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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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6  
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9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

10 **CIVIL UNLIMITED DIVISION**

11  
12 OLD TOWN ACADEMY, a California nonprofit  
13 public benefit corporation

14 Plaintiff,

15 v.

16 TRI-VALLEY LEARNING CORPORATION, a  
California nonprofit public benefit corporation;  
17 CHRISTOPHER CELENTINO, an individual;  
and DOES 1-25, inclusive.

18 Defendants.  
19

Case No.: 37-2015-00018828-CU-MC-CTL

**PLAINTIFF'S VERIFIED COMPLAINT FOR DAMAGES:**

- (1) VIOLATION OF RALPH M. BROWN ACT;
- (2) BREACH OF FIDUCIARY DUTY;
- (3) CONVERSION;
- (4) PRELIMINARY AND PERMENANT INJUNCTION;
- (5) DECLARATORY RELIEF.

20  
21  
22 Plaintiff OLD TOWN ACADEMY, (hereinafter "Plaintiff" or "OTA") alleges as follows:

23 **PARTIES**

- 24 1. Plaintiff OTA is and at all relevant times was a California Nonprofit Public Benefit  
25 Corporation that was incorporated on May 14, 2010 and is presently an active corporate  
26 entity authorized to conduct business in the state of California. Plaintiff operates as an  
27 independent charter school authorized by the San Diego Unified School District  
28 maintaining its principal place of business at 2120 San Diego Avenue, San Diego, 92101.

- 1 2. Plaintiff is informed and believes, and thereon alleges, that Defendant TRI-VALLEY  
2 LEARNING CORPORATION (hereinafter "Tri-Valley") is and at all relevant times was  
3 a California Nonprofit Public Benefit Corporation that was incorporated on May 10, 2004  
4 and is presently an active corporate conducting business in the state of California  
5 maintaining its principal place of business in the city of Livermore located in Alameda  
6 County in the state of California.
- 7 3. Plaintiff is informed and believes, and thereon alleges, that Defendant CHRISTOPHER  
8 CELENTINO (hereinafter "Celentino") is, and at all times herein mentioned was, a  
9 citizen of the State of California and maintains his residence in San Diego County.  
10 Defendant Celentino is presently a member of the Old Town Academy Board of  
11 Directors.
- 12 4. The true names and capacities of Defendants DOES 1 through 25 (hereinafter "Doe  
13 Defendants"), inclusive, are unknown to Plaintiff at the time of filing this Complaint, and  
14 Plaintiff, therefore, sues said Doe Defendants by such fictitious names pursuant to  
15 California Code of Civil Procedure §414 and will ask leave of Court to amend this  
16 Complaint to show their true names or capacities when the same have been ascertained.  
17 Plaintiff is informed and believes, and based thereon alleges, that each of Doe Defendants  
18 is, in some manner, responsible fore the events and happenings herein alleged and  
19 proximately caused injury and damages as herein alleged.
- 20 5. At all relevant times, each Defendant committed, caused, directed or permitted others to  
21 commit the acts alleged in this Complaint. Additionally, Defendant Celentino acted as an  
22 agent of remaining Defendant Tri-Valley, and acted within the purpose, scope and course  
23 of said agency, with the express and/or implied knowledge, permission and consent of  
24 Defendant Tri-Valley whom ratified and approved the acts of the other Defendant  
25 Celentino.
- 26 6. Tri-Valley, Celentino, and Doe Defendants are sometimes collectively referred to herein  
27 as "Defendants", and each of them, are now and/or at all times mentioned in this  
28

1 Complaint were in some manner legally responsible for the events, happenings, and  
2 circumstances alleged in this Complaint.

- 3 7. All allegations made in this Complaint are based on information and belief. The  
4 allegations of this Complaint stated on information and belief are likely to have  
5 evidentiary support after a reasonable opportunity for further investigation or discovery.

6 **JURISDICTION AND VENUE**

- 7 8. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
8 paragraphs one (1) through seven (7).  
9 9. Jurisdiction is proper in the Superior Court for the County of San Diego pursuant to  
10 §410.10 of the California Code of Civil Procedure because it has general subject matter  
11 jurisdiction and no statutory exceptions to jurisdiction exist.  
12 10. Venue is proper in the County of San Diego in accordance with Code of Civil Procedure  
13 §395(a) because the wrongs as alleged herein occurred in San Diego County.

14 **GENERAL ALLEGATIONS**

- 15 11. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
16 paragraphs one (1) through ten (10).  
17 12. OTA was granted federal tax exemption pursuant to Internal Revenue Code Section  
18 501(c)(3) on April 5, 2012 and has the authority to operate as a Kindergarten through  
19 Eighth (8) Grade charter school in the San Diego Unified School District and is therefore  
20 subject The Ralph M. Brown Act (hereinafter "The Brown Act").  
21 13. Pursuant to Plaintiff's Corporate Bylaws, the activities and affairs of Plaintiff are to be  
22 conducted and all corporate powers are exercised by or under the direction of the Board  
23 of Directors. As of May 26, 2015, there were five (5) director seats authorized consisting  
24 of: (1) Defendant Celentino, (2) Anna Sick (hereinafter "Sick"), (3) Dr. Carleton Lincoln  
25 ("Lincoln"), (4) Mireille DesRosiers-Kutchuck (hereinafter "DesRosiers-Kutchuk"), and  
26 (5) Hunter Hawkins (hereinafter "Hawkins").  
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28

- 1 14. On or about January 30, 2014 OTA recognized the need for back office administrative  
2 and operational support and as a resulting contacted Tri-Valley to inquire about its  
3 management support services.
- 4 15. On or about June 30, 2014, the Board of Directors approved an action to enter into a  
5 Memorandum of Understanding (hereinafter "MOU") with Tri-Valley for the purposes of  
6 retaining Tri-Valley's services for assistance with back office administrative support for  
7 the 2014-2015 school year, as well as, contemplate the prospect of OTA becoming a Tri-  
8 Valley School thereafter if mutually agreed upon by both OTA and Tri-Valley following  
9 a one year transitional period.
- 10 16. Pursuant to a majority Board vote regarding the terms of the MOU, the OTA Board of  
11 Directors would to remain the governing body of OTA unless and until the OTA Board  
12 of Directors approved a transition plan proposed by Tri-Valley, at which time a "Site  
13 Council Board" would be established commencing the 2015-2016 school year consisting  
14 of OTA parents to serve as an advisory board to Tri-Valley.
- 15 17. The MOU was drafted in concert by Celentino and Derek Austin, legal counsel for Tri-  
16 Valley, and purportedly presented to Board of Directors for approval by board resolution  
17 at a June 5, 2014 meeting of the OTA Board of Directors.
- 18 18. Plaintiff is informed and believes, and thereon alleges that Defendant Celentino falsified  
19 the June 5, 2014 meeting minutes to reflect an action never taken by the board as  
20 evidenced by the missing resolution to the June 5, 2014 meeting minutes and the lack of a  
21 subsequent attested approval of the minutes by the Board of Directors.
- 22 19. On or about August 2, 2014, Tom Donahue, the President, Executive Director and  
23 Principal of OTA executed a MOU drafted by Defendants with Tri-Valley on behalf of  
24 OTA.
- 25 20. At all times since communications between OTA and Tri-Valley began until May 27,  
26 2015, all meetings were noticed as "Notice of Meeting of Board of Directors" on Old  
27 Town Academy letterhead.
- 28

- 1 21. At all times since communications between OTA and Tri-Valley began until May 27,  
2 2015 all meetings held were in the capacity of the Old Town Academy Board of  
3 Directors and not as Old Town Academy Site Council.
- 4 22. On May 24, 2015 an agenda was posted for the regular meeting of the OTA Board of  
5 Directors to be held on May 27, 2015. The following pertinent action items were listed on  
6 the Agenda:
- 7 a. "Trailing Motion from February 2015 Meeting to Appoint to OTA Parents to Site  
8 Council until Fall Site Council Elections: Ken Morris (former OTA Foundation  
9 President) and Ryan Callan (former OTA Treasurer and TVLC Sub-committee  
10 Member)"
  - 11 b. "Appointment of OTA Site Council Member as OTA Representative to  
12 TRIVALLEY Board – subject to TVLC Board confirmation at TVLC Board  
13 Meeting on May 28, 2015."
- 14 23. On May 27, 2015 a regular meeting of the OTA Board of Directors was held at 2120 San  
15 Diego Avenue, San Diego, California 92110. Quorum was established by the physical  
16 presence of four of the five board members: (1) Defendant Celentino, (2) Sick, (3)  
17 DesRosiers-Kutchuk, and (4) Hawkins.
- 18 24. Dr. Carleton Lincoln attempted to attend the May 27, 2015 regular meeting  
19 telephonically, however was informed by Derek Austin, legal counsel for Tri-Valley, that  
20 since his telephonic presence was not previously posted on the agenda, he was not  
21 permitted to participate in the meeting pursuant to The Brown Act.
- 22 25. Lincoln informed the board of directors and Derek Austin that timely notice of his  
23 intention to attend the May 27, 2015 regular meeting was provided to Christopher  
24 Celentino and Tom Donahue. Dr. Carleton Lincoln was informed that despite such facts,  
25 he would be permitted to listen and watch the meeting telephonically, but would not be  
26 counted toward quorum or permitted to participate in the meeting.
- 27 26. At the regular meeting of the Board of Directors on May 27, 2015, the following  
28 sequence of events transpired, including formal actions taken:

- 1 c. On motion by Celentino, the Board of Directors of OTA voted on the appointment  
2 of Ken Morris and Ryan Callan to the OTA Board of Directors, with Directors  
3 Celentino and Sick voting in favor of appointment, Director Hawkins opposed,  
4 and Director DesRosiers-Kutchuk abstaining from the vote. The motion passed by  
5 a margin of 2-1, and Ken Morris and Ryan Callan were appointed to the OTA  
6 Board of Directors.
- 7 d. Celentino then invited Ken Morris and Ryan Callan to join the table of OTA  
8 board members already seated.
- 9 e. On motion by Celentino, the Board of Directors of OTA voted on the appointment  
10 of Ken Morris and Ryan Callan to the Site Council to become effective upon  
11 completion of the acquisition of OTA by Tri-Valley, should the parties agree to  
12 take such action, with Directors Celentino and Sick voting in favor of  
13 appointment, Director Hawkins opposed, and Director DesRosiers-Kutchuk  
14 abstaining from the vote. New members, Morris and Callan, did not vote because  
15 they were directly interested in the outcome of the motion. The motion passed by  
16 a margin of 2-1, and Ken Morris and Ryan Callan were appointed to the Site  
17 Council if and upon its eventual creation.
- 18 f. On motion by Celentino, the OTA Board of Directors voted on the appointment of  
19 Ken Morris as OTA Representative to Tri-Valley Board, with Directors  
20 Celentino, Sick, and Callan voting in favor of appointment, Directors Hawkins  
21 and DesRosiers-Kutchuk opposed. Morris did not vote because he was a party  
22 directly interested in the outcome of the motion. The motion passed by a margin  
23 of 3-1, and Ken Morris was appointed as OTA Representative to Tri-Valley  
24 Board.

25 27. There was no proposed action to increase the number of authorized director seats on the  
26 OTA Board of Directors from five (5) members to seven (7) members listed on the May  
27 27, 2015 regular meeting agenda.  
28

- 1 28. There was no proposed action to appoint Ken Morris and Ryan Callan to the OTA Board  
2 of Directors on the May 27, 2015 regular meeting agenda.
- 3 29. Following the May 27, 2015 regular meeting, having witnessed the events that transpired  
4 and the actions taken, parents, faculty members, and others in attendance were visibly  
5 upset and expressed displeasure with the actions taken and with the direction of the  
6 school going forward.
- 7 30. Directors Hawkins, DesRosiers-Kutchuk, and Lincoln attempted to call a special meeting  
8 on June 5, 2015 to address the actions taken at the May 27, 2015 regular meeting, rectify  
9 the improper actions taken, and clarify the direction of OTA and its relationship with Tri-  
10 Valley going forward.
- 11 31. On or about June 5, 2015 Defendants and the San Diego Police Department confronted  
12 Executive Director at OTA property during school hours to escort him from the OTA  
13 premises on the assertion they had made the decision to “terminate his employment”  
14 confronted Executive Director. Executive Director is an employee of OTA and not Tri-  
15 Valley, thus any attempted termination was unauthorized.
- 16 32. Given the events that transpired prior to the commencement of the special meeting  
17 proposed for June 5, 2015, specifically, the attempted termination of Tom Donahue by  
18 Tri-Valley purporting to have authority as his employer, contentious confrontations at  
19 OTA that required police intervention between Tom Donahue and Tri-Valley agents,  
20 officers, and also Defendant Celentino, Directors Hawkins, DesRosiers-Kutchuk, and  
21 Lincoln agreed that a special meeting would likely be futile and only lead to increased  
22 hostile relations between the two adversarial factions.
- 23 33. Defendant Celentino has sent multiple electronic correspondences with OTA faculty and  
24 staff that were perceived as intimidating by the faculty and staff members in an effort to  
25 garner support for the position held by Defendant Celentino regarding OTA and its  
26 relationship with Tri-Valley.
- 27 34. OTA was in possession of three (3) bank accounts at San Diego Private Bank, subject to  
28 the authority of Principal Tom Donahue in the capacity of “Super Administrator” of the

1 bank accounts, with signatory authority granted only to Tom Donahue, Christopher  
2 Celentino, and officers and agents of TRIVALLEY as necessary to perform back office  
3 operations for OTA. As of June 4, 2015 the three (3) accounts reflected the following  
4 balances:

5 g. Account #1040005413: \$210,921.43

6 h. Account #1040005694: \$7,705.29

7 i. Account #1040005595: \$127,000.00

8 35. On or about June 5, 2015, OTA's three (3) bank accounts at San Diego Private Bank  
9 reflected a collective balance of \$0.00, although Super Administrator Tom Donahue  
10 made no withdrawals from any of the accounts, nor did he authorize any withdrawals or  
11 transfers by other persons.

12 36. Plaintiff is informed and believes that Defendant Celentino and Defendant Tri-Valley  
13 unlawfully withdrew such funds and presently maintains all funds in their possession  
14 creating irreparable damage to OTA and its operations.

15 37. On June 5, 2015 electronic correspondence was sent by Susan Park, Program Manager in  
16 the Office of Charter Schools at San Diego Unified School District (hereinafter  
17 "SDUSD"), to "Old Town Academy Governing Board" comprising of the five (5) OTA  
18 Board Members and Tom Donahue, to address the multiple communications it had  
19 received in the preceding 48-hour period regarding the governance and operations of  
20 OTA.

21 38. In its June 5, 2015 electronic correspondence, SDUSD clarified that "in order to revise  
22 Old Town Academy's charter, including but not limited to a change in the school's  
23 governance structure" a "Charter Revision Form" must be submitted to SDUSD for  
24 consideration and approval.

25 39. To date, SDUSD has not received a "Charter Revision Form" on behalf of OTA, nor has  
26 the OTA Board of Directors approved submission of such form.

27 40. Later on June 5, 2015, the OTA Board of Directors received notice of a special meeting  
28 of "Old Town Academy K-8 Charter School Board and Old Town Academy Site



1 Council” called by Tri-Valley to be held on June 7, 2015 at Old Town Academy.  
2 Directors Hawkins, DesRosiers-Kutchuk, and Lincoln do not recognize the existence of  
3 Site Council or the authority of Tri-Valley to call a meeting to order, and thus chose not  
4 to attend.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF RALPH M. BROWN ACT**

7 **(AGAINST DEFENDANT CELENTINO AND DOES 1-25, INCLUSIVE)**

- 8 41. Plaintiff re-alleges and incorporates by reference each and every allegation contained in  
9 paragraphs one (1) through forty (40).
- 10 42. Pursuant to the Brown Act, at least 72 hours prior to a regular meeting, the body must  
11 post an agenda containing a brief general description of each item to be discussed or  
12 transacted at the meeting, including items to be discussed in closed session. (§  
13 54954.2(a)) The Act makes it clear that discussion items must be placed on the agenda, as  
14 well as items, which may be the subject of action by the body.
- 15 43. At its regular meeting on May 27, 2015, the OTA board of directors, acting in the  
16 absence of board member Lincoln whose absence was procured due to the intentional  
17 failure of Defendant Celentino to post Lincoln’s timely stated desire to attend and vote  
18 via teleconference, took the following actions:
- 19 j. Ken Morris and Ryan Callan to the OTA Board of Directors, increasing the  
20 number of OTA board members from five (5) to seven (7).
  - 21 k. Appointment of Ken Morris and Ryan Callan to the Site Council to become  
22 effective upon completion of the acquisition of OTA by Tri-Valley, should the  
23 parties agree to take such action.
  - 24 l. Appointment of Ken Morris as OTA Representative to Tri-Valley Board.
- 25 44. There was no proposed action to increase the number of authorized director seats on the  
26 OTA Board of Directors from five (5) members to seven (7) members listed on the May  
27 27, 2015 regular meeting agenda.  
28

1 45. There was no proposed action to appoint Ken Morris and Ryan Callan to the OTA Board  
2 of Directors on the May 27, 2015 regular meeting agenda.

3 46. WHEREFORE, Plaintiff prays for judgment and relief against DEFENDANTS as  
4 hereinafter set forth.

5 **SECOND CAUSE OF ACTION**

6 **BREACH OF FIDUCIARY DUTY**

7 **(AGAINST DEFENDANT CELENTINO AND DOES 1-25, INCLUSIVE)**

8 47. A Plaintiff re-alleges and incorporates by reference each and every allegation contained  
9 in paragraphs one (1) through forty-six (46).

10 48. Defendant Celentino, as director of OTA owed fiduciary duties to OTA and the public.  
11 Defendant Celentino owed the duty of care, which requires that the directors and officers  
12 act reasonably with respect to the management of the organization's affairs, and the duty  
13 of obedience, which requires directors and officers to ensure that the organization is run  
14 in accordance with its mission and purpose as articulated in its governing documents that  
15 directors and the organization complies with applicable laws. The Ralph M. Brown Act,  
16 at Government Code section 54954.3 provides that "[w]hen a body elects to use  
17 teleconferencing, it must post an agenda at each teleconference location and list each  
18 teleconference location in the notice and agenda."

19 49. OTA is an independent charter school subject to governance under The Brown Act and  
20 Defendant Celentino is a Director of OTA charged as its fiduciary.

21 50. At all times relevant to this lawsuit, the Defendant Celentino voluntarily undertook the  
22 duties and responsibilities of director and/or officer of OTA. The voluntary undertaking  
23 of these duties and responsibilities created a duty on the part of Defendant Celentino to  
24 exercise due care in the performance of those duties and responsibilities.

25 51. Plaintiff is informed and believes and thereon alleges that Defendant Celentino was in  
26 possession of knowledge that board member, Lincoln, intended to attend and vote at the  
27 May 27, 2015 Regular Meeting via teleconference.  
28

1 52. Plaintiff is informed and believes and thereon alleges that Defendant Celentino actively  
2 concealed and intentionally omitted from the regular meeting agenda Lincoln's intention  
3 to attend via teleconference in order to procure Lincoln's inability to participate in the  
4 open discussion and voting on action items at the meeting.

5 53. The Defendant breached the duty of care it owed to OTA by committing the actions and  
6 omissions set forth in the facts above, and committing other actions and omissions of  
7 which plaintiff is currently unaware.

8 54. The Defendant breached the duty of care and obedience it owed to OTA and to members  
9 of the public by intentionally procuring the absence of a board member that held a  
10 position unfavorable to the position of the defendant with regard to the actions voted on  
11 and passed at the regular meeting of the OTA Board of Directors held on May 27, 2015.

12 55. As a proximate result of Defendant's breaches of the fiduciary duties of due care and  
13 obedience, OTA and its charitable beneficiaries have been damaged in an amount  
14 presently unknown to Plaintiff and which cannot be ascertained without an accounting by  
15 Defendants, as the full extent of the implications of the actions erroneously taken by  
16 Defendants are not yet quantitatively and qualitatively established.

17 56. In doing the acts alleged in this cause of action, Defendant Celentino acted in callous  
18 disregard of the rights of OTA, and its students and faculty, knowing that its conduct was  
19 substantially certain to injure the school by restricting the free exchange of ideas at its  
20 Board Meeting.

21 57. WHEREFORE, Plaintiff prays for judgment and relief against Defendant Celentino as  
22 hereinafter set forth.

23 **THIRD CAUSE OF ACTION**  
24 **CONVERSION**  
25 **(AGAINST ALL DEFENDANTS)**

26 58. A Plaintiff re-alleges and incorporates by reference each and every allegation contained  
27 in paragraphs one (1) through fifty-seven (57).  
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1 59. Plaintiff is informed and believes and thereon alleges that Plaintiff possessed funds in  
2 three (3) separate bank accounts at San Diego Private Bank in the amounts of  
3 \$210,921.43, \$7,705.29, and \$127,000.00 respectively, and that the access to the bank  
4 accounts was limited to OTA Principal, Tom Donahue, Defendant Celentino, and officers  
5 and agents of Defendant Tri-Valley for the purpose of performing back office support to  
6 OTA.

7 60. Plaintiff is informed and believes and thereon alleges that Defendants collectively  
8 usurped authority over each of the three (3) bank accounts and relocated the funds  
9 contained in the accounts to an undisclosed location, preventing Plaintiff from having  
10 access to the funds and substantially interfering with its right of possession of the funds.

11 61. As alleged herein, Plaintiffs did not consent to the exercise of control over the bank  
12 accounts by Defendants for purposes other than providing back office support to OTA.

13 62. As a proximate result of the aforementioned acts, Defendants have damaged Plaintiff by,  
14 among other things, impairing Plaintiff's ability to manage its operations, preventing  
15 Plaintiff from accessing its funds and other assets, and by threatening OTA's ability to  
16 pay its expenses, including the salaries of faculty and staff, and fund its daily operations  
17 by continuing to engage in willful, malicious, and reckless acts as alleged herein.

18 63. Wherefore Plaintiff prays for judgment and relief against Defendants as herein set forth.

19 **FOURTH CAUSE OF ACTION**

20 **PRELIMINARY AND PERMANENT INJUNCTION**

21 **(AGAINST ALL DEFENDANTS)**

22 64. A Plaintiff re-alleges and incorporates by reference each and every allegation contained  
23 in paragraphs one (1) through sixty-three (63).

24 65. As alleged herein, Defendants continue to purport to have authority over OTA and its  
25 assets and properties, continue to waste assets, continue to take actions that affect the  
26 welfare and safety of the students and teachers of OTA, continue to exclude OTA officers  
27 from OTA property, and take actions that have the effect of harming contractual  
28

1 relationships with third parties by engaging in such willful, malicious, and reckless  
2 conduct as alleged herein.

3 66. Plaintiff is informed and believes that Defendants and those acting in concert with  
4 Defendants must be prohibited from representing to others that Defendants have acquired  
5 OTA and its assets, when a valid OTA Board of Directors did not approve the  
6 acquisition.

7 67. Plaintiff is informed and believes that Defendants and those acting in concert with  
8 Defendants must be prohibited from taking possession of OTA assets and entering OTA  
9 properties.

10 68. Plaintiff is informed and believes that Defendants must be prohibited from possessing  
11 any and all OTA property, including all financial records and must be ordered to turn  
12 over all OTA property and financial records to Plaintiffs.

13 69. Plaintiff is informed and believes that Defendants must be prohibited from having access  
14 to OTA bank accounts and OTA assets, and must be ordered to turn over all OTA funds  
15 and access to OTA bank accounts to Plaintiff.

16 70. Plaintiff is informed and believes that Defendants must be prohibited from having access  
17 to OTA cyber accounts, and must be ordered to relinquish access to cyber accounts to  
18 OTA.

19 71. Plaintiff is informed and believes that Defendants must be prohibited from interfering  
20 with the day-to-day operations of OTA and management of OTA.

21 72. As a proximate result of the aforementioned acts, Defendants have damaged Plaintiff by,  
22 among other things, injuring its reputation, injuring its contractual relationships with third  
23 parties, impairing Plaintiff's ability to manage its operations, preventing Plaintiff from  
24 accessing its funds and other assets, preventing Plaintiff from accessing its real property,  
25 causing Plaintiff the loss of goodwill with parents and others in the community, and by  
26 threatening the existence of OTA by continuing to engage in willful, malicious, and  
27 reckless acts as alleged herein.  
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1 73. Plaintiff is informed and believes that if Defendants are not prohibited from engaging in  
2 the conduct as alleged herein, that OTA will cease to exist, OTA will be unable to fulfill  
3 its obligations to pay its faculty and staff, OTA will be prevented from defending pending  
4 lawsuits brought by Defendants against OTA and its officers, and the academic integrity  
5 of OTA will be undermined and its students will be irreparably damaged by Defendants'  
6 willful, malicious, and reckless conduct.

7 74. Plaintiff has no adequate remedy at law and monetary damages are an inadequate  
8 remedy.

9 **FIFTH CAUSE OF ACTION**  
10 **DECLARATORY RELIEF**  
11 **(AGAINST ALL DEFENDANTS)**

12 75. A Plaintiff re-alleges and incorporates by reference each and every allegation contained  
13 in paragraphs one (1) through seventy-four (74).

14 76. A controversy presently exists between Plaintiff's elected Board of Directors and  
15 Defendants as Defendants took action in disregard of The Brown Act and OTA's bylaws  
16 to establish a "Site Council" purporting to replace OTA's Board of Directors, utilizing its  
17 improperly established and invalid "site council" to institute numerous changes to the  
18 management and operation of OTA, such as approving the addition of new board  
19 members, removing OTA's Principal, President, Executive Director, and Co-Founder,  
20 Tom Donahue, seizing control of OTA bank accounts and moving its funds to  
21 undisclosed locations, and preventing OTA from accessing its cyber accounts to control  
22 the dissemination of information by OTA to its supporters.

23 77. As alleged herein, Plaintiff is informed and believes that acquisition of OTA by  
24 Defendants was made expressly conditional in the MOU and that the conditions had not  
25 yet occurred, which leaves OTA and its validly elected board of directors, as it existed  
26 prior to the May 27, 2015 board meeting, in control of OTA as a legal entity separate and  
27 distinct from Defendants.  
28

1 78. Specifically, an acquisition did not occur and OTA remains independent because  
2 Defendants and OTA had not reached an agreement to complete the acquisition, the  
3 appointment of "site council" and other actions taken at the May 27, 2015 board meeting  
4 were done so by only by Defendants intentional acts to procure the absence of certain  
5 board members that would have offered opposition to Defendants, and Defendants failure  
6 to comply with The Brown Act requirement that all actions taken must be listed on the  
7 official Agenda.

8 79. As alleged herein, Defendants contend that they acquired OTA and thereby gained  
9 control over OTA and its assets by instituting a "site council" replacing OTA's Board of  
10 Directors and completing a plan of transition allegedly compliant with the MOU.  
11 Defendants further contend that Defendants acts to add additional board members,  
12 remove Principal, Tom Donahue, accessing OTA bank accounts and moving OTA funds,  
13 and preventing OTA from accessing its cyber accounts are still valid.

14 80. As alleged herein, Plaintiff is informed and believes that Defendants took actions at a  
15 board meeting on May 27, 2015 that were not listed on the official agenda for the  
16 meeting, including appointing two (2) members to the OTA Board of Directors,  
17 ostensibly creating a "site council" and using it to effectuate further actions at the OTA  
18 Board of Directors Meeting, preventing OTA Board Members from attending the meeting  
19 in order to maintain a majority of voters favorable to its devious causes.

20 81. As alleged herein, Plaintiff is informed and believes that Defendant Celentino procured  
21 the absence of OTA Board Member, Lincoln by deliberately failing to give adequate  
22 notice of the meeting.

23 82. As alleged herein, and in accordance with the official records of the Secretary of State,  
24 OTA remains a separate legal entity distinct from Defendants, and that the legal  
25 representatives of OTA remain its validly elected Board of Directors consisting of the  
26 five (5) members that existed on the Board prior to the meeting held on May 27, 2015  
27 where Defendants used improper means and devious conduct to effectuate changes to the  
28

1 structure of OTA and its elected Board of Directors, and ultimately improperly claim  
2 acquisition and control of OTA.

3 83. An actual controversy has arisen and now exists between the parties relating to whether  
4 Plaintiff's elected Board of Directors, as it existed prior to the invalid actions taken at the  
5 May 27, 2015 meeting, or the erroneously appointed "site council" are actually the  
6 rightfully elected board of directors of OTA, and whether OTA remains a separate and  
7 distinct legal entity or Defendants acquired OTA pursuant to the MOU.

8 84. A declaratory judgment is necessary to determine if Plaintiff's elected board of directors,  
9 as it existed prior to the invalid actions taken at the May 27, 2015 meeting, or Defendants  
10 who took actions that resulted in the alleged termination of OTA Principal Tom Donahue  
11 by Tri-Valley purporting to have authority as his employer, the conversion of funds in  
12 OTA bank accounts, and the creation contentious confrontations at OTA that required  
13 police intervention between Tom Donahue and Tri-Valley agents, officers, and also  
14 Defendant Celentino.

15 **PRAYER**

16 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as  
17 follows:

- 18 1. For a preliminary and permanent injunction enjoining Defendants from the following:
  - 19 a. Prohibited from continuing to enter OTA property and facilities and intimidating  
20 its staff via email and text message.
  - 21 b. Prohibited from possessing OTA assets, including its bank accounts and funds.
  - 22 c. Prohibited from having access to OTA bank accounts and OTA assets, and must  
23 be ordered to turn over all OTA funds and access to OTA bank accounts to  
24 Plaintiff.
  - 25 d. Prohibited from possession and control of OTA websites, including its blogs,  
26 email servers, and other medium used to disseminate information to students,  
27 parents, faculty, and staff of OTA as well as members of the community.



1 e. Prohibited from possessing any and all OTA property, including all financial  
2 records, and must be ordered to turn over all OTA property and financial records  
3 to Plaintiff.

4 f. Prohibited from interfering with the day-to-day operation of OTA, including  
5 interacting with OTA's employees.

6 g. Prohibited from interfering with management of OTA, including purporting to  
7 have the authority to terminate its employees, such as Principal Tom Donahue,  
8 and reinstating Tom Donahue as Principal of OTA until this matter can be  
9 resolved.

10 2. That the Court declare that Plaintiff is a separate and distinct legal entity, and that it has  
11 not been acquired, nor is it subject to the authority of, Tri-Valley and its erroneously  
12 appointed Site Council;

13 3. That the Court declare the effective OTA board of directors to be as it was prior to the  
14 regular meeting held on May 27, 2015;

15 4. That the Court invalidate the actions taken at the May 27, 2015 regular meeting.

16 5. That the Court reinstate Tom Donahue as Principal of OTA;

17 6. For general damages;

18 7. That Plaintiff be awarded its costs, expenses, and attorney's fees incurred herein;

19 8. Punitive damages;

20 9. For such other and further relief as the Court deems just and proper.

21 June 8, 2015

22 By:



23 May L. Harris  
24 Attorney for Plaintiff

25 By:



26 Mary E. Tovella  
27 Attorney for Plaintiff

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**VERIFICATION**

**I, Thomas Donahue, am the President and Executive Director of Old Town Academy, Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe it to be true.**

**I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 8<sup>th</sup> day of June, 2015.**



Thomas Donahue, President and Executive Director  
of Old Town Academy