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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the State of Washington; KIRK H. SCHULZ, in his official capacities as the President of Washington State University and Chair of the Pac-12 Board of Directors; OREGON STATE UNIVERSITY, an institution of higher education and agency of the State of Oregon; and JAYATHI Y. MURTHY, in her official capacities as the President of Oregon State University and Member of the Pac-12 Board of Directors,

Plaintiffs,

v.

THE PAC-12 CONFERENCE; and GEORGE KLIAVKOFF, in his official capacity as Commissioner of the Pac-12 Conference,

Defendants.

Case No.

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS’
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

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1 **I. INTRODUCTION**

2 Plaintiffs Washington State University, Kirk Schulz, in his official capacities as
3 President of Washington State University and Chair of the Pac-12 Board of Directors, Oregon
4 State University, and Jayathi Murthy, in her official capacities as the President of Oregon
5 State University and member of the Pac-12 Board, seek a Temporary Restraining Order to
6 preserve the status quo and prevent imminent, irreparable damage to Plaintiffs and to the Pac-
7 12 Conference, one of the preeminent intercollegiate athletic conferences in the country, with
8 a storied history spanning over a century.

9 In the past year, ten of the twelve members of the Pac-12 have given notices of
10 withdrawal from the Conference, after the Pac-12’s current media rights deals with ESPN and
11 Fox terminate, to join the competing Big Ten, Big 12, and Atlantic Coast Conferences. The
12 Pac-12’s Constitution and Bylaws specify the consequences for doing so. The Bylaws state
13 that if a member delivers a notice of withdrawal prior to August 1, 2024, “the member’s
14 representative to the Pac-12 Board of Directors shall automatically cease to be a member of
15 the Pac-12 Board of Directors and shall cease to have the right to vote on any matter before
16 the Pac-12 Board of Directors.” This provision recognizes that members that have announced
17 their intent to withdraw from the Pac-12 and join a competing conference now owe allegiance
18 to their new conference and they cannot continue to act in the best interests of the Pac-12.

19 The Pac-12’s Constitution and Bylaws are clear and unambiguous on this point, and
20 the Conference had no difficulty applying them last year when the University of Southern
21 California (“USC”) and University of California, Los Angeles (“UCLA”) announced that they
22 would withdraw from the Pac-12 in 2024 to join the Big Ten Conference. Pursuant to the
23 Bylaws, USC’s and UCLA’s representatives were promptly removed from the Pac-12 Board
24 and were no longer permitted to vote on Board matters. But now that eight more schools have
25 given notices of withdrawal, the Commissioner of the Pac-12 has reversed course and has
26 purported to schedule a “Board Meeting” for **7:00 am on Wednesday, September 13, 2023**,
27 at which representatives of all twelve members will be asked to vote on matters of existential
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1 importance to the Pac-12’s future, including a retention plan for Pac-12 employees that hinges
2 on whether the Conference will exist beyond August 1, 2024, and a “go forward governance
3 approach.” The Commissioner has scheduled this “Board Meeting” notwithstanding that
4 President Schulz, the Chair of the Pac-12’s Board, declined to convene a meeting of the
5 representatives of all twelve members at the Commissioner’s request, including
6 representatives of members that had delivered notices of withdrawal.

7 If that purported “Board Meeting” proceeds, it would do irreparable damage to
8 Plaintiffs and the Pac-12. The departing members’ former Board representatives are
9 hopelessly conflicted and have no incentive to expend the resources that will be needed to
10 retain employees and partners, recruit new members, and take other steps that would be
11 necessary to sustain the Pac-12 after 2024. On the contrary, they are now motivated by a
12 strong financial incentive to dissolve the Pac-12—which will otherwise compete against their
13 new conferences for media rights deals, viewers, and student athletes—and distribute the
14 Conference’s assets. Moreover, regardless how members may vote at the scheduled meeting,
15 the mere occurrence of that meeting, under color of authority by the Pac-12’s Commissioner,
16 will create an impenetrable cloud of uncertainty surrounding the Pac-12’s governance that
17 will itself do irreparable harm. The meeting will violate the Conference’s Constitution and
18 Bylaws and throw into doubt who is in charge, making it difficult or impossible for Plaintiffs
19 to negotiate agreements, recruit new members, and carry out the other legitimate business of
20 the Conference. This will cause irreparable injury to Plaintiffs, the only two remaining Pac-
21 12 members that have *not* given notices of withdrawal.

22 The Court should order that Defendants may not convene a purported Board meeting,
23 or otherwise permit the former Board representatives of the ten departing schools to
24 participate on the Pac-12 Board or vote on any Board matter, until the Court can determine
25 through a preliminary injunction hearing or other suitable procedure who constitutes the Pac-
26 12’s Board of Directors. This narrow relief—which merely preserves the status quo until the
27 Court can decide the critical question of Board composition—is necessary to prevent
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1 irreparable harm to Plaintiffs and to the Pac-12, is compelled by the plain language of the Pac-
2 12’s Constitution and Bylaws. And Plaintiffs’ proposed TRO will cause Defendants (and the
3 ten departing members) no cognizable harm whatsoever.

4 For these reasons, and more stated below, Plaintiffs respectfully request that the Court
5 schedule a hearing for **Monday, September 11**—before the September 13 “Board
6 Meeting”—and that, at the conclusion of that hearing, the Court enter Plaintiffs’ proposed
7 Temporary Restraining Order.

8 II. FACTUAL BACKGROUND

9 A. The Pac-12 Conference

10 The Pac-12 Conference (“the Pac-12” or “the Conference”) is a NCAA Division 1
11 collegiate athletic association that boasts a storied history and reputation. Founded in 1915,
12 the Pac-12 Conference is dedicated to developing the next generation of leaders by
13 championing excellence in academics, athletics, and the well-being of student athletes. *See*
14 *About the Pac-12*, <https://pac-12.com/about-pac-12#missionstatement> (last visited September
15 7, 2023). Since its establishment more than a century ago, the Pac-12 Conference has earned
16 more team sport national championships than any other conference in history, earning it the
17 nickname “the Conference of Champions.” *See About the Pac-12*, [https://pac-12.com/about-](https://pac-12.com/about-pac-12#pac12history)
18 [pac-12#pac12history](https://pac-12.com/about-pac-12#pac12history) (last visited September 7, 2023).

19 Oregon State University (then known as Oregon Agricultural College) was one of the
20 four founding members of the Pac-12 in 1915. Washington State University joined the Pac-
21 12 just one year later, in 1916. For over 100 years, Oregon State and Washington State have
22 dedicated themselves to promoting the Pac-12 Conference and its mission. Today, the Pac-12
23 is comprised of twelve member schools: University of Arizona; Arizona State University
24 (“ASU”); University of California, Berkeley (“UC Berkeley”); UCLA; University of
25 Colorado, Boulder (“Colorado”); University of Oregon; Oregon State University (“OSU”);
26 USC; Stanford University; University of Utah; University of Washington; and Washington
27 State University (“WSU”). *See Declaration of Rebecca Gose in support of Plaintiffs’*

1 Application for TRO (“Gose Decl.”), Ex. A, Chapter 2, Section 1. The Pac-12 is one of the
2 five conferences in the NCAA that are referred to as the “Power Five,” along with the Atlantic
3 Coast Conference (“ACC”), the Big Ten Conference (“Big Ten”), the Big 12 Conference
4 (“Big 12”), and Southeastern Conference (“SEC”). *See* Declaration of Eric MacMichael in
5 support of Plaintiffs’ Application for TRO (“MacMichael Decl.”) Ex. A.

6 **B. Under the Pac-12 Bylaws, members that have delivered notice of their**
7 **withdrawal are automatically removed from the Pac-12 Board.**

8 The Pac-12 has adopted a Constitution and Bylaws (“the Bylaws”) that address the
9 conditions and obligations of membership, media rights, Conference actions, and
10 organizational governance. Gose Decl. ¶ 2 & Ex. A. As a condition and obligation of
11 membership in the Pac-12, each member agrees “[t]o cooperate in the spirit of mutual trust
12 and confidence with the other members of the Conference in supporting and promoting the
13 objectives of the Conference.” Gose Decl. Ex. A, Ch. 3 Sec. 1.g.

14 Under the Bylaws, the Conference can only act under the direction of its Board of
15 Directors. *Id.*, Ch. 5, Sec. 1. The Board of Directors manages or directs all business and
16 affairs of the Conference and acts as its governing body. *Id.* Each member of the Conference
17 has one representative on the Pac-12 Board of Directors, who must be the Chancellor or
18 President of the member institution. *Id.* Ch. 5, Sec. 2. The Pac-12 Commissioner is selected
19 by the Board and is “responsible for ensuring that the objectives, policies, and orders of the
20 [Board] are implemented.” *Id.* Ch. 5, Sec. 3. The Commissioner’s powers are limited, as the
21 Pac-12 may only act at the direction of the Board, the Conference’s ultimate governing
22 authority. *Id.* Ch. 5, Sec. 1; Ch. 6, Sec. 3.

23 The Bylaws also make clear that once a member gives notice of its withdrawal from
24 the Conference, it is automatically removed from the Board of Directors. The Bylaws state
25 that “[n]o member shall deliver a notice of withdrawal to the Conference in the period
26 beginning on July 24, 2011, and ending on August 1, 2024.” *Id.* Ch. 3, Sec. 2. If “any
27 member does deliver a notice of withdrawal prior to August 1, 2024,” then “the member’s

1 representative to the Pac-12 Board of Directors shall automatically cease to be a member of
2 the Pac-12 Board of Directors and shall cease to have the right to vote on any matter before
3 the Pac-12 Board of Directors.” *Id.* This provision protects the interests of the non-departing
4 members and the Conference itself. Once members have delivered notice of their withdrawal
5 from the Pac-12 to join competing conferences, they are conflicted and their loyalties lie with
6 the competing conference they have chosen to join. As such, their representatives on the Pac-
7 12 Board may no longer act in the best interests of the Pac-12 Conference.

8 **C. USC and UCLA deliver notice of withdrawal from the Pac-12 and lose**
9 **their Board seats and right to vote on Board matters.**

10 On June 30, 2022, UCLA and USC gave notice of withdrawal from the Pac-12
11 Conference, effective in 2024, and announced their intent to join the Big Ten. MacMichael
12 Decl. Exs. B, C. The announcement came as a shock to the Pac-12 and its members, as
13 neither USC nor UCLA had indicated they were negotiating with the Big Ten or
14 contemplating leaving the Pac-12. Gose Decl. ¶ 5. It has been reported that under their
15 agreements with the Big Ten, USC and UCLA will receive an even share of the Big Ten’s
16 revenue, which is expected to approach \$100 million annually for each school. MacMichael
17 Decl. Ex. D. A report issued by the University of California Office of the President estimated
18 that each of the remaining ten member institutions in the Pac-12 would lose around \$13
19 million annually in media rights due to the withdrawal of USC and UCLA. *See id.* Ex. E.

20 Following USC’s and UCLA’s notices of withdrawal, the Pac-12 informed those
21 members that, pursuant to Chapter 3, Section 2 of the Bylaws, representatives from USC and
22 UCLA would no longer be permitted to attend Board meetings or engage in decision making
23 on behalf of the Pac-12. *See* Declaration of Kirk H. Schulz in support of Plaintiffs’
24 Application for TRO (“Schulz Decl.”) ¶ 13; Gose Decl. ¶ 6. Since noticing their withdrawal
25 from the Conference, representatives of USC and UCLA have not participated as voting
26 members in Pac-12 Conference Board meetings. Schulz Decl. ¶ 14.

1 **D. Eight other members of the Pac-12 deliver notice of withdrawal.**

2 In the wake of USC and UCLA noticing their withdrawal, the Pac-12 Conference and
3 the remaining members spent the next year pursuing a future media rights deal that would
4 benefit all remaining Pac-12 members and ensure the continued vitality of the Conference
5 itself. Just as the Pac-12 Conference was on the cusp of reaching a lucrative and
6 groundbreaking agreement with Apple, another wave of Pac-12 members gave notice of their
7 withdrawal from the Conference. Schulz Decl. ¶¶ 19-21.

8 On July 27, 2023, Colorado gave notice of its withdrawal from the Pac-12 and
9 announced it would be joining the Big 12 in 2024. *See* MacMichael Decl. Ex. F. Following
10 Colorado’s notice of withdrawal, the then-nine non-departing Pac-12 members’ Board
11 representatives continued to meet to discuss a path forward with Apple. Schulz Decl. ¶¶ 18-
12 19. Colorado was not invited to those meetings. *Id.* ¶ 18. After several Board meetings and
13 robust discussion among the nine remaining Board representatives, and following a Board
14 meeting held on the evening of Thursday, August 3, 2023, Plaintiffs believed that the nine
15 remaining members had decided to stay together, pursue a new partnership with Apple, and
16 move forward with expanding the Pac-12 Conference. *Id.* ¶ 19. The nine non-departing
17 members’ Board representatives scheduled a meeting for the following morning, Friday,
18 August 4, 2023, to sign the needed paperwork, finalize, the deal with Apple, and move the
19 Pac-12 forward. *Id.* ¶ 20. But just minutes before the August 4, 2023 Board meeting was
20 scheduled to commence, Oregon and Washington delivered a shocking announcement that
21 they were withdrawing from the Pac-12 to join the Big Ten. *Id.* ¶ 20; MacMichael Decl. Exs.
22 G, H. Later that same day, Arizona, ASU, and Utah delivered notice of their withdrawal from
23 the Pac-12 to join the Big 12. MacMichael Decl. Exs. I-K. Finally, on September 1, 2023,
24 UC Berkeley and Stanford gave notice of their withdrawal from the Pac-12 to join the ACC.
25 MacMichael Decl. Exs. L, M.

26 By the end of the day on September 1, 2023, only two members of the Pac-12
27 remained committed to the Conference beyond the 2023-2024 academic year: WSU and

1 OSU. And only those two members' Board representatives remained as authorized members
2 of the Board. By noticing their withdrawal, the ten departing members and their
3 representatives on the Pac-12 Board chose to prioritize their own self-interest ahead of the
4 interests of the Pac-12 Conference. Indeed, the deals that the departing schools reached with
5 competitor conferences were highly lucrative to them. For example, Colorado is expected to
6 take in nearly \$32 million in annual television revenue over the course of its deal with the Big
7 12. MacMichael Decl. Ex. N. And the Big Ten recently completed a \$7 billion media rights
8 agreement and is projected to eventually distribute \$80 million to \$100 million per year to
9 each of its members. *Id.* Ex. O. But in the process of noticing their withdrawals, the
10 departing members effectively scuttled the Pac-12's partnership with Apple and jeopardized
11 the Pac-12's very existence. Schulz Decl. ¶¶ 19-20; Gose Decl. ¶ 12.

12 As the only remaining members committed to the Pac-12, WSU and OSU have been
13 left to pick up the pieces. WSU and OSU wish to preserve the opportunity to explore
14 preserving the Pac-12 Conference and are committed to making reasonable business decisions
15 about its future. *Id.* ¶ 13.

16 **E. Defendants are poised to irreparably harm WSU and OSU by convening a**
17 **“Board Meeting” for September 13, 2023, at which ineligible members are**
18 **supposed to attend and vote on existential Conference matters.**

19 In contravention of the Pac-12 Bylaws, and in stark contrast to the Conference's
20 treatment of USC and UCLA in 2022 when they delivered early notices of withdrawal, the
21 Commissioner of the Pac-12 has now taken the position that the departing members *retain*
22 their Board seats and may continue to vote on Board matters. On August 29, 2023, the
23 Commissioner wrote to all twelve Conference presidents proposing a “meeting of all
24 Conference CEOs” to discuss “complex issues facing the Conference.” Gose Decl. Ex. B.
25 The Commissioner did so even though President Schulz, in his capacity as Chair of the Pac-
26 12 Board, previously had declined the Commissioner's request to call a Board meeting.
27 Schulz Decl. ¶¶ 39-40. On August 30, 2023, the Commissioner's office contacted all twelve
28 Conference presidents to schedule this “Pac-12 Board Meeting.” *Id.* ¶ 41.

1 Concerned that the Defendants were acting in violation of the Bylaws, on August 30,
2 2023, OSU’s General Counsel, Rebecca Gose, contacted Scott Petersmeyer, the Pac-12’s
3 General Counsel, to discuss the matter. Gose Decl. ¶ 15. Counsel for OSU informed Mr.
4 Petersmeyer that it appeared that, under the Conference Bylaws, the representatives of the ten
5 members that had delivered notice of their withdrawal from the Conference were ineligible to
6 participate on the Board or vote on Board matters. MacMichael Decl. ¶ 17. Ms. Gose also
7 asked Mr. Petersmeyer if the Commissioner was calling a formal Board meeting for
8 September 13, 2023, or if it was something like a “conversation among the 12 Presidents.”
9 Gose Decl. ¶ 15. Mr. Petersmeyer responded that he thought it was a conversation among the
10 twelve Presidents. *Id.* The next day, Ms. Gose emailed the Pac-12 Commissioner, copying
11 Mr. Petersmeyer, to again seek confirmation that the Commissioner was “not calling a formal
12 Board of Directors meeting for September 13.” *Id.* ¶ 16 & Ex. C.

13 On September 5, 2023, Mr. Petersmeyer responded to Ms. Gose’s email inquiry, and
14 shifted course. *Id.* ¶ 17 & Ex. C. Mr. Petersmeyer now stated: “We do consider the meeting
15 on 9/13 to be a Board meeting” during which the Commissioner “anticipate[s]” that *all*
16 representatives of Pac-12 members will be “voting on certain matters including [a proposed
17 employee] retention plan¹ and having a discussion and possible vote on our go forward
18 governance approach.” *Id.* Ex. C.

19 The next day, September 6, 2023, Presidents Schulz and Murthy sent a joint letter on
20 behalf of WSU and OSU to the Commissioner and the Presidents and Chancellors of the ten
21 members that had given notice of their withdrawal from the Pac-12. Gose Decl. Ex. D. The
22 letter reiterated that, under the Conference Bylaws, “only representatives of members that
23 have not given notice of withdrawal from the Pac-12 Conference may serve on the Board.”

24 _____
25 ¹ In August 2023, the Conference began to develop a retention plan for Pac-12 personnel,
26 given the uncertain future of the Conference. Gose Decl. ¶ 10. The Pac-12 informed the
27 then-four remaining schools (UC Berkeley, Stanford, OSU and WSU) that they were
28 analyzing two possible “scenarios” of retention plans for approval—one that assumed the
Pac-12 would dissolve before August 1, 2024, and another that assumed it would not. *Id.*
Each plan’s recommended course of action hinges on a crucial gating question facing the
Conference—whether or not the Conference will continue in the future or dissolve. *Id.*

1 *Id.* The letter further explained that the “the recent correspondence from the Commissioner’s
2 office creates the misimpression that representatives of all Conference members are eligible to
3 serve on the Board, participate in Board meetings, and vote on Board matters.” But “[t]hat is
4 incorrect” because, under the Bylaws, “members that have given notice of their withdrawal
5 from the Conference have ‘automatically cease[d] to be a member of the Pac-12 Board of
6 Directors’ and no longer ‘have the right to vote on any matter.’” *Id.* (quoting Bylaws, Ch. 2,
7 Sec. 3). Indeed, the Conference adhered to this very provision of the Bylaws “when the
8 University of California, Los Angeles and University of Southern California gave notice of
9 their withdrawal from the Conference in June 2022,” and “the Conference deemed their
10 representatives ineligible to participate on the Board or vote on any Conference matters.” *Id.*

11 Accordingly, WSU and OSU requested that Defendants: 1) cancel the purported Board
12 meeting scheduled for September 13; 2) confirm that pursuant to Chapter 2, Section 3 of the
13 Bylaws, representatives of members that had given notice of withdrawal had “automatically
14 cease[d] to be a member of the Pac-12 Board of Directors and shall cease to have the right to
15 vote on any matter;” and 3) confirm that the only duly authorized Board members are
16 representatives whose member institutions have not given notices of withdrawal. *Id.*

17 In an email on September 6, 2023, in response to Presidents Schulz and Murthy’s
18 September 6, 2023 letter, one representative from a departing Pac-12 member made clear that
19 the departing members were poised to take immediate action to seize control of the Pac-12.
20 The representative from the departing Pac-12 member wrote: “It seems obvious that any 9
21 Members can declare the fate of the Conference at any time.” Gose Decl. ¶ 20.

22 Defendants’ actions have left Plaintiffs with no choice but to bring this emergency
23 temporary restraining order to preserve the status quo until a hearing can be had on a
24 preliminary injunction. Plaintiffs are willing to schedule a prompt preliminary injunction
25 hearing and conduct any needed discovery on an expedited basis.

1 **III. LEGAL STANDARD**

2 “A party seeking an injunction must show: (1) that [the party] has a clear legal or
3 equitable right, (2) that [the party] has a well-grounded fear of immediate invasion of that
4 right, and (3) that [the party] acts complained of are either resulting in or will result in actual
5 and substantial injury to [the party].” *Hoggatt v. Flores*, 152 Wash. Ct. App. 862, 868 (2009)
6 (internal quotation marks omitted). “The[se] listed criteria must be examined in light of equity
7 including balancing the relative interests of the parties and, if appropriate, the interests of the
8 public.” *Id.*

9 **IV. ARGUMENT**

10 **A. Plaintiffs have a clear legal and equitable right to enforce the Bylaws and**
11 **prevent unauthorized Board action.**

12 “To establish a clear legal or equitable right, the moving party must show that it is
13 likely to prevail on the merits.” *Nw. Gas As’n v. Washington Utilities & Transp. Comm’n*,
14 141 Wash. App. 98, 116, 168 P.3d 443, 453 (2007) (internal quotations omitted). Plaintiffs
15 are likely to succeed on the merits of their claims for breach of contract and declaratory
16 judgment.²

17 The language of the Bylaws is clear and unambiguous: if a member delivers a notice
18 of withdrawal to the Conference before August 1, 2024, that member’s representative “shall
19 automatically cease to be a member of the Pac-12 Board of Directors and shall cease to have
20 the right to vote on any matter before the Pac-12 Board of Directors.” Gose Decl. Ex. A, Ch.
21 2, Sec. 3. Ten members have given notice of withdrawal and, therefore, their representatives
22 are automatically off the Pac-12 Board. Allowing those members’ former Board

23 ² Plaintiffs have standing to seek declaratory relief. *See* RCW 7.24.010. This case presents
24 an issue of major public importance—the governance of a storied college athletics
25 Conference, which will impact tens of thousands (if not millions) of student athletes, alumni,
26 and fans of public institutions, with serious economic implications not only in Washington
27 and Oregon, but in other states as well. This, standing alone, is sufficient. *See Lewis Cnty. v.*
28 *State*, 178 Wash. App. 431, 436 (2013). In addition, this dispute regarding the appropriate
governance of the Pac-12 Conference under the Bylaws presents a justiciable controversy that
is appropriate for declaratory relief. *See State v. Econ. Dev. Bd. for Tacoma-Pierce Cnty.*, 9
Wash. App. 2d 1, 11 (2019), as amended on reconsideration (July 25, 2019).

1 representatives to participate in Board meetings and vote on *any* issue before the Board, much
2 less the “complex issues” regarding the future of the Conference or its “go forward
3 governance approach,” would be an unmistakable violation of the Bylaws.

4 This “automatic” elimination of a departing member’s Board seat and termination of
5 its right to vote on Board matters is not only dictated by the clear and unambiguous language
6 of the Bylaws; it is also compelled by loyalty and conflict of interest principles. A member
7 that has announced that it is joining a competing conference cannot continue to make
8 decisions in the best interest of the Pac-12. As the Bylaws recognize, directors’ loyalty to the
9 Pac-12 Conference is compromised once their member institutions have given notice of
10 withdrawal from the Conference. At that point, those directors are conflicted because their
11 member institutions’ interests are aligned with competing athletic conferences. The Bylaws
12 protect against these conflicts of interests, while promoting the appropriate governance of the
13 Conference.

14 Moreover, the Conference’s prior actions confirm the plain meaning of Chapter 2,
15 Section 3 of the Bylaws. When UCLA and USC gave notice of their withdrawal from the
16 Conference, the Conference deemed their representatives ineligible to participate on the
17 Board, per the Bylaws. Gose Decl. ¶ 6. Representatives of UCLA and USC have not
18 participated in Board meetings or voted on Board matters since then. Schulz Decl. ¶ 14. The
19 meaning of the Bylaws does not change simply because eight more schools have given notice
20 of their withdrawal, and thus the same rule applies to the eight members who more recently
21 gave notice of their withdrawal from the Conference. Even after the second wave of member
22 departures in late-July and early-August 2023, and until the Commissioner proposed the
23 upcoming September 13, 2023 “Board Meeting,” the Pac-12 Commissioner and General
24 Counsel were only calling meetings and discussions with the non-departing members. Gose
25 Decl. ¶ 9. Any attempt by Defendants to run away from their prior actions now would be
26 “nothing more than a litigating position” that should be “ignored.” *See Yamaha Corp. of Am.*
27 *v. State Bd. of Equalization*, 19 Cal.4th 1, 9, 13 (Cal. 1998) (cleaned up); *cf. Henning v. Indus.*

1 *Welfare Comm'n.*, 46 Cal.3d 1262, 1278 (Cal. 1988) (cleaned up) (“when as here the
2 construction in question is not a contemporaneous interpretation of the relevant statute and in
3 fact flatly contradicts the position which the agency had enunciated at an earlier date, closer to
4 the enactment of the statute, it cannot command significant deference.”).

5 Finally, Defendants may argue that some members have not officially delivered a
6 formal notice of withdrawal, because they have strategically tried to sidestep the Bylaws by
7 not explicitly styling their communications as a “Notice of Withdrawal” or by not
8 communicating directly with the Conference at all. That argument hardly passes the straight
9 face test. The Bylaws do not set forth any magic words that must be included to constitute a
10 notice of withdrawal, and there is no formal means of delivery of any such notice. It is
11 beyond legitimate dispute that each of the ten departing members has publicly stated that they
12 are withdrawing from the Pac-12. *See, e.g.*, MacMichael Decl. Ex. B (USC: “We intend to
13 end our membership in the Pac-12 conference when the Pac-12’s current media rights
14 agreement expires in August 2024.”); Ex. F (Colorado: “After careful thought and
15 consideration, it was determined that a switch in conference would give CU Boulder the
16 stability, resources, and exposure necessary for long-term future success in a college athletics
17 environment that is constantly evolving.”); Ex. G (Oregon: “The University of Oregon will
18 join the Big Ten Conference in 2024.”). No amount of obfuscation can avoid the fact that the
19 ten members have given notice that they are withdrawing from the Pac-12.

20 Accordingly, Plaintiffs have demonstrated a likelihood of success on the merits
21 warranting injunctive relief. *See Nw. Gas Ass’n*, 141 Wash. App. at 116 (cleaned up) (“[T]he
22 plaintiff need not prove and the trial court does not reach or resolve the merits of the issues,
23 ... only the likelihood that the plaintiff will ultimately prevail at a trial on the merits.”).

24 **B. Plaintiffs will suffer irreparable harm absent entry of a TRO.**

25 WSU and OSU will suffer actual, substantial, and immediate irreparable harm unless
26 the Court enters Plaintiffs’ requested TRO. *DeLong v. Parmelee*, 157 Wash. Ct. App. 119,
27 150 (2010), *review granted, cause remanded*, 171 Wash. 2d 1004 (2011) (“a trial court should
28

1 issue an injunction to an applicant who can demonstrate necessity and irreparable injury”).

2 Emergency relief is needed to preserve the status quo and prevent Defendants from
3 holding a Board meeting at 7:00 am on September 13, 2023, at which Defendants have
4 proposed to allow ineligible former Board representatives of the ten members that have
5 delivered notice of their withdrawal from the Conference to participate and vote on Board
6 matters. Unless Defendants are enjoined from holding this meeting, the Pac-12 and the ten
7 departing members will wrongfully seize control of the Conference in violation of the Bylaws
8 and take steps that will cause irreparable harm to WSU and OSU. Once the Conference
9 allows the ten ineligible former Board members to participate on the Board and purport to
10 vote on behalf of the Conference, irreparable damage to Plaintiffs will be done. The
11 Conference will have breached its Bylaws; WSU’s and OSU’s rights as remaining members
12 of the Pac-12 Conference will have been eviscerated; and the ten departing members may
13 seek to amend the Bylaws to alter the governance structure of the Conference and take actions
14 to protect their own self-interests to the detriment of WSU and OSU, and the Conference
15 itself. These actions cannot be reversed or remedied by the Court after the fact. *See Nw. Gas*
16 *Ass’n*, 141 Wash. App. at 121 (holding plaintiff demonstrated actual and substantial injury by
17 demonstrating that “prevailing at a trial on the merits would be meaningless” if immediate
18 relief were not granted).

19 The threat of irreparable injury to Plaintiffs is clear and immediate. As the only Pac-
20 12 members who have *not* delivered a notice of withdrawal from the Conference, WSU and
21 OSU are the only remaining members with a legitimate interest in the survival and success of
22 the Conference. The ten departing members no longer share this goal. Having announced
23 their plans to leave the Pac-12 and join competing conferences next year, they have no
24 incentive to devote the resources needed to retain employees and partners, recruit new
25 members, and take the other steps necessary to protect the Pac-12’s interests. On the
26 contrary, they are now incentivized to dissolve the Pac-12—against which their new
27 conferences will compete—and distribute its assets. Thus, absent an injunction, the ten

1 ineligible members will irreversibly undermine WSU's and OSU's interests.

2 Moreover, Defendants have made clear that the Board will take up issues of existential
3 importance to the Pac-12 at the September 13 meeting. *See* Gose Decl. Ex. C. First, the
4 Board's selection of an employee retention plan from the Conference's two proposals will
5 solidify, both within the Pac-12 and to other conferences and partners, whether the
6 Conference will survive beyond August 1, 2024. If the Board adopts and implements a
7 retention plan that is predicated on the Conference's dissolution, it will not be practically or
8 economically feasible to reverse course. Second, Defendants indicated that the Board would
9 vote on its "go forward governance approach" at the September 13 meeting, indicating that
10 Defendants will propose that the ineligible former Board representatives from the ten
11 departing schools adopt resolutions to circumvent the Bylaws and participate in Conference
12 governance going forward. As with the retention plan, once this "go forward governance
13 approach" is established and the unauthorized former Board representatives begin to act on
14 behalf of the Conference, any actions it takes (such as negotiating with third parties, entering
15 into contracts, agreements or plans, or taking steps toward dissolving the Conference) will be
16 impossible to reverse or dismantle in a way that restores the status quo. *See Eash v. Russell*,
17 178 Wash. Ct. App. 1032 (2013) ("The primary purpose of a preliminary injunction is to
18 preserve the status quo until such time that a trial on the merits can take place."). This is not
19 an abstract threat. One representative from a departing Pac-12 member stated his view just
20 two days ago that "9 Members can declare the fate of the Conference at any time." Gose
21 Decl. ¶ 20. Plaintiffs will be unable to regain control of the Conference or advocate for the
22 Pac-12's future in any meaningful way if the September 13 meeting goes forward.

23 What is more, virtually every aspect of Plaintiffs' ability to promote their athletics
24 programs and advocate for their student athletes will be irreparably harmed if the Pac-12 is
25 led by conflicted former Board representatives whose loyalties lie with competing
26 conferences. For example, media partners and sponsors could use the impending dissolution
27 of the Conference to extract one-sided terms from negotiations with Plaintiffs. The leadership

1 and future of the Conference will also have a significant impact on Plaintiffs’ ability to recruit
2 and retain student athletes, which will affect their competitive prospects for years to come.
3 *See Gose Decl.* ¶ 21.

4 **C. The balance of the equities weighs in favor of granting a TRO.**

5 The balance of equities weighs strongly in Plaintiffs’ favor. Consistent with the
6 Bylaws, WSU and OSU have consistently acted in the best interest of the Pac-12 Conference
7 by “supporting and promoting the objections of the Conference.” Bylaws, Ch. 3, 1.g. The
8 members that have chosen to give notice of withdrawal from the Pac-12 have prioritized their
9 own interests ahead of the Conference’s best interest. There is no justification in law or
10 equity for allowing institutions that are no longer loyal to or invested in the Pac-12 (and in
11 fact will benefit from its dissolution) to make decisions on behalf of the Conference in clear
12 violation of its Bylaws. Moreover, the Pac-12 will not be significantly burdened by an
13 injunction that simply preserves the status quo and prevents unauthorized former Board
14 representatives from seizing control of the Conference until a preliminary injunction hearing
15 can be conducted on the ultimate governance question. *Nw. Gas Ass’n*, 141 Wash. App. at
16 98, 122 (holding “equitable factors weigh in favor of granting the preliminary injunction to
17 maintain the status quo until a full trial on the merits”).

18 **V. CONCLUSION**

19 WSU and OSU have each been members of the Pac-12 for more than 100 years, and
20 they are dedicated to supporting the Conference and its mission, including exploring
21 opportunities to sustain the Pac-12. The Court should grant this motion to preserve the
22 possibility that they can do so. For the foregoing reasons and those set forth in Plaintiffs’
23 complaint and declarations in support of this application, Plaintiffs respectfully request that
24 the Court enter their proposed Temporary Restraining Order.
25
26
27

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2
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