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19 Attorneys for Plaintiffs

20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF ARIZONA

22 Arizona Summit Law School, LLC, a
23 Delaware corporation; and InfiLaw
24 Corporation, a Delaware corporation,

25 Plaintiffs,

26 vs.

27 American Bar Association, an Illinois
28 corporation; Council of the Section of Legal
Education and Admissions to the Bar,
American Bar Association; and
Accreditation Committee of the Section of
Legal Education and Admissions to the Bar,
American Bar Association,

Defendants.

NO.

COMPLAINT

(Jury Trial Demanded)

Plaintiffs, Arizona Summit Law School, LLC and InfiLaw Corporation, by and through their attorneys at Kirkland & Ellis LLP and Quarles & Brady LLP, bring this civil action against Defendants—American Bar Association; Council of the Section of Legal Education and Admissions to the Bar, American Bar Association; and Accreditation

1 Committee of the Section of Legal Education and Admissions to the Bar, American Bar
2 Association (collectively, “ABA”)—and allege as follows:

3 **NATURE OF THE ACTION**

4 1. This is a civil action for declaratory and injunctive relief and damages to
5 remedy the ABA’s violations of due process in its role as an accrediting agency. The
6 ABA issued decisions regarding the accreditation of Arizona Summit Law School on
7 December 6, 2016, March 27, 2017, October 3, 2017, January 3, 2018, and April 27, 2018
8 (collectively, “the Decisions”). As explained herein, the ABA in the Decisions violated
9 its obligation to provide due process to the law school.

10 **PARTIES**

11 2. Plaintiff Arizona Summit Law School, LLC operates a law school, the
12 Arizona Summit Law School (“Arizona Summit” or “the law school”), in Phoenix,
13 Arizona. Arizona Summit was founded in 2005. The ABA fully accredited (or, in the
14 ABA’s terminology, fully “approved”) the law school in 2010. Until 2013, Arizona
15 Summit was known as the Phoenix School of Law.

16 3. Plaintiff InfiLaw Corporation (“InfiLaw”) owns Arizona Summit Law
17 School, LLC.

18 4. Defendant American Bar Association is a corporate entity organized into
19 various components, including the “Council” and the “Committee,” as described below.

20 5. Defendant Council of the Section of Legal Education and Admissions to the
21 Bar, American Bar Association (“Council”) is a component of the American Bar
22 Association. Pursuant to 34 C.F.R. Part 602, the U.S. Department of Education (“DOE”)
23 has recognized the Council as the agency for accrediting programs in legal education that
24 lead to a professional degree in law and the law schools offering such programs.

25 6. Defendant Accreditation Committee of the Section of Legal Education and
26 Admissions to the Bar, American Bar Association (“Committee” or “Accreditation
27 Committee”) is a component of the American Bar Association. The DOE’s recognition of
28

1 the Council as an accrediting agency extends to the Committee for decisions involving
2 continued accreditation of law schools.

3 7. The American Bar Association, the Council, and the Committee are
4 collectively referred to herein as the “ABA.”

5 **JURISDICTION AND VENUE**

6 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28
7 U.S.C. § 1332(a)(1), and 20 U.S.C. § 1099b(f).

8 9. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because
9 Plaintiffs’ civil action against Defendants arises under the Constitution, laws, or treaties of
10 the United States and presents the question whether Defendants violated their federal
11 obligation to provide due process in the accreditation process.

12 10. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a)(1).
13 Plaintiffs and Defendants are citizens of different States. Arizona Summit is incorporated
14 in Delaware and has its principal place of business in Arizona. InfiLaw is incorporated in
15 Delaware and has its principal place of business in Florida. The American Bar
16 Association is incorporated in Illinois and has its principal place of business in Illinois.
17 The Council and the Committee are components of the American Bar Association and are
18 not separately incorporated. The matter in controversy exceeds the sum or value of
19 \$75,000, exclusive of interest and costs.

20 11. This Court has jurisdiction under 20 U.S.C. § 1099b(f), which provides:
21 “Notwithstanding any other provision of law, any civil action brought by an institution of
22 higher education seeking accreditation from, or accredited by, an accrediting agency or
23 association recognized by the Secretary [of Education] for the purpose of this subchapter
24 and involving the denial, withdrawal, or termination of accreditation of the institution of
25 higher education, shall be brought in an appropriate United States district court.”

26 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). The
27 Committee sent its Decisions to Arizona Summit’s address in Phoenix, and the law school
28 received the Decisions in Phoenix.

1 **FACTUAL ALLEGATIONS**

2 ***ABA Accreditation***

3 13. Pursuant to 34 C.F.R. Part 602, the DOE has recognized the Council as the
4 agency for accrediting programs in legal education that lead to a professional degree in
5 law and the law schools offering such programs.

6 14. The DOE's recognition of the Council extends to the Committee for
7 decisions involving continued accreditation of law schools.

8 ***ABA Standards 202(a), 301(a), 308(a), 309(a), and 501(b)***

9 15. The Council has promulgated Standards and Rules of Procedure for
10 Approval of Law Schools ("Standards").

11 16. Standard 202(a) provides: "The current and anticipated financial resources
12 available to the law school shall be sufficient for it to operate in compliance with the
13 Standards and to carry out its program of legal education."

14 17. Standard 301(a) provides: "A law school shall maintain a rigorous program
15 of legal education that prepares its students, upon graduation, for admission to the bar and
16 for effective, ethical, and responsible participation as members of the legal profession."

17 18. Standard 308(a) provides: "A law school shall adopt, publish, and adhere to
18 sound academic standards, including those for regular class attendance, good standing,
19 academic integrity, graduation, and dismissal."

20 19. Standard 309(b) provides: "A law school shall provide academic support
21 designed to afford students a reasonable opportunity to complete the program of legal
22 education, graduate, and become members of the legal profession."

23 20. Standard 501(b) provides: "A law school shall only admit applicants who
24 appear capable of satisfactorily completing its program of legal education and being
25 admitted to the bar."

26 21. Interpretation 501-1 provides: "Among the factors to consider in assessing
27 compliance with this Standard are the academic and admission test credentials of the law
28 school's entering students, the academic attrition rate of the law school's students, the bar

1 passage rate of its graduates, and the effectiveness of the law school’s academic support
2 program.” Interpretation 501-1 also states: “Compliance with Standard 316 is not alone
3 sufficient to comply with the Standard.”

4 22. Interpretation 501-2 provides: “Sound admissions policies and practices
5 may include consideration of admission test scores, undergraduate course of study and
6 grade point average, extracurricular activities, work experience, performance in other
7 graduate or professional programs, relevant demonstrated skills, and obstacles overcome.”

8 23. The ABA in its Decisions concluded that Arizona Summit was not in
9 compliance with Standards 202(a), 301(a), 309(b), and 501(b) and Interpretations 501-1
10 and 501-2.

11 24. The ABA also concluded in its Decisions that Arizona Summit was not in
12 compliance with Standard 308(a) but subsequently reached the opposite conclusion.

13 25. Standards 202(a), 301(a), 309(b), and 501(b) and Interpretations 501-1 and
14 501-2 are vague and lack objective metrics for determining compliance or noncompliance.

15 26. Maureen O’Rourke, the current Chair of the Council, at a Council meeting
16 held in October 2016 (when she was Chair-elect), publicly admitted what many people
17 involved in the ABA accreditation process have long known: that the ABA views its own
18 Standards as “fuzzy and hard to enforce.” Chair O’Rourke’s admission is contrary to the
19 provisions of the HEA and DOE regulations requiring an accrediting agency to have
20 “*clear standards*” of accreditation. 20 U.S.C. § 1099b(a)(6); 34 C.F.R. § 602.18(a)
21 (emphasis added).

22 27. The ABA did not in any of the Decisions give Arizona Summit any
23 guidance regarding what the law school needed to do or show to return to compliance
24 with the ABA’s vague Standards. That is not how the ABA as an accrediting agency
25 should operate. The National Advisory Committee on Institutional Quality and Integrity
26 (“NACIQI”) makes recommendations to the U.S. Secretary of Education on accreditation
27 matters, including on whether the DOE should recognize the ABA as an accrediting
28 agency. At NACIQI’s June 2016 meeting, NACIQI told ABA representatives present at

1 the meeting, including the Chair of the Council, that “[w]e want to make sure that the schools
2 that follow your standards clearly understand what you want them to do.” The ABA did not do
3 that in the Decisions.

4 ***Other ABA Standards: 206(a) and 316***

5 28. Standard 206(a) provides: “Consistent with sound legal education policy
6 and the Standards, a law school shall demonstrate by concrete action a commitment to
7 diversity and inclusion by providing full opportunities for the study of law and entry into
8 the profession by members of underrepresented groups, particularly racial and ethnic
9 minorities, and a commitment to having a student body that is diverse with respect to
10 gender, race and ethnicity.” Arizona Summit complies with Standard 206, is committed
11 to diversity, and has a diverse student body.

12 29. Standard 316, captioned “Bar Passage,” provides in pertinent part as
13 follows:

14 Standard 316. BAR PASSAGE

15 (a) A law school’s bar passage rate shall be sufficient, for
16 purposes of Standard 301(a), if the school demonstrates that it
meets any one of the following tests:

17 (1) That for students who graduated from the law
18 school within the five most recently completed calendar
years:

19 (i) 75 percent or more of these graduates
20 who sat for the bar passed a bar examination; or

21 (ii) in at least three of these calendar years,
22 75 percent of the students graduating in those
years and sitting for the bar have passed a bar
examination.

23 * * *

24 (2) That in three or more of the five most recently
25 completed calendar years, the school’s annual first-time
26 bar passage rate in the jurisdictions reported by the
27 school is no more than 15 points below the average
first-time bar passage rates for graduates of ABA-
approved law schools taking the bar examination in
these same jurisdictions.

28 * * *

1 (b) A school shall be out of compliance with this Standard
2 if it is unable to demonstrate that it meets the requirements of
3 paragraph (a)(1) or (2).

4 * * *

5 30. A law school complies with Standard 316 if it satisfies either of two metrics.
6 Under paragraph (a)(1), compliance with Standard 316 is based on ultimate bar pass rates
7 (*i.e.*, the percentage of a law school graduating class that passed a bar examination).
8 Under paragraph (a)(2), compliance with Standard 316 is based on first-time bar pass rates
9 (*i.e.*, the percentage of a graduating class that passed the bar on the first attempt).

10 31. In contrast to such Standards as 202(a) 301(a), 309(b), and 501(b) and
11 Interpretations 501-1 and 501-2, Standard 316 is a clear standard and sets forth objective
12 metrics for assessing compliance.

13 32. Arizona Summit is in compliance with Standard 316 based on the ultimate
14 bar pass rate metric.

15 33. Arizona Summit's compliance with Standard 316, the standard specifically
16 governing bar pass, makes it arbitrary and capricious for the ABA to rely on selective bar
17 pass data to conclude that the law school is out of compliance with the ABA's "fuzzy"
18 standards that lack objective metrics for assessing compliance.

19 ***The ABA's Obligation Under Federal Law to Provide Due Process***

20 34. Several sources of federal law require the ABA to provide due process to
21 the law schools it accredits.

22 ***The HEA and DOE Regulations***

23 35. The Higher Education Act ("HEA") provides that an accrediting agency
24 recognized by the U.S. Secretary of Education

25 shall establish and apply review procedures throughout the
26 accrediting process, including evaluation and withdrawal
27 proceedings, which comply with due process procedures that
28 provide -- (A) for adequate written specification of -- (i)
requirements, including clear standards for an institution of
higher education or program to be accredited; and (ii)
identified deficiencies at the institution or program examined;
(B) for sufficient opportunity for a written response, by an
institution or program, regarding any deficiencies identified by

1 the agency or association to be considered by the agency or
2 association -- (i) within a timeframe determined by the agency
3 or association; and (ii) prior to final action in the evaluation
4 and withdrawal proceedings[.]

5 20 U.S.C. § 1099b(a)(6).

6 36. The DOE has promulgated regulations governing due process in the
7 accreditation process (“DOE regulations”). The DOE regulations provide that an
8 accrediting agency “must demonstrate that the procedures it uses throughout the
9 accrediting process satisfy due process.” 34 C.F.R. § 602.25.

10 37. 34 C.F.R. § 602.25, captioned “Due process,” provides that an accrediting
11 agency must demonstrate that it:

12 (a) Provides adequate written specification of its
13 requirements, including clear standards, for an institution or
14 program to be accredited or preaccredited.

15 (b) Uses procedures that afford an institution or program a
16 reasonable period of time to comply with the agency’s
17 requests for information and documents.

18 (c) Provides written specification of any deficiencies
19 identified at the institution or program examined.

20 (d) Provides sufficient opportunity for a written response
21 by an institution or program regarding any deficiencies
22 identified by the agency, to be considered by the agency
23 within a timeframe determined by the agency, and before any
24 adverse action is taken.

25 (e) Notifies the institution or program in writing of any
26 adverse accrediting action or an action to place the institution
27 or program on probation or show cause. The notice describes
28 the basis for the action.

(f) Provides an opportunity, upon written request of an
institution or program, for the institution or program to appeal
any adverse action prior to the action becoming final.

* * *

(g) The agency notifies the institution or program in
writing of the result of its appeal and the basis for that result.

34 C.F.R. § 602.25(a)-(g).

1 contrary to constitutional right, without observance of procedure required by law, or not
2 based on substantial evidence (collectively, “arbitrary and capricious”).

3 44. An accreditor violates administrative law principles if it fails to provide a
4 reasoned explanation for its decisions.

5 45. An accreditor’s decisions must be consistent, and the accreditor must
6 provide a reasoned explanation for any departure from past precedent. *See also* 34 C.F.R.
7 § 602.18 (providing that an accrediting agency “must consistently apply and enforce [its]
8 standards”).

9 46. Like an administrative agency, an accreditor may not defend a decision on
10 new grounds not set forth by the accreditor in its original decision.

11 ***Fifth Amendment Due Process***

12 47. The Fifth Amendment to the United States Constitution provides that “[n]o
13 person shall ... be deprived of life, liberty, or property, without due process of law.” U.S.
14 Const. amend. V.

15 48. A private entity may be deemed a state actor, and therefore subject to the
16 Due Process Clause of the Fifth Amendment, to the extent that the federal government has
17 delegated governmental functions to the entity, or coerced, pressured, or significantly
18 encouraged the entity to take an action that would be unconstitutional if taken by the
19 government.

20 49. InfiLaw officers have information and believe that during the prior
21 Administration one or more DOE officials coerced, pressured, or significantly encouraged
22 the ABA to take adverse accreditation actions against for-profit law schools, including
23 law schools owned by InfiLaw.

24 50. In 2017, a now-former DOE official publicly touted on social media as one
25 of his personal “achievements” leading the DOE to impose an “unprecedented restriction
26 on a for-profit law school’s” access to the Title IV student loan program. That official
27 was referring to the Charlotte School of Law, an InfiLaw-owned law school.
28

1 56. The Committee did not provide a reasoned explanation, or any explanation,
2 for that Conclusion. Instead, the Committee stated: “See Findings of Fact (4)-(39).”

3 57. The cited Findings did not support the Committee’s conclusion of
4 noncompliance with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-
5 1 and 501-2.

6 58. The Committee did not explain how the Findings it cited constituted
7 noncompliance with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-
8 1 and 501-2. The Committee did not even explain which Findings related to which
9 Standards.

10 59. The Committee did not explain what Arizona Summit had to do or show to
11 return to compliance with the Standards. The Committee provided no guidance to
12 Arizona Summit for avoiding future conclusions of noncompliance with Standards 301(a),
13 308(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2.

14 60. The Committee “further conclude[d],” pursuant to ABA Rule 16(a), that
15 “the issues of non-compliance with 301(a), 308(a), 309(b), and 501(b) and Interpretations
16 501-1 and 501-2 are substantial and have been persistent.” Conclusion (3).

17 61. Under ABA Rule 16(a), the ABA may impose sanctions on a law school for
18 “[s]ubstantial or persistent noncompliance with one or more of the Standards.” But the
19 Committee did not explain how the supposed “issues of noncompliance” were
20 “substantial” and “persistent.” Conclusion (3). Nor did the Committee cite any facts in
21 support of its view that the issues of noncompliance were substantial and persistent. The
22 Committee did not set forth any tests or criteria for substantiality or persistence. The
23 terms “substantial” and “persistent” are not defined in the ABA’s rules.

24 62. Furthermore, Rule 16(a) requires substantial or persistent *noncompliance*
25 with the Standards, not just substantial or persistent “issues” (*i.e.*, questions) of non-
26 compliance. It is not enough for “issues” to be substantial or persistent; actual
27 noncompliance must be substantial or persistent. The Committee’s substantial and
28 persistent conclusion did not meet the requirements of Rule 16(a).

1 63. The Committee recommended to the Council that it place Arizona Summit
2 on probation. Conclusion (4). The Council subsequently did so.

3 64. In Conclusion (5-d), the Committee required Arizona Summit to provide to
4 all admitted students and publish on its website a public notice, in a form provided by the
5 Committee, stating that the Committee has found the law school not to be in compliance
6 with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2
7 (“the Public Notice”). Conclusion (5-d).

8 65. The Public Notice required by the Committee is a compelled speech
9 requirement. The Public Notice forces Arizona Summit to communicate the ABA’s
10 flawed determination and views to the law school’s students, prospective students, alumni,
11 faculty, the legal community, and the public. Furthermore, the ABA’s message that
12 Arizona Summit is being forced to communicate is misleading because it is the product of
13 the ABA’s due process violations. The Public Notice inflicts immediate and irreparable
14 injury on Arizona Summit and implicates the same concerns as those underlying the First
15 Amendment’s general prohibition against governmental efforts to compel speech from
16 private parties.

17 66. The Public Notice has harmed and continues to harm Arizona Summit’s
18 ability to attract and retain higher credentialed students and to demonstrate compliance
19 with the ABA Standards and has caused and will cause other substantial damage to the
20 law school, including by making it more difficult to attract and retain students. The
21 Public Notice requirement inflicts on the law school irreparable injury.

22 67. The Committee directed Arizona Summit to publish the Public Notice
23 within five business days of the decision, and the law school timely complied with the
24 directive.

25 68. The Committee directed Arizona Summit to communicate to all of its
26 current students, “each semester, within 30 days of the completion of the assignment and
27 distribution of semester grades,” the following information: “(a) the Arizona first-time bar
28 examination passage rates, by class quartiles, for Law School graduates sitting for the

1 Arizona bar examinations over the six administrations preceding the semester; and (b) the
2 class quartile in which the student then falls.” Conclusion (5-e). This directive is referred
3 to herein as the “Bar Pass by Quartile Communication.”

4 69. The Bar Pass by Quartile Communication requires Arizona Summit to
5 provide incomplete and misleading information to its students. For example, Arizona
6 Summit is required to tell students that they are in, for example, the 4th quartile and what
7 the 4th quartile pass rates were for the last three years. The natural inference the ABA
8 wants 4th quartile students to draw from this information is that their pass rate would be
9 similar to that of the 4th quartile students in the past. But that desired inference is
10 misleading and ignores critical information. Arizona Summit’s current students do not
11 have the same entering qualifications as those of students who took the last six bar
12 examinations. That means that the law school’s current third and fourth class quartiles do
13 not align with the class quartiles for the prior six bar exams. Thus, the Bar Pass by
14 Quartile Communication requires Arizona Summit to give students information that is
15 inaccurate as to their expected pass rates. In all events, the Bar Pass by Quartile
16 Communication forces Arizona Summit to communicate a misleading message to its
17 students it would not communicate (and could not be directed to communicate) in the
18 absence of the Committee’s flawed determinations that fail to comport with due process.

19 70. Similarly, first year, first semester students would infer from their class
20 quartile that they would perform similarly on the bar examination as those in the same
21 class quartile did on the previous six examinations. Graduating LGPA is a strong
22 predictor of bar passage, but graduating LGPA and associated rank are not the same thing
23 as cumulative rank and LGPA at earlier periods in a student’s law school career.
24 Furthermore, the strength of LGPA as a predictor for bar pass goes down each semester
25 earlier in a student’s law school career—with the LGPA of a first year, first semester
26 student having the least predictive power. Providing students before their final semester
27 this information (bar pass by graduating LGPA class quartiles and their current class
28

1 quartile in the same email) has a high risk of giving them a projection of their bar pass for
2 which there is not a sound basis in the statistics.

3 71. Like the Public Notice, the Bar Pass by Quartile Communication is a
4 compelled speech requirement. The Bar Pass by Quartile Communication forces Arizona
5 Summit to communicate misleading information to its students. Like the Public Notice,
6 the Bar Pass by Quartile Communication implicates the same concerns as those
7 underlying the First Amendment's general prohibition against governmental efforts to
8 compel speech from private parties. It also flows directly from the Committee's flawed
9 accreditation determination.

10 72. The Bar Pass by Quartile Communication has harmed and will harm
11 Arizona Summit's ability to attract and retain higher credentialed students and to
12 demonstrate compliance with the ABA Standards and will cause other substantial damage
13 to the law school. The Bar Pass by Quartile Communication inflicts further irreparable
14 injury on the law school.

15 73. The Committee's decision included a "Notice" stating that the Committee
16 and the Council will take "immediate adverse action" against Arizona Summit if the law
17 school does not demonstrate compliance with the Standards by the end of the two-year
18 period that began on May 18, 2016. The Notice stated that "[f]or these purposes, adverse
19 action means removal from the list of law schools approved by the American Bar
20 Association."

21 ***The Council's Decision of March 27, 2017***

22 74. On March 10-11, 2017, the Council held a meeting concerning Arizona
23 Summit and other law schools.

24 75. On March 27, 2017, the Council released to Arizona Summit its decision,
25 which was styled as "Decision of the Council of the ABA Section of Legal Education and
26 Admissions to the Bar, March 2017."

27 76. The Council's decision states that the Council adopted a motion adopting
28 the Committee's Findings of Fact and affirming the Committee's Conclusions with

1 respect to Arizona Summit’s non-compliance with Standards 301(a), 308(a), 309(b), and
2 501(b) and Interpretations 501-1 and 501-2.

3 77. The Council concluded in its decision that Arizona Summit was not in
4 compliance with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-1
5 and 501-2. Conclusion (1).

6 78. The Council did not provide a reasoned explanation, or any explanation, for
7 that Conclusion.

8 79. The Council did not explain how the Committee’s findings constituted
9 noncompliance with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-
10 1 and 501-2.

11 80. The Council did not explain what Arizona Summit had to do or show to
12 return to compliance with the Standards. The Council provided no guidance to Arizona
13 Summit for avoiding future conclusions of noncompliance with Standards 301(a), 308(a),
14 309(b), and 501(b) and Interpretations 501-1 and 501-2.

15 81. The Council further concluded that “the issues of non-compliance with
16 Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2 are
17 substantial and have been persistent.” Conclusion (2).

18 82. The Council placed Arizona Summit on probation, effective March 27,
19 2017. Conclusion (3).

20 83. The Council directed Arizona Summit, within five business days of the
21 decision, to publish on its website and “provide to all admitted students a letter reporting
22 the fact that the Law School has been placed on probation and of the specific remedial
23 actions the Law School is required to take and including a copy of a statement in the form
24 attached” to the Council’s decision. Conclusions (4-d) and (4-e). The allegations in
25 Paragraphs 65-66 concerning the Committee’s Public Notice also apply to the Council’s
26 Public Notice.

27 84. The Council directed Arizona Summit to communicate to its current
28 students the same information that was required by the Committee’s Bar Pass by Quartile

1 Communication. Conclusion (4-f). The allegations in Paragraphs 69-71 concerning the
2 Committee's Bar Pass by Quartile Communication also apply the Council's directive.

3 85. The Council's decision included a "Notice" substantially the same as the
4 one described in Paragraph 73.

5 *The Committee's Decision of October 3, 2017.*

6 86. On September 14-15, 2017, the Committee held a meeting concerning
7 Arizona Summit and other law schools.

8 87. On October 3, 2017, the Committee released to Arizona Summit its
9 decision, which was styled "Recommendation of the Accreditation Committee, September
10 2017."

11 88. The Committee concluded that Arizona Summit was not in compliance with
12 Standards 301(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2. Conclusion
13 (2).

14 89. The Committee did not provide a reasoned explanation, or any explanation,
15 for that Conclusion. Instead, the Committee stated: "See Findings of Fact (17)-(26) and
16 (28)-(40)."

17 90. The cited Findings did not support the Committee's conclusion of
18 noncompliance with Standards 301(a), 308(a), 309(b), and 501(b) and Interpretations 501-
19 1 and 501-2.

20 91. The Committee did not explain how the Findings it cited constituted
21 noncompliance with Standards 301(a), 309(b), and 501(b) and Interpretations 501-1 and
22 501-2. The Committee did not even explain which Findings related to which Standards.

23 92. The Committee did not explain what Arizona Summit had to do or show to
24 return to compliance with the Standards. The Committee provided no guidance to
25 Arizona Summit for avoiding future conclusions of noncompliance with Standards 301(a),
26 309(b), and 501(b) and Interpretations 501-1 and 501-2.

27 93. Reversing course from its December 6, 2016 decision, the Committee
28 concluded that Arizona Summit was in compliance with Standard 308(a). Conclusion (1).

1 The Committee did not explain how Arizona Summit complied with Standard 308(a) but
2 not Standards 301(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2.

3 94. The Committee stated that it “has reason to believe that the Law School is
4 not in compliance with Standard 202(a) concerning adequacy of its finances.” Conclusion
5 (3).

6 95. The Committee recommended to the Council that Arizona Summit “remain
7 on probation and continue the specific remedial actions mandated by the Council in its
8 March 2017 letter.” Conclusion (4).

9 96. The Committee’s decision did not include any “substantial and persistent”
10 conclusion.

11 97. The Committee’s decision included a “Notice” substantially the same as the
12 one described in Paragraph 73.

13 ***The Committee’s Decision of January 3, 2018***

14 98. On December 7-8, 2017, the Committee held a meeting concerning Arizona
15 Summit and other law schools.

16 99. On January 3, 2018, the Committee released to Arizona Summit its decision,
17 which was styled as “Decision of the Accreditation Committee, December 2017.”

18 100. The Committee in its decision concluded “that the Law School is not in
19 compliance with Standard 202(a) concerning its adequacy of its finances.” Conclusion
20 (1).

21 101. The Committee did not provide a reasoned explanation, or any explanation,
22 for that Conclusion. Instead, the Committee stated: “See Findings of Fact (5)-(17).”

23 102. The cited Findings do not support the Committee’s conclusion of
24 noncompliance with Standard 202(a).

25 103. The Committee did not explain how the Findings it cited constituted
26 noncompliance with Standard 202(a).

27
28

1 113. The Committee did not explain how the Findings it cited constituted
2 noncompliance with Standard 202(a).

3 114. The Committee did not explain what Arizona Summit had to do or show to
4 return to compliance with Standard 202(a). The Committee provided no guidance to
5 Arizona Summit for avoiding future conclusions of noncompliance with Standard 202(a).

6 115. The Committee “further conclude[d]” that “the issues of non-compliance
7 with Standard 202(a) are substantial and have been persistent.” Conclusion (2).

8 116. The Committee did not explain how the “issues of non-compliance with
9 Standard 202(a)” are “substantial’ and have been “persistent.” The allegations set forth in
10 Paragraphs 61-62 also apply to this substantial and persistent conclusion.

11 117. The Committee recommended to the Council that “Standard 202(a) be
12 added to the Standards with which Arizona Summit Law School is out of compliance and
13 for which the Law School is on probation.” Conclusion (3).

14 118. The Committee’s decision includes a “Notice” substantially the same as the
15 one described in Paragraph 73.

16 119. Arizona Summit has appealed the Committee’s decision to the Council,
17 which does not stay the decision in any way.

18 120. At its meeting on March 15-17, 2018, the Committee considered the status
19 of several law schools, including Arizona Summit and the Western Michigan University
20 Thomas M. Cooley Law School (“Cooley”). On April 27, 2018, the same day the
21 Committee released its decision on Arizona Summit, the Committee publicly released a
22 decision concluding that Cooley is in compliance with Standard 501(b) and Interpretation
23 501-1. The Committee’s decision on Cooley cited the “concrete steps taken by the Law
24 School with respect to its admissions policy and practices.”

25 121. The Committee’s Cooley decision is inconsistent with its decision the same
26 day on Arizona Summit. Like Cooley, Arizona Summit has taken “concrete steps” with
27 respect to its admissions policy and practices. A comparison of the two law schools’
28

1 objective metrics renders the Committee’s decision on Arizona Summit arbitrary and
2 capricious.

3 122. The Committee did not attempt to reconcile its decisions on Arizona
4 Summit and Cooley. The Committee in its decision on Arizona Summit did not provide
5 any explanation for its conclusion that Cooley is in compliance with the Standards but
6 Arizona Summit is not.

7 123. One difference between Arizona Summit and Cooley is that the former is a
8 for-profit entity and the latter is not. But Arizona Summit’s for-profit status is not a
9 lawful basis for the ABA to take adverse action against the law school. Indeed, the Justice
10 Department previously obtained an injunction prohibiting the ABA from engaging in such
11 discriminatory treatment.

12 124. In none of the Decisions did the ABA cite as precedent any ABA decisions
13 on any other law schools.

14 125. The Committee’s decision of April 27, 2018, was made no later than March
15 17, 2018. The cover letter transmitting the decision to Arizona Summit and signed by
16 Barry Currier, Managing Director of Accreditation and Legal Education, states:
17 “Attached please find the decision of the Accreditation Committee *at its meeting on*
18 *March 15-17, 2018*, with respect to the Arizona Summit Law School.” (Emphasis added.)
19 The Committee violated 34 C.F.R. § 602.26(b), which provides that an accreditation
20 agency must notify a school of an adverse decision “no later than 30 days after it reaches
21 the decision.” In violation of that DOE regulation, the Committee took 41 days, from
22 March 17 to April 27, to notify Arizona Summit of its decision.

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **(VIOLATION OF DUE PROCESS)**

26 126. Plaintiffs repeat and reallege the allegations of paragraphs 1-125 as if set
27 forth fully herein.

28

1 127. The ABA in its Decisions committed numerous violations of its obligation
2 to provide due process to Arizona Summit.

3 128. Contrary to the HEA and DOE regulations, as well as the federal common
4 law due process obligation that is informed in part by those sources of law, the ABA
5 violated due process in the following respects, among others: The ABA did not apply to
6 Arizona Summit clear standards for accreditation; did not specify in writing the supposed
7 deficiencies at Arizona Summit; did not consider Arizona Summit's responses regarding
8 the supposed deficiencies before taking adverse action; did not describe the basis for its
9 adverse accrediting actions; did not consistently apply and enforce its standards; and did
10 not employ effective controls against the inconsistent application of its standards.

11 129. In concluding that Arizona Summit was not in compliance with Standards
12 202(a), 301(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2, the ABA violated
13 the due process required by federal common law. The ABA's conclusions, adverse
14 findings, and specific remedial actions imposed on Arizona Summit were arbitrary,
15 capricious, unreasonable, an abuse of discretion, not in accordance with law, contrary to
16 constitutional right, without observance of procedure required by law, and not based on
17 substantial evidence. The ABA failed to provide a reasoned explanation for its decisions,
18 conclusions, adverse findings, and specific remedial actions imposed on Arizona Summit.
19 The ABA's decisions on Arizona Summit were inconsistent with the ABA's decision on
20 another law school.

21 130. The Standards articulated by the ABA and applied to Arizona Summit are
22 vague and lack objective tests for assessing compliance.

23 131. Contrary to the HEA and DOE regulations, the ABA did not apply to
24 Arizona Summit clear standards for accreditation; did not adequately specify in writing
25 the supposed deficiencies identified at Arizona Summit; and did not describe the basis for
26 its adverse accrediting actions and probation action.

27 132. To the extent that one or more DOE officials during the prior
28 Administration coerced, pressured, or significantly encouraged the ABA to take adverse

1 accreditation action against for-profit law schools, including law schools owned by
2 InfiLaw such as Arizona Summit, the ABA’s actions violated the Due Process Clause of
3 the Fifth Amendment.

4 **COUNT II**

5 **(DECLARATORY JUDGMENT)**

6 133. Plaintiffs repeat and reallege the allegations of the paragraphs 1-125 as if set
7 forth fully herein.

8 134. The Declaratory Judgment Act provides: “In a case of actual controversy
9 within its jurisdiction, ... any court of the United States ... may declare the rights and
10 other legal relations of any interested party seeking such declaration, whether or not
11 further relief is or could be sought.” 28 U.S.C. § 2201(a).

12 135. In this case, there is an actual and substantial controversy, between parties
13 having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
14 of a declaratory judgment.

15 136. This Court possesses an independent basis for jurisdiction over the parties.

16 137. A judgment declaring that the ABA’s Decisions regarding Arizona Summit
17 violated due process will serve a useful purpose in clarifying and settling the legal
18 relations in issue and will terminate and afford relief from the uncertainty, insecurity, and
19 controversy giving rise to the proceeding.

20 138. Absent a declaratory judgment, there is a substantial likelihood that Arizona
21 Summit will suffer irreparable injury in the future.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs respectfully request that the Court:

24 (a) Vacate, hold unlawful, and set aside the ABA’s Decisions on Arizona
25 Summit and the ABA’s conclusions, adverse findings, and specific remedial actions in
26 those Decisions, including but not limited to the Public Notice and the Bar Pass by
27 Quartile Communication;

28

1 (b) Declare that the ABA’s Decisions on Arizona Summit are arbitrary and
2 capricious and otherwise violate due process;

3 (c) Declare that, contrary to due process and the provisions of the HEA and
4 DOE regulations requiring the ABA to articulate and apply “clear” accreditation
5 standards, ABA Standards 202(a), 301(a), 309(b), and 501(b) and Interpretations 501-1
6 and 501-2 are unlawfully vague and, therefore, unenforceable;

7 (d) Grant an injunction prohibiting the ABA from applying or enforcing its
8 Decisions against Arizona Summit, including but not limited to the Public Notice and the
9 Bar Pass by Quartile Communication;

10 (e) Grant an injunction barring the ABA from enforcing Standards 202(a),
11 301(a), 309(b), and 501(b) and Interpretations 501-1 and 501-2 against Arizona Summit
12 or any law school;

13 (f) Grant an injunction requiring the ABA to adhere to all of the requirements
14 of due process obligations in all future accreditation proceedings;

15 (g) Enjoin the ABA *pendente lite* from removing Arizona Summit from the list
16 of ABA-approved law schools or otherwise withdrawing or terminating Arizona Summit’s
17 accreditation.

18 (h) Award damages for the ABA’s violations of due process and its Public
19 Notice and Bar Pass by Quartile Communication; and

20 (i) Award pre- and post-judgment interest, attorney’s fees, and such other and
21 further relief as the Court may deem just and proper.

22 **DEMAND FOR TRIAL BY JURY**

23 Plaintiffs hereby demand trial by jury on all issues so triable.
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RESPECTFULLY SUBMITTED this 24th day of May, 2018.

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By /s/ Nicole France Stanton
Nicole France Stanton

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