

1 Chad S. Hummel (SBN 139055)
chummel@sidley.com
2 Jack Yeh (SBN 174286)
jyeh@sidley.com
3 David R. Carpenter (SBN 230299)
drcarpenter@sidley.com
4 Benjamin M. Mundel (admitted pro hac vice)
bmundel@sidley.com
5 Renee Pesiri (SBN 293317)
rpesiri@sidley.com
6 SIDLEY AUSTIN LLP
1999 Avenue of the Stars, 17th Floor
7 Los Angeles, CA 90067
Telephone: (310) 595-9505
8 Facsimile: (310) 595-9501

9 *Attorneys for Defendants*
ASHFORD UNIVERSITY, LLC and ZOVIO, INC.

Theane D. Evangelis (SBN 243570)
tevangelis@gibsondunn.com
Blaine H. Evanson (SBN 254338)
bevanson@gibsondunn.com
Jeremy S. Smith (SBN 283812)
jssmith@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

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Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 ASHFORD UNIVERSITY, LLC, a California
19 limited liability company; ZOVIO, INC., a
20 Delaware corporation; and DOES 1 through
21 50, INCLUSIVE,

22 Defendants.

CASE No.: 37-2018-00046134-CU-MC-CTL

**DEFENDANTS' NOTICE OF MOTION AND
MOTION FOR RELIEF FROM BOND
REQUIREMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Declarations of Kevin Royal and Paul Pastorek
Filed Concurrently Herewith]*

Date: May 13, 2022
Time: 2:00 p.m.
Dept.: C-67
Judge: Hon. Eddie C. Sturgeon
Trial Date: November 8, 2021
Action Filed: November 29, 2017

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 13, 2022, at 2:00 p.m., or as soon thereafter as the
3 matter may be heard in Department C-67 of the above-captioned Court, located at 330 West Broadway,
4 San Diego, California 92101, Defendants Ashford University, LLC and Zovio, Inc. (“Defendants”), by
5 and through their counsel of record, will and hereby do move this Court for relief from the bond
6 requirement.

7 This motion for relief from the bond requirement is made pursuant to Code of Civil Procedure
8 section 995.240 and this Court’s equitable authority. In light of the Court’s award of \$22,375,282 in
9 civil penalties against Defendants, Zovio must post a bond totaling 1.5 times the amount of the award
10 (i.e., \$33,562,923), deposit the same in the Court, or pay the judgment to pursue an appeal (should one
11 be necessary). (Code Civ. Proc., § 917.1, subds. (a)(1), (b).) None of these options is viable for Zovio.
12 Zovio does not have the assets necessary to satisfy the bond providers’ collateral requirements, and
13 does not have \$33 million in cash to deposit with the Court. Paying the judgment before appeal would
14 not only significantly impair the company’s operations and jeopardize its ability to fulfill its contractual
15 obligations to the University of Arizona Global Campus (and its students), but would also put at risk
16 the chances of recovering any amounts reversed on appeal. This Court should therefore exercise either
17 its discretion under section 995.240 or its equitable power to waive the bond requirement.
18 Alternatively, the Court should allow Zovio to either secure a significantly reduced bond or deposit a
19 significantly reduced amount with the Court to stay enforcement of the judgment pending appeal.

20 This motion is based on the Notice of Motion, the attached Memorandum of Points and
21 Authorities, the Declarations of Kevin Royal and Paul Pastorek and the exhibits attached thereto, the
22 Court’s file in this matter, and on such other and further evidence and argument as may be presented
23 at or before the hearing on this motion.

24 Dated: April 21, 2022

GIBSON, DUNN & CRUTCHER LLP

25
26 By: /s/ Theane D. Evangelis
Theane D. Evangelis

27 *Attorney for Defendants*
28 *Ashford University, LLC and Zovio, Inc.*

1 **TABLE OF CONTENTS**

2 Page

3 I. INTRODUCTION 6

4 II. FACTUAL BACKGROUND 6

5 A. Procedural Posture 6

6 B. Zovio’s Financial Position 7

7 III. ARGUMENT 9

8 A. The Court Should Exercise Its Discretion to Waive Zovio’s Bond. 10

9 i. Zovio Is “Indigent” Pursuant to Section 995.240. 10

10 ii. Zovio Is Unable to Provide Sufficient Sureties Under the Statute..... 13

11 iii. Other Considerations Weigh in Favor of This Court Exercising Its
12 Discretion to Waive the Bond Requirement. 13

13 B. Even If the Court Finds That Zovio Does Not Satisfy Section 995.240, It
14 Should Stay the Bond Requirement. 15

15 C. Alternatively, the Court Should Permit Zovio to Either Post a Significantly
16 Reduced Bond or Deposit a Significantly Reduced Amount with the Court..... 16

17 IV. CONCLUSION 17

18

19

20

21

22

23

24

25

26

27

28

1 **TABLE OF AUTHORITIES**

2 Page(s)

3 **Cases**

4 *Alshafie v. Lallande* (2009)
5 171 Cal.App.4th 42110

6 *Cardinal Care Management, LLC v. Afable* (2020)
7 47 Cal.App.5th 101111, 12

8 *City of Sacramento v. Cal. State Legislature* (1986)
9 187 Cal.App.3d 3939, 11

10 *Conover v. Hall* (1974)
11 11 Cal.3d 84210

12 *Cussler v. Crusader Entertainment, LLC* (2012)
13 212 Cal.App.4th 3569

14 *Davis v. Custom Component Switches, Inc.* (1970)
15 13 Cal.App.3d 219, 14, 15

16 *Ferguson v. Keays* (1971)
17 4 Cal.3d 64911

18 *Gunderson v. Wall* (2011)
19 196 Cal.App.4th 10608

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21 7 Cal.3d 42210

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25 506 U.S. 194.....12

26 *Wada Farms, Inc. v. Jules & Assoc., Inc.* (C.D.Cal. July 1, 2015)
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123 Cal.App.4th 60912

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23 Cal.App.4th 165312

Statutes

18 U.S.C. § 233112

22 U.S.C. § 61112

28 U.S.C. § 191512

TABLE OF AUTHORITIES
(continued)

Page(s)

1		
2		
3	Civ. Code, § 1746	11
4	Civ. Code, § 1798.3	11
5	Code Civ. Proc., § 116.130	11
6	Code Civ. Proc., § 917.1	9
7	Code Civ. Proc., § 995.240	9, 10, 14
8	Code Civ. Proc., § 995.710	16
9	Code Civ. Proc., § 996.030	10, 16
10	Gov't Code, § 965	9, 11
11	Gov't Code, § 965.6	9, 11
12	Other Authorities	
13	Cal. Civ. Prac. Proc., Eileen C. Moore & Michael Paul Thomas (Apr. 2022 Update)	
14	§ 16:207.....	16
15	Cal. Prac. Guide Civ. App. & Writs, Ch. 7-C	10
16		
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22		
23		
24		
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I. INTRODUCTION

If the Court does not grant a new trial or vacate the judgment, Defendants intend to appeal the Court’s award of over \$22 million in civil penalties to the State. But before Defendants can pursue an appeal of the Court’s Statement of Decision, Zovio must either secure a bond of over \$33 million, deposit the same amount with the Court, or pay the judgment. Zovio presently lacks the financial wherewithal to pursue any of those options. Zovio should not be forced to either forego its right to appeal or put itself in such financial jeopardy that Zovio’s ability to fulfill its obligations to the University of Arizona Global Campus and its 28,000 students is threatened. That result would end up harming the very people whose rights the State was purportedly vindicating in bringing suit.

The Court should waive the bond requirement for two independent reasons. *First*, Zovio qualifies for relief under Code of Civil Procedure section 995.240: Zovio is “indigent” and “unable to obtain sufficient sureties,” and the potential harm to Zovio and the students it directly and indirectly serves vastly outweighs any harm to the State. *Second*, the Court should exercise its equitable authority to stay the bond requirement, as Defendants should not be denied the ability to appeal because Zovio does not have the resources to obtain a bond.

In the alternative, if the Court does not waive the bond altogether, it should allow Zovio to either secure a significantly reduced bond or deposit a significantly reduced amount with the Court in order to stay enforcement of the judgment pending appeal.

II. FACTUAL BACKGROUND

A. Procedural Posture

After an 18-day bench trial, the Court issued its Statement of Decision on March 3, 2022. (Dkt. 696 at pp. 8–9.) The Court found for Defendants on the State’s claims regarding debt collection practices and likewise denied the State’s request for restitution and injunctive relief relating to claims that Defendants provided students false or misleading information concerning career outcomes, cost and financial aid, the pace of degree programs, and transfer credits. (*Id.* at pp. 8, 47.) The Court did, however, impose civil penalties amounting to \$22,375,282 for those claims. (*Ibid.*) Under the terms of the Asset Purchase and Sale Agreement by which Ashford was transferred from Zovio to the University of Arizona Global Campus (“UAGC”), an online affiliate of the University of Arizona,

1 “Zovio agreed that it would pay any liabilities arising from operation of Ashford prior to December
2 2020”—liabilities that now include this Court’s \$22 million judgment against Defendants. (*Id.* at p. 8,
3 citing Ex. 1320.0005.)

4 On March 28, Defendants filed a notice of intention to move for a new trial and/or to set aside
5 and vacate the judgment and amend the Statement of Decision, and on April 7 filed their opening
6 memorandum. (Dkts. 719–720.) Defendants’ motions seek a reduction of the Court’s penalty award
7 on various grounds, including the following: (1) the penalties are grossly disproportionate to, and
8 excessive in light of, the undisputed evidence of Defendants’ financial condition and negative net
9 worth; (2) the penalties far exceed what is necessary to meet the statutory objectives of securing
10 compliance with law, particularly given the Court’s findings that there is no evidence of any ongoing
11 violations and that Defendants compliance practices have already improved; and (3) the penalties are
12 disproportionate and unsupported because the per-call extrapolation is not premised on any showing
13 of actual harm and is not sufficiently reliable to justify penalties that are so large as to drive Defendants
14 out of business.

15 **B. Zovio’s Financial Position**

16 At trial, Defendants introduced undisputed testimony that, as of September 2021, Defendants
17 had a negative net worth and were operating at an annual loss of \$18 million, with \$70 million in
18 upcoming liabilities and just \$31 million in cash on hand. (Dec. 8 Trial Tr. at p. 49; see also *id.* at p. 50
19 [noting that Zovio’s public filings confirmed this testimony].)

20 The \$22 million judgment compounded these financial difficulties and threatened the continued
21 viability of Zovio. In response, Zovio obtained an emergency loan from Blue Torch Finance in the
22 amount of \$31.5 million, at annual interest rate of LIBOR plus 9%. (Declaration of Kevin Royal ¶ 8.)
23 The funds from this loan can *only* be accessed, in the first instance, to pay the judgment, and *only* if
24 necessary. (*Ibid.*) Prior to payment of the judgment, the funds cannot be accessed for any purpose.
25 The loan cannot be used to pay for a bond or to deposit funds with the Court. (*Ibid.*) It is a loan of last
26 resort.

27 Zovio’s current market capitalization (the total value of its stock) is only \$25.2 million. (Royal
28 Decl. ¶ 4.) Moreover, as noted in its most recent financial disclosures, Zovio sustained operating losses

1 of over \$42 million in 2021, and its cash on hand at the end of 2021 was less than \$29 million. (*Ibid.*)

2 As a result of Zovio’s current financial condition, it cannot obtain the necessary bond in the
3 amount of \$33 million. (Royal Decl. ¶¶ 6–7.) Zovio contacted multiple bond providers in order to
4 secure the \$33 million bond necessary to pursue an appeal. (*Id.* ¶ 5.) In light of Zovio’s finances,
5 however, these providers can only furnish a sufficient bond if Zovio pledges 100% collateral. (*Id.* ¶ 5;
6 see also *id.*, Exs. 3–4.) But given Zovio’s cash on hand, its lack of free and clear material real estate
7 assets and other marketable securities, and its inability to obtain sufficient letters of credit, Zovio does
8 not have the assets necessary to satisfy the bond providers’ collateral requirements. (*Id.* ¶ 6.) It is
9 therefore unable to provide the collateral necessary to secure a bond. (*Ibid.*)

10 Zovio also cannot deposit with the Court \$33 million. It does not have enough unrestricted
11 cash on hand. (Royal Decl. ¶ 6.)

12 In addition, Zovio cannot pay the entire \$22 million judgment without significantly impairing
13 the company’s operations and jeopardizing its ability to fulfill its contractual obligations to the UAGC
14 (and its students). (Royal Decl. ¶ 10.) Over 1,000 Zovio employees currently provide numerous forms
15 of assistance to UAGC—e.g., processing financial aid, providing digital textbooks and course
16 materials, delivering virtual classrooms, and operating student and faculty help desks, to name a few—
17 which ultimately enables UAGC to provide instruction to its students. (Declaration of Paul Pastorek
18 ¶¶ 2–5.) If Zovio were unable to provide that technological know-how, UAGC’s students would likely
19 experience some interruption in delivery of services and a disruption of their education. (*Id.* ¶¶ 6–7.)
20 Paying the judgment in full before an appeal could also jeopardize Zovio’s ability to operate its
21 TutorMe (a 24/7 online tutoring service) and Fullstack Academy (a computer coding program)
22 divisions, which serve approximately 71,000 students and partner with more than 100 school districts
23 and universities. (Royal Decl. ¶¶ 13–14.)

24 Furthermore, paying the \$22 million judgment to the State of California before appeal may
25 render any success by Zovio in the Court of Appeal a pyrrhic victory. In general, if an appellant does
26 not post a bond (or deposit one-and-half times the judgment with the court), the plaintiff is “entitled to
27 collect his award prior to the completion of the appeal.” (*Gunderson v. Wall* (2011) 196 Cal.App.4th
28 1060, 1067, fn. 2.) But if the appellant then wins on appeal after paying the full amount of the

1 judgment, the appellant “is entitled to restitution,” plus interest, “unless restitution would be
2 inequitable.” (*Id.* at pp. 1064, citation omitted.) Essentially, the appellant is put “in as favorable a
3 position as they could have been in had the judgments not been enforced pending appeal.” (*Id.* at
4 p. 1065, citation omitted.)

5 For many private litigants, this pay-and-appeal option is a viable alternative to posting a bond
6 at 1.5 times the judgment. (See, e.g., *Cussler v. Crusader Entertainment, LLC* (2012) 212 Cal.App.4th
7 356, 369–370 [awarding 7% interest on amount paid while appeal pending].) But there is both a statute
8 and case law indicating that the State of California may be able to avoid paying back Zovio, even if
9 ordered by a court, because that repayment may require a specific legislative appropriation.
10 Specifically, under Government Code § 965, subdivision (b), “if there is no sufficient appropriation for
11 the payment of claims, settlements, or judgments against the state arising from an action in which the
12 state is represented by the Attorney General, the Attorney General shall report the claims, settlements,
13 and judgments to the chairperson of either the Senate Committee on Appropriations or the Assembly
14 Committee on Appropriations, who shall cause to be introduced legislation appropriating funds for the
15 payment of the claims, settlements, or judgments.” And the Court of Appeal has stated that “mandamus
16 will not lie to compel the Legislature to enact any legislation.” (*City of Sacramento v. Cal. State*
17 *Legislature* (1986) 187 Cal.App.3d 393, 397; see also Gov’t Code, § 965.6.) Thus, absent sufficient
18 assurances from the State that it would and could pay back any amounts reversed on appeal, paying the
19 judgment and then appealing does not appear to be a viable option for Zovio.

20 III. ARGUMENT

21 Under California law an appeal generally does not stay enforcement of a money judgment
22 unless a bond is posted. (Code Civ. Proc., § 917.1, subd. (a)(1).) If provided by an admitted surety
23 insurer (e.g., a bond provider), the amount of the bond must be 1.5 times the amount of the judgment.
24 (*Id.* § 917.1, subd. (b).) A court may, however, waive the bond requirement if the appellant is “indigent
25 and is unable to obtain sufficient sureties.” (*Id.*, § 995.240.) A court may also evaluate the equities
26 and stay the bond requirement, because the benefits of doing so outweigh any potential costs to the
27 beneficiary (in this case, the State). (See *Davis v. Custom Component Switches, Inc.* (1970) 13
28 Cal.App.3d 21, 26–28.) As an alternative to waiving the bond requirement altogether, a court may

1 order that the bond be reduced if it determines that the amount is excessive. (Code Civ. Proc.,
2 § 996.030, subd. (a).)

3 If the Court declines to exercise its discretion to provide such relief, Zovio may be unable to
4 pursue an appeal and could ultimately be unable to provide its critical services to UAGC. That outcome
5 would result in dire consequences for the students Zovio serves—the very people whose rights the State
6 was purportedly vindicating in bringing suit—as well as its partner organizations. This Court should
7 not countenance that perverse result. It should therefore waive the bond requirement or, at the very
8 least, significantly reduce the required amount.

9 **A. The Court Should Exercise Its Discretion to Waive Zovio’s Bond.**

10 Pursuant to section 995.240, this Court may waive a provision of a bond if it determines that
11 Zovio cannot provide that bond because it “[1] is indigent and [2] is unable to obtain sufficient
12 sureties.” (Code Civ. Proc., § 995.240; see also Cal. Prac. Guide Civ. App. & Writs, Ch. 7-C
13 [“discretionary exemption” for “[i]ndigents”].) In deciding whether to waive the bond requirement,
14 the Court “shall take into consideration all factors it deems relevant.” (Code Civ. Proc., § 995.240.)

15 **i. Zovio Is “Indigent” Pursuant to Section 995.240.**

16 The California Supreme Court has long recognized that courts retain the authority to dispense
17 with fees such as bond requirements “in the case of poor litigants,” even when those requirements were
18 “intended to protect an adversary’s financial interest.” (*Conover v. Hall* (1974) 11 Cal.3d 842, 851;
19 *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 429 [“The public policy underlying an indigent’s
20 entitlement to a waiver of security costs is essentially ‘access [to the courts] trumps comfort,’” as a
21 contrary view would “contravene[] the fundamental notions of equality and fairness,” citations
22 omitted].) Section 995.240 codified the common-law authority noted in *Conover*, providing that a
23 court may waive the bond requirement for indigent defendants. (See Code Civ. Proc., § 995.240.)

24 While “there is no rigid standard for the requisite showing of indigency” under California law
25 (*Alshafie, supra*, 171 Cal.App.4th at p. 434), the California Supreme Court has explained that “[t]he
26 relevant consideration in determining indigency is whether the [party’s] *current financial status* affords
27 him equal access to the legal process” (*March v. Municipal Ct.* (1972) 7 Cal.3d 422, 430). What a
28 showing of indigency does not require, the Supreme Court has explained, is proof of “total

1 destitution”—all a party must show is an “[inability] to pay the requisite filing fee without depriving
2 himself or his dependents of the necessities of life.” (*Ferguson v. Keays* (1971) 4 Cal.3d 649, 658 &
3 658, fn. 8.)

4 Zovio satisfies section 995.240’s indigency requirement. Zovio’s current market capitalization,
5 though it fluctuates daily, is only \$25.2 million. (Royal Decl. ¶ 4.) Zovio suffered over \$42 million in
6 operating losses last year, has over \$74 million in outstanding liabilities, and its cash on hand at the
7 end of 2021 was less than \$29 million. (*Ibid.*) The emergency loan it obtained from Blue Torch cannot
8 be used to pay for a bond, and can only be used, in the first instance, to pay the judgment—and only if
9 necessary. (*Id.* ¶ 8.) Zovio therefore lacks sufficient resources to pledge the collateral necessary to
10 secure the over \$33 million bond required under section 917.1(b). (*Id.* ¶ 9.) It also lacks the necessary
11 cash to deposit \$33 million with the Court, as required under section 995.710(b). (*Ibid.*) And paying
12 the judgment before appeal would not only significantly impair the company’s operations and
13 jeopardize its ability to fulfill its contractual obligations to the UAGC (and its students) (*id.* ¶ 10), but
14 it would also put at risk the chances of recovering any amounts reversed on appeal due to the court’s
15 apparently limited powers over the State of California. (See *Sacramento, supra*, 187 Cal.App.3d at
16 p. 397; see also Gov’t Code, §§ 965, subd. (b), 965.6.)

17 No published decision has expressly addressed whether an entity, rather than a natural-born
18 person, may be considered “indigent” for purposes of section 995.240. But section 995.240 itself
19 answers the question: The statute does not use the word “natural person” or even “person.” It instead
20 refers to the party that must provide the bond as a “principal,” strongly suggesting its application is *not*
21 restricted to natural-born persons and may encompass entities as well. Even if section 995.240 were
22 restricted to “persons” (again, it is not), a number of California statutory provisions expressly provide
23 that the term “person” includes corporate entities. (See, e.g., Code Civ. Proc., § 116.130, subd. (e),
24 [“‘Person’ means an individual, corporation, partnership, limited liability partnership, limited liability
25 company, firm, association, or other entity”]; see also Civ. Code, §§ 1746, subd. (b), 1798.3, subd. (f),
26 6560 [similar].)

27 In addition, the Court in *Cardinal Care Management, LLC v. Afable* (2020) 47 Cal.App.5th
28 1011, at least implicitly suggested the entities at issue *could* meet the statute’s indigency requirement

1 if they had provided “details of their financial situation,” although it ultimately determined based on
2 the specific facts that the residential care facility employers and their sole member were able to post an
3 undertaking. (*Id.* at pp. 1019–1020.) And in *Woodline Furniture Manufacturing Co. v. Department of*
4 *Industrial Relations* (1994) 23 Cal.App.4th 1653, the court recognized that the trial court had
5 “effectively exercis[ed] its discretion to grant the requested relief” after Woodline “filed an application
6 for relief from the bonding requirement” under section 995.240. (*Id.* at p. 1661, fn. 7; see also *Wada*
7 *Farms, Inc. v. Jules & Assoc., Inc.* (C.D.Cal. July 1, 2015) 2015 WL 13298572, at p. *6 [suggesting
8 plaintiff corporation and limited liability company could, at least in theory, invoke section 995.240].)

9 A single decision, on the other hand, has suggested that the corporate defendant “could not
10 claim indigency” because it is “well settled that a corporation is not a ‘person’ for the purpose of
11 establishing indigency.” (*Williams v. Freedomcard, Inc.* (2004) 123 Cal.App.4th 609, 612, 615.) But
12 that language from *Freedomcard* is dicta—the court held that the corporate entity at issue was not
13 entitled to a stay of the bond requirement because it never made “any attempt to contact a bonding or
14 surety company.” (*Id.* at p. 615.) As explained below, that conclusion has no bearing on this case
15 because Zovio has repeatedly tried (and failed) to obtain a surety.

16 Moreover, the authority cited by *Freedomcard* for its proposition that corporations are
17 categorically unable to demonstrate indigency—*Rowland v. California Men’s Colony* (1993) 506 U.S.
18 194—does not support that proposition. In *Rowland*, the U.S. Supreme Court interpreted a *federal*,
19 rather than a California, statutory provision—i.e., 28 U.S.C. § 1915. Section 1915 is not typical even
20 among federal statutes, which almost universally treat a person as “an[] individual *or entity*.” (E.g., 18
21 U.S.C. § 2331, subd. (3); 22 U.S.C. § 611, subd. (a) [materially the same].) And far from being
22 “analogous” to section 995.240 (*Freedomcard, supra*, 123 Cal.App.4th at p. 615), section 1915
23 repeatedly uses the term “person,” and multiple “contextual features indicat[e] that ‘person’ in
24 § 1915(a) refers only to individuals” (*Rowland, supra*, 506 U.S. at p. 201). As explained above, section
25 995.240 refers only to “principal[s],” *not* “person[s].” As a result, *Freedomcard* and *Rowland* ought
26 not influence this Court’s decision in light of the plain language of the statute.

27 Because Zovio satisfies the definition of indigent as used across California law, this Court
28 should hold that Zovio meets the indigency requirement under section 995.240.

1 **ii. Zovio Is Unable to Provide Sufficient Sureties Under the Statute.**

2 In order to obtain a waiver of the bond requirement under section 995.240, a court must also
3 find that the principal is “unable to obtain sufficient sureties, whether personal or admitted surety
4 insurers.” Zovio easily satisfies that requirement.

5 Zovio has attempted to secure a surety from a bond provider but has been unsuccessful in doing
6 so. Zovio contacted multiple bond providers—including Court Surety Bond Agency and International
7 Sureties, Ltd.—in an attempt to secure a bond. (Royal Decl. ¶ 5.) All of these companies indicated
8 that, in light of Zovio’s financial position and current market capitalization, surety markets would
9 require Zovio to provide 100% collateral to secure the over \$33 million bond. (*Ibid.*) For example,
10 International Sureties, Ltd. noted that the “leading commercial surety markets . . . most likely to agree
11 to bond issuance on an uncollateralized basis . . . required 100% collateral, typically in the form of
12 cash or a letter of credit, due to the company’s recent losses, limited equity, and market capitalization”
13 and that “no surety market will consider issuing an unsecured \$33,750,000 appeal bond based on Zovio,
14 Inc. indemnity alone.” (*Id.*, Ex. 1; see also *id.*, Ex. 2 [noting same and that Zovio’s recent financial
15 disclosures, which included the Blue Torch loan, did not alter this landscape].) Zovio does not possess
16 sufficient resources to meet those collateral requirements, at least without suffering severe and perhaps
17 irreparable financial repercussions (*Id.* ¶ 6.) Zovio’s end of 2021 cash reserves were less than \$29
18 million; Zovio does not have significant real estate assets or other marketable securities that can be
19 pledged as collateral; and as a consequence Zovio cannot obtain letters of credit sufficient to make up
20 the difference. (*Ibid.*)

21 Under these circumstances, Zovio cannot secure a sufficient bond from an admitted surety
22 insurer. It is also unable to secure sufficient personal sureties, from any person or combination of
23 persons, given the significant dollar figures involved. (Royal Decl. ¶ 7.)

24 **iii. Other Considerations Weigh in Favor of This Court Exercising Its Discretion to**
25 **Waive the Bond Requirement.**

26 Because section 995.240’s two requirements—indigency and inability to secure sufficient
27 sureties—are satisfied here, the Court may exercise its discretion to waive provision of the bond.
28 Because the costs to Zovio of maintaining the bond requirement vastly outweigh any harm the State

1 would suffer if the bond is waived, the Court should exercise its discretion to waive the bond
2 requirement. (See Code Civ. Proc., § 995.240.)

3 This Court’s refusal to waive the bond requirement would jeopardize Zovio’s ability to fulfill
4 its contractual obligations to UAGC. (Royal Decl. ¶ 10.) That would pose potentially dire
5 consequences for the UAGC and its 28,000 students (many of whom live in California). (Pastorek
6 Decl. ¶¶ 2, 6–7.) Zovio, as a result of the work of over 1,000 staff members, provides, among other
7 things, “student finance, academic support and advising services for UAGC.” (*Id.* ¶¶ 3, 5.) Moreover,
8 Zovio “has provided technological assistance needed to help recruit students, provide digital textbooks
9 and course materials, process financial aid, manage data, deliver virtual classrooms, and operate student
10 and faculty help desks.” (*Id.* ¶ 4.) If Zovio were unable to provide this technological assistance to
11 UAGC, an online university, that could result in the “interrupt[ion] [of] the education of UAGC’s
12 28,000 students.” (*Id.* ¶¶ 6–7.)

13 The impact of having to pay the judgment before an appeal would also threaten Zovio’s ability
14 to serve the approximately 70,000 high school and college students who rely on TutorMe, Zovio’s
15 customized online tutoring service in over 300 subjects. (Royal Decl. ¶ 13.) It could also jeopardize
16 the viability of Fullstack Academy, which provides computer coding, cybersecurity, and data analytics
17 training that prepares students for technology careers, and has resulted in over 100 U.S. companies
18 hiring Fullstack graduates. (*Id.* ¶ 14.)

19 Waiving the bond requirement is warranted to avoid this potential harm to tens of thousands of
20 innocent students. The Court of Appeal in *Davis* recognized that waiver of the bond requirement was
21 necessary when it would hurt innocent parties. There, the court stayed the bond requirement during
22 appeal because “execution against the assets of [the defendant] would wipe out the minority
23 shareholders,” including “employee-shareholders,” who had no role in the alleged misconduct. (*Davis*,
24 *supra*, 13 Cal.App.3d at p. 27.) Here, if this Court refuses to stay the bond requirement, it is not just
25 Zovio that would suffer the consequences: Zovio’s partner schools (like UAGC) and the tens of
26 thousands of students (the same students the State seeks to protect) that it serves would also be
27 impacted.

1 The State, on the other hand, would not suffer any meaningful consequences if this Court
2 waives the bond requirement. Unlike an individual or small business, the State’s operations would not
3 be affected by Zovio’s failure to immediately satisfy the judgment. The State’s putative purpose for
4 initiating this suit, moreover, was to punish Defendants for making false and misleading statements to
5 students—a purpose that has already been achieved. Indeed, were this Court to deny Zovio’s motion
6 to waive the bond requirement, it would directly *undermine* the other stated purpose of the case: to
7 protect students from harm.

8 The statutory factors all weigh in favor of this Court waiving Zovio’s bond requirement.
9 Accordingly, this Court should grant Zovio’s motion and waive the bond under section 995.240.

10 **B. Even If the Court Finds That Zovio Does Not Satisfy Section 995.240, It Should Stay the**
11 **Bond Requirement.**

12 This Court’s equitable authority to stay the bond requirement is not constrained by section
13 995.240’s two gatekeeper factors. While courts have recognized that section 995.240 codified the
14 common law, the statute did not preempt it. So even if the Court determines that Zovio cannot satisfy
15 the section 995.240, the Court still should stay the bond requirement here because the equities favor
16 that result.

17 Courts of Appeal, in evaluating writs of supersedeas, have repeatedly halted the execution of
18 judgments when the “failure to issue a stay is more likely to injure defendants [and innocent third
19 parties] than the issuance of a stay is likely to injure plaintiff.” (*Davis, supra*, 13 Cal.App.3d at p. 28.)
20 In *Davis*, Defendant Custom owed \$1.7 million on a judgment, and “could not put up a bond . . . of
21 \$2,550,000 (one and one-half times the unpaid balance).” (*Id.* at pp. 26, 28 [recognizing Custom could
22 not furnish the bond, even though it was “operating profitably”].) The court could either stay
23 proceedings “during the pendency of an appeal . . . in order to preserve the status quo in aid of its
24 jurisdiction and ensure that the subject matter of the appeal [would be] still in existence,” or it could
25 permit *Davis* to execute the judgment, “leav[ing] the minority shareholders . . . with an interest in a
26 corporate entity which was nothing more than an empty shell.” (*Id.* at p. 26.) The court chose the
27 former path, finding “an appropriate claim for a stay pending appeal ha[d] been made out, since
28 execution against the assets of Custom would wipe out the minority shareholders,” who, as the trial

1 court specifically found, did not participate in the controlling shareholders’ fraud. (*Id.* at pp. 27–28
2 [noting too that the “appeal does present substantial issues related to the amount of Davis’ judgment
3 against Custom”].)

4 Similarly, in *Estate of Murphy* (1971) 16 Cal.App.3d 564, the court held that “the potential
5 damage which may result to appellants in allowing the estate to be distributed at this time outweighs
6 the hardship to respondent in postponing distribution.” (*Id.* at p. 569.) And it recognized that “any
7 hardship which may be occasioned by delay can be mitigated by expeditious prosecution and
8 determination of the appeal.” (*Ibid.*) As a result, the Court “deem[ed] it appropriate to grant the
9 supersedeas *without bond.*” (*Ibid.*, italics added.)

10 As explained above (*supra* section III(A)(iii)), the “potential damage” that may result from
11 forcing Zovio to pay the full judgment now—i.e., the potential service disruption to the students of
12 UAGC, TutorMe, and Fullstack Academy—far outweighs the hardship to the State in allowing Zovio
13 to pursue an appeal. Indeed, the State’s own objectives of protecting students would be undermined
14 by such an outcome.

15 As a result, this Court should waive the bond requirement.

16 **C. Alternatively, the Court Should Permit Zovio to Either Post a Significantly Reduced Bond**
17 **or Deposit a Significantly Reduced Amount with the Court.**

18 If this Court “determine[s] that the amount of the bond is excessive,” it may “order the amount
19 reduced to an amount [that] . . . in [its] discretion . . . appears proper under the circumstances.” (Code
20 Civ. Proc., § 996.030, subd. (a); see also Cal. Civ. Prac. Proc., Eileen C. Moore & Michael Paul Thomas
21 (Apr. 2022 Update) § 16:207.) Similarly, because a defendant could provide a deposit in lieu of a bond
22 as long as it equals the amount required to be secured by the bond (Code Civ. Proc., § 995.710, subds.
23 (a)–(b)), a court could allow a principal to provide such a deposit at the same reduced amount.

24 For the reasons explained, Zovio cannot secure a bond of over \$33 million, deposit the same
25 with the court, or pay the judgment in order to appeal. It could, however, provide collateral for a
26 significantly reduced bond—the exact amount of which Zovio expects to be able to provide at the time
27 of the hearing on this motion—without risking a disruption of services to the students of UAGC,
28 TutorMe, and Fullstack Academy. (Royal Decl. ¶¶ 11–14.) Accordingly, if the Court does not waive

1 Zovio’s bond requirement in full, it should allow Zovio to either secure a significantly reduced bond
2 or deposit a significantly reduced amount with the Court to stay enforcement of the judgment pending
3 appeal.

4 **IV. CONCLUSION**

5 This Court should waive or significantly reduce the amount required for a bond or court deposit
6 so that Zovio may move forward with its appeal concerning the liability determination and damages
7 award in the Statement of Decision.

8
9 Dated: April 21, 2022

GIBSON, DUNN & CRUTCHER LLP

10 By: /s/ Theane D. Evangelis
11 Theane D. Evangelis

12 *Attorney for Defendants*
13 *Ashford University, LLC and Zovio, Inc.*

1 **PROOF OF SERVICE**

2 I, Jeremy S. Smith, declare as follows:

3 I am employed in the County of Los Angeles, State of California, I am over the age of
4 eighteen years and am not a party to this action; my business address is 333 South Grand Avenue,
5 Los Angeles, California 90071, in said County and State. On April 21, 2022, I served the following
6 documents:

7 **DEFENDANTS’ NOTICE OF MOTION AND MOTION FOR RELIEF FROM BOND
8 REQUIREMENT; MEMORANDUM OF POINTS AND AUTHORITIES;
9 DECLARATION OF KEVIN ROYAL (WITH FOUR EXHIBITS); DECLARATION
10 OF PAUL PASTOREK**

11 on the parties stated below, by the following means of service:

- 12 Vivian Wang: Vivian.Wang@doj.ca.gov
- 13 Michael Elisofon: Michael.Elisofon@doj.ca.gov
- 14 Vesna Cuk: Vesna.Cuk@doj.ca.gov
- 15 Rachel Foodman: Rachel.Foodman@doj.ca.gov
- 16 Sheldon Jaffe: Sheldon.Jaffe@doj.ca.gov
- 17 Hunter Landerholm: Hunter.Landerholm@doj.ca.gov
- 18 Emily C. Kalanithi: Emily.Kalanithi@doj.ca.gov
- 19 Colleen Fewer: Colleen.Fewer@doj.ca.gov
- 20 Joseph Lake: Joseph.Lake@doj.ca.gov
- 21 Chad S. Hummel; chummel@sidley.com
- 22 Jack Yeh; jyeh@sidley.com
- 23 David R. Carpenter; drcarpenter@sidley.com
- 24 Benjamin M. Mundel; bmundel@sidley.com
- 25 Renee Pesiri; rpesiri@sidley.com

26 (VIA E-MAIL OR ELECTRONIC TRANSMISSION) Based on agreement of the parties to
27 accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the
28 person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time
after the transmission, any electronic message or other indication that the transmission was
unsuccessful.

(STATE) I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

Executed on April 21, 2022 in Los Angeles, California.

Jeremy S. Smith