subject to limited circumstance through which the contractual right would extinguish.

25. Upon information and belief, Defendants are explicitly and virulently opposed to faculty tenure and governance but publicly (mis)represented their support for faculty tenure and governance in their effort to obtain ABA accreditation for the School.

26. The School received full accreditation from the ABA on June 11, 2010.

27. Soon after receiving ABA accreditation, the School's Interim Dean withdrew his name from consideration for the permanent Dean position and Shirley Mays was hired as Dean. Scott Thompson, CFO of Defendant InfiLaw, was hired as President of the School, and initially was identified by both titles.

28. At approximately the same time Professors O'Connor and Rumann were named to a "leadership team" comprised of some faculty of the School that was headed by Don Lively, a member of InfiLaw's "executive team."

29. As members of the School's "leadership team," Professors O'Connor and Rumann were invited to a series of meetings in Florida with members of the national governing board of InfiLaw, InfiLaw executives and "leadership teams" from other law

schools in the InfiLaw "consortium." At the meeting, one speaker informed the leadership teams that, in his opinion, law school faculty, and tenured faculty in particular, were the primary problems at law schools nationally.

30. Professors O'Connor and Rumann challenged that assertion and their opinions were dismissed.

31. Later in the conference, Rick Inatome, CEO of InfiLaw, mirrored the prior speaker's opinion that law schools' faculty were the primary cause of problems with law school.

32. Professor O'Connor challenged Mr. Inatome and explained that the view expressed was not consistent with the dedication and depth of experience with the School's faculty that had worked extremely hard for the School's students and were directly responsible for the positive student outcomes that the School's students had achieved.

33. After returning from Florida, Professor O'Connor was removed from the "leadership team" without notice or explanation, and was not included on any further communications among the team. While Professor Rumann remained on the "leadership team" for a period after Professor O'Connor was removed, Professor Rumann was ultimately removed from the team.

34. After obtaining ABA accreditation, beginning in fall 2010 Defendants embarked on a campaign to reduce the role of faculty in the governance of the School and, upon information and belief, at other schools within the "consortium." Specifically, Defendants' administration embarked on a policy to limit the number of committees on which individual faculty members serve and to dilute the voting impact of faculty on committees.

35. Particularly noteworthy of Defendants' plan to limit faculty governance of the School are the limitations placed on the role of faculty in the admissions process, including establishing admissions standards.

36. Specifically, at a fall 2012 faculty meeting, the school's faculty raised the subject of recruitment and admissions. The subject of recruitment and admissions, including concerns about the reduced role of faculty in the admissions process, the Chair of the meeting, Associate Dean Willrich, claimed that comments were not appropriate because PhoenixLaw's Dean and President were not present.

37. The limitations violate Section 1.5 of the Faculty Handbook, which states:

> Faculty members play an essential managerial role of influence in the formulation and effectuation of academic policy. This includes the primary role and effective participation in the development and administration of policies concerning: grading, classroom student conduct, *student progress, degree requirements, curricular content, course offerings, admission standards*, departmental staffing, *educational policies and standards, faculty promotion, faculty tenure, faculty appointment and retention, and faculty professional development.*

(Emphasis added).

38. The limitations also violate ABA Standard 205(b), which states in part that:

> The dean *and faculty* shall formulate and administer the educational program of the law school, including *curriculum; methods of instruction*; *admissions*; and academic standards for retention, advancement, and graduation of students; and shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty.

(Emphasis added).

39. Defendants' opposition to faculty tenure and governance has exhibited itself by their concerted effort to force tenured faculty out based on pretextual reasons.

40. For example, Defendants held an event in Spring 2010 to honor the four faculty members who had been granted tenure at the School by that time. Three of those faculty members (including Professor O'Connor) have since been forced out of the School, and now Defendants terminated Professor Rumann based on the pretext that she rejected Defendants' offer of employment despite clearly manifesting her intent to return to the School, as described more fully below.

Program 2.0 and Faculty 2.0

41. Beginning in 2011, Defendants proposed changes to faculty compensation and evaluation (referred to by PhoenixLaw as "Faculty 2.0") and curriculum changes (referred to by PhoenixLaw as "Program 2.0") at the Phoenix School of Law, and formed a "Steering Committee" to oversee the proposals. These proposals were collectively referred to as Legal Ed. 2.0 and resulted from Defendants' belief that they needed to "rebrand" the School and "build a better mousetrap" to prevent the School's students from transferring to more highly ranked law schools.

42. One of the major drives behind Program 2.0 was to reduce transfer attrition; specifically, reducing the ability of students to transfer from the Phoenix School of Law to other law schools that the students perceive as higher ranked law schools, leading to greater employability after graduation.

43. Dean Mays spoke about transfer attrition of students during the August 2011 faculty orientation and explained to the faculty that the Phoenix School of Law needed to "build a better mousetrap," particularly with respect to the School losing minority students through transfer attrition.

44. Professors O'Connor and Rumann, and other faculty, objected to Dean Mays approach, and argued that building a law school that emphasized strong teaching, individualized attention for students, increased opportunities for elective courses, greater and more nuanced financial grants, and aggressive job placement would create a greater value for students and thus better address transfer attrition.

45. Professors O'Connor and Rumann, and another tenured professor, publicly raised their objection that Legal Ed. 2.0 were matters that the ABA committed to the faculty and dean and that the Faculty Handbook required that these issues be processed through standing committees, such as the Curriculum Committee and the Retention,

Promotion and Tenure Committee ("RPT"), not through Defendant InfiLaw and the consultants that it retained to create the Legal Ed. 2.0 "rebranding."

46. Upon information and belief, this rebranding effort was in part motivated by Defendants fears concerning increased regulations and scrutiny emanating from Congress and the Department of Education.

47. PhoenixLaw did embark on its plan to reduce student attrition by requiring any student who was considering transferring out of the School to meet with PhoenixLaw administrators before PhoenixLaw would release the student's transcripts to the school(s) to which the student was considering transferring.

48. During the spring of 2012, PhoenixLaw convened a special meeting to address transfer attrition, which included an InfiLaw representative.

49. During that special meeting, Dean Mays raised the possibility of PhoenixLaw adopting a policy of refusing to write recommendation letters for students considering transfer and the InfiLaw representative spoke in favor of the proposal.

50. Upon information and belief, during that special meeting, Associate Dean Willrich announced that she had already adopted a policy of not writing recommendation letters for students seeking to transfer out of the School.

51. Upon information and belief, during that special meeting, several faculty members questioned the proposed policy of faculty refusing to provide recommendation letters for students who were considering a transfer out of the School because, it was inconsistent with the School's professed "student centered approach." Upon information and belief, the InfiLaw representative, referring to faculty writing recommendation letters to students who were considering a transfer out of the School, responded that writing recommendation letters would be contrary to the interests of the School and questioned why a faculty member would write recommendation letters.

52. In or about September 2012, PhoenixLaw convened a meeting of all employees at the School, and Scott Thompson, the School's President, discussed transfer attrition and disclosed that the previous academic year 68 students had transferred from the School, reflecting 55% of the transfer requests and 18% of the students who enrolled as first-year students in the Fall of 2011.

53. At that meeting, Mr. Thompson discussed curriculum and structural changes that the School's administration was considering, including: (i) reordering class offerings so that competing law schools would not accept students requesting transfer because mandatory courses for transfer would not be included in the first year curriculum; and (ii) considering grading all first year courses as "pass/fail" so that competing law schools could not identify the School's top performers.

54. At a subsequent faculty meeting, Mr. Thompson addressed the School's financial sustainability and ability to hire faculty in a manner that some faculty perceived as a not too veiled threat that they should back Program 2.0 or risk losing faculty positions.

55. Professors O'Connor and Rumann, and other faculty, were very involved and vocal about the Program 2.0 proposal, and openly shared criticisms and suggestions on Program 2.0 with the School's administration and faculty.

56. One particular criticism of Program 2.0 was that it proposed a changed curriculum that would focus on soft skills to the detriment of legal analysis in the context of traditional courses in the first and second years, and some faculty (including Professors O'Connor and Rumann, who voiced their concern) believed that this shift may disadvantage students in the job market with a transcript that did not indicate that they had completed traditional law school courses.

57. Professors O'Connor and Rumann and other faculty analyzed the curriculum proposal of Program 2.0 and found that there was little to no support in academic literature

for the changes proposed, particularly at a school that accepts a high percentage of non-traditional students.

58. Professors O'Connor and Rumann, and other faculty members, also opposed the Faculty 2.0 proposal to the extent it was affirmatively represented as purely a financial decision for the School and not one in the best interests of the current and prospective students.

59. The Faculty 2.0 proposal was geared at reducing and ultimately eliminating tenured faculty because investors would look more favorably upon a school with fewer or no tenured faculty.

60. Professors O'Connor and Rumann openly voiced their concerns about the Faculty 2.0 proposal to PhoenixLaw administrators and other faculty members.

61. The purpose of Faculty 2.0 appeared to be an effort to limit the number of tenure track faculty, as directed by InfiLaw.

62. Faculty members were polled about the Faculty 2.0 proposal and reported the results of the survey in a memorandum circulated prior to the December 13, 2012 meeting by PhoenixLaw administrators and faculty to discuss the Faculty 2.0 and Program 2.0 proposals. That memorandum reflected that the majority of the faculty polled would choose to stay on the tenure track (which Faculty 2.0 was attempting to limit) and that the School's tenure track faculty would agree to teach an increased load in order to equalize salaries.

63. At a Committee Chairs' Meeting on December 7, 2012, Professor O'Connor challenged Defendants' assertion that the proposals were "faculty initiatives" and "faculty driven" because the proposals were in fact, driven by Defendants and their consultants. Dean Mays berated Professor O'Connor in response.

64. On December 11, 2012, Dean Mays sent an email to the School's faculty regarding the December 13, 2012 faculty meeting, and Dean Mays stated that the Steering Committee and InfiLaw's National Policy Board had approved Program 2.0.

65. Dean Mays' email mentioned that the faculty would be asked to take a vote on the finalized Program 2.0 proposal, as required by Section 1.5 of the Faculty Handbook.

66. Specifically, Dean Mays' approach focused on the Faculty Handbook's language that "[f]aculty members acting in their official individual roles as a corporate body are co-managers with the administration and the governing boards in areas of academic policy and administration."

67. However, the approach by Dean Mays (and the Steering Committee and InfiLaw's National Policy Board) ignored the remainder of Section 1.5 which states:

> Faculty members play an essential managerial role of influence in the formulation and effectuation of academic policy. This includes the primary role and effective participation in the development and administration of policies concerning: grading, classroom student conduct, *student progress*, *degree requirements*, *curricular content*, *course offerings*, admission standards, departmental staffing, *educational policies and standards*, faculty promotion, faculty tenure, faculty appointment and retention, and faculty professional development.

(Emphasis added).

68. Dean Mays' approach also violates ABA Standard 205(b), as well as ABA Standard 207 which states that the dean *and faculty* have a significant role in determining educational policy.

69. Dean Mays' email stated that:

> At the completion of that vote [on Program 2.0], we will have as our major topic of discussion the faculty 2.0 information. Since faculty 2.0 concerns compensation and evaluation, no faculty approval is needed for this information. However, we are interested in your feedback and suggestions on how to improve the faculty model.

70. This approach – not allowing the faculty to vote on Faculty 2.0, violated Section 1.5 and ABA Standard 205(b) because through Faculty 2.0, *only* Dean Mays, the Steering Committee and InfiLaw's National Policy Board were deciding matters related to faculty promotion, faculty tenure, faculty appointment and retention, although Faculty 2.0 was clearly geared at reducing and ultimately eliminating tenured faculty.

71. Because the proposal contained modifications in committee service, faculty evaluation, and course content the proposal should be put up for a faculty vote, in accordance with the requirements of ABA Standard 205 and Section 1.5 of the Faculty Handbook.

72. Also on Dec. 11, 2012, Professor O'Connor distributed a memorandum that detailed his approach to analyzing the Program 2.0 proposal, and arguing that there was insufficient evidence that this program would allow faculty members and PSL to meet their ethical obligations to the students and the profession.

73. The December 13, 2012 meeting was carefully orchestrated to avoid debating the merits of Program 2.0 or Faculty 2.0. A member of the Faculty 2.0 subcommittee read an email from Dean Mays (who was not in attendance) that essentially stated that if the Program 2.0 proposal did not pass, the salaries of legal process faculty and perhaps other faculty would not be raised to the level of the doctrinal faculty. This position was directly contrary to the opinions of the School's faculty that doctrinal and legal process faculty should be compensated equally. Some faculty, including Professors O'Connor and Rumann, believed that Dean Mays' position was a not-too-veiled incentive for the majority of the legal process faculty to vote in favor of Program 2.0. Indeed, Dean Mays' message was that passing Program 2.0 was a precondition to the equalization of salaries among doctrinal and legal process faculty.

74. Approximately 30 minutes into the December 13, 2012 meeting, a tenured professor who Professors O'Connor and Rumann were known to support addressed the

group and announced that he intended to vote against the proposals and would list his reasons. The speaker was silenced by the Associate Dean Penny Willrich.

75. The Program 2.0 subcommittee seemed unprepared for the December 13, 2012 meeting and drafted the ballot for the vote during the meeting.

76. The ballot is oddly drafted – if a faculty member voted "no" (against) Program 2.0 as a whole, the faculty member was instructed to then address individual components of the proposal.

77. The faculty voted 22 against Program 2.0, as a whole, and 20 in favor.

78. Two faculty members counted the ballots and announced that while the vote against Program 2.0 exceeded those who voted in favor, when they counted the total "yes" votes on the individual aspects of the proposal from the ballots marked "no," they could not decide whether the proposal passed or not.

79. The faculty was in disbelief because the majority clearly voted against Program 2.0 in total and Associate Dean Willrich announced that Dean Mays would be the one to decide whether Program 2.0 passed. Many faculty, including Professors O'Connor and Rumann, objected to that decision.

80. Dean Mays interpreted any "yes" as a vote in support of Program 2.0 and therefore Program 2.0 has "passed."

81. PhoenixLaw terminated a tenured professor in December 2012 who was very critical of many aspects of Legal Ed. 2.0 and of other matters impacting students and faculty at the School that he deemed detrimental to the School, which had the effect of "chilling" faculty speech at the School.

82. At a February 21, 2013 meeting, faculty voted against a position advocated by the Dean on Program 2.0 and thereafter Dean Mays announced that she did not have to abide by the faculty vote because all votes were "just recommendations" to the Dean and that she was responsible for making the final decision.

83. Professor O'Connor challenged Dean Mays' interpretation of her role as the final arbiter of faculty administration (which is inconsistent with the Faculty Handbook and ABA Standards and a "decision-tree matrix" in which she had previously identified the faculty as the ultimate decision makers on curriculum issues) and Dean Mays dismissed Professor O'Connor's objection and reiterated that, under her reading of the Faculty Handbook, she was the final decision maker on curriculum issues.

84. ABA Standards 404 and 405 concern academic freedom, including the ability to voice unpopular opinions and tenure of faculty members. Indeed, one purpose of tenure is to allow a professor the freedom to voice unpopular opinions without risk of being terminated because of the contract rights granted with tenure.

85. Defendants have repeatedly violated ABA Standards 404 and 405 by threatening to and expelling professors, such as Professors O'Connor and Rumann, who challenge Defendants' actions with respect to students, curriculum, and faculty governance and have questioned whether the actions were in the interests of students and faculty and based on sound education objectives or driven by economic interests.

86. As Professors O'Connor and Rumann expressed their opinions, perspective, suggestions and criticisms regarding faculty governance (and the limitations proposed in how the Faculty 2.0 proposal would be promulgated and adopted) and on the Program 2.0 proposal, and as those opinions became widely known through the administration and faculty, Professors O'Connor and Rumann reasonably believed that representatives of Defendants intended to terminate their employment and breach their tenure rights.

Defendants Terminate Professors O'Connor and Rumann by Falsely Claiming that Professors O'Connor and Rumann Did Not Accept The Offer of Employment for the 2013-2014 Academic Year

87. The Faculty Handbook is a contract between Defendants and Professors O'Connor and Rumann.

88. The Faculty Handbook is clear – all employment contracts *shall* be in the form and style outlined in Section 2.2.5.

89. Professors O'Connor and Rumann had tenure contracts with Defendants.

90. The Faculty Handbook Section 2.2.4 is clear – a tenure contract "gives the faculty member the contractual right to be re-employed for succeeding academic years." The Post-Tenure Review provision of the Faculty Handbook provides: "Once a faculty member has attained tenure, the faculty member shall be presumed to continue in that position." That provision continues, "the tenured faculty member's record shall be reviewed in the fifth full academic year after grant of tenure and every five years after each extension of tenure. … In the event the Board does not grant the candidate an extension of tenure, the candidate will receive a detailed report setting forth the basis for such determination. In such a case, the candidate shall be granted not less than one, nor more than two, academic years to cure the failure. Failure to achieve compliance in the time allotted will result in the loss of tenure and termination of the employment relationship one academic year after the compliance deadline has passed."

91. On May 3, 2013, PhoenixLaw's Director of Human Resources issued a cover letter attaching an "appointment letter" to Professors O'Connor and Rumann.

92. The May 3, 2013 letter stated that the appointment letters were being presented "for returning faculty rather than lengthy contracts" and that "[t]he change was made to simplify the process and eliminate redundancies." *Id.*

93. Notably, the May 3, 2013 letter falsely stated: "The appointment letter does not contain any fewer protections, rights, and responsibilities than the previous contract issued to returning faculty." *Id.*

94. The proposed "condensed appointment letter" purportedly incorporated "Chapter II of the Faculty Handbook, which is where the key contract provisions are located." *Id.*

95. Ms. Lee's representation was false. The form of contract that is contained in Chapter II of the Faculty Handbook contains blanks where material terms are required to be executed by the parties. The "incorporated" contract therefore did not include material contract terms and, in this sense, was nothing more than a void or voidable contract.

96. Without any authority or meaningful explanation, the "appointment letters" expressly reject the Faculty Handbook's *required* form and style of contract that the School was, and is, contractually obligated to offer and execute with Professors O'Connor and Rumann and that had always been used in the past.

97. The "appointment letters" did not offer Professors O'Connor and Rumann the "tenure contract" to which they were entitled but refer to a "full time 'tenure' position." Had Professors O'Connor and Rumann accepted the appointment letters, material terms of their employment – dates of employment, title and rank, whether the contract is subject to conditions, for example – would not have been settled because those are some of the blank terms in the form of contract appearing at Section 2.2.5.

98. Ms. Lee (arbitrarily) imposed a May 17, 2013 date by which Professors O'Connor and Rumann were to sign the appointment letters and return them to PhoenixLaw, at which time Dean Mays would "then sign the appointment letter[s] and you will be sent a signed copy of the fully executed letter." Notably, there was no "time is of the essence" clause in Ms. Lee's letter and the date is not dictated by any formal or informal policy adopted or followed in the past by Defendants or Professors O'Connor or Rumann.

99. On May 10, 2013, Professors O'Connor and Rumann explained these deficiencies to PhoenixLaw and each presented it with a signed Section 2.2.5 form of contract as required by the parties' contracts.

100. On May 10, 2013, Professors O'Connor and Rumann unequivocally indicated their desire and intent to return to employment with PhoenixLaw for the

following academic year, and asked that the submitted contract required by Chapter II that they signed and submitted be executed by PhoenixLaw's May 17, 2013 deadline.

101. Defendants' refused to acknowledge the contracts submitted by Professors O'Connor and Rumann and did not communicate that the May 10 submitted contracts would be considered a rejection of the offer of employment because Professors O'Connor and Rumann reasonably believed that the parties had an employment contract by virtue of the Faculty Handbook and their tenure contract rights and that the contract merely needed to be memorialized in the form Defendants' required by the Handbook and past practice.

102. On May 15, 2013, undersigned counsel sent a letter to PhoenixLaw explaining that the deficiencies of the "appointment letters" and that failing to present the required contract constituted a breach of Chapter II of the Faculty Handbook and reiterated the request that PhoenixLaw act on the signed and submitted contracts no later than PhoenixLaw's May 17, 2013 deadline.

103. Having received no acknowledgment of the May 15, 2013 letter, undersigned counsel left a voicemail for Ms. Lee on May 16 and again requested prompt action in light of the May 17, 2013 deadline.

104. On May 18, 2013, Professors O'Connor and Rumann attended the Phoenix School of Law graduation ceremony. There they saw and spoke with both Dean Mays and President Thompson. Neither indicated that there was any problem concerning the continued employment of Professors O'Connor and Rumann or the contracts that Professors O'Connor and Rumann presented to Defendants on May 10, 2013.

105. On May 20, 2013, Dean Mays and Professors O'Connor and Rumann and one other faculty member met to discuss long-term planned projects for the School and students.

106. In doing so, Dean Mays intentionally gave Professors O'Connor and Rumann the impression that they would be returning to the School and working toward these potentially years-long projects.

107. During that May 20, 2013 meeting, Professors O'Connor and Rumann asked about the status of the employment contracts and Dean Mays stated that the matter was "with legal."

108. The "appointment letter" provided to Professors O'Connor and Rumann did not state or otherwise indicate that the terms were not negotiable, or explain the May 17, 2013 deadline and, in fact, the prior practice had been to execute employment contracts in July preceding the academic year and as late as November of the academic year.

109. At 4:50 p.m. on May 20, 2013, Dean Mays sent Professors O'Connor and Rumann a letter terminating their employment. Specifically, the letter falsely stated that they had not "accept[ed] the offer of employment made to you" because it was not accepted as of May 17, 2013. *See* Exhibit A.

110. Dean Mays' contention that Professors O'Connor and Rumann did not accept the employment offer by May 17, 2013 is false.

111. Professors O'Connor and Rumann unequivocally accepted the offer of employment on May 10, 2013 but insisted that PhoenixLaw comply with its obligations in Chapter II and execute the form and style of the *required* employment contract.

112. Defendants, through their silence, induced Professors O'Connor and Rumann into believing that submitting the form and style of contract required of the Faculty Handbook that they prepared and executed would not be considered a rejection of "the offer of employment," and Defendants' failure to claim that this conduct constituted a failure to accept the employment offer until the next business day after the arbitrarily imposed May 17 deadline constituted a breach of Professors O'Connor's and Rumann's existing tenure contract rights.

113. Notably, because the Faculty Handbook gives Professors O'Connor and Rumann the "contractual right to be re-employed for succeeding academic years," and tenure at Phoenix School of Law guarantees five-year terms that are presumptively renewable, Defendants breached their obligation to bring any alleged concerns about how to formally document that presumptive contractual-right of reemployment to Professors O'Connor and Rumann *prior* to the May 17, 2013 deadline if Defendants believed the failure to sign and submit the "appointment letter" as presented on May 3, 2013 on or before May 17, 2013 constituted – in Defendants' opinion -- a rejection of Defendants' offer of employment.

114. Moreover, upon information and belief, other returning (non-tenured) faculty members did not execute the "appointment letter" on or before May 17, 2013 and were not deemed to have rejected the offer of employment for failing to do so.

115. Moreover, upon information and belief, at least one returning (non-tenured) faculty member modified the "appointment letter" and was not deemed to have rejected the offer of employment for doing so.

116. Professors O'Connor and Rumann were pretextually terminated in retaliation for, among other things, voicing opposition to Faculty 2.0 and Program 2.0, and Defendants desire to eliminate tenure, and Defendants had no legitimate basis for refusing to execute the very form and style of employment contract that was required by the Faculty Handbook.

117. Professor O'Connor's and Rumann's request that they receive an executed copy of the form and style of contract required by the Faculty Handbook was reasonable, required by the parties' contract, did not constitute a rejection of the employment offer or constitute a counter-offer of employment, and Defendants acceptance of the modified appointment letter supplied by another (non-tenured) faculty member and refusal to strictly

impose the return deadline on other (non-tenured) faculty members evidences their selective enforcement of the May 17 deadline.

118. Upon information and belief, Defendants elimination of tenure and tenured professors has an adverse impact on faculty over the age of 40 and is without legal justification.

119. Upon information and belief, Defendants' hostility toward Professors O'Connor and Rumann is a direct result of their objections and attempts to improve the terms and conditions of employment with Defendants, in violation of the National Labor Relations Act.

Count I – Breach of Contract

120. Professors O'Connor and Rumann hereby incorporate each and every allegation of the Complaint as if asserted herein in full.

121. Professors O'Connor and Rumann executed Faculty Contracts of Employment Tenured Contract for the 2012–2013 Academic Year, which granted them full tenure rights under the "Tenure Contract."

122. Defendants' "withdrawal" of the employment offer to Professors O'Connor and Rumann constitutes a breach of contract, including the contractual rights expressly granted by the Faculty Handbook.

123. Professors O'Connor and Rumann accepted Defendants' offer of employment on May 10, 2013 – one week before the May 17 deadline – and requested that Defendants execute the form and style of contract required by the Faculty Handbook instead of the "appointment letter" that expressly did not include all materials terms of the employment contract.

124. Professor O'Connor's and Rumann's request that they receive an executed copy of the form and style of contract required by the Faculty Handbook was reasonable, required by the parties' contract, did not constitute a rejection of the employment offer or

constitute a counter-offer of employment, and Defendants acceptance of the modified appointment letter supplied by another (non-tenured) faculty member and refusal to strictly impose the return deadline on other (non-tenured) faculty members evidences their selective enforcement of the May 17 deadline.

125. Defendants refusal to address the issue until after May 17, 2013 and then to claim that Professors O'Connor and Rumann failed to accept the offer of continued employment by Ms. Lee's arbitrary deadline is wholly unreasonable and evidences Defendants' bad faith in abiding by its own contracts.

126. Defendants breached the employment contract by: (i) terminating Professors O'Connor's and Rumann's ongoing contractual right to employment as tenured professors; (ii) refusing to execute the form and style of employment contract submitted by Professors O'Connor and Rumann; and (iii) failing to notify Professors O'Connor and Rumann that Defendants intended the "appointment letters" to be non-negotiable, despite that they did not comply with the terms of the Faculty Handbook or Professor O'Connor's and Rumann's existing contract rights.

127. Defendants breached the employment contract by terminating Professors O'Connor and Rumann because they exercised their academic freedom to question and object to Defendants' proposed curriculum changes that detrimentally impacted students and faculty, erosion of faculty governance and, ultimately, to reduce or eliminate tenure.

128. As a result of Defendants' conduct, Professors O'Connor and Rumann have been damaged in an amount to be proven at trial.

129. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Professors O'Connor and Rumann are entitled to recover reasonable attorneys' fees and costs incurred because of Defendants' breach of the employment contracts.

Count II – Breach of the Implied Covenant of Good Faith and Fair Dealing

130. Professors O'Connor and Rumann hereby incorporate each and every allegation of the Complaint as if asserted herein in full.

131. There was and is implied in the employment contract a covenant of good faith and fair dealing.

132. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts by, among other things: (i) refusing to execute the required form and style of employment contract required by Chapter II of the Faculty Handbook; (ii) creating a pretextual reason for discharging Professors O'Connor and Rumann because the May 17 deadline was arbitrarily imposed, there was no basis for requiring that they execute "appointment letters," and failing to notify Professors O'Connor and Rumann that the terms of the appointment letters were allegedly non-negotiable; (iii) knowingly failing to notify Professors O'Connor and Rumann on or before May 17, 2013 that Defendants considered the May 10, 2013 submission to constitute a rejection or failure to accept continued employment; (iv) inducing Professors O'Connor and Rumann to believe that their contractual rights to employment were being honored by Defendants' representative scheduling and holding a meeting the morning of May 20, 2013 with Professors O'Connor and Rumann to discuss Defendants' future projects that included Professors O'Connor and Rumann only to "fire" them hours later; and (v) allowing non-tenured professors to modify the appointment letter without the modification allegedly not constituting a rejection of the offer of employment and not withdrawing the offer of employment to other non-tenured professors who did not timely execute and return the appointment letter.

133. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts because Professors O'Connor and Rumann exercised their contractual right to academic freedom and question Defendants' proposed curriculum and faculty governance changes that detrimentally impacted students, eroded faculty

governance, and was geared toward reducing or eliminating tenure, in violation of the Defendants' professed public commitments, the Faculty Handbook, and ABA Standards.

134. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts by refusing to employ Professors O'Connor and Rumann for successive tenured terms of years because they exercised their rights to organize to improve the terms and conditions of employment with Defendants.

135. As a result of Defendants' conduct, Professors O'Connor and Rumann have been damaged in an amount to be proven at trial and, to the extent Defendants' conduct was willful and malicious, exemplary damages.

136. As a result of Defendants' conduct, Professors O'Connor and Rumann have suffered harm to their reputations, causing additional damage.

137. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Professors O'Connor and Rumann are entitled to recover reasonable attorneys' fees and costs incurred because of Defendants' breach of the implied covenant of good faith and fair dealing.

Demand for Jury Trial

138. Plaintiffs demand a jury trial for all claims triable by jury.

WHEREFORE, Plaintiff requests as follows:

A. An award of all compensatory damages proved at trial and, to the extent Plaintiff shows that Defendants' conduct was willful and malicious, exemplary damages;

B. An award of all direct and consequential damages caused by Defendants;

C. An award of attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01;

D. An award of pre-judgment and/or post-judgment statutory interest on all sums awarded and/or deemed owed; and

E. For such other and further relief as the Court deems appropriate.

Dated this 31st day of May, 2013.

SCHNEIDER & ONOFRY, P.C.

By s/Michelle Swann
Michelle Swann
D. Trey Lynn
3101 N. Central Avenue, Suite 600
Phoenix, Arizona 85012-2658
Attorneys for Plaintiffs

EXHIBIT A

PHOENIX
SCHOOL OF LAW

OFFICE OF THE DEAN

May 20, 2013

Dear Professor O'Connor:

This letter follows my letter to you dated May 3, 2013 in which you were offered continued employment as Professor of Law for the upcoming 2013-2014 academic year. The deadline for you to accept the offer of continued employment for the upcoming academic year was Friday, May 17, 2013. We received your written communication indicating that you do not accept the offer of employment made to you. For this reason, the offer of a position for the 2013-2014 academic year is withdrawn.

Your current contract runs through May 31, 2013. In light of your rejection of our offer of continued employment for the 2013-2014 academic year, your employment at the Phoenix school of Law will end on May 31, 2013 as that is the last day of the term of your contract.

On or before May 31, 2013 you will need to have completed the following:

- Cleaned out your office of all personal belongings. Anything that is company property, proprietary and/or confidential must remain.
- Return your ID badge, keys, laptop, company credit card and cell phone (if applicable) to Stephanie Lee in Human Resources.
- Ensure any personal emails or documents are retrieved from your computer.

Because faculty members are paid over a 12 month period, your final paycheck will be May 31, 2013 and will include your balance of contract salary. Your benefits will continue through July 31, 2013 and your final paycheck will reflect the benefit deductions for June and July. Beyond that date, your rights to continue coverage at your expense under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be provided to you by Mindi Sullivan, Benefits Coordinator for Infilaw under separate cover. Information regarding your 401k options will also be provided by Mindi Sullivan.

OFFICE OF THE DEAN

Please ensure you contact me with any change in address to ensure important documents are delivered to you in a timely manner.

It has been a pleasure working with you at the Phoenix School of Law and we wish you success in your future endeavors.

Sincerely,

Shirley L. Mays
Dean and Professor of Law

PHOENIX
SCHOOL OF LAW

OFFICE OF THE DEAN

May 20, 2013

Dear Professor Rumann:

This letter follows my letter to you dated May 3, 2013 in which you were offered continued employment as Professor of Law for the upcoming 2013-2014 academic year. The deadline for you to accept the offer of continued employment for the upcoming academic year was Friday, May 17, 2013. We received your written communication indicating that you do not accept the offer of employment made to you. For this reason, the offer of a position for the 2013-2014 academic year is withdrawn.

Your current contract runs through May 31, 2013. In light of your rejection of our offer of continued employment for the 2013-2014 academic year, your employment at the Phoenix school of Law will end on May 31, 2013 as that is the last day of the term of your contract.

On or before May 31, 2013 you will need to have completed the following:

- Cleaned out your office of all personal belongings. Anything that is company property, proprietary and/or confidential must remain.
- Return your ID badge, keys, laptop, company credit card and cell phone (if applicable) to Stephanie Lee in Human Resources.
- Ensure any personal emails or documents are retrieved from your computer.

Because faculty members are paid over a 12 month period, your final paycheck will be May 31, 2013 and will include your balance of contract salary. Your benefits will continue through July 31, 2013 and your final paycheck will reflect the benefit deductions for June and July. Beyond that date, your rights to continue coverage at your expense under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be provided to you by Mindi Sullivan, Benefits Coordinator for Infilaw under separate cover. Information regarding your 401k options will also be provided by Mindi Sullivan.

OFFICE OF THE DEAN

Please ensure you contact me with any change in address to ensure important documents are delivered to you in a timely manner.

It has been a pleasure working with you at the Phoenix School of Law and we wish you success in your future endeavors.

Sincerely,

Shirley L. Mays
Dean and Professor of Law

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident

(b) County of Residence of First Listed Plaintiff Maricopa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michelle Swann, D. Trey Lynn, Schneider & Onofry, P.C., 3101 N. Central Ave., Suite 600, Phoenix, AZ 85012, 602-200-1287

DEFENDANTS

Phoenix School of Law, LLC, a Delaware limited liability company; and InfiLaw Corporation, a Delaware corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	☒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	☒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 1332

Brief description of cause:
Breach of contract & breach of implied covenant of good faith and fair dealing

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 200,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 05/31/2013

SIGNATURE OF ATTORNEY OF RECORD s/Michelle Swann

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Michelle Swann – 019819
Douglas C. (Trey) Lynn, III – 028054
SCHNEIDER & ONOFRY, P.C.
3101 N. Central Avenue, Suite 600
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E-mail: mswann@soarizonalaw.com
tlynn@soarizonalaw.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident,

Plaintiffs,

vs.

Phoenix School of Law, LLC, a Delaware limited liability company, InfiLaw Corporation, a Delaware corporation,

Defendants.

No. 2:13-cv-01107-SRB

First Amended Complaint

Plaintiff Michael O'Connor, an Arizona resident, and Plaintiff Celia Rumann, an Arizona resident, for their First Amended Complaint against Defendant Phoenix School of Law, LLC, a Delaware limited liability company, and Defendant InfiLaw Corporation, a Delaware corporation, allege as follows:

Nature of the Action

1. This action is brought because Defendants Phoenix School of Law, LLC and InfiLaw Corporation terminated Plaintiffs, Professors O'Connor and Rumann, who are highly respected, tenured professors, in violation of their employment contract, the governing Faculty Handbook, and the ABA Standards and Rules of Procedure for Approval of Law Schools. Among other things: (i) Professors O'Connor and Rumann

opposed initiatives presented by Defendants' administration that placed corporate profits above the articulated purpose, mission, values and organization of the Phoenix School of Law; (ii) Professors O'Connor and Rumann objected to Defendants' systematic program to undermine and, in some cases ignore, the role of faculty in the governance of the Phoenix School of Law, including an attempt to reduce or eliminate the ability to attain tenure, and to reduce or eliminate the faculty's role in setting admission standards; and (iii) Professors O'Connor and Rumann objected to Defendants' proposed curriculum changes that would reduce students' abilities to transfer to schools that the students perceive to provide better opportunities for job placement (described by Dean Shirley Mays as "building a better mousetrap"). This protected conduct caused Defendants to retaliate against Professors O'Connor and Rumann and refuse to renew the employment contracts to which Professors O'Connor and Rumann are entitled.

The Parties, Jurisdiction, and Venue

2. Plaintiff Michael O'Connor and Plaintiff Celia Rumann are Arizona residents and husband and wife. Their claims are asserted on their own behalf and on behalf of their marital community.

3. Defendant Phoenix School of Law, LLC ("PhoenixLaw") is a Delaware limited liability company that is authorized to, and doing, business in Arizona. Specifically, along with Defendant InfiLaw Corporation, PhoenixLaw operates the Phoenix School of Law, a private, for-profit law school in Phoenix, Arizona.

4. Defendant InfiLaw Corporation ("InfiLaw") is a Delaware corporation that, through a number of corporate entities, owns and operates three for-profit law schools, including the Phoenix School of Law (through Defendant PhoenixLaw). InfiLaw retains significant control of all the operations of the for-profit schools within its "consortium," including owning and administering core functions, and providing support for academic

programs and processes for the "consortium" of law schools, including the Phoenix School of Law.

5. This Court has jurisdiction over the claims set forth below by virtue of 28 U.S.C. § 1332 because Defendants and Plaintiffs are citizens of different states and the amount in controversy exceeds $75,000.

6. Venue in this judicial district and the exercise of personal jurisdiction over PhoenixLaw and InfiLaw by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) because, among other reasons, (i) Defendants are doing business in Arizona; (ii) Defendants employed Plaintiffs in Arizona; (iii) Plaintiffs' employment contracts contain an Arizona choice of venue clause and Plaintiffs and PhoenixLaw consented to personal jurisdiction in Arizona; and (iv) Defendants engaged in conduct that substantially gives rise Plaintiffs' claims in this District.

General Allegations

7. InfiLaw owns and administers core functions, provides support for academic programs and processes for a "consortium" of for-profit law schools, including PhoenixLaw's Phoenix School of Law.

8. PhoenixLaw was founded in 2005 and its Phoenix School of Law (the "School") received full ABA accreditation on June 11, 2010.

9. PhoenixLaw hired Professor O'Connor as an Associate Professor of Law effective August 1, 2007, and Professor O'Connor was promoted to Professor of Law with Tenure effective August 1, 2010.

10. PhoenixLaw hired Professor Rumann as an Associate Professor of Law effective August 1, 2008, and Professor Rumann was promoted to Professor of Law with Tenure effective August 1, 2011.

11. Professors O'Connor and Rumann remained tenured faculty members until Defendants' terminated their employment effective May 31, 2013, in violation of the employment contracts.

12. As described by PhoenixLaw, "Tenure is a keystone moment in a professor's career. It is the granting of a continuous employment status to a faculty member. At [PhoenixLaw], it reflects the faculty member's achievement of excellence in scholarship, teaching and leadership abilities, as well as their [sic] commitment to serving their [sic] community."

13. PhoenixLaw has adopted a Faculty Handbook that is a contract between PhoenixLaw and its faculty.

14. Pursuant to Chapter II of the Faculty Handbook, Section 2.2.4, tenure contracts are for an academic year and "give[] the faculty member[s] the contractual right to be re-employed for succeeding academic years until the faculty member resigns, retires, is discharged for adequate cause, is terminated pursuant to a reduction in force, becomes disabled, or dies, but is subject to the terms and conditions of employment, which exist from academic year to academic year."

15. Chapter II of the Faculty Handbook, Section 2.5.6, as amended on October 12, 2012, provides in part:

> **Post-Tenure Review.** Once a faculty member has attained tenure, the faculty member shall be presumed to continue in that position. In order to assure that the tenured faculty member continues to contribute to the School, the tenured faculty member's record shall be reviewed in the fifth full academic year after grant of tenure and every five years after each extension of tenure. * * * In the event the Board does not grant the candidate an extension of tenure, the candidate will receive a detailed report setting forth the basis for such determination. In such a case, the candidate shall be granted not less than one, nor more than two, academic years to cure the failure. Failure to achieve compliance in the time allotted will result in the loss of tenure and termination of the

employment relationship one academic year after the compliance deadline has passed.

16. Pursuant to Chapter II of the Faculty Handbook, PhoenixLaw and its faculty are required to execute a "contract for the employment of faculty at the School" in the "following form and style" dictated by Section 2.2.5 of the Faculty Handbook.

17. Professors O'Connor and Rumann, from the start of their employment to the 2012-2013 academic year, had been presented with the form and style of employment contract set forth and required in Section 2.2.5 of the Faculty Handbook and Professors O'Connor and Rumann, respectively, and Defendants' representative executed the employment contracts.

18. As in years past, Professors O'Connor's and Rumann's 2012-2013 Faculty Contract of Employment, Tenured Contract, states that the contract "is a tenure contract, as that term is defined in the Faculty Handbook." The 2012-2013 Faculty Contract of Employment, Tenured Contract, is hereafter referred to as the "Tenure Contract."

19. The Tenure Contract allows Professors O'Connor and Rumann to terminate it by giving written notice 120 days prior to the beginning of the contract term or at the end of an academic term provided that written notice is given at least sixty calendar days prior to the final scheduled day of the academic term.

20. The Tenure Contract states that the Tenure Contract and Professors O'Connor's and Rumann's employment are "subject to the provisions of Chapter II of the Faculty Handbook, and applicable laws of the State of Arizona and the United States, in force and effect during the Contract Term, all of which may be modified from time to time and are applicable as modified."

21. The Tenure Contract state that "Changes to Chapter II of the Faculty Handbook may be made applicable as changes to this Contract if approved by the Faculty and the School in accordance with established governance processes."

22. On May 3, 2013, Professors O'Connor and Rumann were presented *not* with an employment contract for the 2013-2014 academic term that complied with the contract forth in Section 2.2.5 of the Faculty Handbook but a "letter of appointment," a document that is not described or recognized in the Faculty Handbook.

23. No changes were made to Chapter II of the Faculty Handbook from the start date of the Tenure Contract (August 1, 2012) except to the provisions governing and extending the contractual rights of tenured faculty and post-tenure review.

Defendants' Hostility Toward Faculty Governance

24. Defendant InfiLaw prepared the Faculty Handbook for PhoenixLaw, including the express contractual provisions that granted tenured faculty "contractual right to be re-employed for succeeding academic years" subject to limited circumstance through which the contractual right would extinguish.

25. Upon information and belief, Defendants are explicitly and virulently opposed to faculty tenure and governance but publicly (mis)represented their support for faculty tenure and governance in their effort to obtain ABA accreditation for the School.

26. The School received full accreditation from the ABA on June 11, 2010.

27. Soon after receiving ABA accreditation, the School's Interim Dean withdrew his name from consideration for the permanent Dean position and Shirley Mays was hired as Dean. Scott Thompson, CFO of Defendant InfiLaw, was hired as President of the School, and initially was identified by both titles.

28. At approximately the same time Professors O'Connor and Rumann were named to a "leadership team" comprised of some faculty of the School that was headed by Don Lively, a member of InfiLaw's "executive team."

29. As members of the School's "leadership team," Professors O'Connor and Rumann were invited to a series of meetings in Florida with members of the national governing board of InfiLaw, InfiLaw executives and "leadership teams" from other law

schools in the InfiLaw "consortium." At the meeting, one speaker informed the leadership teams that, in his opinion, law school faculty, and tenured faculty in particular, were the primary problems at law schools nationally.

30. Professors O'Connor and Rumann challenged that assertion and their opinions were dismissed.

31. Later in the conference, Rick Inatome, CEO of InfiLaw, mirrored the prior speaker's opinion that law schools' faculty were the primary cause of problems with law school.

32. Professor O'Connor challenged Mr. Inatome and explained that the view expressed was not consistent with the dedication and depth of experience with the School's faculty that had worked extremely hard for the School's students and were directly responsible for the positive student outcomes that the School's students had achieved.

33. After returning from Florida, Professor O'Connor was removed from the "leadership team" without notice or explanation, and was not included on any further communications among the team. While Professor Rumann remained on the "leadership team" for a period after Professor O'Connor was removed, Professor Rumann was ultimately removed from the team.

34. After obtaining ABA accreditation, beginning in fall 2010 Defendants embarked on a campaign to reduce the role of faculty in the governance of the School and, upon information and belief, at other schools within the "consortium." Specifically, Defendants' administration embarked on a policy to limit the number of committees on which individual faculty members serve and to dilute the voting impact of faculty on committees.

35. Particularly noteworthy of Defendants' plan to limit faculty governance of the School are the limitations placed on the role of faculty in the admissions process, including establishing admissions standards.

36. Specifically, at a fall 2012 faculty meeting, the school's faculty raised the subject of recruitment and admissions. The subject of recruitment and admissions, including concerns about the reduced role of faculty in the admissions process, the Chair of the meeting, Associate Dean Willrich, claimed that comments were not appropriate because PhoenixLaw's Dean and President were not present.

37. The limitations violate Section 1.5 of the Faculty Handbook, which states:

> Faculty members play an essential managerial role of influence in the formulation and effectuation of academic policy. This includes the primary role and effective participation in the development and administration of policies concerning: grading, classroom student conduct, *student progress, degree requirements, curricular content, course offerings*, *admission standards*, departmental staffing, *educational policies and standards*, *faculty promotion, faculty tenure, faculty appointment and retention, and faculty professional development*.

(Emphasis added).

38. The limitations also violate ABA Standard 205(b), which states in part that:

> The dean *and faculty* shall formulate and administer the educational program of the law school, including *curriculum; methods of instruction*; *admissions*; and academic standards for retention, advancement, and graduation of students; and shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty.

(Emphasis added).

39. Defendants' opposition to faculty tenure and governance has exhibited itself by their concerted effort to force tenured faculty out based on pretextual reasons.

40. For example, Defendants held an event in Spring 2010 to honor the four faculty members who had been granted tenure at the School by that time. Three of those faculty members (including Professor O'Connor) have since been forced out of the School, and now Defendants terminated Professor Rumann based on the pretext that she rejected Defendants' offer of employment despite clearly manifesting her intent to return to the School, as described more fully below.

Program 2.0 and Faculty 2.0

41. Beginning in 2011, Defendants proposed changes to faculty compensation and evaluation (referred to by PhoenixLaw as "Faculty 2.0") and curriculum changes (referred to by PhoenixLaw as "Program 2.0") at the Phoenix School of Law, and formed a "Steering Committee" to oversee the proposals. These proposals were collectively referred to as Legal Ed. 2.0 and resulted from Defendants' belief that they needed to "rebrand" the School and "build a better mousetrap" to prevent the School's students from transferring to more highly ranked law schools.

42. One of the major drives behind Program 2.0 was to reduce transfer attrition; specifically, reducing the ability of students to transfer from the Phoenix School of Law to other law schools that the students perceive as higher ranked law schools, leading to greater employability after graduation.

43. Dean Mays spoke about transfer attrition of students during the August 2011 faculty orientation and explained to the faculty that the Phoenix School of Law needed to "build a better mousetrap," particularly with respect to the School losing minority students through transfer attrition.

44. Professors O'Connor and Rumann, and other faculty, objected to Dean Mays approach, and argued that building a law school that emphasized strong teaching, individualized attention for students, increased opportunities for elective courses, greater and more nuanced financial grants, and aggressive job placement would create a greater value for students and thus better address transfer attrition.

45. Professors O'Connor and Rumann, and another tenured professor, publicly raised their objection that Legal Ed. 2.0 were matters that the ABA committed to the faculty and dean and that the Faculty Handbook required that these issues be processed through standing committees, such as the Curriculum Committee and the Retention,

Promotion and Tenure Committee ("RPT"), not through Defendant InfiLaw and the consultants that it retained to create the Legal Ed. 2.0 "rebranding."

46. Upon information and belief, this rebranding effort was in part motivated by Defendants fears concerning increased regulations and scrutiny emanating from Congress and the Department of Education.

47. PhoenixLaw did embark on its plan to reduce student attrition by requiring any student who was considering transferring out of the School to meet with PhoenixLaw administrators before PhoenixLaw would release the student's transcripts to the school(s) to which the student was considering transferring.

48. During the spring of 2012, PhoenixLaw convened a special meeting to address transfer attrition, which included an InfiLaw representative.

49. During that special meeting, Dean Mays raised the possibility of PhoenixLaw adopting a policy of refusing to write recommendation letters for students considering transfer and the InfiLaw representative spoke in favor of the proposal.

50. Upon information and belief, during that special meeting, Associate Dean Willrich announced that she had already adopted a policy of not writing recommendation letters for students seeking to transfer out of the School.

51. Upon information and belief, during that special meeting, several faculty members questioned the proposed policy of faculty refusing to provide recommendation letters for students who were considering a transfer out of the School because, it was inconsistent with the School's professed "student centered approach." Upon information and belief, the InfiLaw representative, referring to faculty writing recommendation letters to students who were considering a transfer out of the School, responded that writing recommendation letters would be contrary to the interests of the School and questioned why a faculty member would write recommendation letters.

52. In or about September 2012, PhoenixLaw convened a meeting of all employees at the School, and upon information and belief, Scott Thompson, the School's President, discussed transfer attrition and disclosed that the previous academic year 68 students had transferred from the School, reflecting 55% of the transfer requests and 18% of the students who enrolled as first-year students in the Fall of 2011.

53. At that meeting, Mr. Thompson discussed curriculum and structural changes that the School's administration was considering, including: (i) reordering class offerings so that competing law schools would not accept students requesting transfer because mandatory courses for transfer would not be included in the first year curriculum; and (ii) considering grading all first year courses as "pass/fail" so that competing law schools could not identify the School's top performers.

54. At a subsequent faculty meeting, Mr. Thompson addressed the School's financial sustainability and ability to hire faculty in a manner that some faculty perceived as a not too veiled threat that they should back Program 2.0 or risk losing faculty positions.

55. Professors O'Connor and Rumann, and other faculty, were very involved and vocal about the Program 2.0 proposal, and openly shared criticisms and suggestions on Program 2.0 with the School's administration and faculty.

56. One particular criticism of Program 2.0 was that it proposed a changed curriculum that would focus on soft skills to the detriment of legal analysis in the context of traditional courses in the first and second years, and some faculty (including Professors O'Connor and Rumann, who voiced their concern) believed that this shift may disadvantage students in the job market with a transcript that did not indicate that they had completed traditional law school courses.

57. Professors O'Connor and Rumann and other faculty analyzed the curriculum proposal of Program 2.0 and found that there was little to no support in academic literature

for the changes proposed, particularly at a school that accepts a high percentage of non-traditional students.

58. Professors O'Connor and Rumann, and other faculty members, also opposed the Faculty 2.0 proposal to the extent it was affirmatively represented as purely a financial decision for the School and not one in the best interests of the current and prospective students.

59. The Faculty 2.0 proposal was geared at reducing and ultimately eliminating tenured faculty because investors would look more favorably upon a school with fewer or no tenured faculty.

60. Professors O'Connor and Rumann openly voiced their concerns about the Faculty 2.0 proposal to PhoenixLaw administrators and other faculty members.

61. The purpose of Faculty 2.0 appeared to be an effort to limit the number of tenure track faculty, as directed by InfiLaw.

62. Faculty members were polled about the Faculty 2.0 proposal and reported the results of the survey in a memorandum circulated prior to the December 13, 2012 meeting by PhoenixLaw administrators and faculty to discuss the Faculty 2.0 and Program 2.0 proposals. That memorandum reflected that the majority of the faculty polled would choose to stay on the tenure track (which Faculty 2.0 was attempting to limit) and that the School's tenure track faculty would agree to teach an increased load in order to equalize salaries.

63. At a Committee Chairs' Meeting on December 7, 2012, Professor O'Connor challenged Defendants' assertion that the proposals were "faculty initiatives" and "faculty driven" because the proposals were in fact, driven by Defendants and their consultants. Dean Mays berated Professor O'Connor in response.

64. On December 11, 2012, Dean Mays sent an email to the School's faculty regarding the December 13, 2012 faculty meeting, and Dean Mays stated that the Steering Committee and InfiLaw's National Policy Board had approved Program 2.0.

65. Dean Mays' email mentioned that the faculty would be asked to take a vote on the finalized Program 2.0 proposal, as required by Section 1.5 of the Faculty Handbook.

66. Specifically, Dean Mays' approach focused on the Faculty Handbook's language that "[f]aculty members acting in their official individual roles as a corporate body are co-managers with the administration and the governing boards in areas of academic policy and administration."

67. However, the approach by Dean Mays (and the Steering Committee and InfiLaw's National Policy Board) ignored the remainder of Section 1.5 which states:

> Faculty members play an essential managerial role of influence in the formulation and effectuation of academic policy. This includes the primary role and effective participation in the development and administration of policies concerning: grading, classroom student conduct, *student progress, degree requirements, curricular content, course offerings*, admission standards, departmental staffing, *educational policies and standards*, faculty promotion, faculty tenure, faculty appointment and retention, and faculty professional development.

(Emphasis added).

68. Dean Mays' approach also violates ABA Standard 205(b), as well as ABA Standard 207 which states that the dean *and faculty* have a significant role in determining educational policy.

69. Dean Mays' email stated that:

> At the completion of that vote [on Program 2.0], we will have as our major topic of discussion the faculty 2.0 information. Since faculty 2.0 concerns compensation and evaluation, no faculty approval is needed for this information. However, we are interested in your feedback and suggestions on how to improve the faculty model.

70. This approach – not allowing the faculty to vote on Faculty 2.0, violated Section 1.5 and ABA Standard 205(b) because through Faculty 2.0, *only* Dean Mays, the Steering Committee and InfiLaw's National Policy Board were deciding matters related to faculty promotion, faculty tenure, faculty appointment and retention, although Faculty 2.0 was clearly geared at reducing and ultimately eliminating tenured faculty.

71. Because the proposal contained modifications in committee service, faculty evaluation, and course content the proposal should be put up for a faculty vote, in accordance with the requirements of ABA Standard 205 and Section 1.5 of the Faculty Handbook.

72. Also on Dec. 11, 2012, Professor O'Connor distributed a memorandum that detailed his approach to analyzing the Program 2.0 proposal, and arguing that there was insufficient evidence that this program would allow faculty members and PSL to meet their ethical obligations to the students and the profession.

73. The December 13, 2012 meeting was carefully orchestrated to avoid debating the merits of Program 2.0 or Faculty 2.0. A member of the Faculty 2.0 subcommittee read an email from Dean Mays (who was not in attendance) that essentially stated that if the Program 2.0 proposal did not pass, the salaries of legal process faculty and perhaps other faculty would not be raised to the level of the doctrinal faculty. This position was directly contrary to the opinions of the School's faculty that doctrinal and legal process faculty should be compensated equally. Some faculty, including Professors O'Connor and Rumann, believed that Dean Mays' position was a not-too-veiled incentive for the majority of the legal process faculty to vote in favor of Program 2.0. Indeed, Dean Mays' message was that passing Program 2.0 was a precondition to the equalization of salaries among doctrinal and legal process faculty.

74. Approximately 30 minutes into the December 13, 2012 meeting, a tenured professor who Professors O'Connor and Rumann were known to support addressed the

group and announced that he intended to vote against the proposals and would list his reasons. The speaker was silenced by the Associate Dean Penny Willrich.

75. The Program 2.0 subcommittee seemed unprepared for the December 13, 2012 meeting and drafted the ballot for the vote during the meeting.

76. The ballot is oddly drafted – if a faculty member voted "no" (against) Program 2.0 as a whole, the faculty member was instructed to then address individual components of the proposal.

77. The faculty voted 22 against Program 2.0, as a whole, and 20 in favor.

78. Two faculty members counted the ballots and announced that while the vote against Program 2.0 exceeded those who voted in favor, when they counted the total "yes" votes on the individual aspects of the proposal from the ballots marked "no," they could not decide whether the proposal passed or not.

79. The faculty was in disbelief because the majority clearly voted against Program 2.0 in total and Associate Dean Willrich announced that Dean Mays would be the one to decide whether Program 2.0 passed. Many faculty, including Professors O'Connor and Rumann, objected to that decision.

80. Dean Mays interpreted any "yes" as a vote in support of Program 2.0 and therefore Program 2.0 has "passed."

81. PhoenixLaw terminated a tenured professor in December 2012 who was very critical of many aspects of Legal Ed. 2.0 and of other matters impacting students and faculty at the School that he deemed detrimental to the School, which had the effect of "chilling" faculty speech at the School.

82. At a February 21, 2013 meeting, faculty voted against a position advocated by the Dean on Program 2.0 and thereafter Dean Mays announced that she did not have to abide by the faculty vote because all votes were "just recommendations" to the Dean and that she was responsible for making the final decision.

83. Professor O'Connor challenged Dean Mays' interpretation of her role as the final arbiter of faculty administration (which is inconsistent with the Faculty Handbook and ABA Standards and a "decision-tree matrix" in which she had previously identified the faculty as the ultimate decision makers on curriculum issues) and Dean Mays dismissed Professor O'Connor's objection and reiterated that, under her reading of the Faculty Handbook, she was the final decision maker on curriculum issues.

84. ABA Standards 404 and 405 concern academic freedom, including the ability to voice unpopular opinions and tenure of faculty members. Indeed, one purpose of tenure is to allow a professor the freedom to voice unpopular opinions without risk of being terminated because of the contract rights granted with tenure.

85. Defendants have repeatedly violated ABA Standards 404 and 405 by threatening to and expelling professors, such as Professors O'Connor and Rumann, who challenge Defendants' actions with respect to students, curriculum, and faculty governance and have questioned whether the actions were in the interests of students and faculty and based on sound education objectives or driven by economic interests.

86. As Professors O'Connor and Rumann expressed their opinions, perspective, suggestions and criticisms regarding faculty governance (and the limitations proposed in how the Faculty 2.0 proposal would be promulgated and adopted) and on the Program 2.0 proposal, and as those opinions became widely known through the administration and faculty, Professors O'Connor and Rumann reasonably believed that representatives of Defendants intended to terminate their employment and breach their tenure rights.

Defendants Terminated Professors O'Connor and Rumann by Falsely Claiming that Professors O'Connor and Rumann Did Not Accept The Offer of Employment for the 2013-2014 Academic Year

87. The Faculty Handbook is a contract between Defendants and Professors O'Connor and Rumann.

88. The Faculty Handbook is clear – all employment contracts *shall* be in the form and style outlined in Section 2.2.5.

89. Professors O'Connor and Rumann had tenure contracts with Defendants.

90. The Faculty Handbook Section 2.2.4 is clear – a tenure contract "gives the faculty member the contractual right to be re-employed for succeeding academic years." The Post-Tenure Review provision of the Faculty Handbook provides: "Once a faculty member has attained tenure, the faculty member shall be presumed to continue in that position." That provision continues, "the tenured faculty member's record shall be reviewed in the fifth full academic year after grant of tenure and every five years after each extension of tenure. … In the event the Board does not grant the candidate an extension of tenure, the candidate will receive a detailed report setting forth the basis for such determination. In such a case, the candidate shall be granted not less than one, nor more than two, academic years to cure the failure. Failure to achieve compliance in the time allotted will result in the loss of tenure and termination of the employment relationship one academic year after the compliance deadline has passed."

91. On May 3, 2013, PhoenixLaw's Director of Human Resources issued a cover letter attaching an "appointment letter" to Professors O'Connor and Rumann.

92. The May 3, 2013 letter stated that the appointment letters were being presented "for returning faculty rather than lengthy contracts" and that "[t]he change was made to simplify the process and eliminate redundancies." *Id.*

93. Notably, the May 3, 2013 letter falsely stated: "The appointment letter does not contain any fewer protections, rights, and responsibilities than the previous contract issued to returning faculty." *Id.*

94. The proposed "condensed appointment letter" purportedly incorporated "Chapter II of the Faculty Handbook, which is where the key contract provisions are located." *Id.*

95. Ms. Lee's representation was false. The form of contract that is contained in Chapter II of the Faculty Handbook contains blanks where material terms are required to be executed by the parties. The "incorporated" contract therefore did not include material contract terms and, in this sense, was nothing more than a void or voidable contract.

96. Without any authority or meaningful explanation, the "appointment letters" expressly reject the Faculty Handbook's *required* form and style of contract that the School was, and is, contractually obligated to offer and execute with Professors O'Connor and Rumann and that had always been used in the past.

97. Presentation of an "appointment letter" breached the Professors' existing tenure contracts.

98. The "appointment letters" did not offer Professors O'Connor and Rumann the "tenure contract" to which they were entitled but refer to a "full time 'tenure' position." Had Professors O'Connor and Rumann accepted the appointment letters, material terms of their employment – dates of employment, title and rank, whether the contract is subject to conditions, for example – would not have been settled because those are some of the blank terms in the form of contract appearing at Section 2.2.5.

99. Ms. Lee (arbitrarily) imposed a May 17, 2013 date by which Professors O'Connor and Rumann were to sign the appointment letters and return them to PhoenixLaw, at which time Dean Mays would "then sign the appointment letter[s] and you will be sent a signed copy of the fully executed letter." Notably, there was no "time is of the essence" clause in Ms. Lee's letter and the date is not dictated by any formal or informal policy adopted or followed in the past by Defendants or Professors O'Connor or Rumann.

100. On May 10, 2013, Professors O'Connor and Rumann explained these deficiencies to PhoenixLaw and each presented it with a signed Section 2.2.5 form of contract as required by the parties' contracts.

101. On May 10, 2013, Professors O'Connor and Rumann unequivocally indicated their desire and intent to return to employment with PhoenixLaw for the following academic year, and asked that the submitted contract required by Chapter II that they signed and submitted be executed by PhoenixLaw's May 17, 2013 deadline.

102. Defendants' refused to acknowledge the contracts submitted by Professors O'Connor and Rumann and did not communicate that the May 10 submitted contracts would be considered a rejection of the offer of employment because Professors O'Connor and Rumann reasonably believed that the parties had an employment contract by virtue of the Faculty Handbook and their tenure contract rights and that the contract merely needed to be memorialized in the form Defendants' required by the Handbook and past practice.

103. On May 15, 2013, undersigned counsel sent a letter to PhoenixLaw explaining that the deficiencies of the "appointment letters" and that failing to present the required contract constituted a breach of Chapter II of the Faculty Handbook and reiterated the request that PhoenixLaw act on the signed and submitted contracts no later than PhoenixLaw's May 17, 2013 deadline.

104. Having received no acknowledgment of the May 15, 2013 letter, undersigned counsel left a voicemail for Ms. Lee on May 16 and again requested prompt action in light of the May 17, 2013 deadline.

105. On May 18, 2013, Professors O'Connor and Rumann attended the Phoenix School of Law graduation ceremony. There they saw and spoke with both Dean Mays and President Thompson. Neither indicated that there was any problem concerning the continued employment of Professors O'Connor and Rumann or the contracts that Professors O'Connor and Rumann presented to Defendants on May 10, 2013.

106. On May 20, 2013, Dean Mays and Professors O'Connor and Rumann and one other faculty member met to discuss long-term planned projects for the School and students.

107. In doing so, Dean Mays intentionally gave Professors O'Connor and Rumann the impression that they would be returning to the School and working toward these potentially years-long projects.

108. During that May 20, 2013 meeting, Professors O'Connor and Rumann asked about the status of the employment contracts and Dean Mays stated that the matter was "with legal."

109. The "appointment letter" provided to Professors O'Connor and Rumann did not state or otherwise indicate that the terms were not negotiable.

110. Defendants' representatives had no legal basis for arbitrarily imposing the May 17, 2013 deadline for return of the "appointment letter" and, in fact, the prior practice had been to execute employment contracts in July prior to the following academic year and as late as November of the academic year.

111. At 4:50 p.m. on May 20, 2013, Dean Mays sent Professors O'Connor and Rumann a letter terminating their employment. Specifically, the letter falsely stated that they had not "accept[ed] the offer of employment made to you" because it was not accepted as of May 17, 2013. *See* Exhibit A.

112. Defendants' contention that Professors O'Connor and Rumann did not accept the employment offer by May 17, 2013 is false.

113. Professors O'Connor and Rumann unequivocally accepted the offer of employment on May 10, 2013 but insisted that PhoenixLaw comply with its obligations in Chapter II and execute the form and style of the *required* employment contract.

114. Defendants, through their silence, induced Professors O'Connor and Rumann into believing that submitting the form and style of contract required of the Faculty Handbook that they prepared and executed would not be considered a rejection of "the offer of employment," and Defendants' failure to claim that this conduct constituted a failure to accept the employment offer until the next business day after the arbitrarily

imposed May 17 deadline constituted a breach of Professors O'Connor's and Rumann's existing tenure contract rights and the covenant of good faith and fair dealing implied therein.

115. Notably, because the Faculty Handbook gives Professors O'Connor and Rumann the "contractual right to be re-employed for succeeding academic years," and tenure at Phoenix School of Law guarantees five-year terms that are presumptively renewable, Defendants breached their obligation to bring any alleged concerns about how to formally document that presumptive contractual-right of reemployment to Professors O'Connor and Rumann *prior* to the May 17, 2013 deadline if Defendants believed the failure to sign and submit the "appointment letter" as presented on May 3, 2013 on or before May 17, 2013 constituted – in Defendants' opinion -- a rejection of Defendants' offer of employment.

116. Moreover, upon information and belief, other returning (non-tenured) faculty members did not execute the "appointment letter" on or before May 17, 2013 and were not deemed to have rejected the offer of employment for failing to do so.

117. Moreover, upon information and belief, at least one returning (non-tenured) faculty member modified the "appointment letter" and Defendants accepted the modified appointment letter and did not deem the modification a failure to accept, or a rejection of, the offer of employment.

118. Professors O'Connor and Rumann were pretextually terminated in retaliation for, among other things, voicing opposition to Faculty 2.0 and Program 2.0, and Defendants desire to eliminate tenure, and Defendants had no legitimate basis for refusing to execute the very form and style of employment contract that was required by the Faculty Handbook.

119. Professor O'Connor's and Rumann's request that they receive an executed copy of the form and style of contract required by the Faculty Handbook was reasonable,

required by the parties' contract, did not constitute a rejection of the employment offer or constitute a counter-offer of employment, and Defendants acceptance of the modified appointment letter supplied by another (non-tenured) faculty member and refusal to strictly impose the return deadline on other (non-tenured) faculty members evidences their selective enforcement of the May 17 deadline.

Count I – Breach of Contract

120. Professors O'Connor and Rumann hereby incorporate each and every allegation of the First Amended Complaint as if asserted herein in full.

121. Professors O'Connor and Rumann executed Faculty Contracts of Employment Tenured Contract for the 2012–2013 Academic Year, which granted them full tenure rights under the "Tenure Contract."

122. Defendants' presentation of an "appointment letter" rather than an employment contract in the form and style required by the Faculty Handbook constituted a breach of contract.

123. Professors O'Connor and Rumann accepted Defendants' offer of employment on May 10, 2013 – one week before the May 17 deadline.

124. Professors O'Connor and Rumann requested that Defendants execute the form and style of contract required by the Faculty Handbook instead of the "appointment letter" that expressly did not include all material terms of the employment contract prior to the May 17 deadline.

125. Professor O'Connor's and Rumann's request that they receive an executed copy of the form and style of contract required by the Faculty Handbook was reasonable and necessary under the parties' contract.

126. Professor O'Connor's and Rumann's request that the Defendants execute the required contract in lieu of the "appointment letter" did not constitute a rejection of the employment offer or constitute a counter-offer of employment.

127. Defendants' "withdrawal" or rescission of the employment offer to Professors O'Connor and Rumann constitutes a breach of contract, including the contractual rights expressly granted by the Faculty Handbook.

128. Defendants' contention that failure to return a signed "appointment letter" in the form issued by Defendants constituted a failure to accept the employment offer and/or rejection of the offer is defeated by the fact that Defendants, upon information and belief, accepted at least one modified appointment letter from a non-tenured faculty member and acceptance of appointment letters submitted after the May 17 deadline.

129. Defendants' termination of Professors O'Connor and Rumann constitutes a breach of contract, including the contractual rights expressly granted by the Faculty Handbook.

130. Defendants refusal to address the issue until after May 17, 2013 and then to claim that Professors O'Connor and Rumann failed to accept the offer of continued employment by Ms. Lee's arbitrary deadline is wholly unreasonable and evidences Defendants' bad faith in abiding by its own contracts.

131. Defendants breached the employment contract by: (i) imposing a signed "appointment letter" requirement as a precondition to continued employment; (ii) refusing to execute the form and style of employment contract submitted by Professors O'Connor and Rumann; (iii) failing to notify Professors O'Connor and Rumann that Defendants intended the "appointment letters" to be non-negotiable, despite that they did not comply with the terms of the Faculty Handbook or Professor O'Connor's and Rumann's existing contract rights; and (iv) terminating Professors O'Connor's and Rumann's ongoing contractual right to employment as tenured professors.

132. Defendants breached the employment contract by terminating Professors O'Connor and Rumann because they exercised their academic freedom to question and

object to Defendants' proposed curriculum changes that detrimentally impacted students and faculty, erosion of faculty governance and, ultimately, to reduce or eliminate tenure.

133. As a result of Defendants' conduct, Professors O'Connor and Rumann have been damaged in an amount to be proven at trial.

134. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Professors O'Connor and Rumann are entitled to recover reasonable attorneys' fees and costs incurred because of Defendants' breach of the employment contracts.

Count II – Breach of the Implied Covenant of Good Faith and Fair Dealing

135. Professors O'Connor and Rumann hereby incorporate each and every allegation of the First Amended Complaint as if asserted herein in full.

136. There was and is implied in the employment contract a covenant of good faith and fair dealing.

137. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts by, among other things: (i) imposing a signed "appointment letter" requirement as a precondition to continued employment; (ii) refusing to execute the required form and style of employment contract required by Chapter II of the Faculty Handbook; (iii) creating a pretextual reason for discharging Professors O'Connor and Rumann because the May 17 deadline was arbitrarily imposed, there was no basis for requiring that they execute "appointment letters," and failing to notify Professors O'Connor and Rumann that the terms of the appointment letters were allegedly non-negotiable; (iv) knowingly failing to notify Professors O'Connor and Rumann on or before May 17, 2013 that Defendants considered the May 10, 2013 submission to constitute a rejection or failure to accept continued employment; (v) inducing Professors O'Connor and Rumann to believe that their contractual rights to employment were being honored by Defendants' representative scheduling and holding a meeting the morning of May 20, 2013

with Professors O'Connor and Rumann to discuss Defendants' future projects that included Professors O'Connor and Rumann only to "fire" them hours later; and (vi) allowing at least one returning faculty member to modify the appointment letter and accepting appointment letters submitted beyond the May 17 deadline without declaring those acts to constitute a rejection of the offer of employment or otherwise constituting grounds for withdrawal of the employment offer and/or rejection of Defendants' employment offer.

138. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts because Professors O'Connor and Rumann exercised their contractual right to academic freedom and question Defendants' proposed curriculum and faculty governance changes that detrimentally impacted students, eroded faculty governance, and was geared toward reducing or eliminating tenure, in violation of the Defendants' professed public commitments, the Faculty Handbook, and ABA Standards.

139. Defendants breached the covenant of good faith and fair dealing implied in their employment contracts by refusing to employ Professors O'Connor and Rumann for successive years as required by the Faculty Handbook and tenure system.

140. As a result of Defendants' conduct, Professors O'Connor and Rumann have been damaged in an amount to be proven at trial and, to the extent Defendants' conduct was willful and malicious, are entitled to exemplary damages.

141. As a result of Defendants' conduct, Professors O'Connor and Rumann have suffered harm to their reputations, causing additional damage.

142. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Professors O'Connor and Rumann are entitled to recover reasonable attorneys' fees and costs incurred because of Defendants' breach of the implied covenant of good faith and fair dealing.

Demand for Jury Trial

138. Plaintiffs demand a jury trial for all claims triable by jury.

WHEREFORE, Plaintiff requests as follows:

A. An award of all compensatory damages proved at trial and, to the extent Plaintiff shows that Defendants' conduct was willful and malicious, exemplary damages;

B. An award of all direct and consequential damages caused by Defendants;

C. An award of attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01;

D. An award of pre-judgment and/or post-judgment statutory interest on all sums awarded and/or deemed owed; and

E. For such other and further relief as the Court deems appropriate.

Dated this 21st day of June, 2013.

SCHNEIDER & ONOFRY, P.C.

By s/Douglas Lynn
Michelle Swann
Douglas C. (Trey) Lynn, III
3101 N. Central Avenue, Suite 600
Phoenix, Arizona 85012-2658
Attorneys for Plaintiffs

☒ I hereby certify that on June 21, 2013, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nicole F. Stanton, Esq.
Michael S. Catlett, Esq.
Quarles & Brady, LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004
Attorneys for Defendants

By s/Stacy Miller

EXHIBIT A

PHOENIX
SCHOOL OF LAW

OFFICE OF THE DEAN

May 20, 2013

Dear Professor O'Connor:

This letter follows my letter to you dated May 3, 2013 in which you were offered continued employment as Professor of Law for the upcoming 2013-2014 academic year. The deadline for you to accept the offer of continued employment for the upcoming academic year was Friday, May 17, 2013. We received your written communication indicating that you do not accept the offer of employment made to you. For this reason, the offer of a position for the 2013-2014 academic year is withdrawn.

Your current contract runs through May 31, 2013. In light of your rejection of our offer of continued employment for the 2013-2014 academic year, your employment at the Phoenix school of Law will end on May 31, 2013 as that is the last day of the term of your contract.

On or before May 31, 2013 you will need to have completed the following:

- Cleaned out your office of all personal belongings. Anything that is company property, proprietary and/or confidential must remain.
- Return your ID badge, keys, laptop, company credit card and cell phone (if applicable) to Stephanie Lee in Human Resources.
- Ensure any personal emails or documents are retrieved from your computer.

Because faculty members are paid over a 12 month period, your final paycheck will be May 31, 2013 and will include your balance of contract salary. Your benefits will continue through July 31, 2013 and your final paycheck will reflect the benefit deductions for June and July. Beyond that date, your rights to continue coverage at your expense under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be provided to you by Mindi Sullivan, Benefits Coordinator for Infilaw under separate cover. Information regarding your 401k options will also be provided by Mindi Sullivan.

OFFICE OF THE DEAN

Please ensure you contact me with any change in address to ensure important documents are delivered to you in a timely manner.

It has been a pleasure working with you at the Phoenix School of Law and we wish you success in your future endeavors.

Sincerely,

Shirley L. Mays
Dean and Professor of Law

PHOENIX
SCHOOL OF LAW

OFFICE OF THE DEAN

May 20, 2013

Dear Professor Rumann:

This letter follows my letter to you dated May 3, 2013 in which you were offered continued employment as Professor of Law for the upcoming 2013-2014 academic year. The deadline for you to accept the offer of continued employment for the upcoming academic year was Friday, May 17, 2013. We received your written communication indicating that you do not accept the offer of employment made to you. For this reason, the offer of a position for the 2013-2014 academic year is withdrawn.

Your current contract runs through May 31, 2013. In light of your rejection of our offer of continued employment for the 2013-2014 academic year, your employment at the Phoenix school of Law will end on May 31, 2013 as that is the last day of the term of your contract.

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- Ensure any personal emails or documents are retrieved from your computer.

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OFFICE OF THE DEAN

Please ensure you contact me with any change in address to ensure important documents are delivered to you in a timely manner.

It has been a pleasure working with you at the Phoenix School of Law and we wish you success in your future endeavors.

Sincerely,

Shirley L. Mays
Dean and Professor of Law

FACULTY HANDBOOK
Of the
PHOENIX SCHOOL OF LAW

Approved by the PhoenixLaw faculty on Tuesday, April 3, 2007

Revised: October 16th, 2007, unanimously amending Section 2.2.3

The new language of this last revision follows:

2.2.3 Extended Term. An extended-term contract is for an academic year and gives the faculty member the contractual right to be re-employed for succeeding academic years for up to five (5) academic years unless the faculty member resigns, retires, is discharged for adequate cause, is terminated pursuant to a reduction in force, becomes disabled, or dies, but subject to the terms and conditions of employment which exist from academic year to academic year. Upon completion of a five (5) year extended-term, the faculty member's contract shall be presumptively renewable for a new five (5) year term so long as that faculty member has maintained his/her performance in consonance with the freedom standards that apply to elevation to extended-term status (see Section 2.2.3.3) and, if approved, shall be renewed to an additional five (5) year extended term. If renewal is not granted, the faculty member shall be entitled to receive notice of non-renewal equivalent to the notice requirement specified in Section 2.2.2 (c), above.

PHOENIX
SCHOOL OF LAW

TABLE OF CONTENTS

INTRODUCTION

This *Faculty Handbook* (hereinafter "*Handbook*" or "*Faculty Handbook*") reflects the faculty-related policies of the Phoenix School of Law, LLC (hereinafter "PhoenixLaw" or "School" or "Phoenix School of Law") in effect as of the date of publication. It prescribes the conditions of employment of all members of the faculty, both ranked and unranked.

Part 2.0 and Sections 1.5 and Section 1.6 (with respect to faculty committees) rescind all prior related administrative policies and procedures, all contract provisions, and all faculty handbooks or personnel documents issued prior to this one pertaining to the faculty in the School. This *Faculty Handbook* shall remain the policy of the School until amended or replaced.

The *Faculty Handbook* represents School-wide policy and takes precedence over policies or procedures promulgated by departments or other units within the School. This does not preclude departments or other units within the School from issuing policy documents, in accordance with established authority and procedures that are separate from the *Faculty Handbook*; however, while all such documents may amplify, add detail to, and expand upon policies contained in the *Faculty Handbook*, all policy disputes shall be resolved in favor of those contained in the *Faculty Handbook.*

The inclusion of American Bar Association ("ABA") Standards for Approval of Law Schools is for reference purposes only and does not incorporate the referenced *Standards* into the policies or procedures of the School

The statements contained herein shall be construed in accordance with the laws of the State of Arizona.

Organization
The material contained in the Faculty Handbook is organized by chapter, article, section, and subsection.

Words used in this Faculty Handbook shall have their ordinary and usual meaning unless otherwise defined or unless a technical meaning is clearly implied by the context.

The editors of this Faculty Handbook have attempted to use dual gender references (he/him/his, she/her/hers) wherever such references are employed. It is intended that all gender references include both male and female unless a more limited meaning is clearly implied by the context.

Official Copies
The Dean will designate an editor who shall maintain an official current copy of the Faculty Handbook and who will be responsible for disseminating new material to the Faculty Handbook subscribers. Additional official current copies of the Faculty Handbook shall be maintained in the Office of the Dean.

Modifications
Modification and additions to policies, regulations, and procedures contained herein will be processed in accordance with established governance processes. Proposals for change, additions, and modifications of the official policies and provisions (Chapter 2.0) may be submitted to the appropriate governance unit and/or to the Office of the Dean.

CHAPTER I
PURPOSE, MISSION, VALUES, AND ORGANIZATION

1.0 Scope and Application. This chapter contains policies and regulations that identify the philosophy and purposes of the institution and its organizational structure. It does not contain a description of every organizational unit but focuses on principal units, with concentration on the academic division. The material contained in this chapter is provided for the information of the faculty member and is not contractual. The Faculty Handbook is not the official or authoritative source for this material

1.1 Purpose, Mission, and Values.

1.1.1 System Purpose and Mission. The InfiLaw System is a consortium of independent, community-based law school that is establishing itself as a leader in making legal education more responsive to the realities of modern legal practice. The consortium includes Florida Coastal School of Law in Jacksonville, Florida, Phoenix School of Law in Phoenix, Arizona and Charlotte School of Law in Charlotte, North Carolina. The Mission of the consortium is to transform the lives of its law students through inspiration and humility-based leadership, enabling them to reach their greatest potential. Phoenix School of Law is committed to taking full advantage of its unique organizational heritage. It is pioneering the advantages of efficient access to private equity capitalization that is unfettered by the traditional funding restraints (e.g., taxpayer cycles, political vagaries, conditional grants, and donations) associated with preexisting public and private education models. A key element of this model is a faculty stewardship role that, through successful execution of mission, creates pathways for student success and ensures protection of investor interests. The central aspect of this responsibility is an outcome orientation that provides the basis for best practices, continuous improvement, and building and maintaining the preeminent brand in legal education.

1.1.2 System Governance Model and Philosophy. The System conducts its operations in accordance with a systematic planning model that coordinates consortium, School, and individual objectives in a cascade of strategic planning analyses, annual work plans, and individualized strategic objectives ("ISO's"). The strategic drivers for each School are focused and articulated in a plan that has as its primary goal the development of each School as a "Regional Center of Excellence." A flow chart of the planning process and glossary of key planning terms are set forth at Appendix VII.

1.1.3 School Mission and Values. Consistent with the System's objective of being the market leading source of practice ready law school graduates, the School is committed to becoming the region's premier source of practice ready graduates. Toward these ends, the institution is grounded in processes that enable

it to decisively and nimbly move toward its objectives; adapt to changing markets; establish and facilitate best practices in teaching, mentoring, and other activities; and function on the basis of positive group dynamics. As noted above, the School's mission is based upon three primary pillars: 1) an educational experience that is student-centered, 2) outcome-driven programs and performances that yield practice-ready graduates, and 3) a commitment to serving underserved communities. These cornerstones reflect a sense that legacy and benchmark status is dependent upon the capacity to respond positively and effectively to change in the legal profession and the market for legal education.

1.1.4 School Vision. PhoenixLaw has consciously structured and defined itself on the basis of some significant differentiations from traditional law schools. PhoenixLaw sets itself apart on the basis of its culture, a student-centered orientation, a practice-readying educational experience, service to underserved communities, and accountability of the faculty for market-leading student outcomes. These distinguishing characteristics aim toward establishing PhoenixLaw as a benchmark institution for legal education in the 21st century. PhoenixLaw encourages prospective faculty, in gauging their interest in a position with PhoenixLaw, to reflect upon these institutional traits and the implications for their roles and responsibilities.

1.1.4.1 A Humility and Transparency-Based Culture. Personal security, productivity, and timely institutional movement depend heavily upon positive group dynamics. This condition is optimized to the extent persons in leadership positions, including faculty, interact on the basis of personal humility, transparency, and accountability for maintenance of a culture based upon these habits. It is a founding premise that these personal qualities are linchpins for institutional leadership and organizational role modeling. The following characteristics, habits, or understandings thus are critical for School administrators and faculty members:

a. An appreciation of and disposition toward humility and transparency based values;

b. A commitment to processes of personal development that strengthen these qualities;

c. A resistance to trading on the basis of manipulation or, without disclosing bias or self-validating agendas;

d. A readiness to view institutional process from a team-based rather than self-interested perspective; and

e. An understanding that the misuse of power within personal and professional relationships compromises academic freedom and professional development.

1.1.4.2 A Student-Centered Learning Experience. Student centeredness is a priority at PhoenixLaw. Students, staff, administrators, and faculty have a shared responsibility to help students develop the values, skills, and knowledge required of legal professionals. Recognizing the rigors of a legal education, all members of the PhoenixLaw community are expected to contribute to an intellectually demanding, supportive, multicultural learning environment, and maintain an organizational culture of humility, transparency, dignity, fairness, and respect.

Faculty commit to:

a. Preparing students to succeed academically and professionally by modeling ethics, values, and skills, sharing knowledge, providing feedback to students and leading in course and class design;

b. Maintaining a positive, challenging, and relevant learning environment and evaluating student performance according to rigorous but fair criteria;

c. Being accessible to students, including mentoring, counseling, and responding responsibly to student questions and concerns; and

d. Promoting understanding and sensitivity to differences based on gender, ethnicity, race, sexual preference, and religion.

Staff and administrators commit to:

a. Developing methods and processes that provide timely and accurate information to students in all aspects of their PhoenixLaw experience;

b. Providing a healthy learning environment that nurtures and promotes personal growth, encouraging students to feel connected to the school community;

c. Providing mutual respect for students and PhoenixLaw staff while promoting personal responsibility and accountability at all levels of the institution; and

d. Working collectively with faculty as an additional support system and resource for students with regard to information and communication.

Students commit to:

a. Studying with honor, intellectual curiosity, and diligent attention to concepts, rules and procedures;

b. Promoting an atmosphere of camaraderie and growth;

c. Acting with respect and professionalism toward each other, administrators, staff, and faculty;

d. Supporting one another in pursuing success; and

e. Strengthening the reputation of PhoenixLaw through competency and conduct in the classroom and community.

1.1.4.3 Training Practice Ready Lawyers. Historically, legal education has stressed instruction in academic theory and left much of the skills training load to law firms. Changes in law firm economics have unsettled this convention at the same time that most graduates anticipate employment in small firms or on their own. Within this context and setting aside elite schools, which may continue to trade upon their traditional currency, the value of a contemporary legal education rests upon how well it readies students for professional reality. Practice-readiness requires not merely training in essential skills but understanding of the personal habits and interactive qualities associated with personal success and career satisfaction. Most law schools, even if they were to establish practice-readiness as a priority, would not have the faculty skill set to execute this objective. PhoenixLaw aims to establish itself as the region's premier source of practice-ready graduates and, consistent with this goal, assemble a faculty that has the ability to effectively teach and train its students. Toward this end, essential faculty traits and responsibilities include the following:

a. Exposure to and experience in legal practice sufficient to provide relevant practice-related insight and understanding;

b. The ability to transfer knowledge and perspective that contribute to an appreciation and grasp of practice realities;

c. A commitment to implementing skills training into his or her course plan;

d. Attention to effective preparation for the bar examination;

e. The capacity to diversify beyond traditional Socratic teaching methodology and incorporate problem-solving and skills facilitating exercises; and

f. An appreciation for how qualities unrelated to raw intelligence, such as intuitiveness and interpersonal competence, are critical to personal success.

1.1.4.4 Serving Underserved Communities. The commitment to serving underserved communities reflects an interest in establishing relevance beyond the four corners of the institution. This premise has a broad spectrum and non-ideological cast, and begins with the location of the School in a community that historically has been underserved by legal education and in a state where no part-time evening legal education opportunities previously existed. Also implicit in this commitment is an understanding that the ability to interact effectively with persons of diverse backgrounds and experiences is a critical skill for the 21st century. Globalization and demographic trends make this competence an increasingly significant factor in institutional and career success. It is a capacity that has particular relevance for modern law school graduates, whether their professional destiny is with a large organization, small firm, or solo practice. In any of these contexts, the ability to succeed and to serve depends upon the ability to connect with the broadest spectrum of opportunity. Against this backdrop, faculty should possess the following interests and capacities:

a. Readiness and enthusiasm for teaching evening as well as day classes;

b. A commitment to public service that enhances the institution's relevance to the community;

c. An interest in developing new service programs and initiatives or adding value to existing undertakings;

d. The ability to interact positively and effectively with persons from diverse backgrounds and life experiences; and

e. International experience and connectivity.

1.1.4.5 Market-leading Student Success. It is the goal of PhoenixLaw to become a "Regional Center of Excellence" committed to a student-centered educational model that prepares students for modern legal practice. We serve the under-served by providing a high quality legal education to those persons who might not otherwise be able to attend law school. Our students are immersed in a culture that encourages service to

individuals and entities that have historically been under-served by the legal profession.

In our model a *Regional Center of Excellence* is an educational institution that:

a. Attracts and educates talented and diverse students.

b. Leads the market in student outcomes in Bar passage and career placement.

c. Recruits and retains a high quality faculty and staff guided by a humility-based culture emphasizing high EQ (Emotional Intelligence).

d. Prepares its graduates to be effective leaders.

e. Provides valuable service, intellectual capital, and leadership to the Southwestern United States.

1.1.5 Accreditation and Approvals. The School is presently a candidate for provisional approval by the American Bar Association ("ABA"). Provisional approval "is granted [to a law school] if it establishes that it is in substantial compliance with each of the Standards [for accreditation] and presents a reliable plan for bringing the law school into full compliance with the Standards within three years after receiving provisional approval." *ABA Standards for Approval of Law Schools, Standard 102.* The School is also licensed to operate in the State of Arizona by the Arizona State Board for Private Postsecondary Education.

1.2 School Administrative Organization. Each administrator is granted the authority and obligation to perform the duties and responsibilities of her/his position, both those expressly directed and those which necessarily flow there from. The authority granted and the duties and responsibilities to be performed are subject to the superintendence of and preemption by superior administrators. Duties and responsibilities may be provisionally delegated to subordinates; however, the ultimate responsibility for their proper performance rests with the administrator who is principally charged with the obligation of performance.

1.2.1 President. The President is the chief executive officer of the School and is responsible to the governing boards (as defined in Section 1.4.1 below) for the execution of governing board policies and the general oversight and superintendence of corporate operations. The President is primarily responsible for ensuring that the corporate mission, vision, and objectives are achieved, that corporate finances and assets are sufficient to support corporate purposes, and that the assets of the School are properly secured. The principal duties of the President are to:

a. Prepare, submit to the governing boards for approval, and monitor business, strategic, and other plans for the development of the School, including without limitation its academic programs, financial resources, physical resources, human capital, and administrative operations.

b. Prepare and submit to the governing boards for approval an annual budget of the receipts and expenditures of the School.

c. Adopt such regulations and procedures in furtherance of governing boards' policies as are necessary and appropriate to the proper conduct of the operations and activities of the School.

d. Recommend to the governing boards the adoption of such policies as are necessary and appropriate to the proper governance of the School.

e. Secure the assets of the School, both tangible and intangible, against loss, theft, unauthorized use, and infringement.

f. Present to the governing boards at its annual meeting each year a comprehensive report on the state of the School.

g. Maintain the operations and activities of the School in compliance with applicable regulatory and financial management standards.

h. Evaluate and assess the capabilities and effectiveness of the Dean and other heads of the principal areas of operation of the School.

ABA Standard 205: DEAN

(a) A law school shall have a full-time dean, selected by the governing board or its designee, to whom the dean shall be responsible.

(b) A law school shall provide the dean with the authority and support needed to discharge the responsibilities of the position and those contemplated by the Standards.

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.

(d) The faculty or a representative body of it shall advise, consult, and make recommendations to the appointing authority in the selection of a dean.

ABA Interpretation 205-1

The governing board of a law school that is not part of a university should authorize the dean to serve as chief executive, or chief academic officer of the law school, or both and shall define the scope of the dean's authority in compliance with the Standards. The dean shall be responsible to the governing board. The dean may be a member of the board but should not serve as chairperson of the board.

1.2.2 Dean/Chief Academic Officer. Appointed by the Board of Directors, with the advice, consultation, and recommendation of the faculty, the Dean/Chief Academic Officer ("Dean") is the chief academic and administrative officer of the School. The Dean reports to and is subject to the supervision of the governing

boards and the President with respect to the execution of the responsibilities of the office of Dean. The Dean's responsibility is to provide leadership that will support the Mission Pillars and achieve the objectives of the Regional Center of Excellence Plan. Within the framework of the policies of the System, the governing boards, the President, and the governing boards' and President's powers of superintendence and preemption, the Dean has the authority and obligation to exercise such powers and perform such duties and responsibilities as may be necessary and appropriate for the proper management of the School. The principal duties of the Dean are:

a. To provide leadership, in accordance with System governance processes, in the development, pursuit, and achievement of the Plan of Work and strategic objectives for the School and the related individualized strategic objectives ("ISO's").

b. To exercise supervision and direction necessary to promote the efficient and cost effective operation of the School.

c. To act as the official medium of communication between all groups on campus and the governing boards.

d. To report on a regular basis to the governing boards concerning the condition, needs, and general state of the School.

e. To provide leadership, in accordance with System governance processes, in the preparation and administration of the annual budget of the School and its presentment to the governing boards.

f. To appoint committees and councils considered necessary in the performance of administrative duties.

g. To hold final approval authority with reference to all campus recommendations, actions, and decisions, except decisions that are reserved to a governing board or the President.

h. To present degrees to all degree candidates who have been approved by the Faculty and the School Board of Directors.

i. To work with the senior administrators in reaching decisions relative to budget, resource development, student life, and academic issues.

j. To provide periodic, formal evaluations of his direct reports and to exercise a general supervision over and work to maintain the efficacy of the evaluation process for other School employees.

k. To implement and monitor comprehensive and strategic long-range planning involving all sectors of the School.

l. To work effectively with System executives in the implementation of System objectives, goals, and strategies and in achieving the System mission and maintaining its values.

m. To conduct a vigorous schedule of public speaking for the planned promotion of the School for maximum public approval.

n. To aid and promote programs designed to increase public relations and visibility of the institution.

o. To support and promote governing board development efforts.

p. To serve in an *ex officio* capacity as a member of all School committees.

q. To serve as the official School liaison with all regional and professional accreditation agencies with which the School is affiliated.

r. To serve as chief spokesperson of the School.

s. To sign all contracts of the School.

t. To perform other duties as requested by the President or the governing board(s).

1.2.3 Dean of Students. The Dean of Students is responsible for creating and maintaining a safe, healthy, and supportive environment and culture that synthesizes the intellectual, social, and emotional development of PhoenixLaw students. This goal will be accomplished by taking ownership of the following responsibilities that include, but are not limited to: managing departments that provide student learning and development opportunities; manage departments that provide student and college-wide support services; learning and development of PhoenixLaw students outside the classroom; assist in assessing at-risk students for additional intervention by appropriate personnel; assist in counseling students in academic, personal, and disciplinary matters; collect, analyze, and distribute statistical reports regarding key programmatic areas and analyze trends; create, revise, and oversee PhoenixLaw policies, practices, and procedures in key program areas; assist in the progression of a student culture where diversity is encouraged; and coordinate with campus constituencies and community leaders in developing and managing co-curricular learning and service opportunities. Perform other duties as assigned.

1.2.4 Dean of Admissions. The Dean of Admissions is responsible for the overall leadership and strategic direction of the admission and financial aid departments. The Dean of Admissions is responsible for the establishing the departments, hiring staff, and creating policies/procedures as necessary for the Admissions Department. The Admissions Dean will assist with the American Bar Association accreditation process and serve on any committees for that purpose. The Dean of Admissions is a member of senior management and reports directly to the Dean of PhoenixLaw.

1.2.5 Associate Dean for Academic Affairs. The duties and responsibilities of the Associate Dean for Academic Affairs include the development and management of the academic program and related systems as well as the following specific functions include:

a. Course planning and curricular review consistent with educational objectives;

b. Developing programs that incubate professional skills and personal leadership;

c. Developing and implementing systems for academic support, mentoring and enhanced learning that facilitate practice ready outcomes;

d. Overseeing processes relating to admissions, academic review, curriculum and faculty development and recruiting;

e. Participating in processes of academic strategic planning and instructional technology development;

f. Coordinating institutional accreditation processes;

g. Operating within the framework of annual budgetary targets, including expenses and capital expenditures, while maintaining compliance with ABA standards; and being an effective role model for values that facilitate effective leadership and role modeling.

h. Other duties as assigned.

1.2.5.1 Assistant Dean for Academic Affairs. The Assistant Dean for Academic Affairs reports to the Associate Dean for Academic Affairs of PhoenixLaw. One of the primary assignments for the Assistant Dean (AD) is the day-to-day management of the school's American Bar Association (ABA) accreditation process. This includes managing the self study process and the assembly of the supporting documents of the Self Study. Other projects will be assigned to support the administrative functions of

the law school, and will be assigned at the discretion of the Dean or the Associate Dean for Academic Affairs. Additional responsibilities of the Assistant Dean include:

a. Creates and executes project work plans and revises them as appropriate to meet changing needs and requirements.

b. Identifies staff resources needed and assigns individual responsibilities.

c. Manages day-to-day operational aspects of assigned project(s) and scope.

d. Reviews deliverables prepared by the project team before passing on to the Associate Dean for Academic Affairs.

e. Effectively applies PhoenixLaw methodology and enforces project standards.

f. Prepares for reviews by parent company personnel and other quality assurance procedures.

g. Ensures project documents are complete, current, and stored appropriately.

1.2.6 Associate Dean for Information Resources and Technology. The Associate Dean for Information Resources and Technology is responsible for the development and maintenance of the law library and information technology systems and services of Phoenix School of Law. Additionally, as a full-time faculty member, the Associate Dean for Information Resources and Technology will teach one (1) course per semester and perform other tasks reasonably assigned by the Dean. Additional responsibilities of the Assistant Dean include:

a. Recruits and retains a high performance team to optimize library resources and associated technology

b. Ensures that the library provides and range and depth of services

c. Maintains and develops a collection that supports the School's teaching, information, and research needs

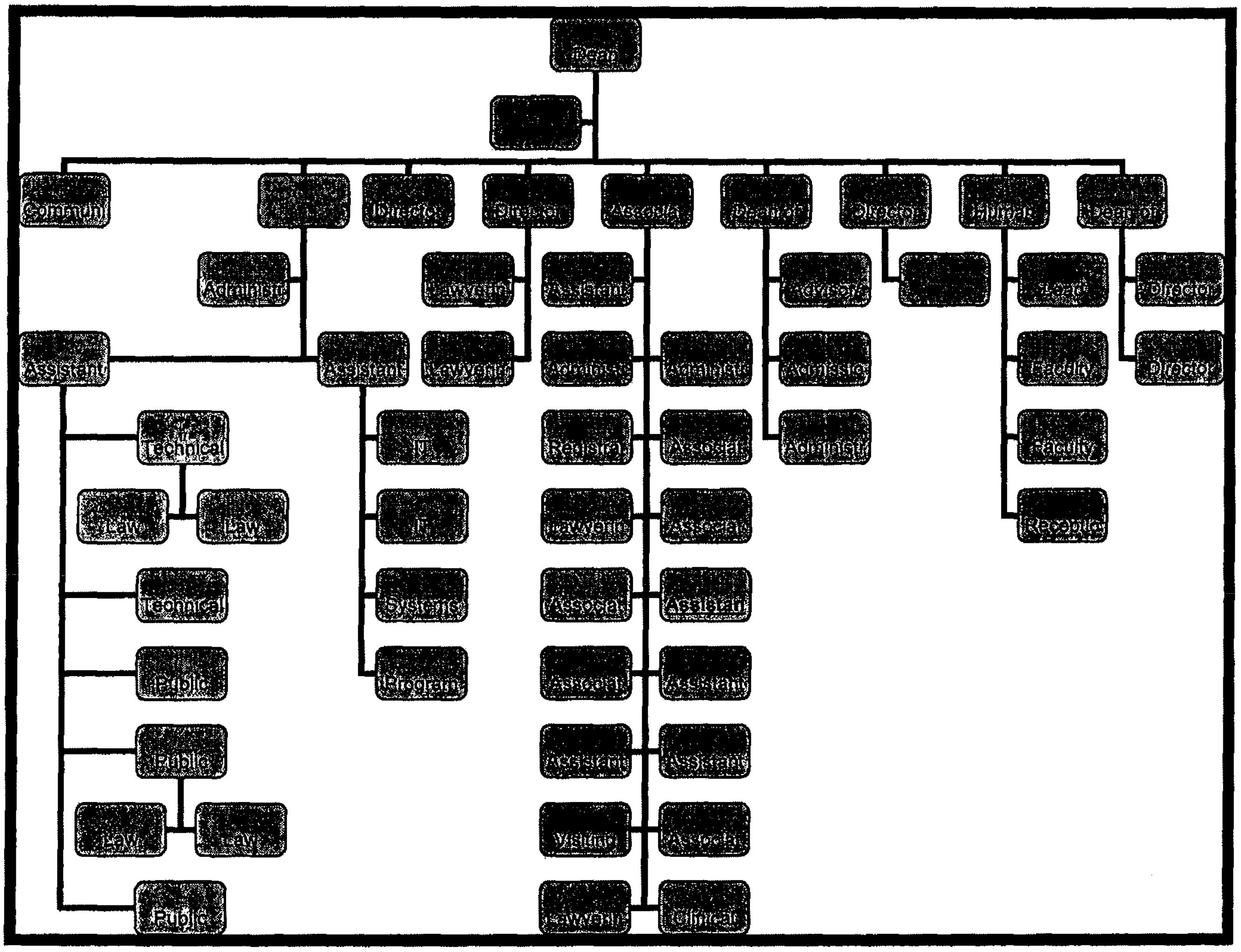
d. Collaborates in developing and facilitating application of technology that helps bridge the differences in academic success based on learning style or group status

e. Effectively engages faculty and staff in supporting their technology needs and developing their technology skills

f. Develops and implements an annual written plan and long-term developmental plan, including annual and long-term budgets

g. Participates in institutional reporting and best practices processes

1.3 School Organization Chart



1.4 Corporate and Administrative Governance Relationships and Organizations

1.4.1 System Governance. The School is affiliated with The InfiLaw System™ and is owned by InfiLaw Holding, LLC ("InfiLaw"). The relationship between PhoenixLaw and InfiLaw parallels the traditional university-law school administrative structure. InfiLaw provides university-like "Central Services" support functions including: funding; equipping facilities; and establishing and maintaining the technology infrastructure. In addition, InfiLaw plays a consultative role, promoting continuous improvement by facilitating the sharing of best practices across all of the law schools in the consortium. InfiLaw is governed by a board of directors. The actions and undertakings of that Board are advised and influenced by an advisory board of leaders in legal and higher education, business, and governmental affairs selected from a national and international pool of candidates. Similarly, the School is governed directly by a board of directors which, in turn, is advised by an advisory board of leaders in legal and higher education, business and governmental affairs who are resident in Arizona or the region. The national and School fiduciary and advisory boards are sometimes referred to herein as the "governing boards."

1.4.1.1 National Board of Directors (National Fiduciary Board). The board of directors of InfiLaw Holding, LLC is the governing body of the company that holds all ownership interests and rights in and to Phoenix School of Law, LLC and the other law schools that are a part of the InfiLaw System. The board is populated by individuals who bring broad business experience and expertise in a variety of industries but with particular prominence in higher education. The board provides oversight and executive policy direction for the System and plays a critical role in forming and maintaining the financial infrastructure that supports the growth and operation of the System and each of its constituent schools.

1.4.1.2 National Board of Advisors (National Advisory Board). A national board of advisors was established by the chief executive officer of InfiLaw Holding, LLC to provide advice and counsel to the National Fiduciary Board and the CEO. That board is composed of individuals who bring substantial national experience and expertise in law school operations and national legal education policy and accreditation. The board is typically composed of leading legal educators, former ABA officers and committee members, and current and former deans of law schools. The board plays an influential role in the formulation of policy and the development of strategic directions for the System and constituent schools.

1.4.2 School Governance.

1.4.2.1 School Board of Directors (School Fiduciary Board or Board of Directors). The Board of Directors is the governing body of the School

company, viz., Phoenix School of Law, LLC, a Delaware limited liability company. The Board exercises all of the powers, rights and privileges appertaining to the company under the laws of the State of Delaware and the United States. The primary function of the Board is policy making and general oversight of the executive and management operations of the School. It formulates and establishes the general, educational, and financial policies as it deems necessary, appropriate, and convenient for the proper development and management of the School in pursuit of its established purposes. The Board delegates such of its authority as it deems proper and convenient to the President, the Dean/Chief Academic Officer, the Faculty and other offices, officials and groups, provided that the Board always reserves to itself the final and ultimate power and authority to act at any time on any and all matters essential to the proper functioning of the School. The Board, *inter alia,* approves the conferral of degrees, the elevation of faculty to tenure and extended term contract status, and promotions in rank.

ABA Standard 204. GOVERNING BOARD AND LAW SCHOOL AUTHORITY

(a) A governing board may establish general policies that are applicable to a law school if they are consistent with the Standards.

(b) The dean and faculty shall formulate and administer the educational program of the law school, including curriculum, methods of instruction, admissions, and academic standards for retention, advancement, and graduation of students; and shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty.

1.4.2.2 School Board of Advisors. PhoenixLaw's Board of Advisors is composed of local individuals with significant professional backgrounds, including backgrounds in law and legal education. Each member of the Board of Advisors has been appointed because of his or her expertise and experience in areas relating to the academic program and/or the legal profession, as well as their representation of a cross-section of the local community. Accordingly, great weight and deference are given to the recommendations of the Board of Advisors. With respect to appointments, promotion, tenure, and other forms of security of position, there is a strong presumption by the Fiduciary Board of Directors in favor of the recommendation of the Dean and faculty and the Board of Advisors. The primary responsibility of the Board of Advisors is to make recommendations to the Board of Directors on academic policy, standards, and processes. It meets quarterly (or more often if the need arises), and its areas of focus areas include:

a. Supporting the mission of PhoenixLaw and making appropriate recommendations to the School Board of Directors regarding academic programs and policies that further programmatic quality and institutional mission;

b. Making recommendations to the School Board of Directors regarding tenured faculty positions and all senior administrative positions;

c. Facilitating community engagement and support for the institution;

d. Advising the School Board of Directors regarding the adequacy of current and anticipated law school resources to sustain a sound program of legal education;

e. Ensuring high quality education programs by providing advice and input to the Dean and faculty members, as requested;

f. Recommending approval of faculty and student handbooks; and

g. Advising on other issues as requested by the School Board of Directors, or the Dean.

1.5 Faculty Participation in School Governance. Faculty members acting in their official individual roles and as a corporate body are co-managers with the administration and the governing boards in areas of academic policy and administration. They lend their expertise to the management and administration of other areas of School operations such as finances, personnel management, regulatory compliance, and student affairs administration.

Faculty members play an essential managerial role of influence in the formulation and effectuation of academic policy. This includes the primary role and effective participation in the development and administration of policies concerning: grading, classroom student conduct, student progress, degree requirements, curricular content, course offerings, admission standards, departmental staffing, educational policies and standards, faculty promotion, faculty tenure, faculty appointment and retention, and faculty professional development.

This participation is exercised in accordance with established governance processes herein prescribed and those processes established or directed by the Dean or the School Board of Directors from time to time. Specifically, faculty members participate in School governance through the following channels: committee meetings, Faculty meetings, and interaction with members of the administration, the Board of Directors, and the School Board of Advisors in forums, on task forces, and in a variety of informal activities.

ABA Standard 204: GOVERNING BOARD AND LAW SCHOOL AUTHORITY
(b) The dean and faculty shall formulate and administer the educational program of the law school, including curriculum, methods of instruction, admissions, and academic standards for retention, advancement, and graduation of students, and shall

recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty."

ABA Standard 206. ALLOCATION OF AUTHORITY BETWEEN DEAN AND FACULTY

"The allocation of authority between the dean and the law faculty is a matter for determination by each institution as long as both the dean and the faculty have a significant role in determining educational policy."

1.5.1 Definition of the Faculty. For purposes of formal participation in the faculty governance processes of the School as established and defined in this Section 1.5, including without limitation enfranchisement in meetings of the Faculty, and for purposes of service on and participation as voting members of committees of the Faculty, the "Faculty" shall include all ranked faculty, doctrinal and professional practice, as defined in Section 2.1.1 of the *Faculty Handbook*, who are contracted on a full-time basis, the Dean, any associate dean for academic affairs, and any full-time visiting faculty member who is employed in the equivalent of, and possesses the qualifications for, a ranked faculty position.

1.5.2 Meetings of the Faculty. The Faculty will meet at regular intervals throughout the academic year in accordance with a schedule established by the Faculty, upon the call of the Dean, or at the request of one or more of the governing boards to consider matters of academic concern, to formulate positions, and to generate information to be shared with the faculty and other governance bodies and officers. The Faculty will take action on matters referred to it by the President, the Dean, one or more of the governing boards, or as otherwise directed by policies or procedures of the School, as well as on matters originated by the Faculty. The Faculty will conduct its deliberations and render its decisions in accordance with timelines established in the referral or as provided in policy or procedure pursuant to which the action is taken.

1.5.2.1 Procedures. The following procedures will govern the action of the Faculty when it is meeting as a deliberative body.

a. A quorum, defined as a simple majority of members of the Faculty eligible to vote, is required to be in attendance at a meeting of the Faculty in order for official action to be taken by the Faculty. Proxies shall not be considered in establishing a quorum or for action on any matter. A quorum, once established, cannot be defeated by the removal of members from a duly constituted meeting. Actions must be approved by the affirmative vote of a majority of those eligible voters in attendance at a duly constituted meeting of the Faculty unless otherwise specified in this Handbook.

b. The Dean will normally provide no less than three (3) business days notice of a meeting of the Faculty called for the purpose of taking action on any matter, provided that meetings that are established pursuant to a schedule published in the minutes of a prior meeting of the Faculty, or that are a part of a standing schedule, shall not require any other notice. The Dean may convene a meeting of the Faculty without complying with the notice requirements above in the event of an emergency, as determined by the Dean, and provided that the Dean undertakes to provide actual notice to each member of the Faculty in a manner that is reasonable under the circumstances. In the absence of previous notice, official action can be taken on a matter only if such consideration is approved by the affirmative vote of two-thirds of all voting members present at a duly constituted meeting.

c. The Dean or the Dean's designee will preside at all Faculty meetings.

d. The Dean shall not vote on any matters with respect to which the Dean has the right or responsibility of final independent review, approval or action. The Dean shall have the right of personal refusal or withdrawal from any matters that come before the Faculty for deliberation or decision when the Dean determines that her/his refusal or withdrawal is appropriate. In such cases the Dean's designate shall serve as Chair during the period of such refusal or withdrawal.

e. Robert's Rules of Order shall apply in all faculty meetings in any instance where other rules of proceeding have not been established.

f. The Dean shall set the agenda for all faculty meetings unless the agenda for a meeting is established by the Faculty at a prior meeting. Generally, the agenda shall consist of unfinished business from previous meetings; matters the Dean presents for discussion; referrals or reports from committees; referrals from a governing board; or any matter that no less than ten percent (10%) of the members of the Faculty have requested the Dean in writing and on a timely basis to place on the agenda. The Dean shall have discretion to decide the priority for consideration of items on the agenda of any meeting unless the priority is established by action of the Faculty.

g. Minutes of all Faculty meetings shall be maintained by a person designated by the Dean as the recording secretary.

h. Any member of the Faculty who ceases to possess the qualifications for membership in the Faculty shall be disqualified for further participation in the Faculty governance processes immediately upon the occurrence of such disqualification and without formal action of the Dean or the Faculty.

i. All deliberations and actions of the Faculty shall be undertaken in compliance with policies and procedures of the School, including without limitation, equal opportunity, student record confidentiality, and conflict of interest policies.

j. Actions and deliberations of the Faculty shall be undertaken with proper regard to the confidential nature of the matters under consideration. Each member of the Faculty shall undertake her/his governance duties and responsibilities in accord with the highest ethical standards.

1.6 Committees. A substantial portion of the administrative and managerial functions of the School are carried out through the work of committees. Those committees are established by various governance offices and bodies including the governing boards, the Dean, the student government, and by the Faculty. In all cases, the composition of the committee and its purpose should be clearly stated in writing. The committees described below are standing committees of the School. Other *ad hoc* committees may be established from time to time with provisional status. In order to be a standing committee of the School, other than a governing board approved committee, a committee must be approved by the Dean. Unapproved committees shall not have the authority to speak on behalf of, bind, or exercise the powers or authority of the School.

1.6.1 Committees of the Board of Directors. The School Board of Directors establishes committees and task groups from time to time. Those committees and groups act at the instance of the School Board of Directors and its chair and under their direction.

1.6.2 Faculty Committees. The following committees have been established by the Faculty. The voting members of these committees will be selected from among the members of the Faculty unless otherwise provided below or unless an exception to these standards is approved by the Faculty and the Dean on a provisional basis to adjust for the lack of available qualified faculty that meet the permanent specifications, provided that no exceptions may be made to the membership of the *Faculty Development and Evaluation Committee* without the approval of the governing boards. The Dean and the Associate Dean for Academic Affairs will be *ex officio* members, without vote, of all Faculty committees. All committees will report their actions, recommendations and

findings to the Dean and the Faculty unless otherwise directed in a referral from the Dean or a governing board, or in a provision of this *Handbook*.

a. The *Academic Standards Committee* will exercise a general superintendence and review over the academic standards, rules, and regulations of the School. In addition, the Committee will hear and decide petitions filed by students who, a) have been subject to academic sanctions, including dismissals, b) petition for readmission, or c) desire a waiver of academic rules or regulations. The voting members of the Committee will be composed of five members of the Faculty three of whom will be senior, i.e., Associate Professors and Professors.

b. The *Admissions and Financial Aid Committee* will exercise a general superintendence and review over the admissions standards and financial aid guidelines of the School and their application, review the credentials of applicants for admission, and make recommendations regarding same, recommend changes in admission standards as appropriate from time to time, and review and recommend guidelines for the award of student financial assistance. The Committee will monitor the impact of the admissions and student financial aid policies on persons from protected classes and the acuity of the policies with respect to the mission of the School and its success in producing graduates that meet identified outcomes objectives. The voting members of the Committee will be composed of five members of the Faculty, and *ex officio*, without vote, the director of the office of admissions and the director of the office of student financial assistance.

c. The *Curriculum and Career Readiness Committee* will exercise a general superintendence and review over the law school curriculum, the school's program for bar examination preparation, and the career services program. The Committee will assess proposed programs, courses and course materials, recommend changes to the curriculum and programs from time to time as deemed appropriate, and recommend standards regarding instructional quality, programs, course requirements, and content. The Committee will also monitor the effectiveness of the academic, bar preparation, and career readiness programs of the School in producing the identified outcomes objectives of the School and of the profession. The voting members of the Committee will be composed of five members of the Faculty.

d. The *Faculty Appointments Committee*, in coordination with the Dean and the Director of Human Resources, will coordinate faculty recruiting for full-time members of the ranked, doctrinal and professional practice in accordance with the staffing plan established

by the School from time to time. At the beginning of each academic year, the Committee and the Dean will meet to identify anticipated hiring needs and develop search, recruitment, and hiring policies and procedures. The Committee will coordinate the search and recruitment process and determine, *inter alia*, those candidates to invite to campus for interviews and the elements of the interview process. The Committee will report to the Faculty and the Dean its hiring recommendations. The voting members of the Committee will be composed of five members of the Faculty.

e. The *Faculty Development and Evaluation Committee* will review and evaluate the qualifications and accomplishments of those faculty members eligible for promotion, tenure, and retention in accordance with the policies, procedures, and timelines established in this *Handbook* and submit recommendations thereon to the Dean. The Committee will also assist the Dean in the development of the School evaluation program as outlined in Section 2.5 of this Faculty Handbook. The voting members of the Committee will be composed of five senior members (Associate Professor and Professor) of the Faculty no less than three of whom will be tenured. In the case of Committee reviews of applications for promotion, motions, and votes on such applications will be taken only by persons at the rank or a higher rank than the rank sought by the applicant. In the case of Committee reviews of tenure applications, motions, and votes on such applications will be taken only by persons with tenure.

f. The *Grievance Committee* is established and composed pursuant to the provisions of Article 2.16.

g. The *Technology Committee* will provide advice and counsel on the planning and development of the law school's information and technology resources as well as the use of those resources in the implementation of the educational programs of the School. It will provide advice and direction regarding the library, the institution's technology infrastructure, and instructional technology that enhances the learning process. The voting members of the Committee will be composed of five members of the Faculty, and *ex officio*, without vote, the director of the office of information technology and the director of the library/media resources department.

h. The *Creative Works Committee* is established and composed pursuant to the provisions of Section 2.12.8.

1.6.3 General Committee Guidelines

1.6.3.1 Mandate. Each committee will conduct its work during each academic year in accordance with a mandate presented by the Dean and in concert with the Plan of Work and strategic objectives of the School. At the end of each academic year, each committee will conduct an assessment of its outcomes and effectiveness against the mandate and the strategic objectives for the year in accordance with procedures established by the Dean.

1.6.3.2 General Procedures. Each committee will establish rules and procedures for conducting its business in accordance with the general procedures and rules set forth in the *Faculty Handbook* and with parliamentary guidance provided by Robert's Rules of Order. Committees must meet at least once each semester during the academic year and as often as necessary. A committee will meet on call by the Chair, on request of one-third of the committee members, at the request of the Dean, or at the request of the Faculty. In the absence of a Chair, the Dean or her/his designate will serve as Chair-pro temp until a Chair is elected.

Committee chairs may invite anyone to a committee meeting who has a proposal to put before the committee or has a special interest in a matter under discussion. Committee members may propose to the Chair any person(s) whom they would like to have invited to particular meetings.

Each committee will elect a secretary from among its membership. The secretary will prepare minutes of all committee meetings and distribute them to committee members and, when appropriate, to all members of the Faculty. Precise committee votes, (e.g., 8-3) will be reported in committee minutes.

Committee chairpersons will vote only in the event of a tie but may request that their views be included in committee minutes.

Actions and deliberations of Faculty committees will be undertaken with proper regard to the confidential nature of the matters under consideration. Each member of a Faculty committee will undertake her/his committee role, duties, and responsibilities in accord with the highest ethical standards.

1.6.3.3 Composition. The appointments of the members of each committee will made by the Dean. The Dean may establish processes for the solicitation of nominations and service preferences and consultation with the Faculty to aid in the appointment process.

Vacancies in the membership of a Faculty committee will be filled by the office or authority having the original selection authority for the vacant position.

A member of a Faculty committee will be automatically removed from membership if the member fails to possess or retain the qualifications for membership. A member of a Faculty committee may be removed by a vote of two-thirds of the voting members of the Faculty at any meeting called for the purpose of considering such removal action, or by action of the School Fiduciary Board in the event that the member is determined to have a conflict of interest that impairs her/his ability to exercise independent judgment in the best interest of the School as a member of the Committee or in the event that the member breaches the standards of conduct or refuses to cooperate in the ongoing orderly processes of the committee.

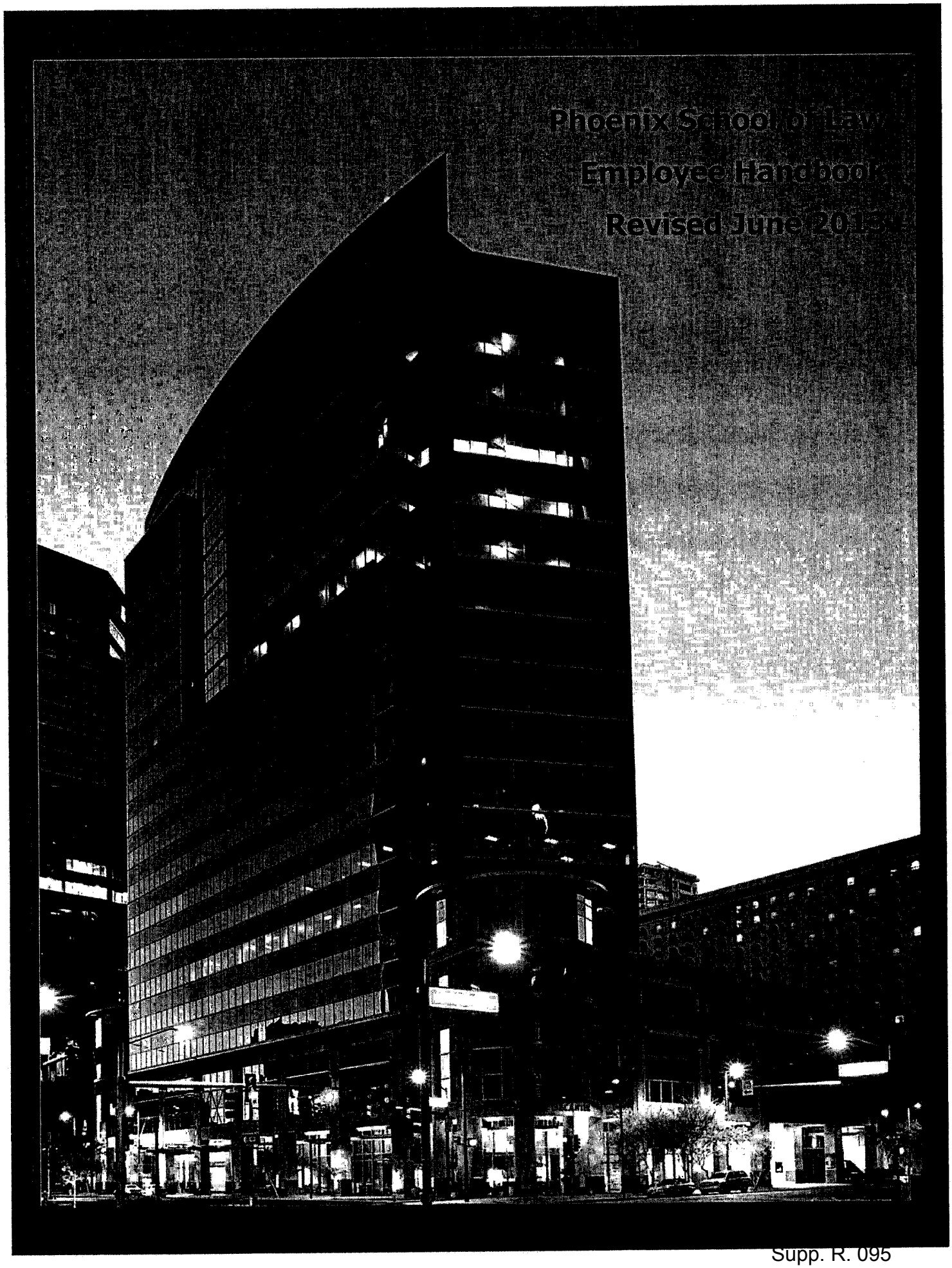
All deliberations and actions of Faculty committees will be undertaken in compliance with policies and procedures of the School, including without limitation, equal opportunity, student record confidentiality, and conflict of interest policies.

1.6.3.4 Referral and Approval of Actions. All Faculty committee recommendations and proposals will be reported to the Faculty and the Dean and will be processed by them in accordance with established governance processes of the School.

Unless otherwise provided, all actions of the Faculty will be subject to approval by the Dean and, as necessary or appropriate, by the appropriate governing board(s).

1.6.3.5 Quorum and Action. A quorum, defined as a simple majority of voting members, is necessary for committee action.

Committees will take action on a matter only when there has been prior notice of at least seven (7) calendar days given to committee members. Such notice may be through distribution of an agenda or consideration of an item at a previous meeting. In the absence of previous notice, action can be taken on a matter only by the affirmative vote of all voting members present at a duly constituted meeting.


Phoenix School of Law
Employee Handbook
Revised June 2013

STAFF EMPLOYEE HANDBOOK

REVISED JUNE 2013

This Handbook contains a summary explanation of many of the benefits and policies in effect at the time of publication at the Phoenix School of Law, herein after referred to as PhoenixLaw. It is not intended as an employment contract, and is subject to change at anytime at the discretion of PhoenixLaw. PhoenixLaw must be able to respond flexibly to different circumstances as they arise.

It is each employee's responsibility to review this Handbook and become familiar with the policies and procedures. Please note that there is a separate "Handbook" that applies to Faculty, however, many of these policies also apply to Faculty as they are employees of Phoenix School of Law.

For questions or clarifications regarding the handbook, please see your supervisor or the Human Resources Department.

This Handbook refers to the Infilaw System and its consortium of independent law schools collectively as "Infilaw" or the "Consortium". Phoenix School of Law is a part of the Infilaw System.

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SECTION A - POSITION AND PAY

Orientation
All employees will receive orientation during the first week of employment. Orientation will include information on PhoenixLaw and Infilaw generally as well as training specific to the position hired for.

Probationary Period
All new employees or those transferred into a new position will be on probationary status during the first 90 days of employment. At a department manager's discretion, probationary periods may be extended.

At-Will Employment
Unless altered by contract, all employees are "at will." Employment is for no definite term or period of time, and either you or PhoenixLaw may end the employment relationship at any time, with or without notice or a reason. PhoenixLaw is not required to establish cause or just cause for an employee's discharge from employment. "At will" status may not be changed or modified by any oral representation to the contrary, any practice or procedure of PhoenixLaw or in the industry, and/or any policy manual or other document except a written employment contract executed by you and the Dean of the law school that specifically sets a definite term or period of time for employment. No other person at PhoenixLaw has the power or authority, either orally or in writing, to alter the employment-at-will relationship.

Changes to Handbook
It is not possible to anticipate every situation that may arise in the workplace or to provide answers for every possible question. PhoenixLaw retains the sole discretion to change its policies and practices, including those described in this Handbook, at any time, with or without advance notice. All decisions regarding the application or interpretation of PhoenixLaw policies and practices are also in PhoenixLaw's sole discretion. When changes are made, PhoenixLaw will make every effort to notify employees in writing.

This Handbook supersedes all previous PhoenixLaw Handbooks or other statements of policy or practice, whether oral or written. In the event of a conflict between this Handbook and an individual employment agreement or benefits plan or agreement, the plan or agreement will control.

Acknowledgment of Receipt
After you receive this Handbook, please sign the Acknowledgment Form (a reproduction of this acknowledgement appears in the back of this Handbook for your records) and return it to the Human Resources Department. This form acknowledges that you received this Handbook, will read it, and understand its contents. If you have any questions, comments or suggestions about this Handbook, please contact your direct supervisor or Human Resources.

Immigration Law Compliance
PhoenixLaw is committed to complying with federal immigration law. In compliance with the Immigration Reform and Control Act of 1986, each new employee must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility within three (3) business days of beginning work. Former employees who are rehired must also complete the form if they have not completed an I-9 with PhoenixLaw within the past three (3) years, or if their previous I-9 is no longer retained or valid. PhoenixLaw does not discriminate on the basis of citizenship or national origin.

[redacted]

Position Classification
Some provisions in this Handbook apply only to certain employee classifications. If a provision does not state to which classification it applies, then it applies to all employee classifications.

- **Exempt:** Exempt (often referred to as salaried) employees are exempt from overtime pay under the Fair Labor Standards Act.

- **Non-Exempt:** Non-exempt (often referred to as hourly) employees are eligible for overtime pay, and must keep track of their hours worked. **(See Section on Time Recordkeeping Requirements in this Same Section).** Employees in this category are eligible for overtime pay for work in excess of 40 hours per week.

- **Regular Full-Time Employees:** This includes all employees who are assigned to an established position and regularly scheduled to work 30 hours or more per week. Regular full-time employees are generally eligible for benefits.

- **Regular Part-Time Employees:** This includes employees who are assigned to an established position and regularly scheduled to work not more than 29 hours per week. Regular part-time employees generally are not eligible for benefits, except those required by law.

- **Temporary, Casual or Student Employees:** This refers to persons working on an as-needed basis. Such persons are typically paid on an hourly or fee basis and are not employed in an established position. These employees are not eligible for benefits, except those required by law.

Work Schedule
The employee's daily work schedule will be decided upon by the department manager and is dependent upon department needs. All full-time positions at PhoenixLaw (40 hours per week) are scheduled for 5 days per week at 8 hours per day.

Resignation
A voluntary termination is one initiated by the employee. It may occur by resignation, either oral or written; by retirement; as a result of an absence from work for more than two (2) consecutive workdays without notifying PhoenixLaw; or as a result of a failure to return to work at the expiration of an approved leave of absence or of any extension of such leave granted by PhoenixLaw.

If you wish to end your employment for any reason, please inform your supervisor as soon as possible. We request that you notify PhoenixLaw of your resignation at least two weeks in advance of your last day. This gives us time to fill your position without straining other employees to take over your workload. Out of consideration for your co-workers, you should give as much notice as you can.

Exit Interview
Upon notification that you are voluntarily terminating your employment with PhoenixLaw, Human Resources will schedule an exit interview with you to gather information on your employment experience with the school and to learn ways to improve. Information regarding your benefit coverage and final paycheck will also be covered at this meeting.

Termination
An involuntary termination is one initiated by PhoenixLaw. Eligibility for rehire depends upon the reason for termination.

Benefits at Termination

The Consortium has developed procedures to ensure that employee terminations are handled in an efficient and professional manner. The purpose of the Benefits at Termination Policy is to review the benefits status at the time of termination of employment.

All benefit eligible employees who terminate employment will receive Consolidated Omnibus Budget Reconciliation Act (COBRA) information regarding flexible spending accounts, medical, dental and vision from the third party administrator.

In general, benefits for benefit eligible employees who are terminating are as follows:

Vacation: Payment at the employee's regular rate for accrued, but unused vacation days up to a maximum of 20 days (160 hours). Accrued vacation will be paid in the next available pay period. last paycheck. (wording)

Personal Time: Personal time is not paid to employees upon termination.

Health Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option to continue group coverage according to the Consolidated Omnibus Budget Reconciliation Act (COBRA) is available. Employees will be required to pay their share and any dependents share of health premiums through the end of the month in which termination occurs.

Dental Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option to continue group coverage according to the Consolidated Omnibus Budget Reconciliation Act (COBRA) is available. Employees will be required to pay their share and any dependents share of dental premiums through the end of the month in which termination occurs.

Vision Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option to continue group coverage according to the Consolidated Omnibus Budget Reconciliation Act (COBRA) is available. Employees will be required to pay their share and any dependents share of vision premiums through the end of the month in which termination occurs.

Flexible Spending Accounts: Regular coverage ceases the last day of the month in which termination occurs. Option to continue group coverage according to the Consolidated Omnibus Budget Reconciliation Act (COBRA) is available. Employees will be required to submit their contribution through the end of the month of termination.

Health Savings Accounts: Regular coverage ceases the last day of the month in which termination occurs. Employees will be required to submit their contribution through the end of the month of termination, unless the employee requests immediate termination of benefit.*

Retirement Benefit: Fidelity Investments 401(k) Plan — Contributions will be deducted in the last paycheck, unless the employee requests immediate termination of benefit.* Fidelity will be notified of Employees termination after the last paycheck contribution is submitted. Once notified, Fidelity will prepare and send a Distribution Packet to the Employee with further instructions. Employees with outstanding loan balances will be contacted by Fidelity for re-payment. The entire outstanding principal and accrued interest shall be immediately due and payable. If a loan is not repaid within its stated period, it will be treated as a taxable distribution to the employee.

Basic Life Insurance: Coverage ends on the date of termination.

Supplemental Life Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option for conversion to individual policy is available within 31 days of termination as long as the employee has not requested termination of benefit. Employees will be required to submit their share of contribution through the end of the month of termination, unless the employee requests immediate termination of benefit.*

Long-Term Disability Insurance: Coverage ends on the date of termination.

Short-Term Disability Insurance: Regular coverage ceases the last day of the month in which termination occurs. Employees will be required to submit their share of contribution through the end of the month of termination, unless the employee requests immediate termination of benefit.*

Accident Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option for conversion to individual policy will be made available as long as the employee has not requested termination of benefit. Employees will be required to submit their share of contribution through the end of the month of termination, unless the employee requests immediate termination of benefit.*

Critical Illness Insurance: Regular coverage ceases the last day of the month in which termination occurs. Option for conversion to individual policy will be made available as long as the employee has not requested termination of benefit. Employees will be required to submit their share of contribution through the end of the month of termination, unless the employee requests immediate termination of benefit.*

Tuition Waiver: Tuition Waiver ends on the date of termination and any remaining balance of the waiver is processed on the last paycheck.

Tuition Reimbursement: No further reimbursements are made as of the date of termination. Tuition reimbursement applies only to courses which are completed prior to termination. Employees will be required to repay the full amount of the reimbursed tuition if the termination, whether voluntary or involuntary, is within a period of 12 months from the date of the last tuition reimbursement received by the employee.

Probationary Employees

Vacation: Probationary employees are not eligible for vacation payout during the probationary period.

Transferred or promoted employees are eligible for vacation payout on accrued unused vacation days during the probationary period, up to a maximum of 20 days (160 hours). Accrued vacation will be paid in the next available pay period.

- Health Insurance: Same as regular employees.
- Dental Insurance: Same as regular employees.
- Vision Insurance: Same as regular employees.
- Flexible Savings Account: Same as regular employees.
- Health Savings Account: Same as regular employees.
- Retirement: Same as regular employees.
- Life Insurance: Same as regular employees.
- Long-term Disability: Same as regular employees.
- Short-term Disability: Same as regular employees.
- Accident Insurance: Same as regular employees.
- Critical Illness Insurance: Same as regular employees.
- Tuition Reimbursement and Waiver: Probationary employees are not eligible for these benefits.

[redacted]

Domestic Partners—COBRA

Federal COBRA Rights for Domestic Partners:
Although PhoenixLaw offers medical, dental and vision coverage for Qualified Domestic Partners, Qualified Domestic Partners are not eligible for individual federal COBRA rights, per the Defense of Marriage Act, which passed in 1996, and federal guidelines thereunder. As such, Qualified Domestic Partners do not have individual COBRA rights such that they may elect COBRA coverage based on a "qualifying event" that may occur. However, if an employee experiences a "qualifying event" and elects COBRA, such employee may add his/her Qualified Domestic Partner to such employee's COBRA coverage in accordance with such employee's COBRA rights.

Domestic Partners are not eligible for COBRA if the Domestic Partnership ends.

Additional information on benefits can also be obtained in the employee handbook, the Summary Plan Descriptions for each benefit plan or by contacting your local Human Resource Department.

Return of PhoenixLaw Property

Any PhoenixLaw property in your possession when your employment ends must be returned immediately upon termination or resignation. This includes, but is not limited to; electronic devices, keys, equipment, manuals or other items supplied to you by PhoenixLaw during your employment. If you do not return an item, PhoenixLaw may withhold its cost from your final paycheck in compliance with state and federal law.

Final Pay

All wages due an employee who voluntarily resigns will be paid no later than the next regularly scheduled payday. Upon request, we will mail your final paycheck. All wages due an employee who separates service involuntarily will be paid no later than seven business days or the end of the next regular pay period, whichever is sooner. Regardless of who initiates the employee's departure, if there are monies owed to PhoenixLaw by the employee, the amount owed will be deducted from the final paycheck in compliance with state and federal law.

Request for Employee Information / References

PhoenixLaw does not authorize its employees to provide information to anyone regarding past or present employees. Upon written request, PhoenixLaw will only verify an employee's dates of employment, position or positions held and final rate of pay.

General Rules of Conduct

As an employee of PhoenixLaw, you are expected to meet acceptable standards of service. These standards are measured in your overall conduct, performance, courtesy, and enthusiasm. Meeting these standards promotes productivity, efficiency and a more pleasant work environment for all employees. Certain policies, designed to minimize problems and enhance your experience with PhoenixLaw, also must be followed. This section of the Handbook outlines some of these basic policies.

Hours of Operation

PhoenixLaw operating hours will be determined by the President and Dean of PhoenixLaw. Each department manager will determine the operating hours for their department in accordance with the schedule set forth by the President and Dean.

Meal / Break Periods
Meal periods will be scheduled with your manager based upon the department's needs. This privilege should not be abused, and should not affect the operation of your department. For an employee working an 8 hour day, there are generally two paid breaks (15 minutes each). Breaks should be taken once in the morning and once in the afternoon. One unpaid 30 minute or one hour lunch should be taken each day. Hourly staff should take lunch away from their work area and are not permitted to perform work during their lunch break. If an hourly employee must work during their lunch break or cannot take a lunch break, their supervisor should be notified. Hourly staff must clock out for lunch breaks, unless they are not taking a lunch break or working during their lunch break.

Breaks and lunch periods cannot be used at the beginning or end of the employee's shift to shorten the work day. The two fifteen minute breaks cannot be combined to make a 30 paid break or to extend the lunch break. Any employee who violates the meal/break periods policy is subject to disciplinary action up to and including termination.

Team Work
Every employee is responsible for the appearance, efficiency and safety of PhoenixLaw. Statements such as, "that's not my job" and "how come they get to?" are not acceptable. Employees and/or departments with this mindset are unlikely to find satisfaction or be successful in the PhoenixLaw culture. Be conscious of any situation that would be considered out of the ordinary in terms of the cleanliness of PhoenixLaw, or any unsafe or hazardous condition. If you come across a situation that appears to be out of the ordinary and feel you need assistance to resolve, report it to your supervisor or management personnel immediately.

Open Door Policy
If something is exciting or troubling about your job, we want to know. We encourage you to speak with your supervisor openly, honestly, and frequently to support the idea of giving and receiving feedback in a non-formal, non-threatening environment. If, for some reason, you are not comfortable speaking with your supervisor, please schedule a meeting with human resources at the earliest opportunity.

EMPLOYEE CONDUCT POLICY

Standards of Behavior and Disciplinary Action

PhoenixLaw expects all employees to conduct themselves in a reasonable manner at all times in the workplace, while on or using PhoenixLaw property, and whenever representing PhoenixLaw or Infilaw. In dealing with deficiencies in conduct or work performance, PhoenixLaw considers a number of factors in determining whether to take disciplinary action, including the nature and seriousness of the offense, the employee's past record, the impact on PhoenixLaw, and any mitigating circumstances.

Examples of potential disciplinary actions include, but are not limited to, counseling, verbal warning, written warning, suspension with or without pay, probation, or termination with or without additional notice. PhoenixLaw is not required to follow any set or established disciplinary procedure, but in its discretion, may apply the level and type of discipline it determines to be appropriate in the circumstances, including termination of employment.

Examples of conduct by an employee that may lead to disciplinary or corrective action include:

- Being insubordinate or failing to carry out instructions.
- Unsatisfactory performance of job duties.
- Falsifying or altering PhoenixLaw records of any kind.
- Violating the law or failing to follow PhoenixLaw policies.
- Excessive episodes of unexcused tardiness or absenteeism (including no-call, no-show).
- Sexual or other unlawful harassment.
- Stealing (taking without permission), willfully destroying, damaging, or hiding property belonging to PhoenixLaw, a fellow employee, or a visitor.

This list is not intended to be all-inclusive, and violation of acceptable standards of conduct, whether or not listed above, may subject an employee to disciplinary action, up to and including immediate discharge.

Confidentiality

Each employee is entitled to and expected to maintain the confidentiality of PhoenixLaw records including medical records, educational records, policies, strategies and intellectual property.

Ownership of Work Product

All inventions, creative works or other developments or improvements conceived by PhoenixLaw employees during their employment that relate to the business of PhoenixLaw, regardless of whether developed during working hours or with PhoenixLaw resources, shall be the exclusive property of PhoenixLaw. Further, the materials, plans, ideas, and data of this organization are the property of PhoenixLaw and should never be given to an outside firm or individual except through normal business channels
and with appropriate authorization.

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Personnel Information

PhoenixLaw keeps all personnel records confidential and complies with applicable federal and state law regarding release of records and information. Personnel records remain PhoenixLaw property, even after termination of employment. Employees may review their own personnel records only in the presence of a Human Resources representative and only on PhoenixLaw premises. To view your personnel file, please submit a written request to the Human Resources department and allow 24 hours for a response.

To keep necessary PhoenixLaw records up to date, it is extremely important that you notify the Human Resources Department of any changes in:

- Name and/or marital status
- Address and/or telephone number
- # of eligible dependents
- W-4 deductions
- Person to contact in case of emergency

COMPENSATION

Overtime Policy

PhoenixLaw pays overtime to non-exempt employees for hours worked in excess of 40 hours in a work week. Overtime is paid at one and one-half (1½) times the employee's regular rate of pay. Paid time off, such as holidays, vacation and sick leave, does not count as "hours worked" for overtime purposes. **Your supervisor must approve in advance all overtime work, whether an early start or late finish.** Working overtime without advance authorization may result in disciplinary action.

Weekend and holiday work by a non-exempt employee must be approved in advance by the employee's supervisor. Neither weekend nor holiday work automatically qualifies for compensation at the overtime rate of pay. Hours worked on Saturday, Sunday, or a holiday, qualify for overtime pay only if they result in overtime hours under the standards noted above.

Payday

PhoenixLaw's work week runs from Sunday, 12:01 a.m. to Saturday, midnight. Payroll is processed semi-monthly. The actual pay days fall on the 15th and the last day of each month. If a regular pay day falls on a weekend or a holiday, the pay day will be changed to the last workday immediately preceding the holiday or weekend.

Non-exempt employees are paid 1 pay period in arrears. Non-exempt employees are paid two weeks in arrears. For example, if an employee works August 1 – August 15, that pay period will not be paid on August 15, but rather on August 30. This policy is in effect so that the actual time worked and reported for the non-exempt employee is what is paid to them.

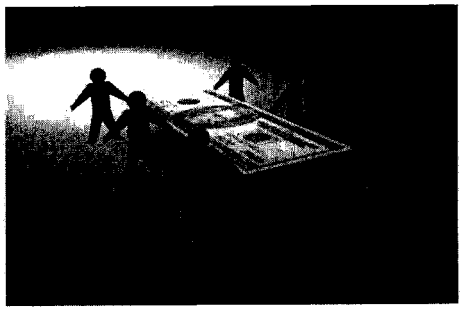
Payroll Deductions

PhoenixLaw withholds federal payroll taxes as required by law. You must complete federal withholding forms (IRS Form W-4) at the time of hire. If there are any changes in this information, you must inform PhoenixLaw immediately. Each year we issue you a statement (IRS Form W-2) of earnings and tax withholdings.

The law requires or permits PhoenixLaw to make the following deductions from pay:

- Social Security (FICA) Tax
- Medicare Tax
- Federal Income Taxes
- Court Ordered Deductions
- Costs of unreturned property of PhoenixLaw, and any inadvertent wage overpayments
- Health and other Insurance Premiums (when applicable)
- 401(k)/Pension Contributions (when applicable)

A statement attached to your paycheck will itemize the various deductions required by law or authorized in writing by you, and should be retained for your records. If you discover an error in your paycheck, it is your responsibility to immediately bring the error to the attention of your supervisor or Human Resources.



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Direct Deposit
You are encouraged to have your paycheck deposited directly into your bank account. To do so, complete a direct deposit authorization form and return to Human Resources. If you elect direct deposit, you will not receive a paper paystub. Paystubs can be retrieved from the ADP payroll system.

Pay Advances/Loans
To avoid misunderstandings, InfiLaw wants to maintain an employer/employee, not a creditor/debtor, relationship with its employees. Therefore, InfiLaw does not provide loans or pay advances.

Loss or Damage
If your conduct causes loss or damage to PhoenixLaw property, PhoenixLaw may, in its sole discretion, require you to pay for it.

Garnishment of Wages & Other Assignments
The law requires PhoenixLaw to recognize certain court orders, liens and wage assignments (e.g., for child support payments). PhoenixLaw will take great care and confidentiality when acknowledging these requirements.

Expense Reimbursement
Business related expenses will be reimbursed per policies. Travel expenses, including meals, are subject to advance signed authorization on PhoenixLaw Travel Forms and must follow policies noted therein.

Break in Service

This policy is in effect as of August 1, 2012.

Employees who have a break in service other than an authorized leave of absence will be considered terminated for purposes of accrual of paid time off. Employees who terminate employment and leave the Consortium in good standing, due to resignation, layoff, or reduction in force, and who wish to return are eligible for consideration for rehire.

If rehired to any location within the Consortium, the Employee will have a new hire status which will trigger a 90 day or longer introductory evaluation period. If the rehire date is within twelve (12) months or less after the termination of employment date, the Employee will accrue vacation at the rate effective as of the termination of employment date. In addition, the years of service accrued prior to the termination of employment date will be credited toward the minimum requirement for benefits that have a minimum service criterion that must be met to be eligible for the benefit.

If an Employee returns to work after twelve (12) months have lapsed, the employee becomes a new hire.

Time Recordkeeping Requirements
For purposes of state and federal wage and hour laws, all non-exempt employees are required to keep a record of hours worked for each payroll week. (Exempt employees are not required to keep time records.) The hours shown on your time record determine your pay for that week. Time records also serve as a permanent record of your time worked at PhoenixLaw. Employees must record accurately each day the times they begin and end work and the beginning and end of all meal periods or other breaks from work of more than 10 minutes. Recording of work time is done through the ADP payroll system.

Each employee is responsible for clocking in and out of the ADP system each day. If corrections or modifications need to be made to the time record, both the employee and the supervisor must certify the accuracy of the changes by correcting the time record in ADP before submitting it for payroll processing. Falsifying, altering, or tampering with time records, whether yours or another employee's, will result in disciplinary action, up to and including immediate termination.

SECTION B - BENEFITS PROGRAMS & SERVICES

General
It is the goal of PhoenixLaw to provide reasonable benefits that balance its educational and business needs with the personal needs of its employees. PhoenixLaw may, in its sole discretion, expand or reduce these benefits from time to time. For questions or more information on employee benefits, please contact Human Resources.

PhoenixLaw and Infilaw, reserves the right, in its sole and absolute discretion, to make eligibility determinations, benefit calculations and to apply and interpret the terms of each benefit policy and/or plan. In addition, Infilaw has made every effort to ensure accuracy of the benefits information described in this document; however, in all cases, if there are any inconsistencies between this information and the formal benefit plan, the provisions in each formal benefit plan will govern.

Separate booklets, available at Human Resources, describe the insurance and retirement plans summarized only briefly here. The actual provisions of each formal plan, policy or contract govern in determining entitlement to benefits, benefit levels, and all other matters.

Benefit enrollment forms and/or waiver forms must be elected and turned in to Human Resources no later than 30 days from date of hire. If benefits elections are not made by this deadline, then the employee cannot enroll for coverage until the next annual open enrollment or unless they have a qualifying event.

Domestic Partner Benefits and Their Qualifying Children
Effective January 1, 2007, the Consortium voluntarily decided to begin offering certain benefits to qualifying Domestic Partners ("Qualified Domestic Partners") and such Qualified Domestic Partner's qualifying child(ren) ("Qualified Children"). Same-sex or opposite-sex Domestic Partners may be Qualified Domestic Partners. Qualified Domestic Partners and Qualified Children are eligible to receive medical, dental and vision benefits offered by the Consortium and are also eligible for the Consortium's tuition waiver policy.

Eligible employees have the option of enrolling their Qualified Domestic Partners and Qualified Children in medical, dental, and vision coverage offered by the Consortium.

In order to be a "Qualified Domestic Partner" and eligible for these benefits, the employee and the Domestic Partner must submit a Declaration of Domestic Partnership, available in Human Resources, that establishes the following:

1.The employee and Domestic Partner are each eighteen (18) or older;

2.The employee and Domestic Partner reside together, sharing the same permanent residence for at least six (6) consecutive months, with the current intent to continue doing so indefinitely;

3.The employee and Domestic Partner are each other's sole Domestic Partner; neither one of them is legally married to someone else; nor have had another Domestic Partner within the prior six (6) months;

4.The employee and Domestic Partner are not related by blood closer than would otherwise prohibit legal marriage in the state of residence; and

5.The employee and Domestic Partner share financial responsibilities, evidenced by at least three of the following: joint bank accounts, joint credit cards, joint ownership of a residence, common ownership of a motor vehicle, Driver's license listing a common address, household expense, granting power of attorney, designating each other as sole beneficiary/executor, or evidence of other joint financial responsibilities.

In order to be a "Qualified Child" and eligible for medical, dental, and vision coverage offered by the Consortium, the employee and the domestic partner must submit a Declaration of Domestic Partnership, available in Human Resources, that establishes the following:

1.The child has one of the following relationships to the Employee:

a. A biological child;
b. A lawfully adopted child;
c. A step-child;
d. A biological or adopted child of the Qualified Domestic Partner; or
e. A child for whom the employee or the Qualified Domestic Partner has been legally appointed sole guardian for an indefinite period of time.

2. The employee and child have the same principal place of abode for more than one half of the calendar year;
3. The child is a member of the employee's household for more than one half of the calendar year (the relationship must not violate local law);
4. During the calendar year the employee provides more than half of the child's total financial support or was under a court order to do so;
5. The child is NOT anyone else's qualifying child under Internal Revenue Code Section 152(c);
6. The child is a U.S. citizen, a U.S. national, or a resident of the U.S., Canada, or Mexico, or is an adopted child and the Domestic Partner is a U.S. citizen or U.S. national;
7. The child is unmarried; and
8. The child is younger than the employee and
   A. the child has not attained age 19 as of the close of the calendar year, or
   B. the child is a student who has not attained age 24 as of the close of the calendar year.

9.The requirements of paragraph 8, above, do not apply in the case of a child who is permanently and totally disabled.

Employees will be required to provide documentation verifying that an individual is a Qualified Child (e.g. birth certificate, guardianship orders, adoption orders), as applicable.

The Consortium makes the same contribution toward covering a Qualified Domestic Partner and Qualified Children as it would to cover a spouse and eligible children of the employee. However, under current federal tax law, the employee will pay more in taxes for covering the Qualified Domestic Partner and Qualified Children under the Consortium's medical, dental and/or vision plans than the employee would for covering a spouse and eligible dependent children.

Currently, the Internal Revenue Code requires taxation on benefits for same-sex or opposite-sex Domestic Partners and the same-sex or opposite-sex Domestic Partners' dependents. This means:

- The portion of the employee's contribution for benefit coverage for a Domestic Partner and his/her children must be deducted from the employee's pay on an after-tax basis (rather than on a pre-tax basis, as would be the case if the benefit coverage was for a spouse or eligible dependent children).

- The portion of the Domestic Partner or dependents contribution for same-sex or opposite-sex Domestic Partner benefit coverage must be counted as taxable income to the employee (as opposed to non-taxable income, as would be the case if the benefit coverage was for health coverage for a spouse or eligible dependent children).

- The only exception to these rules is when the Domestic Partner or the Domestic Partner's children qualify as a dependent of the employee under the Internal Revenue Code, as described below.

An employee who elects coverage on behalf of his or her Qualified Domestic Partner may terminate such coverage when such Domestic Partner fails to meet the requirements above and therefore fails to be a Qualified Domestic Partner.

Domestic Partner as a Qualifying Dependent Under the Internal Revenue Code

If the employee's Domestic Partner is a "qualifying dependent" under Internal Revenue Code Section 152 and regulations thereunder, the value of the health insurance coverage for the Domestic Partner can be excluded from an employee's taxable income for federal tax purposes.

In general, the following conditions must be met for an employee's Qualified Domestic Partner to qualify as a "qualifying dependent" for federal tax law purposes:

1. The employee and Domestic Partner have the same principal place of abode for more than one half of the calendar year;

2. The Domestic Partner is a member of the employee's household for more than one half of the calendar year (the relationship must not violate local law);

3. During the calendar year the employee provides more than half of the Domestic Partner's total financial support;

4. The Domestic Partner is not the employee's (or anyone else's) qualifying child under Internal Revenue Code Section 152(c); and

5. The Domestic Partner is a U.S. citizen, a U.S. national, or a resident of the U.S., Canada, or Mexico.

Note that if the employee's Domestic Partner fails to qualify as a "qualifying dependent" for benefit purposes for any portion of the calendar year because of a change of abode, household, or support during the year, then the Domestic Partner will fail to qualify as a "qualifying dependent" for the entire calendar year and the value of the Domestic Partner's coverage for the portion of the year prior to the change will be included in the employee's gross income and related income tax and employment tax withholding will be deducted from the employee's pay as rapidly as possible.

Federal COBRA Rights for Domestic Partners

Although the Consortium offers medical, dental and vision coverage for Qualified Domestic Partners, Qualified Domestic Partners are not eligible for individual federal COBRA rights, per the Defense of Marriage Act, which was passed in 1996, and federal guidelines thereunder. As such, Qualified Domestic Partners do not have individual COBRA rights such that they may elect COBRA coverage based on a "qualifying event" that happens to them. However, if an employee experiences a "qualifying event" and elects COBRA, such employee may add his or her Qualified Domestic Partner to such employee's COBRA coverage in accordance with such employee's COBRA rights.

Domestic Partners are not eligible for COBRA when the Domestic Partnership ends.

Domestic Partner Confidentiality

Domestic Partner information is considered by the Consortium to be confidential; however, information may be shared within the Consortium and plan administrators on a need-to-know basis in order to administer benefits, make appropriate payroll deductions, and assess taxes on benefits when required. Information may be made available also as required by law or the courts.

This information does not constitute tax or legal advice. Employees should consult their individual lawyers and tax advisors. In the case of a conflict between the benefit documents and this information, the plan documents shall control. This information is intended to be a summary. For more details, contact Human Resources.

Health, Dental and Vision Coverage

PhoenixLaw offers eligible employees and their family dependents the opportunity, on a subsidized basis, to enroll in group health and dental insurance plans. Regular full-time employees are eligible for health and dental insurance benefits on the first of the month following date of hire and if date of hire is the first day of the month, effective immediately. Full-time status must be maintained to retain benefit eligibility.

Coverage under these plans begins on the first of the month following date of hire and if date of hire is the first day of the month, effective immediately. It is the responsibility of the employee to enroll in any eligible benefits. From time to time, InfiLaw may change the health and dental plans. Any changes to the current plan will be presented in writing.

COBRA Coverage

Continued coverage under Phoenix School of Law's group medical and dental plans may be available under the federal law known as COBRA if a covered employee's hours are reduced or his/her employment ends. Continuation coverage may also be available to the employee's spouse and eligible dependents in certain circumstances. Phoenix School of Law provides employees and covered dependents with a written notice describing rights and obligations under COBRA upon enrollment and at the time of eligibility for this coverage. COBRA coverage is at the employee's or beneficiary's expense at group rates plus an administration charge. Domestic partners are not eligible for individual federal COBRA rights in accordance with the Defense of Marriage Act; however, an employee who elects COBRA may continue coverage for the domestic partner in accordance with COBRA rights of active employees.

HIPAA

PhoenixLaw complies with all requirements of the Health Insurance Portability and Accountability Act (HIPAA). Only those granted permission to review health records by the employee will have access to any health records. PhoenixLaw is committed to making every effort to ensure the privacy and confidentiality of any health records acquired.

Life and Accidental Death/Dismemberment Insurance

PhoenixLaw provides each full-time employee with term life insurance and accidental death and dismemberment insurance. PhoenixLaw pays the full premium for this coverage, which begins on the first of the month following date of hire and if date of hire is the first day of the month, effective immediately and ceases when employment ends. Coverage is equal to the employee's annual salary up to $200,000 (with a minimum of $20,000 of coverage).

Voluntary Supplemental Life Insurance

PhoenixLaw offers each full-time employee the opportunity to elect voluntary supplemental life insurance coverage for the employee, spouse, and children. The employee pays the full premium for this coverage which begins on the first of the month following date of hire and if date of hire is the first day of the month, effective immediately and ceases when employment ends.

Voluntary Short-Term Disability Insurance
PhoenixLaw offers each full-time employee the opportunity to elect voluntary short–term disability insurance coverage. Employees choosing this benefit must pay the full premium for this coverage. Coverage begins on the first of the month following date of hire. In the event the date of hire is the first day of the month, coverage will become effective immediately and ceases when employment ends or an employee chooses to discontinue coverage. There is an elimination (waiting) period of seven (7) days of disability before benefits take effect.

Long-Term Disability Insurance
PhoenixLaw provides each full-time employee with long-term disability insurance coverage. PhoenixLaw pays the full premium for this coverage. Coverage begins the first of the month following date of hire and if date of hire is the first day of the month, effective immediately and ceases when employment ends. There is an elimination (waiting) period of ninety (90) days of disability before benefits take effect.

401(k) Retirement Plan
PhoenixLaw provides eligible employees with the option to participate in a 401(k) retirement plan. This benefit is available as of an employee's date of hire. Participants can elect to defer their salary up to the maximum allowed by the IRS. PhoenixLaw provides a dollar-for-dollar matching contribution of 100% of the employee deferral up to the first 3% and 50% match of the next 2% contributed by the employee. Rollovers are permitted from other qualified plans. Further details are available from the Human Resources Department.

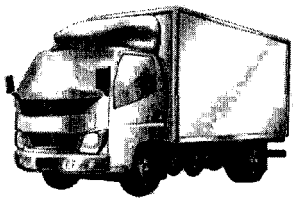
Section 125 Cafeteria Plan
Through PhoenixLaw's IRS Section 125 Cafeteria Plan, full-time employees are able to have their medical and dental plan premium contributions deducted from their pay on a pre-tax basis, resulting in a tax savings to the employee. This plan also provides employees the opportunity to participate in health care and dependent care reimbursement or "flexible spending" accounts (FSA's). Eligible employees may reduce their taxable income within defined limits and receive corresponding reimbursements to pay for qualifying health and dependent care expenses.

To participate, eligible employees must complete and return an enrollment form within 30 days of hire or during the open enrollment period. Further information regarding the Section 125 plan and FSA's is available from the Human Resources Department.

Workers' Compensation
PhoenixLaw maintains workers' compensation insurance program at no cost to employees for on-the-job illness or injury. To be sure that you will receive all the benefits to which you may be entitled, it is essential that you report any injury you incur on the job or that you witness, no matter how minor it seems. Failure to report an accident could jeopardize your entitlement to benefits. See your supervisor and Human Resources for information and forms related to workers' compensation.

Unemployment Insurance
PhoenixLaw pays the full cost of unemployment insurance in accordance with applicable state and federal requirements. If your employment ends, you may be eligible to receive unemployment benefits. You must file a claim to collect these benefits.

Parking
PhoenixLaw employees are expected to adhere to all posted policies and memos from garage management. PhoenixLaw has no authority in matters relating to the garage and garage management policies.



Relocation Assistance Program

Purpose
The purpose of the Relocation Assistance Program is to provide relocation assistance to eligible newly hired or transferring employees (collectively, "Employee") within the InfiLaw Corporation, its consortium of independent law schools (the "Schools"), and their respective affiliates (collectively, "InfiLaw"). For the purposes of this document, the word "Agreement" refers to the executed or amended offer letter.

Procedure
At the discretion of the Vice President of the hiring department, Dean, or President of the School, and in accordance with the Agreement, InfiLaw may provide relocation benefits to an eligible new or relocated Employee who, as a result of accepting employment, is required to move to a new location that exceeds seventy five (75) miles from his/her current place of residence and assigned work location.

Under the general provisions of this policy the Agreement will describe the specific obligations of both InfiLaw and the Employee related to the relocation assistance. Exceptions to this policy must be approved in writing by the Dean, President of the School, Vice President of Human Resources, or location principal Financial Officer.

All payments shall be payable in accordance with InfiLaw's payroll schedule and policies.

Each department should endeavor to include expected relocation costs in its annual budget.

Policy Rules
All relocation expenses must be incurred within twelve (12) months of the effective date of hire or in the case of transferring Employees within twelve months of the date the Employee is reassigned to the new locations. Expenses incurred after this period will not be reimbursed. To the extent that the Schools may require receipts to be produced, they must be provided within 30 days of the request.

Any expense that exceeds the amount specified in the Agreement is the responsibility of the Employee.

InfiLaw reserves the right to refuse to pay any amounts it deems unreasonable or excessive.

Neither this policy nor InfiLaw's relocation practices are intended to create a contract of employment for a definite term. The Employee's employment remains at-will, where applicable, meaning that the Employee and InfiLaw or the School may terminate the employment relationship at any time, with or without cause, and with or without notice.

If the Employee voluntarily cancels his/her move or resigns within one (1) year of his/her effective hire date, all payments will cease and the Employee will be required to repay all of the expenses incurred by InfiLaw for the purpose of the Employee's relocation. The expenses incurred by InfiLaw and due from the Employee cannot be liquidated or exchanged for any other benefit. The expenses for which Employee must reimburse InfiLaw will be payable in full upon the last day of employment.

Payments and benefit under this Policy are intended to comply with the Internal Revenue Code Section 409A and applicable guidance issued thereunder ("Section 409A"). InfiLaw shall not be liable to the Employee for any excise taxes or interest if any payment or benefit which is to be provided pursuant to this policy and which is considered deferred compensation subject to Section 409A otherwise fails to comply with or to be exempt from, the requirements of Section 409A.

Some or all of the payments described in this policy and the Agreement or other documents associated with the relocation expenses may be taxable income to the Employee and are subject to the condition that the Employee will have accomplished his/her move by date set forth in the Agreement. InfiLaw is not a tax advisor and does not offer Employees any tax advice. Please contact a tax accountant or the Internal Revenue Service to review the federal and tax implications of all expenses reimbursed by InfiLaw to ensure you are meeting the IRS tax guidelines.

SECTION C - POLICIES

Equal Employment Opportunity

PhoenixLaw is dedicated to maintaining an environment free of discrimination, exploitation and coercion. Discrimination in employment is strictly prohibited on the basis of race, color, ancestry, national origin, sex, age, disability, marital status, sexual orientation, citizenship status, religion, or on any other basis prohibited by law.

Sexual Harassment Policy

Sexual harassment is prohibited by PhoenixLaw. Sexual harassment consists of any unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct or visual communication of a sexual nature when (a) submission to such is made either explicitly or implicitly a term or condition of an individual's employment; (b) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of conduct that may constitute sexual harassment include but are not limited to:

- Sexually tainted jokes, anecdotes, comments or profanity, sexual propositions, remarks about sexual activity, or speculations about sexual experience;
- Sexually suggestive remarks about a person's clothing or body, or statements based on sexual stereotype;
- Sexually explicit videos, pictures, magazines, cartoons or drawings;
- Repeated and unwanted personal notes, telephone calls, or requests for dates;
- Sexual assault, and/or other unwelcome physical contact, such as touching, patting or hugging;
- Repeated staring or leering at an individual or physical interference with normal work, study or movement, such as blocking or following someone; and
- Express or implied threats that submission to sexual advances will be a condition for a favorable decision or outcome (e.g., letter of recommendation, evaluation, hiring, or work status).

Other Forms of Prohibited Harassment

PhoenixLaw also prohibits harassment on the basis of race, color, ancestry, national origin, age, disability, marital status, sexual orientation, citizenship status, religion, and on any other basis prohibited by law. Prohibited forms of harassment are defined as any unwelcome comments or behavior that is based on one or more of the protected categories listed above when (a) submission to such is made either explicitly or implicitly a term or condition of an individual's employment; (b) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Complaint Process

Any staff member or administrator who believes that he or she has been the victim of prohibited discrimination or harassment is encouraged to make a complaint as promptly as possible. The complaint should be reported and recorded in a written document to his or her immediate supervisor or to the Human Resources Department. If the staff member or administrator does not feel comfortable making the complaint to his or her immediate supervisor or to the Human Resources Department, he or she may make the complaint to the Dean of the law school or to PhoenixLaw's Vice President for Human Resources.

Any manager or supervisor, who receives a complaint, whether written or oral, must immediately report the complaint to the Human Resources Department or to the Dean of the law school or to Infilaw's Vice President for Human Resources.

Retaliation Prohibited

Retaliation against any person who makes a complaint under this policy or against a person who cooperates in the investigation of a complaint under this policy is strictly prohibited. Anyone who believes that he or she has been retaliated against because of a complaint under this policy or because of cooperation in the investigation of a complaint under this policy should immediately report such retaliation to his or her immediate supervisor or to human resources. If the person making the complaint of retaliation does not feel comfortable reporting the retaliation to his or her immediate supervisor or to the Human Resources Department, he or she may report the retaliation to the Dean of the law school or to PhoenixLaw's Vice President for Human Resources.

Informal Resolution

Any person who makes a complaint of prohibited discrimination, harassment or retaliation may seek to informally resolve the complaint without a formal investigation or other action. If the person making the complaint and the person(s) against whom the complaint are made are agreeable, the Human Resources Department or the Dean of the law school may facilitate a voluntary, informal, and confidential process for resolution of the complaint through mutual dialogue and agreement. A formal investigation is not required if a mutual agreement for resolution of the complaint is reached. The investigation can be delayed while the parties attempt informal resolution.

Investigation

PhoenixLaw will promptly investigate a complaint of prohibited discrimination, harassment, or retaliation. Ordinarily, the complaint will be investigated by the human resources department. However, one or more management employees outside of Human Resources may conduct or participate in the investigation if PhoenixLaw determines that someone in the Human Resources Department is involved in the situation under investigation or otherwise determines that it would be best for someone outside the Human Resources Department, or outside of the PhoenixLaw, to investigate or participate in the investigation of the complaint because of the facts and circumstances.

The persons conducting the investigation will investigate and determine whether the person(s) against whom the complaint was made violated PhoenixLaw policy. If a determination is made that the person(s) against whom the complaint was made violated PhoenixLaw policy, the persons conducting the investigation will specify which PhoenixLaw policy(ies) was violated and will describe the facts and circumstances of such violation.

The results of the investigation will be provided to the Dean of the law school unless the complaint was made against the Dean of the law school, in which case the results of the investigation will be provided to InfiLaw's Vice President of Human Resources (the "Decision Maker") for review and consideration. The Decision Maker may request that the investigators further investigate the complaint or the Decision Maker may accept the results of the investigation as submitted. If the investigators do not find a violation of PhoenixLaw policy, the Decision Maker will render a decision that the complaint is not supported by the facts uncovered during the investigation. However, if the investigators find a violation of PhoenixLaw policy, the Decision Maker will determine appropriate remedial measures and corrective actions that are suitable under the facts and circumstances.

The results of the investigation and a summary of the final decision will be communicated by the Decision Maker to the person making the complaint as well as to the person(s) against whom the complaint was made. The Decision Maker's determinations are final.

Confidentiality
PhoenixLaw will keep the complaint and investigation as confidential as possible and will make disclosures only to the extent necessary to fully, completely, and fairly investigate the complaint, communicate the results, and put remedial and corrective measures in place.

Adjustments
The Dean of the law school or InfiLaw's Vice President for Human Resources may make reasonable modifications to the requirements of the foregoing policy with respect to the investigation of the complaint, determination of violations, and reporting of the results, based on the facts and circumstances of each case.

Each provision in the foregoing policy referencing the Dean of the law school shall mean the Dean or his or her designee. Likewise, each provision in the foregoing policy referencing InfiLaw's Vice President for Human Resources shall mean the Vice President or his or her designee.

Policy Prohibiting Workplace Bullying and Workplace Violence Prevention Guidelines
PhoenixLaw believes the work environment must be free of intimidation and offensive conduct. Behavior that interferes with an employee's work performance or contributes toward creation of a hostile work environment is unacceptable. Bullying and violent behavior that contributes toward a hostile work environment will not be tolerated by the Consortium and may result in disciplinary action up to and including immediate termination of employment. PhoenixLaw defines bullying as "repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment. Such behavior violates InfiLaw's Code of Ethics which clearly states that all employees will be treated with dignity and respect. PhoenixLaw will not in any instance tolerate bullying behavior. Employees found in violation of this policy will be disciplined, up to and including termination.

Bullying may be intentional or unintentional. However, it must be noted that where an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when determining discipline. As in sexual harassment, it is the effect of the behavior upon the individual which is important. While the following list is not intended to be exhaustive, PhoenixLaw considers the following types of behavior examples of bullying:

- **Verbal Bullying**: slandering, yelling, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks.
- **Physical Bullying**: pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property
- **Gesture Bullying**: non-verbal threatening gestures, glances which can convey threatening messages
- **Exclusion**: socially or physically excluding or disregarding a person in work-related activities.

In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

- Not allowing the person to speak or express him/herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form; ridiculing, belittling, or otherwise demeaning anyone.

Workplace Violence Prevention

PhoenixLaw is committed to preventing workplace violence and maintaining a safe work environment. Workplace violence refers to a broad range of behaviors falling along a spectrum that, due to their nature and/or severity, significantly affect the workplace, generate a concern for personal safety, or result in physical injury or death. To that end, PhoenixLaw has adopted the following guidelines to deal with intimidation, harassment, aggressive, hostile, emotionally abusive behaviors that generate anxiety or create a climate of distrust or other threats of or actual violence that may occur during working hours or on its premises.

- Phoenix School of Law prohibits the use, possession, display or storage of any weapons, explosive device, fireworks, and all other dangerous or hazardous devices or substances in all buildings or vehicles owned or under the control of Phoenix School of Law, and at all PhoenixLaw sponsored events, except as provided in *Arizona Revised Statutes* § 12–781.

  Additionally, all students and employees with knowledge of violations of this policy are required to report these violations to the President, Dean, or Associate Dean. *If in your judgment you feel there is a threat to your safety, call 911.*

  The Dean, or an employee designated by the Dean to maintain order, may have an individual or group removed from the premises if the Dean or Dean's designee believes the person is committing an act or has entered the premises with the purpose of committing a violation of this policy. Violations of this policy will be considered misconduct and subject to disciplinary action that may result in the ejection from the school and/or confiscation of the weapon, dangerous instrument, etc. Violations may also result in arrest according to applicable Arizona state statues.

- All personnel should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting or other conduct that may be dangerous to others. Conduct that threatens, intimidates, or coerces another employee or a member of the public at any time, including off-duty periods, will not be tolerated.
- All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor or any other member of the administration. This includes threats by employees as well as vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be as specific and detailed as possible. All suspicious individuals or activities also should be reported as soon as possible to a supervisor. Do not place yourself in danger. If you see or hear a commotion or disturbance near your work area, go to a safe location and notify a supervisor or the Human Resources department as soon as possible. Do not try to intercede or see what is happening.
- PhoenixLaw will promptly and thoroughly investigate all reports of threats of or actual violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, PhoenixLaw may suspend employees, either with or without pay, pending investigation. Anyone determined to be responsible for threats of violence, or actual violence, or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action, up to and including termination of employment.

[redacted]

Reporting and Complaint Procedures

PhoenixLaw encourages employees to bring their disputes or differences with other employees to the attention of their supervisors or the Human Resources department before the situation escalates into potential violence. Employees may raise concerns and make reports without fear of reprisal.

Retaliation against any person for the following is absolutely prohibited and will lead to disciplinary action up to and including termination of employment:

- reporting a complaint
- cooperating in any investigation pursuant to this policy, or
- filing a complaint with or cooperating in an investigation of a complaint by any federal, state or local equal employment opportunity agency or commission

Any such retaliation will be considered a very serious violation of this policy and should be reported.

Confidentiality

Any report of violation of this policy brought to PhoenixLaw's attention will be promptly investigated in a confidential manner. Requests for confidentiality will be respected to the extent consistent with the need to conduct a fair, complete and responsive investigation and the needs of PhoenixLaw.

Resolving the Complaint

An investigation by a Human Resources representative will be conducted as soon as is reasonably practicable. PhoenixLaw will communicate its findings and intended actions to the complainant and alleged violator. If it is found that harassment has occurred, the violator will be subject to appropriate disciplinary action, up to and including termination of employment.

Actions That May Be Taken

PhoenixLaw's immediate goal is to take prompt remedial action to stop the discriminatory, harassing or offensive conduct if a violation of this policy is found. A second goal is to assure that the violation will not occur again. PhoenixLaw considers violations of this policy to be as serious as violations of any other fundamental policy. Actions may include reprimanding the offender and placing a written record of the incident in his or her personnel file, referral to counseling, withholding of a promotion or merit increase, or termination of employment.

[redacted]

Romantic Relationships in the Workplace and with Students
Under no circumstances may an employee of PhoenixLaw engage in a romantic relationship with a PhoenixLaw student.

Romantic relationships between staff members or faculty and staff are discouraged especially when the relationship involves a superior and a subordinate. Such a relationship could be a violation of the nepotism policy. Relationships of this type could lead to claims of favoritism and bias in work assignments and evaluations, thereby adversely affecting morale.

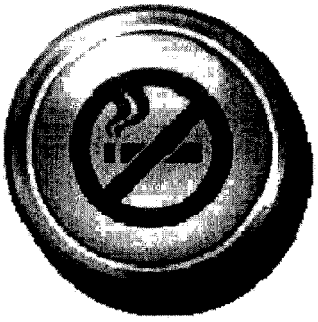
Dress Code & Personal Appearance Policy
Employees contribute to the feeling and reputation of PhoenixLaw in the way they present themselves. A professional appearance is essential to a favorable impression. Good grooming and appropriate dress reflect employee pride and inspire confidence. At a minimum, all employees should dress business casual.

Managers have the discretion to determine appropriateness in appearance. Employees who do not meet a professional standard may be sent home to change and will not be paid for that time off. Some basic essentials of appropriate dress include the wearing of socks or stockings, undergarments and the need for clothing to be neat and clean. A reasonable standard of dress rules out tight or short pants, tank tops, halter-tops or any extreme in dress, accessory, fragrances, or hair. An employee unsure of what is appropriate should check with the manager or supervisor. Business casual is defined as:

- *Casual shirts:* All shirts with collars (I.e. golf and polo shirts) and blouses. Men are not required to wear ties and jackets.
- *Pants:* Casual slacks and trousers. Jeans, without holes, frays, etc. may be worn on Fridays only.
- *Footwear:* Depending on the department, athletic shoes may be worn on Fridays only.

Inappropriate: T-shirts with inappropriate slogans, tank tops, muscle shirts and crop tops, shorts, flip-flops

Some departments may require a heightened dress code. If you are meeting clients, students or conducting interviews, business dress is appropriate.



Smoke Free Workplace Policy

PhoenixLaw is committed to providing a safe and healthy workplace and to promoting the health and wellbeing of its employees. Therefore, smoking is not allowed on PhoenixLaw premises, except in designated areas.

Personal Phone Call & Cellular Phone Policy

Telephones are intended for PhoenixLaw use rather than personal purposes. We recognize that it sometimes may be necessary to make a personal call from work, but such occasions should not interfere with normal job duties. Employees are expected to pay for any toll charges incurred in connection with personal calls.

While at work employees are expected to exercise the same discretion in using personal cellular phones as is expected for the use of PhoenixLaw phones. Personal calls during work hours can interfere with employee productivity and be distracting to others. Employees are asked to make personal calls during breaks and lunch periods and to ensure that friends and family members are aware of this policy.

Policy on Workplace Solicitation & Distribution

Solicitation and distribution can put undue pressure on employees and interfere with work activities. Therefore, the following shall apply to solicitations or distribution of literature:

There will be no solicitation or distribution of literature or other resources during working time or at any time in working areas, unless approved in writing by the Dean or Human Resources. This includes the use of PhoenixLaw e-mail or mail for non-business announcements about sales, events, etc.

There will be no solicitation or distribution of literature or other resources on PhoenixLaw premises at any time by non-employees without prior written approval by the Dean or Human Resources.

Solicitations which are forbidden include, but are not limited to, solicitations for magazines or periodicals, subscriptions, memberships in organizations and political contributions.

Distributions which are forbidden include, but are not limited to, political or religious literature, advertising brochures, production or order forms, packages of materials, leaflets and information bulletins.

Telecommuting

To maintain our mission pillar of being student outcome centered, provide excellent customer service, and maintain equity and fairness for all employees, Phoenix School of Law believes it is important for employees to be physically present on campus. No Phoenix School of Law positions have been designated as "telecommuting positions" and all employees are expected to perform their job duties on site. There may be an extenuating circumstance where an employee may get permission from their supervisor to telecommute for a short period of time, and in such a case, a supervisor may allow all or part of the duties of the position to be performed away from the office on a temporary basis. However, no such arrangement is promised or guaranteed, and no particular duration of telecommuting is guaranteed. Work schedules cannot be modified permanently to include a "telecommuting day" during the week.

Substance Abuse Policy

PhoenixLaw recognizes the importance of maintaining a drug-free, safe, efficient, and healthful work environment for its employees, students, volunteers, and clients. Being under the influence of any alcoholic beverage and/or illegal drug on the job poses serious risks not only to the impaired worker, but also to those with whom he/she comes into contact. It also jeopardizes the community's trust in PhoenixLaw, and can cause avoidable injuries and property damage as well as productivity losses. For these reasons, the following rules are strictly enforced, and an employee found in violation will be subject to disciplinary measures, up to and including termination of employment.

Employees are prohibited from being under the influence of alcohol or illegal drugs or controlled substances or being in possession of illegal drugs while on the job. Consent to drug and alcohol testing is a condition of continued employment at PhoenixLaw. Drug and/or alcohol testing is mandatory for any employee:

- Who is involved in a work-related accident or injury, or who may have contributed to an accident or incidents that result in injury to another employee or property damage.
- Who a supervisor knows or reasonably suspects is impaired by alcohol, illegal drugs, or abuse of prescription drugs to a degree that the impairment may adversely affect the employee's job performance, the job performance of co-workers or the work environment.

Any employee who refuses or fails to take an alcohol and/or drug test when directed to do so, or who alters or otherwise compromises the alcohol and/or drug test (*e.g.*, by providing a diluted specimen), will be terminated. Any employee who tests positive for drugs and/or alcohol following an accident, injury, search, incident involving reasonable suspicion, or as a result of a PhoenixLaw-ordered physical examination/drug screen for return to work, will be terminated.

Any employee who voluntarily reports a drug and/or alcohol dependency problem will not be subject to disciplinary action only in the instance of the first such report. The employee will be placed on an unpaid leave of absence, during which time the employee must enroll in and successfully complete a rehabilitation program. In addition, the employee must present a negative drug/alcohol test prior to returning to work. During the 12-month period following rehabilitation, the employee will be subject to drug/alcohol testing conducted at random intervals determined by PhoenixLaw. A positive test result will result in the employee's immediate termination.

Any employee who is convicted of a drug related offense must advise Human Resources within (5) days of the conviction.

Alcohol Policy

PhoenixLaw complies with appropriate federal and state statutes and local ordinances dealing with the consumption of alcoholic beverages on PhoenixLaw premises and at any function in which PhoenixLaw's name is involved. Employees and their guests who consume any alcoholic beverage at an event sponsored by PhoenixLaw or any entity of PhoenixLaw must be at least twenty-one (21) years of age and must be able to furnish proof of age at the event. PhoenixLaw and its agents reserve the right to refuse to serve alcoholic beverages to anyone who is visibly intoxicated or whose behavior, at the sole discretion of PhoenixLaw and it agents, warrants the refusal of service. Any individual who arrives at a PhoenixLaw function either on or off campus in a visibly intoxicated state may, at the sole discretion of PhoenixLaw, or its agents, be denied entrance to the event.

Employees who desire alcohol abuse counseling should contact Human Resources so that a referral to the appropriate agency can be made.

Nepotism Policy

All employees have the right to expect fair and impartial treatment from supervisors or employees with oversight authority. The purpose of this policy is to address favoritism, bias, conflict of interest and liability from harassment situations and inappropriate conduct caused by a familial relationship, close personal or financial relationship between supervisory employees or employees with an oversight authority of a subordinate employee. This policy applies to full time, part time and temporary employees.

- **Nepotism** – favoritism or bias shown by those acting in the capacity of a supervisor or by persons with oversight authority to familial or financial relationship.
- **Familial relationship** – wife, husband, domestic partner, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, grandchild and includes in loco parentis relationships.
- **Close personal relationship -** relationships between persons who reside in the same household or have a romantic relationship or relationship that has the effect of influencing judgment or employment actions of either party to the relationship.
- **Financial relationship** – any financial relationship that could influence preferential treatment in the workplace.
- **Supervisory or oversight authority** – when one employee has direct influence on decisions concerning selection and hiring, which includes making recommendations for hiring, assignment of review of work, providing input on employee evaluations, transfer, promotion, grievance review or other terms and conditions of employment over another employee. This includes direct supervisors and "in the chain of command" supervision.

All employees shall avoid being in a position where they are subject to supervisory or oversight authority by anyone with whom they have a familial or financial relationship. Employees who become family members or establish a close personal, familial or financial relationship with other employees may continue employment as long as the relationship does not result in nepotism due to supervisory or oversight authority between the two employees' positions.

Provided no nepotism exists, nothing in this policy is intended to prevent individuals in close personal, familial or financial relationships from being employed by Phoenix School of Law.

Guidelines/Procedure

1. Whenever possible, nepotism situations shall be prevented from occurring at the time of hire, transfer, promotion, evaluation or grievance review.

2. When potential nepotistic situations arise as a result of organizational restructure, marriage or development of a close personal or financial relationship, the employees involved have an obligation to immediately inform their supervisor and Human Resources.

3. In a self-reported nepotistic situation, Phoenix School of Law management, in a fair and consistent manner, will decide who is to be transferred or, if necessary, terminated from employment.

4. Policy violations including, but not limited to, failure to disclose nepotistic relationships will be investigated by Human Resources in consultation with the head of the department and the Dean. Policy violations may result in progressive discipline of employees up to and including termination of employment. Supervisors and employees with oversight authority may be disciplined for taking employment actions based upon nepotistic relationships. An alternative assignment for one of the two employees or termination of employment of one of the two employees may also be required.

Policy on Outside Employment / Conflict of Interest

In some cases, PhoenixLaw does not object to non-management personnel holding another job with a different employer if you can effectively meet the performance standards for your position. However, if the other job raises any actual or potential conflict of interest with your position, you will not be able to hold both jobs.

If you are holding another job with a different employer, you must notify PhoenixLaw before you begin your employment with us. Once you are employed with PhoenixLaw, you must notify your supervisor before you accept a position with another employer.

If you do have another job, PhoenixLaw will hold you to the same performance standards and scheduling demands as other employees. PhoenixLaw will not make exceptions for you because you have another job. In addition, employees may not perform outside work during work time and are not permitted to use PhoenixLaw materials, resources, equipment or confidential or proprietary information for any outside work.

Policy on Computer, E-mail and Internet Use

- **PhoenixLaw Property:** Computer equipment, operating systems, electronic files, the electronic mail (E-mail) system, Internet access, and software furnished to employees by PhoenixLaw are the property of PhoenixLaw.
- **Authorized and Prohibited Uses:** Employees are authorized to use PhoenixLaw's equipment or access its systems for academic and business purposes and to further PhoenixLaw's interests in the course and scope of their work. PhoenixLaw prohibits the use of its computer equipment and electronic systems in ways that are unlawful, contrary to its academic or business interests, disruptive, offensive to others, harmful to morale, or that may be construed as harassment or showing disrespect for others. Any activity or transmission that does not comply with PhoenixLaw's philosophy, policies and/or procedures is prohibited.
- **E-Mail:** The PhoenixLaw E-mail system is a valuable business asset. The messages sent and received on the E-mail system, like memos, purchase orders, letters or other documents created by employees in the course of their workday, are the property of PhoenixLaw and are not private correspondence.
- **Importance of Confidentiality:** Employees must exercise a greater degree of caution in transmitting information through e-mail than they take with other means of communicating information (e.g., written memoranda, letters or phone calls) because of the reduced human effort required to redistribute such information and the security considerations on the Internet. Confidential information of InfiLaw should never be transmitted or forwarded to outside individuals or companies not authorized to receive that information. Always use care in addressing e-mail messages to make sure that messages are not inadvertently sent to outsiders or the wrong person inside InfiLaw. In particular, exercise care when using distribution lists to make sure that all addressees are appropriate recipients of the information. Individuals using lists should take measures to ensure that the lists are current. Refrain from routinely forwarding messages containing confidential information to multiple parties unless there is a clear business need to do so.

Personal Use: A reasonable amount of personal use of PhoenixLaw's E-mail systems is permitted. Personal use does not include use for purposes of personal business interests that conflict with, or have an appearance of a conflict with, PhoenixLaw's business interests. Employees are responsible for exercising good judgment regarding the reasonableness of personal use, and for following any departmental policies or guidelines for such use. If there is any uncertainty, employees should consult their supervisor or manager. Excessive or unreasonable use of the E-mail system for personal purposes is prohibited and may lead to disciplinary action.

Monitoring and Enforcement: PhoenixLaw has the right to monitor and review, without prior notice, any and all aspects of its computer system. Employees shall have no expectation of privacy, and waive any right to privacy they might have, in anything they create, store, send, or receive on PhoenixLaw's computer equipment or systems. In its sole discretion, PhoenixLaw may inspect any and all of its electronic equipment and systems used by employees to verify compliance with this policy. Any employee found to have violated this policy may be subject to discipline, up to and including termination of employment.

Email and IT Equipment Set-Up Policy Statement

This policy statement is in addition to, and not in lieu of, any other policies regarding employee email or IT equipment.

1. Email Accounts and IT Equipment Set-Up Requests: New Employees.
Managers must initiate set-up of email accounts and and/or standard IT equipment for every new employee by completing an online IT / email request form on the Human Resources. Juristec homepage. Only full and part-time employees are eligible for phoenixlaw.edu email accounts and standard IT equipment. Requests for email accounts and standard IT equipment will be routed to HR for final approval. Requests for non-employees or non-standard IT equipment also will be routed to the Dean or President, as appropriate, for approval.

2. End of Employment and Email Accounts and IT Equipment.
For the avoidance of doubt, references to email accounts in this policy refers only to the ability to send and receive emails from and to a phoenixlaw.edu email address. Emails in the sent, received, deleted, or other folders from any account, are archived in accordance with PSL document management policies.

HR will instigate all requests to IT for canceling email accounts. For employment that ends in the normal course, immediately following the last day of employment, an employee's email address will be canceled and their emails inaccessible. Employees are required to return IT equipment to the IT department by the close of business on their last day. HR can require shorter time frames for canceling email accounts and return of IT equipment, as appropriate.

HR will remind employees of this policy. For employment that ends in the normal course, HR will notify an employee at least 30 days prior to the end of their contract, or promptly following their notice of resignation, as appropriate.

The following email accounts will remain active and not be canceled, though there may be a brief break in employment:

- Full-time faculty and visiting professors on leave during the summer term but returning for the fall semester;
- Full-time faculty on sabbatical per the Faculty Handbook;
- Adjunct professors under contract for the term, including Summer, immediately following any current semester for which they are teaching at PSL, i.e., Fall-Spring, Spring-Summer or Summer-Fall. Adjunct email accounts will not remain active over any semester, including Summer, that an adjunct is not teaching.

Continuity of Communication.

Managers are responsible for ensuring continuity of communication with internal and external parties when a person's employment has ended. Unless a manager takes action as described below, internal or external senders to a canceled account will receive automatic notification that delivery has failed and that the email address could not be found.

While managers should not communicate internally or externally any details for an employee's departure, managers should do one or all of the following, as appropriate:

- Notify the appropriate internal and external parties of an alternate PSL contact;
- Contact HR to set up an automatic email response from the former employee's email with proper messaging and alternative contact information;
- Contact HR prior to the end of employment to gain access to the employee's email account, the archived emails, and/or to have the account emails forwarded to another employee. Such access should be based on legitimate business need, and prior written approval from the department head or the Dean or President is required.

After 180 days, IT will cancel all accounts, including those with limited activity for the automatic response and access as noted above. All emails connected with that account will be archived in accordance with PSL's document management policies.

SECTION D - ATTENDANCE AND TIME OFF

Attendance

PhoenixLaw and your co-workers depend on you to show up on time. If you do not show up, or you are late or leave early, someone else must do your job. PhoenixLaw expects you to keep regular attendance, be on time, and work as scheduled. If you think you may not be able to work your regular schedule, contact your supervisor before it becomes a problem. Excessive tardiness or absenteeism, or a pattern of either, may result in disciplinary action up to and including termination. Excessive tardiness or absenteeism is defined as the employee being absent or tardy to an extent that it is affecting the business of the department, morale and PhoenixLaw cannot rely on the employee to consistently arrive on time or report to work. This does not apply to employees who are on an approved leave of absence.

Tardiness: If you are having a problem of any kind that will force you to be late, you must contact your supervisor, or another management person, at least one-half hour before normal starting time. Under no circumstances is it sufficient to leave a message with a staff member other than your supervisor.

Absences: If you are unable to report to work, you must contact your supervisor as soon as possible to explain the problem. If you become sick during the day, you must notify your supervisor before you leave. If you are absent for two (2) or more consecutive days without notice, PhoenixLaw will assume that you have voluntarily resigned.

Permission to Leave During Work Hours

If it becomes necessary for you to leave your duties or PhoenixLaw's premises during work hours (other than during designated meal periods), you must obtain your supervisor's permission.

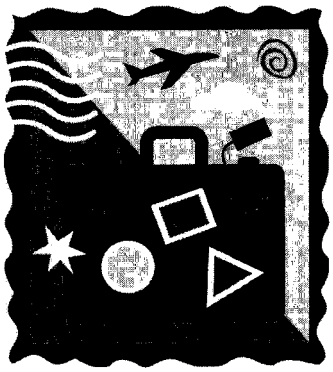
Year of Service Completed	Days Accrued Per Month	Total Days Off*
One-three	0.833	10
Four-nine	1.25	15
Ten or more	1.66	20

Vacation

Regular full-time employees are eligible for paid vacation time.

- **Accrual:** Accrual of vacation begins immediately upon hire, but no vacation may be taken until completion of 90 days of continuous employment. Vacation time accrues according to the following schedule:

*Accrued for a full calendar year from January 1 through December 31.



An employee hired on or before the 15th of the month will be deemed to have started that month; employees hired after the 15th of the month will be deemed to have started the following month. Likewise, an employee terminated on or before the 15th of the month will be deemed to have terminated the end of the prior month and an employee terminated after the 15th of the month will be deemed to have completed that month for vacation accrual purposes.

Restrictions on Use: Vacation may be used prior to accrual, at manager's discretion and within reason, and should not be taken during the first 90 days of employment absent exceptional circumstances and your supervisor's prior written approval. Vacation time must be used in increments of at least one half-day (4 hours) for exempt employees and 1 hour increments for non-exempt employees.

Notification: All vacation time must be requested in writing with as much advance notice as possible and must be approved by your supervisor. Vacation requests should be submitted via the ADP system. Your immediate supervisor may deny a request if it is not timely, if the schedule and service requirements will not permit, and/or if you do not have any available vacation time.

Unused Vacation

A maximum of 20 days (160 hours) unused vacation time may be accrued and carried over from calendar year to calendar year. Carry-over of vacation does not preclude or limit accrual of additional vacation time in subsequent calendar years. Upon an employee's separation from employment, whether voluntary or involuntary, accrued unused vacation time is paid to the employee up to a maximum of 20 days. PhoenixLaw will not pay employees for unused vacation except upon voluntary or involuntary termination of employment and until completion of 91 days of continuous employment.

Paid Time Off (PTO)

Regular full-time employees are eligible for PTO.

Accrual

PTO accrues at 10 days per year each January 1 for existing employees. New hires accrue PTO based on month of hire as follows:

Month	Jan.	Feb.	March	Apr.	May	June	July	Aug.	Sept.	Oct.
Days	10	9	8	7	6	5	4	3	2	1

New hires in November and December will not accrue PTO. For purposes of determining PTO for new hires, an employee hired on or before the 15th of the month will be deemed to have started that month; employees hired after the 15th of the month will be deemed to have started the following month. PTO for new hires may not be taken until 60 days of continuous employment has been completed.

Use of PTO

PTO is intended for use in certain situations, such as outside non-work related appointments, including medical and dental appointments, observance of a holiday not observed by PhoenixLaw, personal or family emergency or for a legitimate illness or injury of the employee or immediate family member. PTO must be used in increments of at least 4 hours for exempt employees and 1 hour increments for hourly-paid employees).

[redacted]

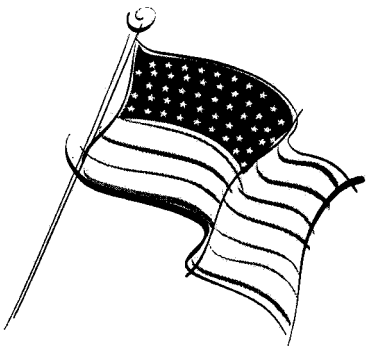
Notification
PTO must be requested via ADP at least two weeks prior to desired time off and approved by your supervisor. In the event of an emergency, the employee must inform his/her supervisor as soon as possible of the absence (or late arrival or early departure). In the event an employee becomes ill the night before and PhoenixLaw is closed, the employee must inform his/her supervisor as soon as possible the following day. If you become sick during the day and must leave, you must notify your supervisor before you leave. The employee must enter the absence into ADP, have it approved by the supervisor for submission to HR and payroll.

Unused Personal Leave
Each year you are awarded 10 days (80 hours) of personal leave. A maximum of 60 days (480 hours) unused personal leave may be banked and carried over from calendar year to calendar year. The maximum of 60 days of banked personal time does not preclude the additional 10 days of personal time given at the beginning of the calendar year. Upon an employee's separation from employment, whether voluntary or involuntary, there is no payment for unused personal leave.

(e.g. Dec. 31 you have 60 days of personal leave, then on Jan. 1 you will be assigned 10 days of personal leave in addition to the 60 days that are banked [total of 70 days for that one year]. If at the end of Dec. 31 of any given year you have 70 days of personal leave accumulated by Dec. 31st, you can only carry over a balance of 60 days as of Jan. 1 in the new year.)

Exhaustion of Vacation and PTO

PhoenixLaw does not have an unpaid leave policy. If an employee exhausts all vacation and PTO, they will not be approved for time off until they accrue additional PTO or vacation. This does not apply to employees who are approved for a leave of absence.



Holidays

PhoenixLaw currently observes the following holidays. PhoenixLaw may, in its discretion, change any of the closed-for-business holidays and schedule employees for regular work days.

New Year's Day	Martin Luther King Day	Memorial Day
Independence Day	Labor Day	Thanksgiving Day
Friday after Thanksgiving	Christmas Day	One Floating Holiday Per Year (to be used at any time with supervisor approval)

Full-time employees may also take time off with pay on the afternoon prior to Christmas Day and New Year's Day.

Regular full-time and part-time employees normally scheduled to work on an observed holiday will be paid their regular rate of pay for that day as holiday pay. Part-time employees will be paid on a pro-rated basis based on the number of hours they are regularly scheduled to work. PhoenixLaw reserves the right to change any of the closed -for-business holidays, and schedule employees for regular work days.

Additional Time Off –December Holiday

On an annual basis, the Dean and the President of PhoenixLaw will decide whether to close PhoenixLaw facilities after the Christmas Day holiday. Historically, PhoenixLaw has closed on the days immediately following the Christmas Day holiday up to the New Year's Day holiday. These discretionary days off will vary year by year, based upon when these holidays fall in the work week. Any days during this period in which the school is closed are considered paid time off.

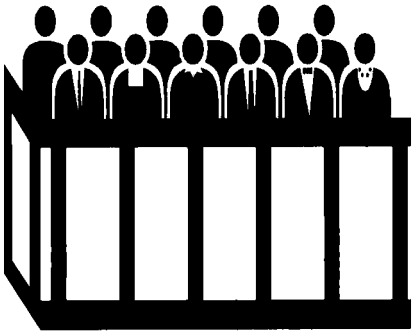
The Dean and the President of PhoenixLawwill have discretion to decide which departments and employees will be required to work during the schools closing based upon school, facility, administrative or security needs.

Bereavement Leave

Following the completion of 90 days of continuous employment, regular full-time employees are eligible to take up to a maximum of five (5) paid days per calendar year for bereavement leave in the event of the death of an immediate family member. An employee must notify his/her supervisor as soon as possible if the need to take bereavement leave arises. Documentation of the family relationship may be requested.

For purposes of Bereavement Leave, the term "immediate family member" includes the employee's parents, siblings, spouse, children, grandparents, parents-in-law, and/or corresponding "step" relation.

Jury and Witness Duty



PhoenixLaw will grant time off to any employee summoned for jury duty (including grand jury duty) or to appear as a witness in court or at a deposition. You must provide your supervisor with reasonable advance notice and written proof that you must attend or appear. PhoenixLaw will pay the employee's regular pay, less any sums received for performing jury duty or appearing as a witness, for a maximum of two weeks (or 10 business days, if the service or appearance is not on consecutive days). During any period of jury duty, PhoenixLaw will continue the employee's participation in all employment benefits, provided that

(a) the employee is otherwise eligible and continued participation is permitted under the terms of the plan, and (b) the employee continues to pay his/her normal premium contribution.

Military Leave

PhoenixLaw provides unpaid leaves of absence for military reserve training, active reserve duty, active duty, or other military duty in accordance with the requirements of applicable law. If an employee will be absent from work because of military duty, he or she must advise his or her supervisor as soon as reasonably practicable, and supply a copy of any written orders or other relevant correspondence from the appropriate military authority.

Leave for Annual Training

Full-time employees who are members of the U.S. Army, Navy, Air Force, Marines or Coast Guard reserves or the National Guard may be granted leaves of absence for the purpose of participating in reserve or National Guard training programs. Employees shall be granted the minimum amount of leave needed to meet the minimum training requirements of their units. No employee will be required to use vacation time for military duty, but employees who do elect to schedule their vacations to coincide with military duty will receive their full regular vacation pay in addition to any pay from the military.
In recognition of the public service performed by reservists and members of the National Guard, employees shall receive up to two weeks of their regular pay during the training period.

Leave for Active Reserve or National Guard Duty

Full-time employees who are members of the U.S. Army, Navy, Air Force, Marines or Coast Guard reserves or the National Guard may be granted leaves of absence for the purpose of participating in active duty tours. Whatever portion of the two weeks of regular pay for annual leave training will be available to the employee to use at the beginning of their leave for active duty. After exhausting those day, the remaining leave will be unpaid.

Employees will be granted leave as required to complete the tour of duty, for up to five (5) years of cumulative uniformed service-related absences. There are some exceptions that may apply that are exempt from counting towards this five year accumulation.

Employees with leaves of less than 31 days must report back to work by the beginning of the first regularly scheduled work period after the end of the last calendar day of duty, plus the time required to return home safely and have an eight hour rest period.

Employees with leaves between 31 and 180 days must apply for re-employment no later than fourteen (14) days after completion of uniformed service. Employees with leaves longer than 180 days must apply for re-employment no later than ninety (90) days after completion of uniformed service. Employees will be ineligible for re-employment if released from uniformed service under dishonorable or other punitive conditions.

Time spent in the reserves or the National Guard will be credited to all employees toward meeting length of service requirements for eligibility for retirement benefits and vacation entitlement. Employer 401(k) contributions, however, may be suspended during military service because the employee is not in pay status, and employees will not accrue vacation while in the military.

Benefit Coverage While on Leave for Active Reserve or National Guard Duty

Medical & Dental Coverage
Employees must decide within 60 days of their leave if they wish to continue their employer-based health and dental coverage. This coverage may be extended for up to 24 months while they are on active leave duty. For leaves fewer than 31 days, the employee is responsible for paying their regular share of insurance premiums. For leaves over 31 days, the employee will be responsible for the premium. coverage is elected and payment is not received within 60 days of election, then coverage will be terminated.

If employees do not elect continuation coverage, PhoenixLaw will reinstate the employee in the plan(s) upon their re-employment, without waiting period or exclusions.

COBRA paperwork for medical and dental will also be sent to active leave employees. COBRA will allow up to a maximum of 18 months continued coverage.

401(k) Plan
Since active leave duty is unpaid, normal deferrals cannot occur through payroll deduction, so no additional deposits will be made to the employee's account. Upon re-employment with PhoenixLaw, the employee can elect to make up deferrals up to the annual limit for the year(s) they were on leave. Upon re-employment, PhoenixLaw will make up any PhoenixLaw match the employee is eligible for. Since this plan has beneficiaries on file, the employee should make sure the information is up to date.

Life Insurance
Since active leave duty is unpaid, the employer paid Basic Life and AD&D benefit will terminate. Employees who have elected the voluntary supplemental life insurance coverage can continue their coverage as this benefit is portable. The employee will be responsible for electing continued coverage and making any premium payments. If coverage is elected and payment is not received, then coverage will be terminated.

Upon re-employment with PhoenixLaw, the employee can elect to reinstate their coverage in the plan(s) within the 30 day eligibility period with no exclusions. If the employee has not been previously approved for coverage over the Guarantee Issued amount prior to active duty and elects coverage over the Guarantee Issued amount upon re-employment, they must submit an Evidence of Insurability form and seek approval from the insurance company for coverage over the Guarantee Issued amount.

Since this plan has beneficiaries on file, the employee should make sure the information is up to date.

Vacation and PTO
Employees have three options for their vacation time that has been accrued:

1) Be paid the accrued amount on the last check due once their leave starts,
2) Leave the accrued vacation for when they return from active leave duty, or
3) Use the accrued vacation to replace a portion of the unpaid leave.

Any accrued PTO will carry over and be saved for when the employee returns.

[redacted]

Family and Medical Leaves of Absence

PhoenixLaw is committed to providing employees with all leave required by applicable state and federal law. If an employee qualifies for state and federal FMLA leave, the company will count leave under both laws to the extent permitted by applicable law.

Unpaid leaves of absence are granted to eligible employees for the reasons provided in the federal Family and Medical Leave Act ("FMLA") and are made available in accordance with, and subject to, the conditions provided under the FMLA and its regulations, except to the extent that this policy may expressly provide more generous benefits.

Eligibility for Leave:

- Employees who have worked for PhoenixLaw for at least 12 months and for at least 1,250 hours in the 12 months prior to when the leave will commence;
- has not used all available FMLA leave in the 12 months looking back from the date the requested leave will begin; and
- there is a qualifying event.

Reasons for Leave: Eligible employees may take a family or medical leave for any of the following reasons:

- the birth of a child or placement of a child with the employee for adoption or foster care, and in order to care for the child;
- to care for a spouse, child, or parent ("covered relation") with a serious health condition; or
- the employee's own serious health condition which renders him/her unable to perform the essential functions of the employee's position, including workers' compensation leaves.

Duration of Leave: A family or medical leave may be taken for up to a maximum of 12 weeks in a 12-month period- The 12-month period is defined as a rolling 12-month period measured backward from the date an employee takes any FMLA leave.

Leave in connection with child birth or placement and to care for the child must be completed within the 12-month period beginning on the date of birth or placement. In addition, spouses who are both employed by PhoenixLaw who request leave for child birth or placement or to care for an employee's parent with a serious health condition may only take a combined total of 12 weeks leave during any 12-month period.

Spouses who are employed by the company and who request FMLA leave for the birth, adoption or foster care placement of a child with the employee, are eligible for a combined 12 weeks between the two employees. In other words, both employees continue to be eligible for 12 weeks of FMLA, but may only take 12 weeks between them for this event. If the leave is for birth, adoption or foster placement of a child with the employee, the leave must be taken within 12 months of the birth or placement. If the leave involves a serious health condition, it can be taken on an intermittent or reduced schedule basis if medically necessary; however, the employee may be temporarily transferred to another position that better accommodates the need for leave

Intermittent Leave: Leave may be taken intermittently (in separate blocks of time) or on a reduced schedule (reducing the employee's usual weekly or daily work hours) if medically necessary. Child care leave may be taken intermittently only with PhoenixLaw's permission. To accommodate intermittent leave, PhoenixLaw may temporarily transfer the employee to another position with equivalent pay and benefits. Additionally, an employee needing intermittent leave must consult with PhoenixLaw regarding the scheduling of such leave so as to minimize the disruption to PhoenixLaw's operations.

Notice of Leave: If the need for family or medical leave is foreseeable, an employee must give PhoenixLaw at least 30 days prior written notice. Where the need for leave is not foreseeable, the employee must give notice as soon as possible (within 1 to 2 business days of learning of the need for leave, except in extraordinary circumstances). Failure to provide such notice may be grounds for delay of leave. Notice to the local Human Resources Department when requesting a leave is accomplished by completing a Request for Leave of Absence form or by requesting a meeting with Human Resources. The Request for Leave of Absence forms are available in the Human Resources Department at the employee's location. The notice may be provided via electronic means (phone, facsimile, email) or via a spokesperson (spouse, adult family member). Communication by an employee's spokesperson is permitted only in the event the employee is unable to communicate the request themselves.

Military Caregiver Leave: Eligible employees with a spouse, son, daughter, or parents on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12 week leave entitlement to address certain qualifying exigencies. Eligible employees are also able to take up to 26 weeks of leave during a single 12 month period to care for a covered service member who has a serious injury or illness incurred in the line of duty on active duty. Such injury or illness is defined as that which may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disabled retired list.

Medical Certification: If leave is requested because of the employee's or a covered relation's serious health condition, the employee must supply medical certification from the relevant physician or other health care provider. When an employee requests leave, PhoenixLaw will notify the employee of the medical certification requirement and the deadline for returning the certification (at least 15 calendar days after the employee receives the form). If an employee gives at least 30 calendar days' notice of the need for leave, medical certification should be provided to PhoenixLaw before leave begins. Failure to provide timely medical certification may result in delay of leave until it is provided. In some circumstances, PhoenixLaw may require second or third opinions (at its expense) or recertifications during the period of leave. Medical certification forms are available from the Human Resources Department.

If the leave time estimated by the health care provider expires, the employee must submit a recertification if the employee desires additional leave. This recertification must be received by Human Resources at least two (2) business days prior to the expiration of the date of the leave. In addition, extensions will not be granted that cause the total period of the leave to exceed the 12-week limitation, except as may be required by law.

Reporting While on Leave: PhoenixLaw may request that an employee on leave report periodically on his/her status and intention to return to work. In addition, an employee must give notice as soon as practicable (within two business days if feasible) if the dates of the leave change or are extended or initially were unknown.

Pay During Leave: All accrued paid time off (vacation, or personal days) must be used at the beginning of an FMLA leave. If the leave is for the serious health condition of the employee or to care for a parent, spouse, or child that has a serious health condition, accrued sick time must be used prior to accrued vacation. Any portion of a leave that occurs after all vacation and personal days have been exhausted, will be without pay, except for any payments to an employee eligible for workers' compensation or short-term disability benefits. The substitution of paid time off for unpaid leave time does not extend the length of any leave period. Instead, the paid time runs concurrently with the unpaid FMLA leave. No additional paid time off accrues during the unpaid portion of an FMLA leave.

Continuation of Benefits: If an employee participates in PhoenixLaw's group health plan, PhoenixLaw will make its usual contributions to the premium cost of that plan during an FMLA leave, provided that the employee continues to pay his/her normal premium contribution. For any part of a leave that is paid, employee contribution(s) will be deducted from his/her pay. For unpaid portions of a leave, the employee will be notified by the Benefits Manager and must send a check to PhoenixLaw for the amount of the contribution(s). Coverage under other group insurance plans in which the employee is enrolled will be continued at the employee's option, provided that the employee timely remits the appropriate premium(s) to PhoenixLaw.

Premium payment(s) are due on or before the date on which the employee would otherwise make premium contributions by payroll deduction or by the last working day of the month, whichever is later. If payment is not received within 30 days of the due date, coverage may be cancelled. If necessary, the employee will be allowed to discontinue coverage and be reinstated to the plan, if he/she returns to work on or before expiration of the FMLA leave.

An employee who fails to return to work at PhoenixLaw at the conclusion of an FMLA leave may be required to reimburse PhoenixLaw for any health insurance premiums paid by PhoenixLaw for the employee's coverage during any unpaid portion of the leave. In addition, if PhoenixLaw paid the employee's share of any premium to continue participation in any other benefit plan(s) during unpaid FMLA leave, the employee may be required to reimburse the PhoenixLaw for such payment(s).

Returning From Leave: Employees should notify Human Resources of their intent to return to work, two weeks prior to the anticipated date of return, or of any medically necessary changes in the date of return. Upon returning from a family or medical leave that has not exceeded 12 weeks, an employee will be returned to the same position that he/she held when the leave began, or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. The employee will be reinstated without loss of employment rights or benefits that the employee had earned or accrued prior to the beginning of the leave, except to the extent such benefits were used or paid during the leave.

An employee returning from medical leave due to childbirth or his/her own serious health condition will be required to provide a fitness for duty release from a healthcare provider that certifies the employee's ability to return to work. Failure to provide this certification may delay the employee's return to work.

If an employee believes that an absence that was not designated in advance as FMLA leave would qualify as such, the employee should notify PhoenixLaw as soon as possible, but in any event not later than two business days after returning to work from such absence.

Key Employees: A key employee, defined under the FMLA as someone among the highest paid 10% of PhoenixLaw's workforce, may in certain circumstances not be returned to his/her former position or its equivalent following a leave. PhoenixLaw will inform key employees of this status at the time leave is requested, and will notify such employees if and when PhoenixLaw determines that it intends to deny reinstatement.

Termination of Employment. An employee on leave who decides not to return to work should inform PhoenixLaw of his/her decision as soon as possible. PhoenixLaw may then end the leave and employment will terminate. Employment also will be terminated if an employee accepts or engages in other employment or work during an FMLA leave, or if an employee makes any misrepresentation to obtain or continue a leave.

Employees are otherwise expected to return to work on the first day (or their first scheduled shift) following the end of their leave. If an employee returns to work on or before the expiration of available FMLA leave, the employee will be returned to their former position or an equivalent job. If, however, an employee fails to return to work at the end of an approved leave, employment normally will terminate. In PhoenixLaw's discretion, and taking any applicable law into consideration, PhoenixLaw may extend the employee's leave or take other appropriate action short of termination. An absence for FMLA leave is not considered an "occurrence" for purposes of PhoenixLaw's attendance policy.

Personal Leaves of Absence

PhoenixLaw may grant a personal leave of absence for unique or extraordinary reasons that may not apply to the other types of leave of absence provided that, as with all other types of leave of absence, the maximum amount of leave of absence time has not been used.

Eligibility for Leave: A regular full-time employee with at least six months of continuous service may request an unpaid leave of absence for medical or personal reasons.

Requests for Leave: Whether to grant an unpaid leave is determined in the sole discretion of PhoenixLaw on a case-by-case basis and the business needs of the organization. In general, a personal leave will not be granted for more than four weeks. Employees must request a leave of absence in writing addressed to his or her manager with a copy to the local Human Resources Department, stating the reason for the leave, the intention to return to work, and the estimated date of return. Requests for medical leave must be supported with documentation from a health care provider regarding the need for leave. Additional information and/or details regarding the request may be required in the discretion of PhoenixLaw.

Any misrepresentation made to obtain or continue a personal leave of absence is grounds for immediate termination of employment.

Leave is Unpaid: Prior to beginning an unpaid personal leave, the employee must exhaust all accrued paid time off. No additional paid time off accrues while an employee is on an unpaid leave pursuant to this policy. An employee may continue health insurance coverage and participation in any other group insurance plan at his/her own expense.

Medical Certification: An employee returning from medical leave due to personal illness/injury will be required to provide a fitness for duty release from a healthcare provider that certifies the employee's ability to return to work. In some circumstances, PhoenixLaw may require the employee to undergo a physical examination, by a doctor chosen and paid for by PhoenixLaw, to verify the employee's ability to return to work.

Reinstatement: PhoenixLaw cannot guarantee that the employee's position will be available upon return from an unpaid personal leave of absence. If business needs require that PhoenixLaw fill the employee's position while he/she is on leave, efforts will be made to reinstate the employee to an appropriate available position. If an employee is unable to return to work at the end of a personal leave of absence, his/her employment normally will be terminated. In PhoenixLaw's discretion, and taking any applicable law into consideration, PhoenixLaw may extend the employee's leave or take other appropriate action short of termination.

[redacted]

Voluntary Short-Term Disability Benefits Policy

This policy is in effect as of May 1, 2012

This policy applies to employees who are eligible for Voluntary Short-Term Disability insurance and have been properly enrolled.

The Consortium's voluntary short-term disability plan provides partial pay (60% of weekly covered earnings -to a maximum of $1,000 per week) for Employees who are unable to work due to non-work related illness, injury, or disability, after an absence of more than seven (7) consecutive calendar days. Benefits begin on the eighth (8) day of disability and coverage continues until the end of the twelve-week benefit period, or until the Employee no longer qualifies for benefits, whichever occurs first.

Disability claims must be filed with the insurance vendor within 31 days after becoming disabled, unless the Employee has a valid reason why they cannot file a claim, such as being hospitalized and/or not having a family member to file on their behalf. Short-term disability leave must be certified by a physician or licensed health care professional identifying the nature of the disability, and stating or estimating the date when the Employee will be able to return to work. If the Employee cannot return on that date, another statement from a physician or licensed health care professional, with a new return date, will be required. Employees will not be able to return to work without submitting to Human Resources a note from a physician or licensed health care professional authorizing the Employee's return.

Any FMLA leave to which an Employee may be entitled runs concurrently with time off granted under this policy. Employees cannot take full short-term disability benefits, and then take twelve weeks off under the FMLA; any time spent on short-term disability counts as part of an Employee's FMLA leave.

The Consortium will attempt to reinstate an Employee who is returning from a short-term disability leave to his/her former position at the same rate of pay that the Employee held prior to the leave. However, unless an Employee is entitled to return to his/her former position or an equivalent position under the Family and Medical Leave Act, the Consortium cannot guarantee that the Employee's prior position will be held open until the Employee returns to work. If the Employee's prior position is unavailable or if there are no available positions for which the Consortium concludes he/she may be qualified at the rate of pay for the new position, or if the Employee chooses not to return to work at the end of the leave, the Employee's employment will be terminated. If an Employee does not return, the termination date is the earlier of the last day that the Employee was authorized to return or the date the Employee notifies his/her Supervisor that he/she is not returning. An Employee who returns to work following a short-term disability leave will be considered as having continuous service.

Employees approved for short-term disability are prohibited from working at the workplace or at any other location, including the Employee's home, either for the Consortium or otherwise.

Managers are prohibited from requesting that Employees who are on short-term disability leave perform any work related tasks or duties. However, in the event of unforeseeable situations that requires Managers to request that an Employee perform work while on short-term disability leave, Managers must immediately notify the Human Resources department and the Employee must immediately notify the Short-Term Disability Carrier.

Pay During Leave

Employees who have elected short-term disability will use personal/vacation time during ***the 7 day elimination period***. The seven (7) day elimination period is defined as seven (7) consecutive calendar days. After the seven (7) day elimination period Employees can elect one of the following options:

1. Employees who have elected short-term disability will be able to choose to continue using their personal/vacation time for 100% pay until exhausted then receive any remaining/eligible short-term disability pay. Personal/vacation time will continue to accrue.

   OR

2. *Employees who have elected short-term disability will be able to elect to use their personal/vacation time to supplement the remaining 40% that is not covered by short-term disability;

   OR

3. *Employees who have elected short-term disability will be able to elect being covered by short-term disability only and receive 60% of their pay from short-term disability, without using any of their personvacation time to supplement the remaining 40%.

***PLEASE NOTE: Vacation, Personal Leave and Holidays** Regarding options 2 and/or 3 above; during the period of time an Employee is on short-term disability leave, no additional paid time off accrues. In addition, employees will not be eligible to receive any holiday pay during his/her short-term disability leave.

Continuation of Benefit Plan Coverage

If an Employee participates in the Consortium's group health plan, the Consortium will make its normal contributions to the premium cost of that plan during a short-term disability leave, provided that the Employee continues to pay his/her normal premium contribution.

For any part of a leave that is paid, Employee contribution(s) will be deducted from his/her pay.

- Benefit premiums will be deducted from the Employee's personal/vacation time and/or their supplemental 40%.
- If Employees benefit premiums are not able to be covered by the Employee's personal/vacation time and/or their supplemental 40%, then the Employee will be responsible for paying that portion of their premium that is not covered.

For unpaid portions of a leave, the Employee will be notified by the Benefits Manager and they must send their payment to the Consortium's Benefits Manager for the amount of the contribution(s). Coverage under other group insurance plans in which the Employee is enrolled will be continued at the Employee's option, provided that the Employee remits the appropriate premium(s) in a timely manner to InfiLaw.

Premium payment(s) are due on or before the date on which the Employee would otherwise make premium contributions by payroll deduction or by the last working day of the month, whichever is later. If payment is not received within 30 days of the due date, coverage will be cancelled.

An Employee who fails to return to work at the Consortium at the conclusion of an FMLA/short-term disability leave will be required to reimburse the Consortium for any health insurance premiums paid by the Consortium on the Employee's behalf. In addition, if the Consortium paid the Employee's share of any premium to continue participation in any other benefit plan(s) during unpaid FMLA/short-term disability leave, the Employee will be required to reimburse the Consortium for such payment(s).

Salary Action

Any planned salary increase for an Employee returning from a short-term disability leave of absence will be addressed when the Employee returns to work, pro-rated by the length of the leave. The regular performance appraisal date will apply.

Intermittent Leave

Under most circumstances, short-term disability pay continuation is not available for intermittent medical leave. The Employee should remain on disability leave until ready to return to work and can perform the essential functions of their position with or without reasonable accommodation. In most cases, Employees will be expected to use personal/vacation time for intermittent absences due to medical conditions. Supervisors should contact the Human Resources Department in the case of circumstances that may justify an exception.

Short-Term Disability Carrier's Return-To-Work Incentives/Criteria

The Short-Term Disability Plan encourages Employees to return to work as soon as medically feasible. It includes return-to-work incentives that offer both the opportunity and the encouragement to successfully return to productive employment.

Return-to-Work Incentive Benefit

Employees may continue to receive benefits if they return to work but continue to meet the definition of disability.

For any week that the sum of their disability benefit, current earnings and any additional income benefits exceed 100% of their weekly covered earnings, the Short-Term Disability Carrier may reduce the benefit by the excess amount.

If Employee's return to work while benefits are payable, but are not performing to the level of their optimum ability in that work – as determined by independent medical specialists qualified to make such an evaluation – the benefits payable under this plan will be reduced by the difference between what the Employee actually earns, and what they would be earning if working to the level considered by those specialists to be their optimum ability.

Confidentiality of Records

Human Resources will work with the Supervisor and the Employee to ensure that appropriate procedures are followed while maintaining the confidentiality of the Employee's medical information.

The Employee is required to discuss the anticipated period of absence and plans to return to work with their Supervisor and Human Resources and needs to provide certifications required by STD, FMLA, and any other applicable policies.

Personal Leave Donation Program

The purpose of the Personal Leave Donation Program is to provide additional support to eligible employees encountering extenuating medical emergencies. It allows eligible employees to voluntarily donate personal leave to a Personal Leave Donation Bank and approved individuals in critical need to access a portion of the donated personal leave after all their available paid leave has been exhausted.

The act of soliciting and/or accepting any form of compensation, gratuity, or anything of value directly or indirectly in return for donating or receiving time off relating to the Personal Leave Donation Program is strictly prohibited.

This program is intended to comply with IRS regulations for qualified leave sharing programs.

Recipient Eligibility:

This policy applies to all active, full-time, non-faculty employees who have completed ninety (90) days of employment and have: (1) a documented medical emergency of self or immediate family members that requires an extended unpaid absence from work; (2) exhausted all forms of paid leave; and (3) must be eligible to accrue personal leave.

An eligible employee may seek to draw from the leave bank if the employee needs more paid leave in the event that he or she experiences a medical emergency, needs to tend to a parent, spouse, domestic partner, or child who has experienced a medical emergency, or needs additional time off for bereavement in the event of the death of a parent, spouse, domestic partner, or child.

A medical emergency is defined as "a medical condition of the employee or a family member that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the leave-sharing plan." Excluded medical conditions are those conditions resulting from workers' compensation or self-inflicted injuries, or injuries that may have occurred during the course of committing a criminal act, i.e. felony or assault.

Employees may not use donated time during a period of disciplinary suspension, or if they are currently receiving short or long term disability benefits, or currently receiving personal (private) disability or Workers' Compensation insurance benefits, or have a Workers' Compensation claim pending that is allegedly related to the absence.

Donating Personal Leave for Medical Emergencies:

Active, full-time, non-faculty employees, who are in good standing, have been employed for at least one (1) year, and are not currently on an approved leave of absence can donate personal leave on a strictly voluntary basis up to two times per year. Donated personal leave is converted into hours/days and has no cash value, regardless of the differences between the donor employee and recipient's pay rates.

All donations are irrevocable and irreversible.

To donate personal leave, the Personal Leave Donation Form- Medical Emergencies must be completed and submitted to the location Human Resource Director for approval during the specified donation periods.

The donation amount must be in whole day increments with a donation minimum of eight (8) hours and may not exceed eighty (80) hours (10 days) total in a calendar year.

Employees who donate personal leave are allowed to donate up to half the amount that has been banked from the previous year in the employee's personal leave account, up to a maximum of forty (40) hours (5 days) per donation period.

Employees cannot borrow against future personal leave to make a donation to the Personal Leave Donation Bank or incur a negative personal leave balance as the result of donating under the Personal Leave Donation Program.

The identity of employees who donate Personal Leave is confidential and will not be provided by individuals administering the Personal Leave Donation Program to the recipient or to any other individual unless necessary to administer the Program or as required by law or regulation.

Requesting Donated Personal Leave for a Medical Emergency:

The eligible requesting employee must complete the Personal Leave Donation Request Form and notify their immediate supervisor of their intent to request donated leave. The completed form must be submitted by employee to the location Human Resource Director along with appropriate medical documentation or physician's letter provided by the attending physician or certified/licensed provider. If the employee is unable to physically or mentally complete the form, the employee's immediate family member can initiate the request on their behalf. All medical information will be kept strictly confidential and used only to determine eligibility for the donated personal leave.

The recipient employee may receive up to a maximum of eighty (80) hours (2 weeks) of donated personal leave within a calendar year (based upon balance available in bank. **An employee can receive donated personal leave from the leave donation bank a maximum of 2 times during a calendar year period.** Personal leave for a particular medical emergency may only be used for that event and must be used within a reasonable period of time, closest to the time of need. The total amount of personal leave requested from the Donation Bank cannot exceed the projected length of time medically certified for the covered condition. Unused personal leave granted from the Donation Bank will be returned to the Donation Bank.

The employee's use of donated leave ends when one or more of the following occur: the employee returns to work; the maximum amount of donated leave or the number of times an employee may use the donated leave has been exhausted; medical documentation releases the employee to return to work; there are no more donations of leave time available for donation to the employee; or the company terminates the program.

Employees cannot receive cash in lieu of Donated Personal Leave.

Donated Personal Leave is a taxable benefit to the recipient employee.

Human Resource Process

The Personal Leave Donation Program Review Committee, consisting of the location Human Resource Director and 2 representatives, from the leadership team is responsible for reviewing applications requesting a donation from the Personal Leave Donation Bank, verifying all other paid leave has been exhausted, and determining final eligibility. The location Human Resource Director may request additional information from the applicant or his/her manager to determine eligibility.

The Review Committee's decision is final and cannot be appealed. Human Resources will ensure no decision is made on the basis of race, color, ancestry, national origin, sex (including pregnancy), age, disability, marital status, sexual orientation, citizenship status, religion, genetic information, veteran's status, or any other basis that is prohibited by law.

Each location has a separate Personal Leave Donation Bank, wherein recipient employees will only be permitted to draw from the Donation Bank at their location and donating employees will only be permitted to donate to the Donation Bank at their location. **Recipients are limited to the extent there is a balance in the Donation Bank.**

The Company reserves the right to make future modifications to the policy or eliminate the program at the Company's discretion. If the Company decides to terminate the Program, the contributions banked will be depleted or forfeited within a 12 month period.

At the end of each calendar year, unused donated time, up to a maximum of 1,000 hours, will be rolled over for use in the next calendar year.

SECTION E - CAREER ADVANCEMENT & SELF-DEVELOPMENT

Employee Growth

PhoenixLaw encourages the long-term growth and development of its employees, and will consider any qualified employee for upward mobility. There are critical qualities PhoenixLaw considers when a position becomes available. PhoenixLaw will evaluate your qualifications and past performance including performance evaluations and 360 reviews, along with your potential and capacity to assume the increased responsibilities involved in the new position. In all cases, PhoenixLaw makes its decisions based on performance and ability rather than just the length of employment.

Performance Reviews

Employees in regular full-time and regular part-time positions will be formally evaluated at least once per calendar year unless management determines that a different time period is appropriate. Employee evaluations are designed to give management and the employee an opportunity to review employee performance, discuss job assignments and objectives for the next year, encourage and recognize strengths, identify opportunities for improvement, and discuss positive, purposeful approaches for meeting individual and organizational goals. Performance reviews do not automatically become the basis for a salary increase. Management is encouraged to conduct informal performance discussions with their staff on a quarterly basis.

Pay Adjustments

It is within PhoenixLaw's sole discretion to decide whether any adjustment to pay will be made, the basis on which it is made, its amount and when it is effective. Factors in pay decisions may include, but are not limited to, an employee's performance in his/her current position, employee's support and modeling of the PhoenixLaw culture, mission, vision and values, any increase or decrease in job duties or responsibilities, and availability of funds.

Education Assistance Programs

The Education Assistance Program provides financial assistance to eligible employees to maintain or improve their skills in their current positions.

Application

This policy applies to all regular, full-time employees. PhoenixLaw offers two educational assistance programs for employees to continue their professional growth and development. The two programs are the Tuition Reimbursement Program and the Tuition Waiver Program. PhoenixLaw also offers a Professional Development Reimbursement Program which is described in a separate section below.

Procedure

The complete policies and applications are posted in the Human Resources section of the website for employees to review the eligibility and plan criteria along with the process required for each program.

Tuition Reimbursement Program

The Tuition Reimbursement Program allows full-time employees in good standing to apply to take up to two job-related degree courses per semester at accredited institutions. Upon satisfactorily completing the course(s) with a grade of "C" or higher, the tuition fees will be reimbursed 100% by PhoenixLaw, up to an annual maximum of $5,000. Please contact Human Resources for the entire policy.

Tuition Waiver Program
The Tuition Waiver Program will allow full-time employees and eligible dependents that meet the eligibility and plan criteria to take courses toward their JD degree at your school location. Registrants will apply for courses prior to each semester, and upon receiving proper approval PhoenixLaw will waive 100% of the tuition fees for that semester. Please contact Human Resources for the entire policy.

Professional Development Program
The work performance of an employee is a vital key to the success of our organization. Providing professional development to our employees is an investment in their careers and the organization's future.

Application
Full-time regular employees are eligible for reimbursement for professional development programs costs that are approved by their immediate supervisor in accordance with the department's budget. It is the employee's responsibility to seek out the courses and other training mediums that will enhance his or her career development and are in line with the organization's mission. It is at the discretion of the location to provide payment in advance or as reimbursement of expenses, depending on the program.

Procedure
All regular full-time employees are eligible for professional development reimbursement in accordance with the department's budget.

Professional development can be obtained through attendance at seminars, educational courses and that once acquired will assist the employee in performing his or her essential job functions and increase the employee's contribution to the organization. Other professional development expenses that are covered under this policy are certification courses, seminars, membership fees to professional organizations, and registration fees for meetings.
Employees must request permission from their immediate supervisor in advance for review and approval to attend and to receive reimbursement/payment for desired training and/or resource. The request must include purpose, job relevance, cost, dates, times of coursework and name source of training.

Reimbursement
The maximum reimbursement will be up to the discretion of the employee's immediate supervisor in accordance with the amount budgeted by the school. If approved, but not used, the amount does not roll into the next calendar year; it is forfeited. The employee is responsible for cancelation within the required timeframe allotted by the organization.

Job Postings

If employees are interested in applying for open positions within the school, they should speak with their supervisor about their interest, and upon receiving approval to post, send their cover letter expressing interest and qualifications, along with their resume, to Human Resources. Employees who have a written warning on file within the last year or are on disciplinary probation or suspension are not eligible to apply for posted jobs.

If employees know of qualified candidates that might be interested in applying for any of the open positions, please have them submit their resume and cover letter to hr@phoenixlaw.edu.

Promotions & Transfers

When an employee is promoted, transferred, or selected to fill a vacancy, all salary recommendations must meet budget approval and be discussed with HR prior to offer. HR contacts the employee's current manager to inform them of an impending offer. Human Resources makes a verbal offer to the selected candidate. If the selected candidate accepts, the current and hiring managers discuss the proposed start date. The minimum notice to the employee's current department is 2 weeks, unless otherwise negotiated. The current department can request to keep the employee until a replacement is found, if circumstances warrant. If a mutually beneficial start date cannot be successfully negotiated between the two managers, the President and Dean, or CEO, if applicable, will make a final recommendation. HR then generates an offer letter and this initiates the promotion or transfer process. Please be advised that a transfer to a new position creates a new hire status thus triggering a 90 day or longer introductory evaluation period.

SECTION F - SECURITY AND SAFETY

Security

In addition to building security personnel, PhoenixLaw has dedicated, evening Security to maintain a high and professional level of security within PhoenixLaw controlled areas as well as common building areas such as parking lots and courtyards. The security staff is available to all students and staff to meet their security needs, including escorting them to vehicles, etc.

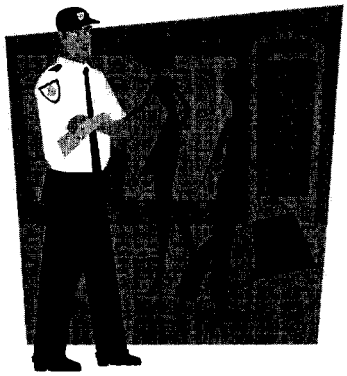
PhoenixLaw is not responsible for personal articles on its property. Always be alert and report anything that is suspicious or threatens our security to your supervisor or to another management person.

Phoenix School of Law prohibits the use, possession, display or storage of any weapons, explosive device, fireworks, and all other dangerous or hazardous devices or substances in all buildings or vehicles owned or under the control of Phoenix School of Law, and at all PhoenixLaw sponsored events, except as provided in *Arizona Revised Statutes* § 12–781.

Additionally, all students and employees with knowledge of violations of this policy are required to report these violations to the President, Dean, or Associate Dean. *If in your judgment you feel there is a threat to your safety, call 911.*

The Dean, or an employee designated by the Dean to maintain order, may have an individual or group removed from the premises if the Dean or Dean's designee believes the person is committing an act or has entered the premises with the purpose of committing a violation of this policy. Violations of this policy will be considered misconduct and subject to disciplinary action that may result in the ejection from the school and/or confiscation of the weapon, dangerous instrument, etc. Violations may also result in arrest according to applicable Arizona state statues.

Please refer to the Emergency Response Plan for specific instructions regarding emergency situations. This plan is available from Human Resources or on the Juristec website.



Building Access/Security Policy

Objectives of Policy:
- Maintain a safe environment for students and employees.
- Protect the assets of our students, employees and institution.
- Control access to the facility by allowing only authorized personnel entry to the facility.

Access Cards and Hours of Access:
- Employee ID / Access cards are issued on the first day of employment.
- Students and Employees have 24/7 access to the building.

Building:
- The front entrance remains unlocked during daytime hours – Monday through Friday.
- A security officer is stationed in the lobby during the times that the doors are unlocked.
- Valid access card scan is required to proceed beyond the lobby.
- Access cards are required to enter the building through the front lobby evenings and weekends.
- Access cards are required to enter the building through the garage at all times.
  See Door Lock Schedule below.

Garage:
- Access cards are required at all times to enter the parking garage.
- Access cards allow for only one entry within a 15-minute period.
- Exit from the garage is controlled by sensor – access cards are not required.
- The roll-up grate closes at 8:00pm weekdays and on weekends. The roll-up grate opens and closes in conjunction with the gate arm, upon entry and exit, and can be opened manually for bicycles which are not heavy enough to trip the sensor.

Elevators:
- Access cards are required to operate the elevators between midnight and 6:00 am every day, and all day on holidays.

Visitors / Contractors / Deliveries:
- Visitors, Contractors & Delivery personnel are required to present valid ID, sign in at Lobby Security, wear a temporary Visitor badge and be escorted, by an employee, to their destination within the building.
- Building Security will contact employees by phone upon arrival of visitors. Advanced notice of visitors and employee contact information is strongly encouraged. Please complete the Visitor Notification Form available on Juristec to notify the PhoenixLaw receptionist and security.

Events
- Please complete the Event Notification form located on Juristec. This form will notify the Receptionist and Security of the details of your event.
- Event organizers are required to station representatives in the lobby to greet visitors, authorize building access, issue temporary visitor badges and escort attendees to the event location.
- All visitors will be issued and required to wear a temporary visitor badge.

Security:

- A PSL-assigned security officer is stationed in the PSL lobby between 6:30 am and 6:00 pm on weekdays (times that the front doors are unlocked). The officer is assigned to make rounds of the PSL floors between 6:00 pm and midnight weekdays, and between 6:00 am and midnight on weekends, to ensure the safety of the building and occupants.
- A security officer, assigned to the entire building, is on site 24 hours per day – everyday. This officer is stationed in the ONC Lobby between 6:00 am and 6:00 pm weekdays and is assigned to make rounds of the entire building and parking garage between 6:00 pm and 6:00 am weekdays and all weekend.
  An additional security office is assigned to make rounds of the entire building and the parking garage 24 hours per day, seven days per week.
- Security services are provided by contract with Trident Security Services. Security may be contacted by email: buildingsecurity@phoenixlaw.edu or by calling 602-689-9942.

Door Lock Schedule
(Doors are locked during the below listed times – access cards required)

	Monday through Friday	Weekend	Holiday
Front Doors	6:00pm – 6:30am	Always	Always
Parking Garage Elevator Lobby Doors	Always	Always	Always
Parking Garage Gate Arm	Always	Always	Always
Parking Garage Roll Up Grate	8:00pm – 6:30am	Always	Always
Employee Mail Room	Always	Always	Always
Library Study Area – 13th Floor	6:00pm – 6:30am	Always	Always
Administrative Suite – 13th Floor	6:00pm – 6:30am	Always	Always
Administrative Suite – 19th Floor	6:00pm – 6:30am	Always	Always
Elevators	Midnight – 6:00am	Midnight – 6:00am	Always
Judges Chambers & Courtroom Conference	Always	Always	Always

Parking

PhoenixLaw's location in downtown Phoenix makes parking limited for both employees and students. To accommodate employees, PhoenixLaw has three options for parking/transportation. Parking fees are required for the options below and are deducted via payroll deduction.

Classification	Location	Hours	Monthly Rate
Full Time Employees	PSL Garage	24 hours per day	$60.00
Adjunct Faculty and Part Time Employees	PSL Garage	24 hours per day	$30.00
Motorcycle Parking	PSL Garage	24 hours per day	$30.00
Full Time, Part Time or Adjunct	Adjacent Surface Lot (Adams Lot)	24 hours per day	$40.00
Full Time, Part Time or Adjunct	Convention Center Garage	6:00 AM – 6:00 PM, Weekdays*	$25.00
Full Time or Part Time (excluding Adjunct)	Light rail/bus pass		$15.00

Any employee or student who selects the light rail/bus pass option will forfeit their parking option.

Please only park in the lot/area that you have signed up for and are paying for via payroll deduction. If an employee is parked in a lot that they have not signed up for, and they received a ticket, PSL will not waive the ticket. The employee will be responsible for the ticket.

Due to capacity issues and fairness/consistency, alternative arrangements **will not** be made for employees who need temporary parking changes. For example, for an employee who has elected to purchase a light rail/bus pass at a discounted rate, they cannot use a visitor pass for a day they must drive into work. There are lots across the street from campus that are $5 per day that the employee can pay and park at. No employees should be using visitor passes for themselves.

In addition, PSL does not validate parking for visitors. If you have a visitor, you can work with your department administrative assistant to get the visitor a temporary pass for the Adams lot.

Parking Regulations (Including Bicycle Parking)

- Vehicles parked in the ONC garage must display a valid parking decal.
- Vehicles parked in the ONC garage must be in operable condition and have valid license plates.
- Vehicles parked in the ONC garage must be parked facing into spaces and within the designated lines.
- Sleeping overnight in vehicles in the ONC garage is prohibited.
- Garage patrons who do not have 24/7 garage access are required to vacate the garage not later than 5:00 AM daily.
- No vehicular repairs or maintenance will be made on campus except under emergency conditions with the approval of the Director of Facilities & Security.
- Notification must be made to the Director of Facilities & Security to temporarily store a vehicle on campus (e.g. an employee storing a personal vehicle while on business travel).
- Bicycle parking is limited to the bike racks, located on P2 and the entrance ramp to P2. Bicycles cannot be secured to any part of the building other than the bike racks.
- Phoenix School of Law will not be responsible for damage, theft or loss of personal property.

Parking Violations

- First Offense: Ticket - $25.00 fine
- Second Offense: Boot - $50.00 fine
- Third Offense: Tow – Up to $125.00 towing and administration fee, based upon type of vehicle towed, – payable to the towing company.
- Fourth Offense: Loss of Parking Privileges
- Parking in handicapped spaces Tow – Up to $125.00 towing and administration fee, based upon type of vehicle towed, – payable to the towing company.
- Bicycle Parking (Not in bike rack) Confiscation – bicycle returned after $50.00 fine

Questions and comments may be addressed to Facilities@phoenixlaw.edu

Garage Safety

Employees should drive appropriate speeds in the garage. If another vehicle is hit while parking, please leave a note on the other vehicle and make every attempt to contact the owner of the vehicle you have damaged. Please contact Security.

Visitors in the Workplace

Children
PSL's employment policies and benefits are indicative of our efforts to help employees balance work and family responsibilities. PSL believes in an environment that is conducive to work; therefore the workplace should not be used in lieu of childcare. Office and workspace is not designed with the safety of children in mind.

As a rule, it is prohibited for minor children to be in the workplace on a regular basis, such as after school each day or on holidays when day care is not available. In the rare instance when there are no other alternatives, and a staff member must bring a child to the workplace, advance approval should be obtained from the supervisor and the duration of the child's visit to the workplace should be kept to a minimum. It is essential that parents provide close constant supervision of their children while they are in the workplace. Children should not be left alone in vacant offices or the library. Children who are ill should never be brought to the workplace. In the unavoidable circumstance when a child must be in the workplace, under no circumstances may the child perform any work , have access to work laptops or computers or have access to any confidential information. This prohibition cannot be waived by the department manager or supervisor.

These guidelines do not prohibit children and family members from being in the workplace during school sponsored, child-friendly events.

Individuals that fail to cooperate or abuse the policy shall be subject to appropriate disciplinary action.

Animals
It is the policy of PSL, that faculty and staff are prohibited from bringing personal pets or other animals into the workplace. This applies to all campus buildings, classrooms and offices. The presence of animals can be disruptive, non-hygienic, and potentially unsafe. It is also a violation of the building property management policy. Guide dogs, and other working dogs serving the disabled, may be allowed if an Americans with Disabilities Act (ADA) accommodation is requested. Employees with an accommodation request should contact the Human Resources Department for additional information.

Emergency Building Evacuation

In the event of a building evacuation, immediately leave the building and report to the designated Phoenix School of Law meeting area. Under no circumstances should you leave the exterior premises until you have been accounted for. Please become familiar with fire exits so that you will know at all times what exit is closest to you.

Elevators will not be in service during fire-alarm activation. Please take the stairs. **Employees who need assistance or that are not able to take the stairs should notify Human Resources of their special needs on an annual basis, so that if an evacuation occurs, their exit from the building can be coordinated.**

Please do not evacuate to the parking garage.

Human Resources Hotline Information

PhoenixLaw is committed to the highest possible standards of ethical, moral and legal business conduct. In line with this commitment and our commitment to maintain open communication, this policy aims to provide an avenue for employees to raise concerns and receive reassurance they will be protected from reprisals or victimization for whistleblowing in good faith.

The whistleblowing policy is intended to cover serious concerns that could have a large impact on PhoenixLaw, such as actions that:

- May lead to incorrect financial reporting;
- Compliance issues that are unlawful;
- Are not in line with policy, including the Code of Business Conduct; or
- Otherwise amount to serious improper conduct.

To whistleblow or report serious improper conduct please contact the Hotline as follows:
- Through the Toll Free Hotline: 800-398-1496 (English) or 800-216-1288 (Spanish)
- E-mail: reports@lighthouse-services.com
- Fax alternative for written documents: 215-689-3885

Callers to the Hotline will have the ability to remain anonymous if they choose. Please note that the information provided by you may be the basis of an internal and/or external investigation into the issue you are reporting and your anonymity will be protected to the extent possible by law. However, your identity may become known during the course of the investigation. Complaints are submitted by the Hotline to PhoenixLaw or its designee.

Employment-related, routine, normal day-to-day employee concerns should continue to be reported through your normal channels such as your supervisor, local HR representative, or to the Vice President of Human Resources (239-659-4614).

Timing - The earlier a concern is expressed, the easier it is to take action.

For questions or more information on the Human Resources Hotline, please contact the Human Resources Department.

SUMMARY & CONCLUSION

Whether you have just joined our staff or have been at PhoenixLaw for a while, we are confident that you will find PhoenixLaw to be a dynamic and rewarding place to work. At PhoenixLaw, employees are considered one of the school's most valuable resources. We look forward to a productive and successful association. This employee Handbook has been written to serve as the guide for the employer/employee relationship.
If you have any questions about any policies contained in the Handbook or anything not addressed here, please do not hesitate to contact Human Resources.

PLEASE ACKNOWLEDGE YOUR RECEIPT AND UNDERSTANDING OF THE PHOENIX SCHOOL OF LAW HANDBOOK BY VIA THE INSTRUCTIONS PROVIDED BY HUMAN RESOURCES.

PHOENIX
SCHOOL OF LAW

EMPLOYEE HANDBOOK ACKNOWLEDGMENT

Please read this page, complete the information at the bottom, sign it and return it to the Human Resource Department.

- I have received a copy of the Employee Handbook. I understand that the Handbook is not a contract. I understand that I should contact the Human Resource Department for additional information regarding the information in the Handbook.
- I understand that I am employed on an "at-will" basis, which means that either InfiLaw or I may terminate my employment at any time, with or without cause.
- I understand that nothing in the Handbook in any way changes my at-will status.
- I understand that the Handbook does not contain every policy or employment practice of InfiLaw. I further understand that the Handbook supersedes any and all prior communications, Handbooks, memoranda, and notices I may have received regarding the topics covered therein.
- I understand that InfiLaw in its sole discretion may make changes to the Handbook at any time, and if changes are made, InfiLaw may require an additional acknowledgement from me to indicate that I have been informed of the changes.
- I understand that it is my responsibility to become familiar with and follow InfiLaw practices set forth in the Handbook.
- I understand Summary Plan Descriptions for each benefit plan mentioned in the Handbook for which I am eligible are located on the InfiLaw Corporation website.
- I understand that my violation of any policies and procedures contained in the Handbook is grounds for immediate disciplinary action, up to and including termination.

A reproduction of this acknowledgement appears in the back of this Handbook for your records.

Please note that faculty members who supervise staff employees must sign indicating they have received a copy of the Handbook and are responsible for familiarizing themselves with its contents.

_____

Employee's Signature

_____ _____

Employee's Printed Name | Position or Title

_____ _____

Date | Department

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

Michelle Swann - (602) 200-1287 - mswann@soarizonalaw.com

May 15, 2013

Via E-Mail and U.S. Post
smays@phoenixlaw.edu
slee@phoenixlaw.edu

Dean Shirley Mays
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

Stephanie Lee,
Director of Human Resources
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

RE: *2013-2014 Employment Contracts for Professor Celia Rumann and Professor Michael O'Connor*

Dear Dean Mays and Ms. Lee:

I represent Professors Rumann and O'Connor. I have reviewed the letters of appointment (the "letters") provided to Professors Rumann and O'Connor on May 3, 2012. While Ms. Lee's May 3, 2013 letter states that the letters of appointment do "not contain fewer protections, rights and responsibilities than the previous contracts issued" to Professors Rumann and O'Connor, that is incorrect.

Professors Rumann and O'Connor are tenured professors and, as such, have "the contractual right to be re-employed for succeeding academic years" until limited events occur. *See* 2.2.4. Employment with the School requires that a faculty member and the School execute the "form and style" of the contract set forth in Section 2.2.5. Without any authority or meaningful explanation, the letters expressly reject that *required* form and style of contract that the School is contractually obligated to offer Professors Rumann and O'Connor and to execute.

The letters do *not* offer Professors Rumann and O'Connor the "tenure contract" to which they are entitled but refer to a "full time 'tenure' position." The letters state that "[t]he provisions of Chapter II of the Faculty Handbook, as they may be modified from time to time, are applicable to your appointment and are incorporated into this Agreement." However, the Section 2.2.5 form contract omits materials terms. Specifically, the dates of employment, title and rank of the faculty member, how an employee may terminate a contract, and whether the contract is subject to certain conditions are left blank. The School's refusal to offer Professors Rumann and

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ATTORNEYS AT LAW

O'Connor with tenure contracts that complies with the Section 2.2.5 form constitutes a breach of their current tenure rights. It is well-established that "a contract, once made, must be performed according to its terms and that any modification of those terms must be made by mutual assent and for consideration." *See Demasse v. ITT Corporation*, 194 Ariz. 500, 509 (1999). This prevents an employer from unilaterally modifying contractual terms in an employee handbook, even if the employer acts in good faith in pursuit of legitimate business objectives. *Id.* The letters are a wrongful attempt to supersede the contractual rights to which Professors Rumann and O'Connor are entitled.

To ensure that the parties have a complete contract that reflects all material terms of the tenure contract, we ask that the School, by its May 17, 2013 deadline, execute and return the Section 2.2.5 employment contracts signed by Professors Rumann and O'Connor that were submitted to the School on May 10, 2013.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Michelle Swann

Quarles & Brady LLP
Firm State Bar No. 00443100
Renaissance One, Two North Central Avenue
Phoenix, Arizona 85004-2391
TELEPHONE 602.229.5200

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Attorneys for Defendants Phoenix School of Law, LLC and InfiLaw Holding, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident, Plaintiffs, vs. Phoenix School of Law, LLC, a Delaware limited liability company, InfiLaw Holding, LLC, a Delaware limited liability company, Defendants.	Case No.: 13-cv-01107-SRB **DEFENDANTS' MOTION FOR AWARD OF ATTORNEY FEES AND MEMO IN SUPPORT**

Pursuant to Fed. R. Civ. P. 54(d)(2) and LRCiv. 54.2, and A.R.S. § 12-341.01(A), Defendants Phoenix School of Law, LLC, InfiLaw Holding, LLC, and InfiLaw Corporation (collectively, "Defendants") hereby move for an award of their attorneys' fees. As more fully explained below, Defendants are entitled to, and therefore request, an award of **$59,404.50** in attorneys' fees and **$126.70** in non-taxable costs. These fees and costs were reasonably and necessarily incurred in connection with Defendants' successful defense of this action. This Motion is supported by the following Memorandum of Points and Authorities, the Declaration of Nicole Stanton attached hereto as **Exhibit "A,"** and the Statement of Consultation attached hereto as **Exhibit "B."**

RESPECTFULLY SUBMITTED this 2nd day of April, 2014.

QUARLES & BRADY LLP
Renaissance One, Two North Central Avenue
Phoenix, Arizona 85004-2391

By *s/ Nicole France Stanton*
Nicole France Stanton
Michael S. Catlett
Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Michael O'Connor and Celia Rumann (collectively, "Plaintiffs"), are former professors at Arizona Summit Law School, formerly known as Phoenix School of Law (the "School"). After Plaintiffs refused to accept the School's employment offer for the 2013-2014 academic year, they filed this lawsuit against the School for breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs also inexplicably named InfiLaw Corporation as a defendant, despite having no contractual relationship with it. The School and InfiLaw Corporation moved to dismiss Plaintiffs' claims for failure to state a claim. On December 11, 2013, the Court dismissed Plaintiffs' contractual claims without prejudice.

Plaintiffs, thereafter, filed a Second Amended Complaint, again asserting claims against the School for breach of contract and breach of the implied covenant of good faith and fair dealing. Rather than rename InfiLaw Corporation in their amended complaint, Plaintiffs instead named InfiLaw Holdings, LLC ("InfiLaw Holdings"), with which Plaintiffs also maintained no contractual relationship. The Second Amended Complaint repeated many of the allegations that the Court had already rejected and added more tenuous allegations regarding the School's alleged breach of contract. The School and InfiLaw Holdings, therefore, again moved to dismiss Plaintiffs' claims for failure to state a claim. On March 19, 2014, the Court dismissed Plaintiffs' contractual claims with prejudice, characterizing Plaintiffs' Second Amended Complaint "as motion for reconsideration in the guise of an amended complaint." [Doc. 33 at 4.]

Based on the foregoing, Defendants are eligible for, and entitled to, an award of

their attorneys' fees and non-taxable costs in the amount of $59,404.50, which includes an estimated $5,000.00 incurred in connection with this request for fees and is a reasonable amount under the circumstances of this litigation.

I. ELIGIBILITY

There can be no dispute that Defendants are eligible for an award of attorneys' fees under A.R.S. § 12-341.01. That statute provides, in pertinent part, that "[i]n any contested action arising out of contract, express or implied, the court may award the successful party reasonable attorney fees." Here, Plaintiffs' sole claims against Defendants were for breach of contract and breach of the implied covenant of good faith and fair dealing, and thus Plaintiffs' claims clearly arose out of contract. *See Smith v. Am. Express Travel Related Servs. Co.*, 179 Ariz. 131, 141, 876 P.2d 1166, 1176 (App. 1994) (holding that an employer was entitled to award of attorney's fees for defending against employee's breach of contract and breach of implied covenant of good faith and fair dealing claims."). Moreover, the Court has dismissed Plaintiffs' contractual claims in their entirety and with prejudice. Thus, Defendants are clearly prevailing parties and are entitled to an award of attorneys' fees and costs, including the estimated fees incurred in preparing and briefing this Motion.

II. ENTITLEMENT

In determining whether to award of fees under A.R.S. § 12-341.01(A), Arizona law instructs the Court to consider the following six factors, among others:

1. The merits of the claim or defense presented by the unsuccessful party;

2. Whether the litigation could have been avoided or settled and whether the successful party's efforts were completely superfluous in achieving the result;

3. Whether assessing fees against the unsuccessful party would cause an extreme hardship;

4. Whether the successful party did not prevail with respect to all the relief sought;

5. Whether the legal question presented was novel, and whether such claim has been previously adjudicated in the jurisdiction; and

6. Whether an award of fees would discourage other parties with tenable claims from litigating legitimate contract issues for fear of incurring liability for substantial amounts of attorneys' fees.

Assoc. Indem. Corp. v. Warner, 694 P.2d 1181, 1184 (Ariz. 1985); *see also Greenawalt v. Sun City West Fire Dist.*, No. CV 98-1408 PHX-ROS, 2006 WL 1663540, at *3 (D. Ariz. Jun. 10, 2006) (citing the *Assoc. Indem.* factors). No one factor is determinative. *Fulton Homes Corp. v. BBP Concrete*, 155 P.3d 1090, 1094 (Ariz. Ct. App. 2007).

As to the first factor, Plaintiffs' claims in this case were wholly lacking in merit. Plaintiffs' primary theory was that the School violated their contractual rights by presenting its offer of employment for the 2013-2014 academic year by way of appointment letters, rather than the form contracts contained in the Faculty Handbook. On their face, however, the appointment letters incorporated all of Chapter 2 of the Faculty Handbook, including the form contract. Moreover, the appointment letters and Chapter 2 of the Faculty Handbook clearly contained all material terms of the parties' prospective employment relationship.

Plaintiffs also claimed that Defendants breached their contractual rights because a few of the terms that the School offered for the 2013-2014 academic year allegedly differed from the terms for the 2012-2013 year. As the Court acknowledged, however, "the Handbook itself contemplates that tenure contract terms may vary from year to year, as '[a] tenure contract is for an academic year . . . subject to the terms and conditions of employment which exist from academic year to academic year.'" [Doc. 21 at 8.] Finally, Plaintiffs claimed that the School violated their contractual rights by reducing the amount of employer contribution to their 401(k) plans. That claim was also frivolous -- "the Handbook provides that '[b]enefits are subject to change from time to time' and '[t]he School may, in its sole discretion, expand or reduce these benefits.'" [Doc. 33 at 3.]

Because each of Plaintiffs' claims was addressed and refuted by the Faculty Handbook, the very contract that Plaintiffs sought to enforce, Plaintiffs' claims were

completely lacking in merit. This is not a case where Defendants prevailed after trial or even after filing a summary judgment motion. The Court held, instead, that Plaintiffs' allegations could not survive a motion to dismiss. Plaintiffs are not legal novices; they were tenured law professors who should be expected to carefully review the pertinent legal documents before initiating a federal lawsuit. The first factor weighs heavily in favor of an award of fees.

As to the second factor, the only way this lawsuit could have been avoided was if Plaintiffs, in the first instance, had refrained from filing a lawsuit pressing contractual claims that contradicted the very contract upon which those claims were based. It is anticipated that Plaintiffs will claim that they made a good faith effort in May of 2013 to resolve this matter short of litigation. Those "efforts," however, consisted primarily of letters from Plaintiffs and their counsel insisting that the School sign the form contracts they drafted. [Doc. 7 ¶¶ 100, 103, 104.] These are the same contracts that the Court has held were counteroffers: "[T]he completed contracts included with those letters were counteroffers and Defendant PSL was not required to accept them." [Doc. 21 at 9.] The only other "effort" relied upon by Plaintiffs is that on May 20, 2013, they asked the Dean of the School "about the status of the employment contracts." [Doc. 7 at ¶ 108.] Just eleven days later, Plaintiffs filed this lawsuit. Any attempt by Plaintiffs to claim that they made an effort to resolve this dispute short of the expenses of this litigation is unfounded.

On the other hand, the School made an effort to eliminate altogether Plaintiffs' liability for fees. In early February 2014, after the School had moved to dismiss Plaintiffs' Second Amended Complaint, but well before Plaintiffs were required to file their response memorandum, Defendants offered to refrain from seeking attorneys' fees if Plaintiffs would drop their lawsuit and sign a release. Plaintiffs refused that offer, indicating that they "strongly feel that any defects present in the first amended complaint have been cured." (*See* Statement of Consultation and Exh. "1" attached thereto.) Thus, the second factor weighs strongly in favor of an award of attorneys' fees.

As to the third factor, Defendants have no reason to believe that awarding fees will

pose an undue hardship on Plaintiffs. Moreover, any hardship imposed on Plaintiffs is more than outweighed by the harm they have inflicted upon the School. As the School pointed out in its initial Motion to Dismiss, many of the Plaintiffs' allegations in this case focused not on the contractual issues at hand, but on supposed mistreatment of students and faculty by the School and its administrators. These salacious and irrelevant accusations were included in order to inflict maximum pain on the School through negative press coverage and had questionable relevance as to Plaintiffs' actual breach of contract claim. Unfortunately, although the School ultimately prevailed in this lawsuit, Plaintiffs had already succeeded in having the press re-broadcast their salacious allegations to the public, including to current and prospective students, faculty, alumni, and the legal community at large. *See, e.g.*, http://www.abajournal.com/news/article/suit_claims_law_profs_were_fired_after_opposing_proposals_to_discourage_stu/ (last accessed March 26, 2014); http://www.courthousenews.com/2013/06/04/58183.htm (last accessed March 26, 2014).

As to the fourth factor, Defendants obtained complete relief in the form of a dismissal of this action in its entirety.

As to the fifth factor, the legal questions were not novel. The issue presented was simple - whether the School's appointment letters breached the Faculty Handbook. The Court disposed of that issue based primarily on the contractual language that Plaintiffs agreed to in the Faculty Handbook. This case, therefore, involved nothing more than a straightforward application of pre-existing law.

Finally, an award of Defendants' fees would not discourage other parties with tenable claims from litigating legitimate contract issues. On the other hand, an award will discourage litigants from bringing contract claims that fly in the face of the plain language of their contractual agreements.

In short, the *Associated Indemnity* factors all favor an award. Consequently, Defendants are both eligible and entitled to attorney fees under A.R.S. § 12-341.01. The Court should, therefore, issue the requested award.

III. REASONABLENESS OF THE REQUESTED AWARD

A. The time and labor required of counsel

In support of the reasonableness of the fees and the hours expended on this case, Defendants have submitted a declaration from Nicole Stanton with this memorandum. For the reasons discussed in Part II above, and as supported by Ms. Stanton's Declaration, all of the fees reflected in statement of fees attached to that declaration were reasonably and necessarily incurred in defending against Plaintiffs claims. Defendants filed three complaints in this matter, two of which necessitated a motion to dismiss with full briefing. The Court heard oral argument on one of those motions. Moreover, Defendants moved to dismiss Plaintiffs' claims on several grounds. Finally, an estimate of $5,000.00 to prepare and fully brief this Motion is reasonable.

B. The novelty and difficulty of the questions presented

The questions presented in this case were neither novel nor difficult. Nonetheless, defense counsel did have to spend time analyzing and moving to dismiss each of the claims contained in both the First and Second Amended Complaints.

C. The skill requisite to perform the legal services properly

The skills possessed by each lawyer or legal assistant who provided services to Defendants were reasonably appropriate and necessary to obtain dismissal of this case. *See* Stanton Decl. ¶ 11.

D. The customary fee charged in matters of the type involved

Defendants were billed attorney fees on an hourly basis. The rates charged varied depending on the experience level of the attorney performing the work and the nature of the work performed. The rates billed by each particular attorney in this case are set forth in Exhibit 2 to Ms. Stanton's Declaration. Quarles & Brady's rates are in accordance with rates charged by other lawyers and legal assistants in this community with similar experience and education. *See* Stanton Decl. ¶ 11. Accordingly, the fees sought should be deemed "customary" for the services performed in this case.

IV. CONCLUSION

For each and all of the foregoing reasons, the Court should award Defendants **$59,404.50** in attorney fees and **$126.70** in non-taxable costs.

RESPECTFULLY SUBMITTED this 2nd day of April, 2014.

QUARLES & BRADY LLP
Renaissance One, Two North Central Avenue
Phoenix, Arizona 85004-2391

By *s/ Nicole France Stanton*
Nicole France Stanton
Michael S. Catlett
Attorneys for Defendants

CERTIFICATE OF FILING/MAILING

I hereby certify that on April 2, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel identified on the Court-Generated Notice of Electronic Filing.

s/ Kelly Thwaites
QB\25842346.1

EXHIBIT A

Quarles & Brady LLP
Firm State Bar No. 00443100
Renaissance One, Two North Central Avenue
Phoenix, Arizona 85004-2391
TELEPHONE 602.229.5200

Nicole France Stanton (#020452)
nicole.stanton@quarles.com
Michael S. Catlett (#025238)
michael.catlett@quarles.com
Attorneys for Defendants Phoenix School of Law, LLC and InfiLaw Holding, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident,

Plaintiffs,

vs.

Phoenix School of Law, LLC, a Delaware limited liability company, InfiLaw Holding, LLC, a Delaware limited liability company,

Defendants.

Case No.: 13-cv-01107-SRB

DECLARATION OF NICOLE FRANCE STANTON IN SUPPORT OF DEFENDANTS' MOTION FOR ATTORNEYS' FEES

I, Nicole France Stanton, do hereby declare as follows:

1. I have personal knowledge of the matters and facts stated in this declaration and am competent to testify with regard to all such matters.

2. I am the Phoenix Office Managing Partner with the firm of Quarles & Brady LLP ("Quarles & Brady"), and am admitted to practice law in the State of Arizona.

3. I am one of the attorneys of record for Defendants Phoenix School of Law, LLC, InfiLaw Holding, LLC, and InfiLaw Corporation, LLC (collectively, "Defendants") in this case, and am making this declaration on their behalf in support of their Motion for Attorneys' Fees and the Memorandum in Support thereof.

4. I received my Juris Doctor from the University of Arizona, James E. Rogers College of Law, and have been licensed to practice law in Arizona since 2000. Following

law school, I served a one-year clerkship with the Hon. Charles E. Jones, Chief Justice of the Arizona Supreme Court. Among other responsibilities, I drafted and revised documents in this matter and was counsel of record for oral argument on Defendants' Motion to Dismiss the Plaintiffs' First Amended Complaint. My billing rate for work performed in this matter was $360.00 per hour, which is a rate comparable with attorneys with my level of experience.

5. Michael S. Catlett is an Associate at Quarles & Brady. He received his Juris Doctor from the University of Arizona, James E. Rogers College of Law, and has been licensed to practice law in Arizona since 2007. Among other responsibilities, Mr. Catlett drafted and revised documents in this matter and performed legal research. Mr. Catlett's billing rate for work performed in this matter was $275.00 per hour, which is a rate comparable with attorneys with my level of experience.

6. Benjamin C. Nielsen is an Associate at Quarles & Brady. He received his Juris Doctor from the University of Arizona, James E. Rogers College of Law, and has been licensed to practice law in Arizona since 2012. Mr. Nielsen assisted in preparation for oral argument on Defendants' Motion to Dismiss the Plaintiffs' First Amended Complaint. Mr. Nielsen's billing rate for work performed in this matter was $225.00 per hour, which is a rate comparable with attorneys with my level of experience.

7. Attached hereto as **Exhibit 1** is a true and correct copy of the written fee agreement between Quarles & Brady and the Phoenix School of Law, LLC.

8. Attached hereto as **Exhibit 2** is an itemized statement of attorneys' fees and costs that Quarles & Brady has charged in this matter, which were reasonably and necessarily incurred in connection with Defendants' successful defense of this matter. These fees total $54,404.50. Moreover, I estimate that Defendants will incur an additional $5,000.00 for the preparation and full briefing of Defendants' Motion for Attorneys' Fees and Costs. Finally, Defendants have incurred $126.70 in non-taxable costs. Pursuant to the engagement agreement between Quarles & Brady and Phoenix School of Law, LLC, Defendants have paid or agreed to pay all of the fees and costs requested in their Motion.

9. The attached detailed descriptions in Exhibit 2 include the date on which each task was performed, the name of the person who performed each task, the amount of time expended, measured in tenths of hours, and a brief description of the work performed.

10. Exhibit 2 was generated from individual time records completed by the attorneys. Consistent with Quarles & Brady's practices and policies, individual attorneys keep track of their time as the work is performed. The time data is then entered into the firms' respective accounting systems, which generate billing statements. Costs are submitted to the firm's accounting department when they have been incurred and are included in the billing statements. The billing statements are sent to the client, reflecting the work performed, the charges, and the costs. Remittances are sent to Quarles & Brady in response to its billing statements. These practices and procedures are standard at Quarles & Brady and in the Phoenix legal market and are part of Quarles & Brady's normal business operations. The entries listed in Exhibit 1 were extracted from Quarles & Brady's computer-generated billing statements.

11. All of the work performed by the attorneys at Quarles & Brady on behalf of Defendants was justified, and the fees shown in Exhibit 2 were reasonable and necessarily incurred. Further, based on my fourteen years' of experience practicing law in Phoenix, the hourly billing rates charged to Defendants are comparable to the rates charged by comparable law firms in the Phoenix metropolitan area for attorneys of comparable skill and experience.

12. Additionally, the amount of the fee award sought for work by Quarles & Brady is a reasonable sum, based upon the importance of the issues in the case, the quality of the law firm and the attorneys performing the legal work for Defendants, the character of the work to be done, and the work actually performed by Quarles & Brady on behalf of Defendants.

13. I anticipate that Quarles & Brady will spend an additional 20 hours preparing the motion and fee memorandum, the supporting documents, and any reply in

support thereof, for a total of approximately $5,000.00. Pursuant to A.R.S. § 12-341.01, the fees associated with preparing the motion, fee memorandum, and supporting documents are recoverable.

14. Thus, including the time spent preparing the application for fees and costs, the total amount of attorneys' fees being sought by Defendants is **$59,404.50**.

15. As reflected in Exhibit 2, Quarles & Brady billed Defendants **$126.70** in costs, which are also recoverable under A.R.S. § 12-341.

16. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of April, 2014.

/s/ Nicole France Stanton
Nicole France Stanton

EXHIBIT 1

Quarles & Brady LLP

One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples and Tampa, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin
Washington, DC
Shanghai, China

Writer's Direct Dial: 602.229.5662
E-Mail: nicole.stanton@quarles.com

June 19, 2013

PRIVILEGED AND CONFIDENTIAL

VIA EMAIL AND U.S. MAIL

Phoenix School of Law, LLC
Attention: Scott Thompson
One North Central Avenue
Phoenix, AZ 85004
Email: sthompson@phoenixlaw.edu

RE: Legal Representation

Dear Scott:

We are very pleased that Phoenix School of Law, LLC and InfiLaw Corporation (collectively "Phoenix School of Law") have selected Quarles & Brady LLP for legal representation. We thank you for your expression of confidence in us. This letter confirms the engagement of our Firm to provide legal services to Phoenix School of Law and describes the scope of our representation, the basis on which fees and expenses will be billed, and other important aspects of our representation. If you have any questions about these provisions, or if you would like to discuss possible modifications, please contact me.

1. *Client; Scope of Representation.* Phoenix School of Law will be our client in the matters discussed in this letter. Our work will include legal work for Phoenix School of Law in connection with the claims asserted in the matter captioned *Michael O'Connor and Celia Rumann v. Phoenix School of Law, LLC and InfiLaw Corporation*, U.S. District Court, District of Arizona Case No. 2:13-cv-01107-SRB. You may limit or expand the scope of our representation from time to time, provided that we agree to any substantial expansion.

2. *Term of Engagement.* Either you or we may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement, we will take reasonably practicable steps to protect your interests in the above matter. If you terminate our services, you will promptly pay us for all fees, charges and expenses incurred prior to the date of our receipt of the termination and for any work required to effect a transition to new counsel. We reserve the right to withdraw from representing you if, among other things, you fail to honor the terms of this engagement letter -- including nonpayment of our bills, you fail to cooperate or follow our advice on a material matter, or we become aware of any fact or circumstance that would, in our view, render our continuing representation unlawful or unethical.

Unless previously terminated, our representation will terminate upon our sending you our final bill for services rendered. If you request, we will return your original papers and property to you promptly. We may retain copies of the documents. We will retain your file after the conclusion of the representation for the period of time discussed in the records retention section of this letter agreement set forth below.

3. *Client Responsibilities.* We will provide legal counsel and assistance to Phoenix School of Law in accordance with this letter and will rely upon information and guidance you and other Phoenix School of Law personnel provide to us. We will keep you reasonably informed of progress and developments, and respond to your inquiries.

In order to enable us to provide the services set forth in this letter, you will disclose fully and accurately all facts and keep us apprised of all developments relating to this matter. You agree to pay our bills for services and expenses in accordance with this engagement letter. You will also cooperate fully with us and be available to attend meetings, conferences, hearings and other proceedings on reasonable notice, and stay fully informed on all developments relating to this matter.

4. *Staffing.* I will be the attorney primarily responsible for the representation, with assistance from my associate, Mike Catlett. It is our mission to provide the highest quality legal services in an efficient, economical manner. As a result, we involve attorneys and paralegals at our Firm with the experience appropriate to the task at hand. If you have any questions or comments about our services, staffing, billings or other aspects of our representation, please contact me. It is important to me and to Quarles & Brady LLP that you are satisfied with our representation and responsiveness at all times.

5. *Fees and Expenses.* Our fees are based primarily upon the billing rate for each attorney and paralegal devoting time to this matter. Each lawyer and paralegal has an hourly billing rate based generally on his or her experience and special expertise. I will review your bills. The hourly rate multiplied by the time spent on your behalf, measured generally in tenths of an hour, is the primary basis for determining our fee. Our billing rates for attorneys currently range from $205 to $645 per hour. Time of paralegals who may work on this matter is currently charged at billing rates ranging from $190 to $225 per hour. My billing rate is currently $375 an hour. Mike's billing rate is currently $275 per hour. We adjust these billing rates from time to time to reflect changes in levels of experience and economic factors affecting our Firm. When our rates change we will notify you in writing and the bills you receive from us after the effective date of the rate change will reflect the rate adjustment.

Charges for services, while based primarily on hourly rates, are also determined after considering a variety of other factors, such as the novelty and difficulty of the issues involved, the skills needed to perform the legal services properly, special timing requirements and the results obtained. We are always pleased to discuss our bills with you to ensure that we both understand the basis for them and to avoid any misunderstanding. We will provide Phoenix School of Law with a litigation budget within 30 days of this letter. We will monitor our fees on

a monthly basis and agree that in any month where fees are expected to exceed $10,000.00 we will discuss that expenditure with a representative of Phoenix School of Law.

We include separate charges on our bills for services such as photocopying, messenger and delivery service, computerized research, travel, facsimile and search and filing fees. We charge for these expenses at a standard rate per unit for each item. We do not currently separately charge for long distance domestic calls or regular U.S. mail delivery. If you wish to see a current schedule of these charges, please let me know. We generally do not pay fees and expenses of others (such as consultants, appraisers, and local counsel). The provider of these services will bill you directly.

We generally bill on a monthly basis, which helps to keep you informed of the time devoted to and progress of your matter. Payment is due upon receipt by check payable to Quarles & Brady LLP. Please include your invoice number (listed on the bill) along with your payment. We will charge interest at the rate of 1.5% per month (18% per annum) on bills that remain unpaid 60 days. You agree to bear the costs we incur in collecting overdue accounts, including reasonable attorneys' fees and all other costs. If any statement remains unpaid for more than 90 days, we may cease performing services for you until we make arrangements with you for payment of outstanding bills and future bills. We may withdraw from representing you if you do not pay us.

6. *Advance Fee Payment.* We will not require an advance payment against fees and expenses at this time. Invoices are payable upon receipt.

7. *Opinions and Beliefs.* Since the outcome of legal matters is subject to factors that cannot always be foreseen, such as the uncertainties and risks inherent in the legal process, it is understood that we have made no promises or guarantees to you concerning the outcome of this or any other matter and cannot do so.

8. *Limited Liability Partnership.* Our Firm is a limited liability partnership ("LLP"). Because we are an LLP, no partner of the Firm has personal liability for any debts or liabilities of the Firm except as otherwise required by law, and except that each partner can be personally liable for his or her own malpractice and for the malpractice of persons acting under his or her actual supervision and control. Please call me if you have any questions about our status as a limited liability partnership.

9. *Conflicts.* We represent many other companies and individuals. It is possible that during the time we are representing Phoenix School of Law, some of our present or future clients will have disputes or transactions with you and/or your affiliates. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse to you. We ask for similar agreements from other clients to preserve our ability to represent Phoenix School of Law when we are engaged by others. We agree, however, that your prospective consent to conflicting representation contained in this

paragraph shall not apply in any instance where, as a result of our representation of Phoenix School of Law, we have obtained proprietary or other confidential information, that, if known to the other client, could be used by that client to your material disadvantage. We will not disclose to the other client(s) any confidential information received during the course of our representation of Phoenix School of Law.

10. *Electronic Communications.* We communicate from time to time with our clients via facsimile, mobile telephone and e-mail. These forms of communication are not completely secure against unauthorized access. There is some risk of disclosure and loss of attorney-client privilege in using these forms of communication because they do not ensure the confidentiality of their contents. If you object to our using any one or more of these forms of communication, please let me know immediately and we will attempt to honor that request.

11. *Records Retention.* The Firm's policy with respect to retention of client records is to retain such records for a period of six (6) years from the date a matter is closed. Upon the expiration of the six (6) year retention period, the Firm will make commercially reasonable attempts to notify you that your records are scheduled for disposition and you will be given the opportunity to have your records returned to you. In the event you do not respond after such inquiry within a reasonable period of time, you acknowledge and agree that the Firm shall be under no obligation to retain your records and shall be entitled to dispose of such records in accordance with its Records Retention Policy.

This letter agreement contains the entire agreement between Quarles & Brady LLP and Phoenix School of Law regarding our representation of Phoenix School of Law and the fees, charges, and expenses to be paid. If you are in agreement with the terms of this letter, please sign below and return this letter to me. We are pleased to have this opportunity to represent Phoenix School of Law, and assure you that we will represent you as diligently and economically as possible. If I do not receive this engagement letter signed by you by June 21, 2013, I will assume that you have obtained other counsel to address your legal interests.

Very truly yours,

QUARLES & BRADY LLP

Nicole France Stanton

Nicole France Stanton

ACCEPTED AND AGREED

The undersigned, by duly authorized signature below, agrees to engage you pursuant to the terms set forth in this letter.

PHOENIX SCHOOL OF LAW, LLC

By Scott E Thompson
Its President
Scott E. Thompson
(Print Name)
6/20/13
(Date)

INFILAW CORPORATION

By [signature]
Its General Counsel
JAY TOSSELLO
(Print Name)
6/20/13
(Date)

QB\21540740.1

EXHIBIT 2

SUMMARY OF FEES BY PERSON

ATTORNEY/PARALEGAL	HOURS	RATE/HR	DOLLARS
Nicole Stanton	83.2	$360.00	$29,952.00
Benjamin C. Nielsen	4.3	$225.00	$967.50
Michael S. Catlett	85.4	$275.00	$23,485.00
TOTAL:	172.9		$54,404.50

ITEMIZED CHRONOLOGY OF FEES

Date	*ATTY/PARA.*	*Hours*	*Description*
06/11/13	Michael S. Catlett	1.60	Review complaint.
06/12/13	Michael S. Catlett	2.40	Review client materials (1.1); conference with client rep (.7); legal research re [Redacted] (.6).
06/12/13	Nicole Stanton	0.50	Telephone conference with client rep to discuss [Redacted].
06/13/13	Michael S. Catlett	0.90	Legal research re [Redacted].
06/17/13	Nicole Stanton	0.60	Telephone conference with Scott Thompson regarding [Redacted] (.4); telephone call to opposing counsel regarding extension and respond to email from same and forward to client (.2).
06/19/13	Michael S. Catlett	1.40	Legal research [Redacted] (1.1); draft and file notice of appearance (.3).
06/20/13	Michael S. Catlett	1.60	Conference with client re [Redacted] (1.1); conference with Nicole Stanton re [Redacted] (.2); draft and file stipulation and order re answer date (.3).
06/20/13	Nicole Stanton	0.90	Telephone conference with client regarding [Redacted].
06/21/13	Michael S. Catlett	1.30	Draft corporate disclosure statements (.3); review amended complaint and compare to original complaint (.8); exchange emails with client re [Redacted] (.2).
06/21/13	Nicole Stanton	0.40	Review First Amended Complaint briefly to identify changes (.3); forward same to client (.1).
06/25/13	Nicole Stanton	1.00	Telephone conference with client rep (1.0).
06/27/13	Michael S. Catlett	2.10	Legal research re [Redacted] (1.4); conference with Nicole Stanton re [Redacted] (.3); draft email to Nicole Stanton re [Redacted] (.4).

06/28/13	Michael S. Catlett	1.20	Draft motion to dismiss.
06/28/13	Nicole Stanton	0.30	Evaluate [Redacted] issue and send email to clients [Redacted] (.3).
06/30/13	Michael S. Catlett	9.50	Legal research for motion to dismiss (.8); draft motion to dismiss (8.7).
07/01/13	Michael S. Catlett	4.40	Draft, review and revise motion to dismiss (3.5); legal research for motion to dismiss (.5); conference with Nicole Stanton re [Redacted] (.4).
07/01/13	Nicole Stanton	2.9	Review draft of motion to dismiss, discuss [Redacted] with M. Catlett (2.9).
07/02/13	Nicole Stanton	1.20	Forward draft of motion to dismiss to client (.1); review email from client rep suggesting [Redacted] (.3).
07/02/13	Michael S. Catlett	0.40	Review and revise motion to dismiss.
07/03/13	Nicole Stanton	0.30	Review client changes to motion to dismiss and exchange emails regarding [Redacted].
07/03/13	Michael S. Catlett	0.40	Conference with Nicole Stanton re [Redacted] (.2); revise motion to dismiss (.2).
07/05/13	Nicole Stanton	2.30	Telephone conference with client to discuss [Redacted] (.3); telephone conference with client to discuss [Redacted] (.2); make revisions to motion to dismiss (1.8).
07/06/13	Nicole Stanton	1.00	Work on motion to dismiss including telephone conference with client re [Redacted].
07/06/13	Michael S. Catlett	1.00	Conference with Nicole Stanton re [Redacted] (.2); review and revise motion to dismiss (.8).
07/08/13	Nicole Stanton	2.30	Work on revisions to and finalizing motion to dismiss (2.3).
07/08/13	Michael S. Catlett	3.00	Review and revise motion to dismiss (1.3); conference with Nicole Stanton re [Redacted] (.4); legal research re [Redacted] (1.3).

07/09/13	Nicole Stanton	0.50	Telephone conference with client regarding [Redacted] (.5).
07/09/13	Michael S. Catlett	0.40	Conference with client re [Redacted].
07/10/13	Nicole Stanton	0.30	Correspond with client and opposing counsel regarding operative Faculty Handbook issue.
07/18/13	Nicole Stanton	0.20	Telephone conference with client regarding [Redacted] (.2).
07/27/13	Nicole Stanton	1.50	Review response in opposition to motion to dismiss and evaluate reply.
07/29/13	Nicole Stanton	0.10	Attention to extension to file reply (.1).
07/30/13	Michael S. Catlett	3.40	Review response to motion to dismiss filed by plaintiffs (.7); conference with Nicole Stanton re [Redacted] (.2); draft stip and proposed order and email opposing counsel re the same (.3); legal research re [Redacted] (1.4); draft reply in support of motion to dismiss (.8).
07/31/13	Michael S. Catlett	5.00	Draft reply in support of motion to dismiss (5).
07/31/13	Nicole Stanton	2.60	More detailed review of response to motion to dismiss and review cases cited therein for purposes of strategy for reply.
08/01/13	Michael S. Catlett	3.80	Draft reply in support of motion to dismiss.
08/01/13	Nicole Stanton	1.30	Review draft of Reply Brief and revisions to same.
08/02/13	Nicole Stanton	0.80	Telephone conference with client to discuss [Redacted] (.8).
08/02/13	Michael S. Catlett	0.90	Conference with client re [Redacted].
08/09/13	Michael S. Catlett	1.00	Review, revise, and finalize reply in support of motion to dismiss (1.0)
08/09/13	Nicole Stanton	0.70	Review email from client regarding [Redacted] (.1); review draft of reply for final review before filing (.6).

08/22/13	Benjamin C. Nielsen	2.70	Review underlying pleadings in preparation for Motion to Dismiss, and begin gathering, compiling, and analyzing material in support of the same.
08/23/13	Benjamin C. Nielsen	1.60	Finish review of underlying pleadings and assist in preparation for oral argument.
08/23/13	Michael S. Catlett	0.20	Conference with Nicole Stanton re [Redacted].
09/04/13	Nicole Stanton	2.50	Begin to prepare for 9/16 oral argument.
09/05/13	Nicole Stanton	2.20	Continued preparation for 9/16 oral argument.
09/10/13	Nicole Stanton	1.50	Continued preparation for oral argument (1.5).
09/11/13	Nicole Stanton	1.70	Continued preparation for oral argument (1.7).
09/12/13	Nicole Stanton	7.40	Review and notate all cases cited in motion to dismiss pleadings in preparation for 9/16 oral argument.
09/13/13	Nicole Stanton	5.90	Work on outline for 9/16 oral argument.
09/14/13	Nicole Stanton	3.10	Continued preparation for oral argument.
09/15/13	Nicole Stanton	6.60	Preparation for 9/16 oral argument.
09/16/13	Nicole Stanton	3.20	Prepare for and then participate in oral argument on motion to dismiss (3.2).
09/16/13	Michael S. Catlett	2.70	Attend oral argument on PSL's motion to dismiss (2.3); conference with client re [Redacted] (.4).
12/11/13	Nicole Stanton	0.80	Review ruling and telephone conference with client and team regarding [Redacted].
12/11/13	Michael S. Catlett	1.10	Review court order dismissing complaint (.3); conference with Nicole Stanton re [Redacted] (.2); legal research re [Redacted] (.6).
12/13/13	Michael S. Catlett	1.90	Conference with client re [Redacted].

12/13/13	Nicole Stanton	1.50	Telephone conference with client to discuss strategy (1.5).
12/20/13	Nicole Stanton	0.60	Receipt and brief review of motion to amend complaint, draft of amended complaint and related documents and email to client regarding [Redacted].
12/20/13	Michael S. Catlett	0.70	Review motion for leave to file amended complaint and amended complaint.
12/22/13	Nicole Stanton	2.50	Review Motion to Amend, evaluate proposed Amended Complaint and exhibits to same in preparation for client call.
12/23/13	Michael S. Catlett	0.90	Conference with client re [Redacted].
12/23/13	Nicole Stanton	1.30	Prepare for and telephone conference with client regarding [Redacted].
01/03/14	Nicole Stanton	0.20	Review and approve non-opposition to motion to amend.
01/03/14	Michael S. Catlett	0.30	Draft notice of non-opposition to motion for leave to amend.
01/08/14	Nicole Stanton	1.40	Review amended complaint filed with court and email same to client.
01/09/14	Nicole Stanton	0.50	Communications regarding acceptance of service.
01/22/14	Nicole Stanton	2.00	Review amended complaint and consider arguments for motion to dismiss, brief review of earlier briefing and re-review of Bolton ruling.
01/26/14	Michael S. Catlett	6.60	Review case materials for motion to dismiss (1.4); draft motion to dismiss (5.2).
01/27/14	Nicole Stanton	2.20	Attention to motion to dismiss.
01/27/14	Michael S. Catlett	4.80	Draft motion to dismiss (3.4); legal research re [Redacted] (1.4).
01/28/14	Michael S. Catlett	2.40	Draft motion to dismiss.
01/28/14	Nicole Stanton	1.70	Review research relative to repudiation claims.

01/29/14	Nicole Stanton	1.50	Review materials sent by client to be incorporated into motion to dismiss and forward draft of motion to client.
01/30/14	Nicole Stanton	2.30	Work on draft of motion to dismiss.
01/30/14	Michael S. Catlett	0.70	Revise motion to dismiss second amended complaint.
01/31/14	Michael S. Catlett	2.70	Conference with client re [Redacted] (.7); review, revise, and finalize motion to dismiss (1.6); collect exhibits for motion to dismiss (.4).
01/31/14	Nicole Stanton	2.60	Work on revisions to motion to dismiss, telephone conference with client regarding draft and strategy.
02/04/14	Nicole Stanton	0.50	Telephone conference regarding [Redacted].
02/04/14	Michael S. Catlett	0.60	Conference with client re [Redacted].
02/07/14	Nicole Stanton	0.10	Telephone call from client regarding [Redacted].
02/10/14	Nicole Stanton	0.40	Telephone conference with opposing counsel regarding settlement proposal and follow up with client (.2); review response email from opposing counsel and forward same to client (.2).
02/13/14	Nicole Stanton	0.80	Review amended version of plaintiffs' response to motion to dismiss and compare with originally filed version.
02/17/14	Michael S. Catlett	4.40	Legal research for reply in support of motion to dismiss (.7); draft reply in support of motion to dismiss (3.7).
02/18/14	Nicole Stanton	0.30	Discuss reply brief with Mike Catlett.
02/18/14	Michael S. Catlett	5.70	Draft reply in support of motion to dismiss.
02/19/14	Michael S. Catlett	1.10	Draft reply in support of motion to dismiss.
02/20/14	Nicole Stanton	2.50	Work on reply in support of motion to dismiss.
02/20/14	Michael S. Catlett	0.40	Revise reply in support of motion to dismiss.

02/21/14	Michael S. Catlett	0.40	Revise reply in support of motion to dismiss.
02/21/14	Nicole Stanton	1.20	Continued work on reply in support of motion to dismiss.
02/24/14	Michael S. Catlett	0.50	Revise and finalize reply in support of motion to dismiss.
03/19/14	Michael S. Catlett	0.50	Review court order and judgment dismissing claims with prejudice.
03/19/14	Nicole Stanton	0.50	Review order and judgment and communicate same to client representatives.
03/24/14	Michael S. Catlett	0.50	Review letter from opposing counsel re attorneys' fees (.3); begin work on motion for attorneys' fees (.2).
03/25/14	Michael S. Catlett	0.60	Draft motion for attorneys' fees.
	TOTAL:	172.9	$54,404.50

DATE	COSTS AND DISBURSEMENTS	AMOUNT
03/26/14	Copy charges	72.90
03/26/14	Fax charges	4.80
08/05/13	Westlaw and Lexis charges	49.00
	TOTAL COSTS AND DISBURSEMENTS:	$126.70

EXHIBIT B

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Attorneys for Defendants Phoenix School of Law, LLC and InfiLaw Holding, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident,

Plaintiffs,

vs.

Phoenix School of Law, LLC, a Delaware limited liability company, InfiLaw Holding, LLC, a Delaware limited liability company,

Defendants.

Case No.: 13-cv-01107-SRB

STATEMENT OF CONSULTATION

Pursuant to LRCiv 54.2, the undersigned hereby certifies that, after personal consultation and good-faith efforts to do so, the parties have been unable to satisfactorily resolve the disputed issues related to attorneys' fees and costs.

In early February 2014, after the School had moved to dismiss Plaintiffs' Second Amended Complaint, but well before Plaintiffs were required to file their response memorandum, I contacted Defendants' counsel to convey that Defendants would refrain from seeking attorneys' fees if Plaintiffs would drop their lawsuit and sign a release. Plaintiffs refused that offer, indicating instead that they "strongly feel that any defects present in the first amended complaint have been cured." Attached hereto as **Exhibit "1"** is Defendants' response letter.

I again reached out to Defendants' counsel, Michelle Swan, on March 26, 2013.

The result of that consultation is that the parties have again been unable to reach agreement on any of the issues related to Defendants' motion for an award of attorneys' fees and costs.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of April, 2014.

/s/ Nicole France Stanton
Nicole France Stanton

EXHIBIT 1

From: Michelle Swann [mailto:mswann@soarizonalaw.com]
Sent: Monday, February 10, 2014 4:31 PM
To: Stanton, Nicole France (PHX x3062)
Cc: Stacy Miller
Subject: Phoenix School of Law

Nicole,

Thank you for calling me today. I hope you are feeling better.

Please consider this communication privileged pursuant to Rule 408, Fed. R. Evid. My clients have considered your clients' "settlement" offer and decline the offer. Indeed, my clients do not view this offer as a good faith attempt to settle this matter. My clients strongly feel that any defects present in the first amended complaint have been cured. However, if your clients are motivated to try to resolve this matter without the time and expense of litigation, my clients are happy to explore various methods of trying to accomplish that goal, as they have from the start.

Indeed, this lawsuit may well have been avoided if your clients had been willing to discuss these contracts with either the clients or me before they unjustifiably terminated my clients' employment in violation of their tenure rights. Your clients refused to speak to my clients (or me) after issuing the appointment letter in May, even though the cover letter invited further discussion about the 2013-2014 academic year contract, other than to state that the issue was "with legal." Your clients' response was then to issue the May 31 termination notice. My clients unequivocally intended to retain their positions as tenured professors but were fired without cause or the process that they were entitled to as tenured professors. Your clients were bent on shedding tenured professors from the School. This lawsuit was therefore necessary to redress the unjustifiable and serious harm done by your clients in ignoring my clients preexisting right to reemployment.

As stated above, if your clients are motivated to try to resolve this matter without the time and expense of litigation we are happy to explore various methods of trying to accomplish that goal. Your clients' offer to not to seek fees that they speculate the Court will award is not a legitimate offer given the harm caused to these respected professors who worked tirelessly to build Phoenix School of Law. Short of reasonable, good faith attempts to settle this, my clients remain prepared to follow through on this litigation.

Regards,

Michelle Swann
Attorney
(602) 200-1287
www.soarizonalaw.com

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

Michael O'Connor, an Arizona resident; and Celia Rumann, an Arizona resident, Plaintiffs, vs. Phoenix School of Law, LLC, a Delaware limited liability company; and InfiLaw Holding, LLC, a Delaware limited liability company, Defendants.	No. CV-13-01107-PHX-SRB **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR AWARD OF ATTORNEY FEES** (Assigned to The Honorable Susan R. Bolton)

Plaintiffs respectfully request the Court exercise its discretion and deny Defendants' motion for award of attorneys' fees (Dkt. # 37). Plaintiffs' claims, although unsuccessful, were meritorious, not frivolous, and there is a vast disparity of resources between the parties. This response is supported by the following Memorandum of Points and Authorities and the attached Plaintiffs' declarations and analysis of Defendants' invoices.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiffs respectfully request that this Court deny Defendants' request for attorneys' fees under A.R.S. § 12-341.01. The statutory provision for attorneys' fees is permissive

and creates no presumption that such fees will be granted. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 568-69, 694 P.2d 1181, 1182-83 (Ariz. 1985) (en banc). Whether to award reasonable attorneys' fees is within the discretion of the court. *Grand Real Estate, Inc. v. Sirignano*, 139 Ariz. 8, 676 P.2d 642, 648 (Ariz. Ct. App. 1983). The Court's discretion is guided by six factors identified by the Arizona Supreme Court. *Assoc. Indem.*, 143 Ariz. at 570, 694 P.2d at 1184. The award of fees, if any, is constrained within certain statutory limits, and A.R.S. § 12-341.01 does not establish a presumption that fees be awarded. *Id.* at 568-69, 694 P.2d at 1182-83; A.R.S. § 12-341.01(B) ("[An award] need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid."). In addition, requests for attorneys' fees must be specific and in compliance with Local Rule of Civil Procedure 54.2. The request for fees in this case should be denied because it is unwarranted under the *Associated Indemnity* criteria, is unreasonable and fails to comply with the specificity requirements of the local rules.

II. Defendants' Request For Attorneys' Fees is Unwarranted Under the *Associated Indemnity* Criteria

Requests for attorneys' fees should be analyzed under the six criteria identified by the Arizona Supreme Court in *Associated Indemnity*. *See Newbery Corp. v. Fireman's Fund Ins. Co.*, 95 F.3d 1392, 1405-06 (9th Cir. 1996).

> Those factors are (1) whether the unsuccessful party's claim or defense was meritorious; (2) whether the litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving that result; (3) whether assessing fees against the unsuccessful party would cause an extreme hardship; (4) whether the successful party prevailed with respect to all the relief sought; (5) whether the legal question was novel and whether such claim or defense has previously been adjudicated in this jurisdiction; and (6) whether the award would discourage other parties with tenable claims

> or defenses from litigating or defending legitimate contract issues for fear of incurring liability for substantial amounts of attorneys' fees.

Id. at 1406 (citing *Assoc. Indem.*, 694 P.2d at 1184). The party seeking fees bears the burden of proving entitlement to the award. *Woerth v. City of Flagstaff*, 167 Ariz. 412, 419, 808 P.2d 297, 304 (App. 1990). No single factor is dispositive, and "[t]he weight given to any one factor is within the Court's discretion." *Moedt v. Gen. Motors Corp.*, 204 Ariz. 100, 60 P.3d 240, 246 (App. 2000).

Analysis of the six factors strongly favors denial of Defendants' motion (Dkt. # 37).

1) **Plaintiffs' unsuccessful claims were meritorious**.

Even unsuccessful claims can be meritorious. *See, e.g., G & S Investments v. Belman*, 145 Ariz. 258, 700 P.2d 1358 (App. 1984); *Stuart v. Insurance Co. of North America*, 152 Ariz. 78, 730 P.2d 255 (App. 1986). Although Plaintiffs' claims were unsuccessful before this Court, they are meritorious and far from "frivolous" as Defendants assert in their application for fees. (Dkt. # 37, p. 4.) Plaintiffs have asserted that Defendants impermissibly terminated them without cause or required process in violation of their vested tenure rights. Plaintiffs further asserted that Defendants' claimed basis for terminating Plaintiffs was a pretext; that their terminations were in retaliation for exercising their academic freedom to speak in opposition to Defendants' proposed curricular changes and changes in security of position for faculty at the school. Plaintiffs additionally asserted that their vested tenure rights were violated when they were fired for failing to sign "appointment letters" that variously described their appointments to a "tenure position" and a "tenure-track position," and that *invited Plaintiffs* to "let [defendants] know if you do not want reappointment to your tenure-track positions." Plaintiffs reasonably believed that responding to this invitation by signing the tenure contract contained in their faculty handbook would not and could not result in their

summary dismissal. Plaintiffs asserted that their vested tenure rights were violated and that Defendants violated the duty of good faith and fair dealing by, among other things, terminating Plaintiffs without cause, notice or the process required by their vested tenure rights.

Plaintiffs' claims, although unsuccessful, were meritorious and not frivolous. In fact, Plaintiffs have been unable to locate a single case in which a court upheld the summary dismissal of a tenured faculty member without cause or process based upon a failure to sign a letter of reappointment. To the contrary, such a position has been scoffed at by other courts.

> Under the terms of the Faculty Handbook, tenure means "continuing employment" absent termination for "just cause." This is a typical definition of tenure in the context of faculty employment in colleges and universities in the United States. *See McConnell*, 818 F.2d at 68 n. 11 ("[T]enure normally carries with it an expectation that, absent demonstrable cause to terminate a faculty member's appointment, a tenured professor will enjoy the freedom to carry out his or her duties free from the fear of dismissal."); *see generally* Richard P. Chait & Andrew T. Ford, Beyond Traditional tenure: A Guide to Sound Policies and Practices (1982); Comm'n on Academic Tenure in Higher Education, Faculty Tenure (1973); Academic Freedom and Tenure: A Handbook of the American Association of University Professors (Louis Joughin ed., 2d ed. 1969). Thus, traditional forms of tenure do not typically depend upon notice of reappointment. Unsurprisingly, Dr. Katz points to nothing in the Faculty Handbook or in University practice to suggest otherwise. Indeed, we are quite sure that tenured members of the Georgetown University faculty would be stunned were this court to hold that a faculty member's tenure would be nullified if the University failed to furnish an annual notice of reappointment.

Katz v. Georgetown Univ., 246 F.3d 685, 689 (D.C. Cir. 2001). Just as in *Katz v. Georgetown Univ.*, nothing in the Faculty Handbook or past practices of Defendants

suggested that tenured faculty were subject to reappointment, or that vested tenure rights could be nullified by failure to sign a notice of reappointment.

Plaintiffs understand but respectfully disagree with this Court's ruling based on contract law principles, but Plaintiffs properly expected the contract to be interpreted in its academic context. "Contracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is." *Browzin v. Catholic Univ.*, 527 F.2d 843, 848 (D.C. Cir. 1975) (quoting *Greene v. Howard Univ.*, 412 F.2d 1128, 1135 (D.C. Cir. 1969)). Courts throughout the country have held that, at both public and private universities, the term "tenure" must be interpreted in light of its common use among academic communities.

Tenure necessarily connotes the right to continuous employment unless terminated for cause and following established procedures. "Tenure in the academic community commonly refers to a status granted, usually after a probationary period, which protects a teacher from dismissal except for serious misconduct, incompetence, financial exigency, or change in institutional programs. The primary function of tenure is the preservation of academic freedom." *Stensrud v. Mayville State College*, 368 N.W.2d 519, 521 n. 1 (N.D. 1985) (citations omitted).

Although their claims were unsuccessful before this Court, Plaintiffs' claims were meritorious and certainly not frivolous. Plaintiffs reasonably expected their claims to be vindicated in line with the wealth of precedent protecting vested tenure rights against summary dismissal without cause or process, particularly when Plaintiffs plausibly plead that they were being terminated in retaliation for exercising their academic freedom.

This factor does not support Defendants' application for attorneys' fees.

2) **Defendants could have easily averted litigation by merely responding to Plaintiffs**.

Plaintiffs and their counsel, both individually and collectively, made repeated efforts to resolve this dispute before litigation ever commenced. This entire case could have been avoided had Defendants shown any willingness to discuss the matter. Instead, various efforts by Plaintiffs' and counsel were met, serially, with silence, a statement that the matter was "with legal" and summary termination.

Plaintiffs initially responded on May 10, 2013 to the *Defendants' invitation* in the appointment letters to let them know whether Plaintiffs desired reappointment to "tenure-track" positions. Plaintiffs' invited response thanked the Defendants for the appointment letters, but pointed out that signing such an appointment letter would not protect their vested tenure rights, provided a signed copy of a tenure contract in the form and style required by the faculty handbook, and asked Defendants to sign the contracts by May 17, 2013, and to "contact [plaintiffs] if [defendant] has any questions." Exhibit 1.[1] When Defendants did not respond to the May 10 letter, Plaintiffs' counsel emailed a letter to Defendants on May 15, 2013, again asking Defendants to inform Plaintiffs if they had concerns with the Plaintiffs' May 10, 2013 communication and requesting a responsive communication from Defendants. Exhibit 2. Once again, Defendants did not in any way respond to this communication. The following day, May 16, 2013, Plaintiffs' counsel placed a phone call to Defendants, once again seeking to ascertain whether Defendants had

[1] Contrary to Defendants' assertion, nothing in this letter indicated either a rejection of employment, or that Plaintiffs were "insisting" that the contract be signed by Defendants. (Dkt. # 37, p. 5.) The letter, in fact, stated Plaintiffs "appreciate the School's appointment letter dated May 3, 2013 and look forward to another successful year at the Phoenix School of Law," and asked that the contract be presented to Dean Mays and expressing that Plaintiffs "would appreciate" it if she were to execute the document and return it by the original date set by Defendants. Exhibit 1.

questions or concerns about the previous communications or the contracts submitted by Plaintiffs and asking for a responsive communication. Again, Defendants ignored Plaintiffs' communications.

On May 18, 2013, graduation ceremonies were held for the 2013 graduating class. Plaintiffs saw and spoke to both Dean Shirley Mays and President Scott Thompson. Neither indicated any concern about Plaintiffs' contract submissions. On May 20, 2013, Plaintiffs met with Dean Mays to discuss the "Botswana Initiative."[2] During this meeting, Dean Mays assigned projects to Plaintiffs to be conducted over the coming months. Plaintiffs inquired about the status of their contracts and were told only that the matter was "with legal." Several hours after this meeting, Dean Mays sent Plaintiffs emails containing letters that summarily fired them without cause and without the notice or process required for dismissing tenured faculty under the Faculty Handbook.

Had Defendants indicated any willingness to discuss the contracts, or even indicated that Plaintiffs' contract submissions were viewed as rejections, litigation could have been averted. Since that time, Defendants have shown a similar disdain for settlement negotiations. The only overture Defendants have made toward settlement was a demand that Plaintiffs drop their lawsuit, waive any appellate rights and any future claims against Defendants in exchange for Defendants' agreement not to seek attorneys' fees.

---

[2] Plaintiffs traveled to Botswana in April 2012 as Defendants' representatives. Plaintiffs were charged with initiating contacts with the Botswana Courts, the Law Society of Botswana (equivalent of the ABA), the University of Botswana, the Attorney General of Botswana and other public and private groups. Plaintiffs were to establish ties that would allow Phoenix School of Law ("PSL") to conduct education of Botswana's judges and lawyers, establish externships for PSL students, develop LLM programs and lay the groundwork for an InfiLaw law school to be opened in Botswana. The use of Plaintiffs for this initiative belies any suggestion that Plaintiffs were other than exemplary faculty members and employees with a long-term future with Defendants.

Plaintiffs, on the other hand, have repeatedly indicated a willingness to engage in mediation or other methods of resolving this dispute.[3] On February 10, 2014, Plaintiffs offered to explore various means of resolving this matter without litigation, and on March 24, 2014, Plaintiffs suggested that the parties enter mediation instead of proceeding through the appellate process. Exhibit 3. Defendants rejected the mediation offer and stated they had "no appetite" for settlement, but would entertain a suggested resolution by Plaintiffs. Plaintiffs, in good faith, within 24 hours proposed settlement of all claims for a fraction of the monetary harm caused by the firing. Exhibit 4. On March 31, 2014, Defendants rejected this offer of settlement. In response, Plaintiffs again affirmed their willingness to engage in any reasonable effort to resolve the dispute between the parties. On April 7, 2014, Defendants again rejected the offer to resolve this dispute, after which Plaintiffs yet again affirmed their willingness to resolve the dispute. Exhibit 5.

Plaintiffs made reasonable efforts to resolve this matter before it became a legal dispute. Defendants ignored those efforts and put the matter "with legal." Plaintiffs attempted to resolve the dispute before Defendants took actionable steps. Defendants ignored those repeated attempts and summarily dismissed Plaintiffs without cause. Defendants' only offer to avoid litigation required complete capitulation from Plaintiffs.

This factor strongly cuts against Defendants' claim for attorneys' fees.

3) **Assessing fees against Plaintiffs will cause extreme economic hardship.**

Assessing fees against Plaintiffs will cause them extreme economic hardship. Plaintiffs have attached sworn declarations attesting to this hardship. Exhibits 6 and 7. This factor does not favor Defendants.

[3] When other related disputes arose, Plaintiffs attempted to resolve these matters. Defendants claimed they would respond to Plaintiffs, but never did.

Contrary to Defendants' assertion in their fees request (Dkt. # 37, p. 6), Defendants are well aware of Plaintiffs' economic circumstances. Defendants employed Plaintiffs and know they are husband and wife. Defendants terminated Plaintiffs and their combined salaries without notice or process, leaving this married couple with no income whatsoever. Plaintiffs' offer of settlement to Defendants, communicated on March 27, 2014, identifies much of the economic harm being fired has caused Plaintiffs. Exhibit 4.

Plaintiffs were highly respected tenured law professors, neither of whom had ever received a negative employment evaluation from any employer, let alone been fired from any professional job they had previously held. Neither Plaintiff had ever been out of work since graduating from law school, in 1990 (O'Connor) and 1991 (Rumann). Since being fired by Defendants, neither Plaintiff has been able to find permanent employment. Exhibits 6 and 7. Professor Rumann has been unable to find a job teaching or other full-time employment. Exhibit 7. When they have been able to obtain interviews, they are invariably asked how a tenured professor could be fired if there was not cause.

They have exhausted their savings and drained two retirement accounts. Exhibits 6 and 7. Professor O'Connor has had to move to California to take a temporary job, with no security of position, without the status he had worked decades to achieve and for a fraction of the money that full professors are normally paid. *Id.* The costs associated with living out of state, in California, are so high that Plaintiffs continue to lose money. *Id.*

Defendants' assertion that Plaintiffs have harmed them more than Plaintiffs have been harmed is astonishing. Defendants describe Plaintiffs' allegations as "salacious" and of "questionable relevance" without identification of those allegations. Plaintiffs asserted that their firing was a pretext to get rid of tenured professors who exercised their academic freedom to oppose policies that they believed were harmful to students and faculty.

Notably, Defendants have never said these allegations were false. If others find news of Defendants' policies to be "salacious" that is not Plaintiffs' fault. Defendants also make the false allegation that Plaintiffs intended "to inflict maximum pain on the School through negative press coverage." It should be noted, however, that the only party to this action that has spoken to the press at all regarding this matter are the Defendants. Plaintiffs, to date, have refused all requests for press interviews, local or national. Defendants, on the other hand, are quoted in the very article they cite to this Court.

The economic hardship that would be caused by assessing attorneys' fees against Plaintiffs is detailed in the attached sworn declarations. Exhibits 6 and 7. This factor argues against an award of fees to Defendants.

4) **Defendants prevailed on the merits, but not on all asserted defenses**.

This is the only factor that arguably supports Defendants' request. Defendants have prevailed on their motion to dismiss. However, they raised a defense in their motion to dismiss that was unsuccessful. In the Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. # 13 – "First MTD"), Defendants asserted a claim that Plaintiffs were required to adhere to Defendants' grievance procedure. In granting Defendants' First MTD, this Court rejected that basis for relief.

While this factor arguably supports Defendants' application for fees, it does not outweigh the other factors that do not support this application.

5) **Defendants do not even assert novelty.**

Defendants make no claim that this factor supports their request for attorneys' fees.

6) **Awarding attorneys' fees would greatly discourage other teachers from raising tenable claims that they were retaliated against for asserting academic freedom**.

The Court should carefully consider the academic context in which this case arose in determining whether to award attorneys' fees. The Supreme Court has recognized the vital role played by academia, and academic freedom, in sustaining the nation's health.

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Sweezy v. State of N.H. by Wyman, 354 U.S. 234, 250, 77 S. Ct. 1203, 1211-12, 1 L. Ed. 2d 1311 (1957).

This case raised allegations that a for-profit corporation was attempting to retaliate against tenured professors for exercising their academic freedom to disagree with educational policies proposed by the corporation.

Defendants conducted a survey of faculty following Plaintiffs' terminations.[4] When asked to identify the traits that best characterize the "current working environment," the single highest trait identified, by far, was "fear," which was identified by 85% of faculty respondents. The reason for this fear was repeatedly identified as Defendants' actions in firing Plaintiffs. One representative comment follows:

[4] Defendants distributed the results of this survey to at least one former employee, who provided it to Plaintiffs.

> No one trusts the leaders of our school. People go to meetings now, afraid to say anything because we've all seen what happens if you even politely offer a different view. You are fired even if you have tenure. So we're all just going through the motions, you clearly don't care what we think. What you have created is a toxic environment where nothing honest happens in official meetings anymore. All the real and honest communication goes on outside of school functions where most people confess they are making moves to find a job elsewhere. Alternatively, they are wondering aloud how much longer until our president and dean are fired, and whether the next leaders will be an improvement. At this point, people laugh at the statements made by our current leaders in meetings because they are so hypocritical and unbelievable.

There is no question but that an award of attorneys' fees to the corporate Defendants in this case will have a chilling effect on other professors who might have tenable claims against the institution, as well as professors at other institutions should they be fired.

This factor strongly favors denial of Defendants' request. Five of the six factors strongly favor denial of Defendants' request for fees.

III. The Defendants have Failed to Meet the Requirements of Local Rule of Civil Procedure 54.2 to Justify Award of Attorneys' Fees and Nontaxable Expenses.

Local Rule of Civil Procedure 54.2 identifies the procedural and substantive requirements for a request for attorneys' fees and nontaxable expenses. The Defendants have failed to meet the requirements of Rule 54.2 in a number of ways, as identified below and on the attached detailed objections to Defendants' invoices. Exhibit 8. As such, Plaintiffs ask this Court to deny the identified requested fees and expenses.

Specifically, Defendants' purported task-based statement of fees and expenses fails to demonstrate that the "time spent and expenses incurred were reasonable and necessary under the circumstances." L.R.Civ.P. 54.2(d)(4)(c) (emphasis added). Rule 54.2(d)(3) mandates that documentation attached to the memorandum filed in support of the motion

for the award of attorneys fees' and related non-taxable expenses must include a task-based statement of fees and nontaxable expenses that describes:

> the services rendered so that the reasonableness of the charge can be evaluated. In describing such services, however, counsel should be sensitive to matters giving rise to issues associated with the attorney-client privilege and attorney work-product doctrine, but must nevertheless furnish an adequate nonprivileged description of the services in question.

L.R.Civ.P. 54.2(e)(2) (emphasis added). "If the time descriptions are incomplete, or if such descriptions fail to adequately describe the service rendered, the court may reduce the award accordingly." *Id.* "In order for the court to make a determination that the hours claimed are justified, the fee application must be in sufficient detail to enable the court to assess the reasonableness of the time incurred." *Schweiger v. China Doll*, 673 P.2d 927, 932 (App. 1983). An award may also be reduced for hours not "reasonably expended." Because Defendants have failed to satisfy the requirements of the rule, if any award of attorneys' fees and nontaxable expenses is ordered, Plaintiffs ask this Court to reduce the award accordingly.

The rule itself gives various examples of the kind of specificity required to support an application for attorneys' fees. For example, it requires that with regard to telephone conferences, the "time entry must identify all participants and the reason for the phone call." L.R.Civ.P. 54.2(e)(2)(A). Almost without exception the purported "itemized chronology of fees" fails to meet this standard with regard to any telephone call listed. *See* 6/12/13 (NS-.5)[5], 6/17/13 (NS-.4), 6/20/13 (NS-.9), 6/25/13 (NS-1), 7/5/13 (NS-.5), 7/6/13

[5] "NS" refers to events listed as done by Nicole Stanton on the Itemized Chronology of Fees. The number following the dash refers to the amount of time claimed for the activity. For example "6/12/13 (NS-.5)" refers to the event on the fees list dated 6/12/13, and identified as performed by Ms. Stanton, claiming .5 hour for the listed activity. "MC"

(NS-1), 7/9/13 (NS-.5), 7/18/13 (NS-.2), 8/02/13 (NS-.8), 12/23/13 (NS-1.3), 2/4/14 (NS-.5), 2/7/14 (NS-.1).

An equivalent lack of specificity applies to the numerous "conferences" listed on Defendants' bill. Defendants provide no specificity by which this Court can assess the reasonableness of the number and duration of such conferences. Indeed, it is unclear if these conferences were telephonic or in person. *See* 6/12/13 (MC-.7), 6/20/13 (MC-1.3), 6/27/13 (MC-.3), 7/1/13 (MC-.4), 7/1/13 (NS-2.9), 7/3/13 (MC-.2), 7/6/13 (MC-.2), 7/8/13 (MC-.4), 7/9/13 (MC-.4), 7/30/13 (MC-.2), 8/2/13 (MC-.9), 8/23/13 (MC-.2), 9/16/13 (MC-.4), 12/11/13 (MC-.2), 12/13/13 (MC-1.9), 12/23/13 (MC-.9), 1/31/14 (MC-.7), 2/4/14 (MC-.6).

So too, when comparing the rule example and mandates with regard to legal research, the Defendants fail to satisfy the requirements of the rule. The rule requires that time entries "must identify the specific legal issue researched, and if appropriate, should identify the pleading or document the preparation of which occasioned the conduct of the research." L.R.Civ.P. 54.2(e)(2)(B). This requirement is particularly important here where Defendants did not prevail on all issues asserted. *See China Doll*, 673 P.2d at 932 ("Furthermore, time spent on unsuccessful issues or claims may not be compensable.") This requirement was ignored by the Defendants. *See* 6/12/13 (MC-.6), 6/13/13 (MC-.9), 6/19/13 (MC-1.1), 6/27/13 (MC-1.4), 6/30/13 (MC-.8), 7/1/13 (MC-.5), 7/8/13 (MC-1.3), 7/30/13 (MC-1.4), 12/11/13 (MC-.6), 1/27/14 (MC-1.4), 2/17/14 (MC-.7).

With regard to fee requests related to the preparation of pleadings and other papers, the rule requires that the "time entry must identify the pleading or paper or other document prepared and the activities associated with its preparation." L.R.Civ.P. 54(e)(2)(C). In this

refers to events identified as having been done by Michael Catlett. "BN" refers to events identified as done by Benjamin Nielsen.

area too, the filing by Defendants' motion is entirely deficient. *See* 6/19/13 (MC-.3), 6/20/13 (MC-.3), 6/21/13 (MC-.3), 6/27/13 (MC-.4), 6/28/13 (MC-1.2), 6/28/13 (NS-.3), 6/30/13 (MC-8.7), 7/1/13 (MC-3.5), 7/2/13 (MC-.4), 7/3/13(NS-.3), 7/5/13 (NS-1.8), 7/6/13 (NS-1), 7/6/13 (MC-.8), 7/8/13 (MC-1.3), 7/27/13 (NS-1.5), 7/29/13 (NS-.1), 7/30/13 (MC-1.1), 7/31/13 (MC-5), 8/1/13 (MC-3.8), 8/1/13 (NS-1.3), 8/9/13 (MC-1), 1/26/14 (MC- 5.2), 1/27/14 (MC-3.4), 1/28/14 (MC-2.4), 1/30/14 (NS-2.3), 1/30/14 (MC-.7), 1/31/14 (MC-1.6), 1/31/14 (NS-2.6), 2/17/14 (MC-3.7), 2/18/14 (MC-5.7), 2/19/14 (MC-1.1), 2/20/14 (NS-2.5), 2/20/14 (MC-.4), 2/21/14 (MC-.4), 2/21/14 (NS-1.2), 2/24/14 (MC-.5), 3/24/14 (MC-.2), 3/25/14 (MC-.6).

In addition to these fees that fail to meet the express specificity requirements of L.R.Civ.P. 54.2, the Defendants fail in several other ways to satisfy their burden to justify the reasonableness of their billing. For example, Defendants characterize the issues before this Court as "simple," yet request extensive hours to prepare things such as oral argument on these "simple" legal questions.[6] *See* 9/4/13 (NS-2.5), 9/5/13 (NS-2.2), 9/10/13 (NS-1.5), 9/11/13 (NS-1.7), 9/14/13 (NS-3.1), 9/15/13 (NS-6.6), 9/16/13 (NS-3.2) (19.9 hours preparing for oral argument listed without any explanation of the nature of the preparation, in addition to the 13.3 (unchallenged) hours for which there was some explanation of the nature of the preparation that occurred); 8/22/13 (BN-2.7) and 8/23/13 (BN-1.6) (work of third lawyer to prepare for simple argument he did not present), and 9/16/13 (MC-2.3) (time for MC to attend and sit through hearing on a motion that was argued solely by NS). In other instances, the time claimed is unjustifiable as reasonable and necessary. *See* 1/3/14 (NS-.2) (12 minutes reviewing a one sentence pleading) and 1/3/14 (MC-.3) (18 minutes drafting a one sentence pleading).

[6] "If a particular task takes an attorney an inordinate amount of time the losing party ought not be required to pay for that time." *China Doll*, 673 P.2d 927.

As noted above, for several of the entries in the itemized chronology of fees, the Plaintiffs simply combine multiple tasks without itemizing the time spent on each, thus failing to demonstrate that the fees for any of the combined activities is justified. *See* 6/19/13 (MC-.3) ("draft and file[7] notice of appearance"), 6/20/13 (MC-.3) ("draft and file stipulation and order re answer date"), 7/27/13 (NS-1.5) ("review response in opposition to motion to dismiss and evaluate reply"); 7/30/13 (MC-.3) ("draft stip and proposed order and email opposing counsel re: the same"), 9/16/13 (NS-3.2) ("prepare for and then participate in oral argument on motion to dismiss"), 12/11/13 (NS-.8) ("review ruling and telephone conference with client and team re [Redacted]), 12/23/13 (NS-1.3) ("prepare for and telephone conference with client regarding [Redacted]), 1/8/13 (NS-1.4) ("review amended complaint filed with court and email same to client"), 1/29/14 (NS-1.5) ("review materials sent by client to be incorporated into motion to dismiss and forward draft of motion to client"), 1/31/14 (NS-2.6) ("work on revisions to motion to dismiss, telephone conference with client regarding draft and strategy").

For some of the listed fees, it is difficult to tell even the nature of the work involved and as such the Defendants have failed to satisfy their burden to justify these fees as reasonable. See 7/29/13 (NS-.1) ("attention to extension to file reply"), 1/27/14 (NS-2.2) ("attention to motion to dismiss"). With other requested fees, the itemization appears to have two lawyers doing the exact same work. See 8/9/13 (MC-1) and 8/9/13 (NS-.6) (both stating that they finalized or did "final review" of document before filing).

With regard to nontaxable expenses, the submission by the Defendants likewise fails to meet the burden to present any evidence upon which this Court could rely to find these requests "reasonable and necessary." Rule 54.2(e)(3) requires particularity to justify any

[7] Filing of any document appears to be clerical work for which it would appear unreasonable to have any attorney billing.

nontaxable expense sought in such a motion. Ignoring this requirement, the Defendants simply request $72.90 for "copy charges" without any specification of the date, numbers and costs of such copies. It equally disregards the particularity requirement with regard to "fax charges" seeking $4.80 with no itemization or documentation to back it up. Finally, defendants request $49.00 for "Westlaw and Lexis charges" in the absence of any evidence to back up this request. As such, Plaintiffs ask this Court to disallow these expenses.

Finally, Plaintiffs object to the awarding of $5,000 for fees relating to the Defendants' motion for attorneys' fees and nontaxable expenses. Defendants were specifically reminded by this Court in its order granting their motion to dismiss with prejudice that any request for attorneys' fees and nontaxable expenses must be made in compliance with the requirements of Local Rule of Civil Procedure 54.2. See Order (Dkt. # 33) p. 4, n. 4. Despite this reminder, the Defendants chose to disregard the requirements of that rule. It is unreasonable for Plaintiffs to be required to pay expenses for fees associated with a filing that fails to comply with the requirements of the local rule. As such, if this Court awards attorneys' fees and expenses, Plaintiffs ask this Court to disallow $46,243.20[8] of the identified fees and expenses.[9]

DATED this 16th day of April, 2014.

SCHNEIDER & ONOFRY, P.C.

By s/Michelle Swann
Michelle Swann
Douglas C. (Trey) Lynn, III
3101 N. Central Avenue, Suite 600
Phoenix, Arizona 85012-2658
Attorneys for Plaintiffs

[8] NS disputed hours (52.4) equals $18,864 in disputed fees. BN disputed hours (4.3) equals $967.50 in disputed fees. MC disputed hours (77.4) equals $21,285 in disputed fees. Also disputed is $5,000 for fees motion and $126.70 in expenses.

[9] For a chronological list of disputed fees and expenses, see Plaintiffs' Exhibit 8.

☒ I hereby certify that on April 16, 2014, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nicole F. Stanton, Esq.
Michael S. Catlett, Esq.
Quarles & Brady, LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004
Attorneys for Defendants

s/Cindy Barton

INDEX TO EXHIBITS

Exhibit 1 – Plaintiffs' May 10, 2013 Letters and Form Contracts

Exhibit 2 – Letter dated May 15, 2013 from Michelle Swann to Dean Mays and Stephanie Lee

Exhibit 3 – Letter dated March 24, 2014 from Michelle Swann to Nicole Stanton

Exhibit 4 – Letter dated March 27, 2014 from Michelle Swann to Nicole Stanton

Exhibit 5 – Letter dated April 8, 2014 from Michelle Swann to Nicole Stanton

Exhibit 6 – Declaration of Plaintiff Michael O'Connor

Exhibit 7 – Declaration of Plaintiff Celia Rumann

Exhibit 8 – Chronological List of Disputed Fees and Expenses

EXHIBIT 1

May 10, 2013

Via Hand Delivery and E-Mail

Stephanie Lee,
Director of Human Resources
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

RE: *2013-2014 Employment Contract*

Dear Stephanie:

I appreciate the School's appointment letter dated May 3, 2013 and look forward to another successful year at the Phoenix School of Law. While the School's attorney has represented that the appointment letter does not contain any fewer protections, rights, and responsibilities than the previous contracts issued to returning the faculty, I respectfully disagree. Specifically, the appointment letter incorporates the Faculty Handbook. Section 2.2.5 of the Faculty Handbook contains the required form employment contract. Certain materials terms – such as paragraphs 1, 5, and 10 – are left blank in the form contract and therefore are not incorporated by the appointment letter. To ensure that we have a complete contract that reflects all material terms of the contract, and avoid any confusion regarding those material terms, I enclose an employment contract that complies with Section 2.2.5 of the Faculty Handbook for the School's consideration and execution.

As stated in your cover letter the employment contract must be executed by May 17, 2013 and therefore I have signed the enclosed contract for presentation to Dean Mays and would appreciate a fully-executed copy by that May 17, 2013 deadline. Please do not hesitate to contact me if you have any questions.

Very truly yours,

s// Michael P. O'Connor
Michael O'Connor

Enclosure: 2013 – 2014 Employment Contract

FACULTY CONTRACT OF EMPLOYMENT

This Contract entered into as of the 17th day of May, 2013, between the Phoenix School of Law, LLC (hereafter "School") and Professor Michael O'Connor of 2617 S. Palm Drive, Tempe Arizona 85282 (hereinafter "Employee").

The School and Employee agree as follows:

1. The School hereby employs Employee as a faculty member for the period of (1) academic year during the period of August 18, 2013 to June 19, 2014, the Contract Term with the rank/title of Professor of Law. The Employee is employed as a tenured doctrinal faculty member.

2. The School will pay Employee a salary of $131,700.24 for the 2013-214 academic year; however, that salary is subject to a retroactive to August 19, 2013 should the Employee receive a merit increase. The Employee's salary shall be paid in accordance with payroll policies and procedures of the School, and subject to deductions required by the School, governmental authorities, or as authorized by the Employee. The School reserves the right to offset from any salary or other compensation owed to the employee, any amount owed by the employee to the School, including without limitation, fines, fees, and salary and benefit recapture.

3. This is a tenure contract, as that term is defined in the Faculty Handbook and as revised on October 12, 2012.

4. The Contract is subject to the provisions of Chapter II of the Faculty Handbook, and applicable laws of the State of Arizona and the United States, in force and effect during the Contract Term, all of which may be modified from time to time and are applicable as modified. Changes to Chapter II of the Faculty Handbook may be made

applicable as changes to this Contract if approved by the Faculty and the School in accordance with established governance processes. The employee shall be assigned duties and responsibilities by the School as defined in Chapter II Faculty Handbook and agrees to perform all duties and responsibilities so assigned in accordance with the standards, policies, and provisions of the Chapter II of the Faculty Handbook.

5. The Employee may terminate this Contract, (a) by giving written notice to the School's signatory, below, at least 120 calendar days prior to the beginning of the Contract Term, or (b) at the end of an academic term, provided written notice is given to the School's signatory, below, at least 60 calendar days prior to the final scheduled day of the academic term.

6. The Contract shall be construed in accordance with the laws of the State of Arizona. It is agreed that any lawsuits or causes of action arising out of this Contract and/or the employment relationship between the School and the Employee shall be venued in the courts of Maricopa County, State of Arizona, to the extent that those courts are reposed with jurisdiction. Employee submits to the personal jurisdiction of those courts.

7. The Employee shall not have the right to make any contracts or commitments for or on behalf of the School without express or written authorization of the School.

8. Except as provided in paragraph 4, above, the terms and provisions of this Contract document shall not be altered, amended, or modified except in a writing signed by the signatories of this Contract.

9. This Contract is subject to the following conditions: none.

10. The Contract contains the entire agreement between the School and the Employee and supersedes any and all prior written or oral agreements or representations. Any changes of any kind in the employee's acceptance of this Contract shall constitute a counter-offer and shall automatically nullify the offer extended herein.

11. This Contract of Employment shall not be binding upon the School unless it is signed by the Employee within 14 calendar days of the date of presentation hereinafter set forth. This Contract is not valid and binding on the School unless and until it has been approved by the Dean. The offer of employment tendered by this Contract of Employment may be rescinded in writing at any time prior to acceptance by the Employee.

Date of Presentation: May 10, 2013

I have read the foregoing Contract of Employment and agree to the provisions thereof.

s// Michael P. O'Connor
Employee

5/10/13
Date

Accepted and approved:

Phoenix School of Law, LLC

By: _____
Dean

_____
Date

Via Hand Delivery and E-Mail

Stephanie Lee,
Director of Human Resources
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

RE: *2013-2014 Employment Contract*

Dear Stephanie:

I appreciate the School's appointment letter dated May 3, 2013 and look forward to another successful year at the Phoenix School of Law. While the School's attorney has represented that the appointment letter does not contain any fewer protections, rights, and responsibilities than the previous contracts issued to returning faculty, I respectfully disagree. Specifically, the appointment letter incorporates the Faculty Handbook. Section 2.2.5 of the Faculty Handbook contains the required form employment contract. Certain materials terms – such as paragraphs 1, 5, and 10 – are left blank in the form contract and therefore are not incorporated by the appointment letter. To ensure that we have a complete contract that reflects all material terms of the contract, and avoid any confusion regarding those material terms, I enclose an employment contract that complies with Section 2.2.5 of the Faculty Handbook for the School's consideration and execution.

As stated in your cover letter the employment contract must be executed by May 17, 2013 and therefore I have signed the enclosed contract for presentation to Dean Mays and would appreciate a fully-executed copy by that May 17, 2013 deadline. Please do not hesitate to contact me if you have any questions.

Very truly yours,

s/Celia Rumann
Celia Rumann

Enclosure: 2013 – 2014 Employment Contract

FACULTY CONTRACT OF EMPLOYMENT

This Contract entered into as of the 17th day of May, 2013, between the Phoenix School of Law, LLC (hereafter "School") and Professor Celia Rumann of 2617 S. Palm Drive, Tempe Arizona 85282 (hereinafter "Employee").

The School and Employee agree as follows:

1. The School hereby employs Employee as a faculty member for the period of (1) academic year during the period of August 19, 2013 to June 19, 2014, the Contract Term with the rank/title of Professor of Law. The Employee is employed as a tenured doctrinal faculty member.

2. The School will pay Employee a salary of $127,864.32 for the 2013-214 academic year; however, that salary is subject to a retroactive increase to August 19, 2013 should the Employee receive a merit increase. The Employee's salary shall be paid in accordance with payroll policies and procedures of the School, and subject to deductions required by the School, governmental authorities, or as authorized by the Employee. The School reserves the right to offset from any salary or other compensation owed to the employee, any amount owed by the employee to the School, including without limitation, fines, fees, and salary and benefit recapture.

3. This is a tenure contract, as that term is defined in the Faculty Handbook and as revised on October 12, 2012.

4. The Contract is subject to the provisions of Chapter II of the Faculty Handbook, and applicable laws of the State of Arizona and the United States, in force and effect during the Contract Term, all of which may be modified from time to time and are applicable as modified. Changes to Chapter II of the Faculty Handbook may be made applicable as changes to this Contract if approved by the Faculty and the School in accordance with established governance

processes. The employee shall be assigned duties and responsibilities by the School as defined in Chapter II Faculty Handbook and agrees to perform all duties and responsibilities so assigned in accordance with the standards, policies, and provisions of the Chapter II of the Faculty Handbook.

5. The Employee may terminate this Contract, (a) by giving written notice to the School's signatory, below, at least 120 calendar days prior to the beginning of the Contract Term, or (b) at the end of an academic term, provided written notice is given to the School's signatory, below, at least 60 calendar days prior to the final scheduled day of the academic term.

6. The Contract shall be construed in accordance with the laws of the State of Arizona. It is agreed that any lawsuits or causes of action arising out of this Contract and/or the employment relationship between the School and the Employee shall be venued in the courts of Maricopa County, State of Arizona, to the extent that those courts are reposed with jurisdiction. Employee submits to the personal jurisdiction of those courts.

7. The Employee shall not have the right to make any contracts or commitments for or on behalf of the School without express or written authorization of the School.

8. Except as provided in paragraph 4, above, the terms and provisions of this Contract document shall not be altered, amended, or modified except in a writing signed by the signatories of this Contract.

9. This Contract is subject to the following conditions: none.

10. The Contract contains the entire agreement between the School and the Employee and supersedes any and all prior written or oral agreements or representations. Any changes of any kind in the employee's acceptance of this Contract shall constitute a counter-offer and shall automatically nullify the offer extended herein.

11. This Contract of Employment shall not be binding upon the School unless it is signed by the Employee within 14 calendar days of the date of presentation hereinafter set forth. This Contract is not valid and binding on the School unless and until it has been approved by the Dean. The offer of employment tendered by this Contract of Employment may be rescinded in writing at any time prior to acceptance by the Employee.

Date of Presentation: May 10, 2013

I have read the foregoing Contract of Employment and agree to the provisions thereof.

s/Celia Rumann
Employee

5/10/13
Date

Accepted and approved:

Phoenix School of Law, LLC

By: _____
Dean

_____
Date

EXHIBIT 2

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

Michelle Swann - (602) 200-1287 - mswann@soarizonalaw.com

May 15, 2013

Via E-Mail and U.S. Post
smays@phoenixlaw.edu
slee@phoenixlaw.edu

Dean Shirley Mays
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

Stephanie Lee,
Director of Human Resources
Phoenix School of Law
1 North Central Avenue
Phoenix, AZ 85004

RE: *2013-2014 Employment Contracts for Professor Celia Rumann and Professor Michael O'Connor*

Dear Dean Mays and Ms. Lee:

I represent Professors Rumann and O'Connor. I have reviewed the letters of appointment (the "letters") provided to Professors Rumann and O'Connor on May 3, 2012. While Ms. Lee's May 3, 2013 letter states that the letters of appointment do "not contain fewer protections, rights and responsibilities than the previous contracts issued" to Professors Rumann and O'Connor, that is incorrect.

Professors Rumann and O'Connor are tenured professors and, as such, have "the contractual right to be re-employed for succeeding academic years" until limited events occur. *See* 2.2.4. Employment with the School requires that a faculty member and the School execute the "form and style" of the contract set forth in Section 2.2.5. Without any authority or meaningful explanation, the letters expressly reject that *required* form and style of contract that the School is contractually obligated to offer Professors Rumann and O'Connor and to execute.

The letters do *not* offer Professors Rumann and O'Connor the "tenure contract" to which they are entitled but refer to a "full time 'tenure' position." The letters state that "[t]he provisions of Chapter II of the Faculty Handbook, as they may be modified from time to time, are applicable to your appointment and are incorporated into this Agreement." However, the Section 2.2.5 form contract omits materials terms. Specifically, the dates of employment, title and rank of the faculty member, how an employee may terminate a contract, and whether the contract is subject to certain conditions are left blank. The School's refusal to offer Professors Rumann and

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

O'Connor with tenure contracts that complies with the Section 2.2.5 form constitutes a breach of their current tenure rights. It is well-established that "a contract, once made, must be performed according to its terms and that any modification of those terms must be made by mutual assent and for consideration." *See Demasse v. ITT Corporation*, 194 Ariz. 500, 509 (1999). This prevents an employer from unilaterally modifying contractual terms in an employee handbook, even if the employer acts in good faith in pursuit of legitimate business objectives. *Id.* The letters are a wrongful attempt to supersede the contractual rights to which Professors Rumann and O'Connor are entitled.

To ensure that the parties have a complete contract that reflects all material terms of the tenure contract, we ask that the School, by its May 17, 2013 deadline, execute and return the Section 2.2.5 employment contracts signed by Professors Rumann and O'Connor that were submitted to the School on May 10, 2013.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Michelle Swann

EXHIBIT 3

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

Michelle H. Swann - (602) 200-1287 - mswann@soarizonalaw.com
Woodrow & Associates, PLC - Of Counsel

March 24, 2014

Via E-Mail

Nicole F. Stanton, Esq.
Quarles & Brady, L.L.P.
One Renaissance Square
Two N. Central Avenue
Phoenix, AZ 85004

Re: *O'Connor; Rumann v. Phoenix School of Law*
Case No. CV-13-01107-PHX-SRB

Dear Nicole:

I am writing on behalf of my clients concerning a couple of related matters.

My clients believe the court's recent ruling granting the motion to dismiss their Second Amended Complaint was erroneous in several respects and they intend to pursue an appeal of that decision. The Ninth Circuit, of course, strongly encourages mediation of disputes under Circuit Rules 3-4 and 33-1. Plaintiffs remain open to mediation or any other good faith effort to resolve this dispute. As you know, both my clients and I, separately and collectively, repeatedly attempted to resolve this issue before litigation commenced (May 10, May 15, May 16 and May 20, 2013), but received no response from Defendants other than that the matter was "with legal," discussing a long-term Botswana project, and then sending an email after graduation celebrations firing them. Despite Defendants' unwillingness to engage in discussions to amicably resolve their employment relationship and avoid litigation, Plaintiffs remain interested in settling this matter. My clients' position favoring any good-faith effort to resolve this dispute was again communicated in an email sent to your office on February 10, 2014. Other attempts by my clients to resolve additional related disputes through discussion between the parties also have garnered no response from Defendants.

Defendants did not oppose my clients' motion for leave to amend the complaint and indicated their intent to seek attorneys' fees from Plaintiffs only after filing the motion to dismiss. We believe that given the vast disparity in resources and our previous attempts to amicably resolve this litigation that a claim for fees has no merit. In anticipation of LR 54(d)(1)'s requirement that Defendants provide a statement of consultation indicating a good-faith effort to resolve all disputed issues concerning attorneys' fees, Plaintiffs once again express their willingness to resolve all issues prior to the filing of an appeal or any other additional litigation.

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

If Defendants are motivated to engage in a good-faith effort to resolve these issues, please contact us by the close of business on Thursday, March 27, 2014.

Very truly yours,

Michelle Swann

Michelle H. Swann

MHS:sm

EXHIBIT 4

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

Michelle H. Swann - (602) 200-1287 - mswann@soarizonalaw.com
Woodrow & Associates, PLC - Of Counsel

March 27, 2014

Via E-Mail

Nicole F. Stanton, Esq.
Quarles & Brady, L.L.P.
One Renaissance Square
Two N. Central Avenue
Phoenix, AZ 85004

Re: *O'Connor; Rumann v. Phoenix School of Law*
Case No. CV-13-01107-PHX-SRB

Dear Nicole:

It was very nice to speak with you yesterday, and I hope you made it safely to Milwaukee.

Based on our call it appears your clients have rejected our offer to participate in a mediation to try to resolve the dispute. My clients are not litigating for the sake of litigating – they strongly believe that their right to continued re-employment until they chose to retire has been breached. My clients have been committed to attempting to resolve this dispute without the time and expense of litigation since May 2013 but your clients have simply refused to discuss a resolution, just as they refused to discuss my clients' employment prior to the termination. My clients remain committed to resolving this dispute and suggest mediation so a neutral party can evaluate the merits of all parties' positions.

As we explained in our March 24, 2014 email, Professors O'Connor and Rumann believe that the Court erred in its ruling on the motion to dismiss the second amended complaint and intend to appeal that decision. They believe that a careful review by the Ninth Circuit will allow this case to proceed to discovery and provide them the opportunity to demonstrate how unjustifiably and irreparably your clients' actions have harmed their academic careers, and their financial security, both of which were established through decades of hard work.

You did indicate that, despite Defendants' unwillingness to engage in mediation, you would pass along any proposal for resolution my clients might offer to your clients. As a show of our continued good faith attempts to resolve this case without further litigation, my clients will forego their rights to appeal and subsequent trial court proceedings, and waive all known and unknown claims against your clients, in exchange for the following.

SCHNEIDER & ONOFRY, P.C.
ATTORNEYS AT LAW

According to the PSL handbook provisions relating to tenured employees, Professors O'Connor and Rumann had the right to be re-employed until they retired, resigned, were discharged for cause, or died. Professor O'Connor (who was 54 years old at the time he was fired) and Professor Rumann (who was 50 years old that time she was fired) anticipated remaining at PSL until they retired. Phoenix long has been their home, they loved being professors, and had worked hard to achieve the benefits of tenure.

It cannot legitimately be disputed that Professors O'Connor and Rumann were exemplary employees. They were hard-working, productive and engaged professors and members of the PSL community – both inside and outside of the classroom. They received positive evaluations and merit increases every year that they were employed at the school. As would follow from this fact, they had never been subject to discipline while employed there. They were even chosen by your clients to be the standard-bearers for their brand and attempts to globalize InfiLaw and PSL – being sent to both Asia and Africa on behalf of PSL/InfiLaw, to work to develop opportunities for the InfiLaw System, work that was bearing fruit in both the visit to PSL of prosecutors and judges from the People's Republic of China and the development of programs in the Republic of Botswana. As such, there was nothing about the work history of Professors O'Connor and Rumann that in any way suggests that they would have been disciplined during their tenure at PSL – much less would have provided a basis to discharge them for cause.

Thus, my clients reasonably anticipate that, after appeal, they will be able to prove that your clients unjustifiably terminated them in violation of their rights to continuous employment and protection against dismissal without cause and without adherence to the process mandated by the contractual provisions of the faculty handbook. If, as expected, they are given this opportunity, they will be able to demonstrate that the provable contractual harm that was inflicted upon them is substantial. For Professor O'Connor, it involves salary and benefits losses spanning a 16-year period (anticipating that he chose to retire at the age of 70); for Professor Rumann the period is 20 years. For demonstration purposes, assuming that neither professor received any further merit increases, Professor O'Connor's salary losses alone are more than $2.1 million dollars over the life of his tenure contract (salary at time of discharge = $131,700.24/year x 16 years = $2,107,203.84). Of course, given his exemplary work history during his time of employment, there really is no justifiable reason to assume he would not have continued to earn merit increases based on his performance. This figure does not include the value of benefits that were lost because of the termination.

Making the same assumptions for Professor Rumann, the number is greater, at over $2.5 million dollars in salary losses alone (salary at time of discharge - $127,864.32/year x 20 years = $2,557,306.40). The loss for the benefits over this period, assuming conservatively that the benefits were valued at $25,000/year for each of these employees, the provable loss for those benefits is $900,000.00. Professors O'Connor and Rumann will prove the actual value of the loss of income and benefits they suffered. As noted, the actual amount would almost certainly be

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a greater sum. Thus, absent any finding of bad faith by your clients, a conservative estimate of actual damages in this case is likely to exceed $5 million dollars. If the bad faith alleged were proven, as we believe it would be, that figure could increase substantially.

While we recognize that there will be some diminution of these numbers based on mitigation of income, the loss caused by this unjustifiable termination is substantial by any measure. Professor O'Connor has repeatedly been required to explain to potential law school employers how a tenured professor could be summarily fired without "cause" as that term is understood throughout academic institutions. After being without employment from May through December 2013 (the first period of unemployment in his professional career), Professor O'Connor has had to move out of state and away from his family (perhaps the most significant though immeasurable harm he has suffered due to defendants' actions) to take a one semester "visiting associate professor" position at another school – a position with neither the rank, income, nor security of position he had earned in his tenure contract. Indeed, he does not yet have a contract for employment for the 2014-2015 academic year. Moreover, he is incurring significant additional expenses to live out of state to work this temporary position – costs he would not have had but for his unjustifiable termination.

The professional harm to Professor Rumann is even more devastating, as she has not yet secured employment (again, this period of unemployment is a first in Professor Rumann's professional life). She continues to look for employment as a professor and has also been applying for legal work in her area of expertise. She has been taking federal court appointed work on the Criminal Justice Act panel, but that work is sporadic and not full-time. She has received almost no income from this work since her termination, and her husband has been required to move out of state.

The financial devastation caused to these married professors in both losing their jobs without warning, notice, cause and the process that they had earned the right to under their tenure contracts, and defendants' refusal to discuss resolution of this dispute prior to litigation has necessitated that Plaintiffs deplete their retirement savings built up over decades to pay for attorneys' fees and living expenses. Despite this unjustifiable damage to their professional and personal lives, Professors O'Connor and Rumann remain open to settling this matter for amounts far below the actual and estimated lost income.

Specifically, my clients' settlement proposal foregoes the presumption of renewal of their tenure contracts after their post-tenure review period. Accordingly, they seek their salaries at termination and benefits, for the terms of their tenure contracts until the end of their post-tenure review period (which is significantly less than their actual losses incurred). They are willing to resolve this matter at this time for $1,081,557.28, plus attorney's fees, which is calculated based on Professor O'Connor's salary over a 3-year period, $395,100 and Professor Rumann's salary over a 4-year period, $511,457.28, including conservatively estimated benefits for each of these

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Professors for each of these years in the amount of $175,000. This figure does not yet include recovery of my clients' attorneys' fees incurred until final documentation of the settlement agreement. Those fees would be added to the settlement figure at the time of final documentation.

Again, this settlement proposal does not begin to cover the damages for the harm caused by the terminations of these professors, yet my clients recognize that there are benefits to both sides in resolving this matter sooner rather than later.

As we discussed yesterday we both have deadlines running. Accordingly, please inform me of your clients' response to this effort to settle our dispute without resort to further litigation.

Very truly yours,

Michelle Swann

EXHIBIT 5

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Michelle H. Swann - (602) 200-1287 - mswann@soarizonalaw.com
Woodrow & Associates, PLC - Of Counsel

April 8, 2014

Via E-Mail

Nicole F. Stanton, Esq.
Quarles & Brady, L.L.P.
One Renaissance Square
Two N. Central Avenue
Phoenix, Arizona 85004

Re: *O'Connor; Rumann v. Phoenix School of Law*
Case No. CV-13-01107-PHX-SRB

Dear Nicole:

Thank you for your letter dated April 7, 2014. I have always found our interactions to be professional and was surprised at the tone of that letter. We understand your clients' position with respect to the pending appeal and that they reject my clients' settlement offer or to engage in mediation. However, parties in litigation almost always have disagreements – if they agreed there would be no reason for litigation. However, personal attacks are not appropriate.

On March 31st, you confirmed your clients' rejection of the settlement offer set forth in my March 27th letter, which in good faith, included an offer to settle all disputes between the parties for substantially less than the actual damages at issue and also rejecting our offer to forego appellate proceedings in order to mediate this dispute.

I did not "mischaracterize" our telephone conversation at any point. As you know, you telephoned after my letter to you on behalf of my clients seeking to settle all matters in dispute. In that call, you stated that your clients had "no appetite" for settlement because they prevailed on the motion to dismiss, but that you would present to your clients any offer we drafted. Less than 24 hours later, on March 27, we presented a settlement offer (and reiterated our previously made offer of engaging in mediation). We heard nothing, and on March 31st filed the notice of appeal necessary to preserve my clients' appellate rights in the event the parties were unable to resolve the matter. Respectfully, nothing in my March 31st letter or any other correspondence mischaracterized our conversations at any point.

We have offered to resolve this litigation before it was even filed – as you recall, your clients refused to discuss the "appointment letters" when the request was made by my clients and by me. Our extensive attempts to resolve this matter will necessarily be set forth in our response to the motion for attorneys' fees. Our March 27th offer (reiterated on my March 31st letter) was conveyed in good faith. That your clients reject the offer does not render this offer (or any of our

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previous attempts to resolve this matter outside of litigation) as "self-indulgent" or an "absurd overture." Attacking me or my clients' good faith efforts to resolve this case does not serve any purpose, in my opinion, but is unproductive, unnecessarily hyperbolic, and unsupported by the documentary record.

I will not engage in a hostile letter writing campaign and hope that you do not intend to waste resources by doing so, either. If at any time your clients decide they are interested in exploring methods to settle this case, I would be happy to explore that with you.

Very truly yours,

Michelle Swann

Michelle Swann

cc: Clients

EXHIBIT 6

DECLARATION

I, Michael O'Connor, with personal knowledge of the facts set forth herein, declare as follows:

1. I am a Plaintiff in the matter entitled *Michael O'Connor and Celia Rumann v. Phoenix School of Law, LLC, et al.*, Case No. CV-13-01107-PHX-SRB.

2. An assessment of attorneys' fees and nontaxable expenses would constitute a severe hardship.

3. I was employed at Phoenix School of Law (PSL) from August 2007-May 2013.

4. I was unexpectedly fired from PSL on May 20, 2013, effective May 31, 2013.

5. My wife, Celia Rumann, was also terminated on May 20, 2013, effective May 31, 2013. Thus, as of May 31, 2013, without warning, our household income went from over $250,000 to 0.

6. Since that time, I have searched for work nearly every day and have applied for numerous jobs.

7. I have not found permanent full-time employment to date.

8. However, in January 2014, in an attempt to keep financially afloat, I accepted a one semester visiting associate professor position in Ontario, California, at the University of La Verne College of Law.

9. This move out of state has increased our living expenses substantially, because now, in addition to our normal living expenses, we must pay for housing and living expenses in California, as well as expenses associated with occasional trips back to Arizona to visit my wife and family.

10. Because of these increased expenses, the income I have earned from this temporary position is inadequate to satisfy our monthly living expenses (even apart from paying our own legal fees).

11. This temporary position ends on May 10, 2014, and I do not yet have any contract promising employment after that date.

12. Since being fired, in addition to our normal expenses, my wife and I have incurred substantial legal fees in an attempt to enforce what we reasonably understood were our security of position rights, earned in tenure.

13. In order to pay our living expenses and legal fees since being fired, we have had to liquidate two retirement accounts and have taken on substantial amounts of credit card debt. It is likely that we will be faced with having to sell our home here in Arizona in the near future to remain solvent.

14. With respect to the liquidated retirement accounts, we have realized substantially less than the amounts in those accounts due to taxes and penalties for early withdrawal.

15. Thus, any requirement that we pay the requested legal fees of the opposing party will constitute an extreme hardship.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2014.

Michael O'Connor

EXHIBIT 7

DECLARATION

I, Celia Rumann, with personal knowledge of the facts set forth herein, declare as follows:

1. I am a Plaintiff in the matter entitled *Michael O'Connor and Celia Rumann v. Phoenix School of Law, LLC, et al.*, Case No. CV-13-01107-PHX-SRB.

2. An assessment of attorneys' fees and nontaxable expenses would constitute a severe hardship.

3. I was employed at Phoenix School of Law (PSL) from August 2008-May 2013.

4. I was unexpectedly fired from PSL on May 20, 2013, effective May 31, 2013.

5. Since that time, I have looked for work consistently every week. I have applied for numerous jobs.

6. I have not found full-time employment to date.

7. In December 2013, I was appointed to the Criminal Justice Act Trial Panel for the District of Arizona.

8. I am also a member of the Criminal Justice Act Appellate Panel for the District of Arizona.

9. Since being terminated from PSL, I have been appointed to a combined total of six cases, three appeals and three district court cases. The hourly rate on these cases has ranged from $110/hr. to $126/hr.

10. I have not been paid on any of these cases on which I have been appointed since being terminated from PSL. (I did receive a $201.56 payment on one case on which I was not formally appointed.)

11. Given the time lag in completing work on these cases and billing on these cases, I do not anticipate receiving any income for this work in the 2014 calendar year.

12. I have also sporadically done contract work drafting motions and appeals for a fellow lawyer who handles misdemeanors.

13. My husband, Michael O'Connor, was also terminated on May 20, 2013, effective May 31, 2013. Thus, as of May 31, 2013, without warning, our household income went from over $250,000 (plus benefits such as health insurance) to 0.

14. Between August and December, our expenses were increased because of the need to pay an additional approximately $1,250 per month to maintain health insurance.

15. My husband was unemployed and had no earned income from May 31, 2013 until January 2014, when he accepted a temporary faculty position out of state.

16. His move out of state has increased our living expenses substantially, because now, in addition to our normal living expenses, he must pay for housing and living expenses in California, as well as expenses associated with occasional trips back to Arizona to visit with me and our family.

17. Because of him being required to live out of state with its additional expense, the income he has earned from this temporary position is inadequate to satisfy our monthly living expenses (even apart from paying our own legal fees).

18. This temporary position ends on May 10, 2014, and he does not yet have any contract promising employment after that date.

19. Since being fired, we have incurred substantial legal fees in an attempt to enforce what we reasonably understood were our security of position rights, earned in tenure.

20. In order to pay our living expenses, health insurance and medical expenses, and legal fees since being fired, we have had to liquidate two retirement accounts in their entirety and have taken on substantial amounts of credit card debt. It appears likely that we will be faced with having to sell our home here in Arizona in the near future order to remain solvent.

21. With respect to the liquidated retirement accounts, we have realized substantially less than the amounts in those accounts due to taxes and penalties for early withdrawal. We presently have approximately $1,000 in regular savings, which is money transferred from our liquidated retirement accounts.

22. Thus, any requirement that we pay the requested legal fees of the opposing party will constitute an extreme hardship.

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I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2014.

Celia Rumann

EXHIBIT 8

Legend of chronological list of objections:

All disputed fees are objected to based on *Schweiger v. China Doll*, 673 P.2d 927 (1983) and failure to comply with the requirements of the Local Rules. Where multiple rule provisions are listed, it is because either multiple tasks were included in the allotted time on a given day, each giving rise to a different objection or there were multiple bases to object to the listed time/fee.

LRCivP 54.2: General failure to demonstrate reasonableness of requested fee.

LRCivP 54.2(d)(4)(C): Failure to demonstrate reasonableness of time/fee identified and requested.

LRCivP 54.2(e)(2): Failure to demonstrate reasonableness of time/fee identified and requested.

LRCivP 54.2(e)(1)(B): Failure to specify time spent on individual tasks.

LRCivP 54.2(e)(1)(C): Failure to provide an adequate description of the services provided.

LRCivP 54.2(e)(1)(D): Failure to identify which lawyer completed each task.

LRCivP 54.2(e)(2)(A): Objection for lack of specificity to conference, telephonic or not.

LRCivP 54.2(e)(2)(B): Objection for lack of specificity to legal research

LRCivP 54.2(e)(2)(C): Objection for lack of specificity with regard to preparation of a document.

LRCivP 54.2(e)(3): Objection for lack of specificity with regard to requested expenses.

List of Disputed Time Entries and Expense Items

Date	Attorney	Time	Basis for Dispute: For all, China Doll and
6/12/2013	NS	0.5	LRCivP 54.2(e)(2)(A)
6/12/2013	MC	1.3	LRCivP 54.2(e)(2)(A) & (B)
6/13/2013	MC	0.9	LRCivP 54.2(e)(2)(B)
6/17/2013	NS	0.4	LRCivP 54.2(e)(2)(A)
6/19/2013	MC	1.4	LRCivP 54.2(e)(2)(B) & (C) & (e)(2)
6/20/2013	NS	0.9	LRCivP 54.2(e)(2)(A)
6/20/2013	MC	1.6	LRCivP 54.2(e)(2) & (A) & (C)
6/21/2013	MC	0.3	LRCivP 54.2(e)(2)(C)
6/25/2013	NS	1	LRCivP 54.2(e)(2)(A)
6/27/2013	MC	2.1	LRCivP 54.2(e)(2)(A) & (B) & (C)
6/28/2013	MC	1.2	LRCivP 54.2(e)(2)(C)
6/28/2013	NS	0.3	LRCivP 54.2(e)(1)(B) & (e)(2)(C)
6/30/2013	MC	9.5	LRCivP 54.2(e)(2)(B) & (C)
7/1/2013	MC	4.4	LRCivP 54.2(d)(3) & (e)(2)(A), (B) & (C)
7/1/2013	NS	2.9	LRCivP 54.2(d)(3) & (e)(1)(B)
7/2/2013	MC	0.4	LRCivP 54.2(e)(2)(C)
7/3/2013	NS	0.4	LRCivP 54.2(e)(2)(C)
7/3/2013	MC	0.4	LRCivP 54.2(e)(2)(A) & (C)
7/5/2013	NS	2.3	LRCivP 54.2(e)(2)(A) & (B)
7/6/2013	NS	1	LRCivP 54.2(e)(2)(A) & (C) & (e)(1)(B)
7/6/2013	MC	1	LRCivP 54.2(e)(2)(A) & (C)
7/8/2013	MC	3	LRCivP 54.2(e)(2)(A), (B), & (C)
7/9/2013	NS	0.5	LRCivP 54.2(e)(2)(A)
7/9/2013	MC	0.4	LRCivP 54.2(e)(2)(A)
7/18/2013	NS	0.2	LRCivP 54.2(e)(2)(A)
7/27/2013	NS	1.5	LRCivP 54.2(e)(2)(B) & (C) & (e)(2)(B)
7/29/2013	NS	0.1	LRCivP 54.2(e)(1)(C) & (e)(2)
7/30/2013	MC	2.7	LRCivP 54.2(e)(2)(A), (B), & (C) & (e)(1)(B)
7/30/2013	NS	0.3	LRCivP 54.2(e)(2)(B) & (C) & (e)(2)
7/31/2013	MC	5	LRCivP 54.2(e)(2)(C)
8/1/2013	MC	3.8	LRCivP 54.2(e)(2)(C)
8/1/2013	NS	1.3	LRCivP 54.2(e)(2)(C)
8/2/2013	NS	0.8	LRCivP 54.2(e)(2)(A)
8/2/2013	MC	0.9	LRCivP 54.2(e)(2)(A) & (B)
8/9/2013	MC	1	LRCivP 54.2(e)(2)(C) & (e)(1)(D)
8/9/2013	NS	0.6	LRCivP 54.2(e)(1)(D)
8/22/2013	BN	2.7	LRCivP 54.2(d)(4)(C) & (e)(2)
8/23/2013	BN	1.6	LRCivP 54.2(d)(4)(C) & (e)(2)
8/23/2013	MC	0.2	LRCivP 54.2(e)(2)(A)
9/4/2013	NS	2.5	LRCivP 54.2(e(1)(C) & (e)(2)
9/5/2013	NS	2.2	LRCivP 54.2(e)(1)(C) & (e)(2)
9/10/2013	NS	1.5	LRCivP 54.2(e)(1)(C) & (e)(2)
9/11/2013	NS	1.7	LRCivP 54.2(e)(1)(C) & (e)(2)
9/14/2013	NS	3.1	LRCivP 54.2(e)(1)(C) & (e)(2)
9/15/2013	NS	6.6	LRCivP 54.2(e)(1)C) & (e)(2)
9/16/2013	MC	2.7	LRCivP 54.2(e)(2)
9/16/2013	NS	3.2	LRCivP 54.2(e)(1)(C) & (e)(2)
12/11/2013	NS	0.8	LRCivP 54.2(e)(2)(A) & (e)(2)

List of Disputed Time Entries and Expense Items

12/11/2013	MC	0.8	LRCivP 54.2(e)(2)(A) & (B)
12/13/2013	MC	1.9	LRCivP 54.2(e)(2)(A)
12/23/2013	MC	0.9	LRCivP 54.2(e)(2)(A)
12/23/2013	NS	1.3	LRCivP 54.2(e)(1)(B) & (2)(A)
1/3/2014	NS	0.2	LRCivP 54.2(e)(2)
1/3/2014	MC	0.3	LRCivP 54.2(e)(2)
1/8/2014	NS	1.4	LRCivP 54.2(e)(2)(C) & (e)(1)(B)
1/26/2014	MC	5.2	LRCivP 54.2(e)(2)(C)
1/27/2014	MC	4.8	LRCivP 54.2(e)(2)(B) & (C)
1/27/2014	NS	2.2	LRCivP 54.2(e)(1)(C)
1/28/2014	MC	2.4	LRCivP 54.2(e)(2)(C)
1/29/2014	NS	1.5	LRCivP 54.2(e)(1)(B)
1/30/2014	NS	2.3	LRCivP 54.2(e)(2)(C)
1/30/2014	MC	0.7	LRCivP 54.2(e)(2)(C)
1/31/2014	MC	2.3	LRCivP 54.2(e)(2)(A) & (C)
1/31/2014	NS	2.6	LRCivP 54.2(e)(2)(B) & (C) & (e)(1)(B)
2/4/2014	NS	0.5	LRCivP 54.2(e)(2)(A)
2/4/2014	MC	0.6	LRCivP 54.2(e)(2)(A)
2/7/2014	NS	0.1	LRCivP 54.2(e)(2)(A)
2/17/2014	MC	4.4	LRCivP 54.2(e)(2)(B) & (C)
2/18/2014	MC	5.7	LRCivP 54.2(e)(2)(C)
2/19/2014	MC	1.1	LRCivP 54.2(e)(2)(C)
2/20/2014	NS	2.5	LRCivP 54.2(e)(2)(C)
2/20/2014	MC	0.4	LRCivP 54.2(e)(2)(C)
2/21/2014	MC	0.4	LRCivP 54.2(e)(2)(C)
2/21/2014	NS	1.2	LRCivP 54.2(e)(2)(C)
2/24/2014	MC	0.5	LRCivP 54.2(e)(2)(C)
3/24/2014	MC	0.2	LRCivP 54.2(e)(2)(C)
3/25/2014	MC	0.6	LRCivP 54.2(e)(2)(C)
Fee prep	NS	$5,000	LRCivP 54.2 (Prospective estimate on fees motion)
?	?	$72.90	LRCivP 54.2(e)(3) (copy charges)
?	?	$4.80	LRCivP 54.2(e)(3) (fax charges)
?	?	$49.00	LRCivP 54.2(e)(3) (Westlaw/Lexis charges)

VERIFIED STATEMENT OF SHIRLEY MAYS

I, Shirley Mays, make the following statement:

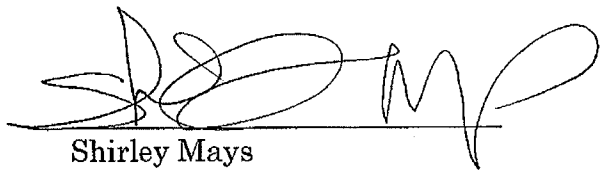
1. I am currently the dean of the Arizona Summit Law School, formerly known as the Phoenix School of Law.

2. Since August 2010, I have been a full-time resident of Phoenix, Arizona. I pay taxes to the State of Arizona and do not consider my domicile to be any state other than Arizona.

3. Since May 2012, I have owned Class C Units in InfiLaw Holding, LLC and continue to own those units as of the date of this statement.

This concludes my statement. I state under penalty of perjury, as provided by 28 U.S.C. §1746, that it is true and correct.

Dated: November 14, 2014



Shirley Mays