MEMORANDUM

Date: June 23, 2014
To: CUFCT Membership
From: Richard Stock, CUFCT President
Re: Petition to NYS Supreme Court

No doubt you are aware of a Petition filed with the New York State Supreme Court on May 27th, 2014. Some of you may have read the document.

The CUFCT leadership has read the Petition. It is fairly long (39 pages) and has been filed by a number of members of the Cooper Union community. A significant portion of the Petition comes under the sub heading of "Factual Allegations". We have extracted the list of factual allegations and attached them to this Memorandum. Please note the paragraph numbers associated with each allegation correspond to the paragraph numbers in the Petition itself. In addition, we have spotted one or two typos but have copied the list from the Petition "as is". Our reaction to the factual allegations is that they appear to conform substantially to what we know about the events, information and documents that the Petition covers. However, you may read them yourself and see if they resonate with your own knowledge and memory.

Since the Fall of 2011 the CUFCT has consistently maintained that the cause of the financial situation at The Cooper Union was extremely bad management, outrageously bad decisions and complete lack of oversight or engagement by the Trustees. As recently as April 2014 we stated "The CUFCT's position remains that the administration and Board of Trustees caused and continue to exacerbate The Cooper Union's financial problems – they broke it, they own it!"

If you have any questions or need further information, please do not hesitate to contact Richard Stock (ext 317) or Peter Buckley (ext 281).

FACTUAL ALLEGATIONS

49. Peter Cooper founded The Cooper Union for the Advancement of Science and Art in 1859, based on the principle that every student should be entitled to a free education. This principle was codified in The Cooper Union Charter and the school's other founding documents. Under this principle, the school has flourished for more than 150 years.

50. Mr. Cooper was an iconic figure of New York City—a renowned inventor and an industrialist, but above all a philanthropist. He made his fortune in diverse ventures, from real estate to iron and steel, railroads, and telecommunication.

51. He believed in giving back to the City and central to that vision was his dream of a school where education would be free, designed to lift the working classes from poverty much as he himself had risen to fortune from his modest beginnings.

52. The Cooper Union website reflects the importance of supporting working class education in its recounting of the school's origins: "Cooper was a laborer's son who achieved greatness despite a lack of formal education. He believed that education should be 'as free as water and air' and so created The Cooper Union for the Advancement of Science and Art, one of the first colleges to offer a free education to working-class children and to women."

53. As Peter Cooper explained: "I then reflected upon the fact that there must be a great many young men in this country, situated as I was, who thirsted for the knowledge they could not reach, and would gladly avail themselves of opportunities which they had no money to procure. I then determined, if ever I could acquire the means, I would build such an Institution...".

54. Peter Cooper founded The Cooper Union with a gift of land and the original Foundation Building, to be held in trust by the school. Later, the school received generous gifts from Peter Cooper's descendants and Andrew Carnegie, including the land beneath what is now the Chrysler Building, which is the school's largest asset.

55. In the cornerstone ceremony on September 17, 1853, Mr. Cooper explained in his address that: "I design to provide for a continued course of night and day lectures and discussions on the most useful and practical sciences, to be *open and free to all*..." (emphasis added).

56. to support the school's governance: free tuition, transparency, and fiscal conservatism.

From the outset, The Cooper Union's founding documents identified three pillars

57. The requirement for The Cooper Union to provide free tuition is reflected in both the Deed of Trust that conveyed the land and building for The Cooper Union and the original Charter of The Cooper Union which similarly emphasized that classes should be "*free to all who shall attend* the same," (emphasis added).

58. This principle is also reflected in other founding documents, such as a letter dated April 29, 1859, which accompanied the Deed of Trust, and in which Peter Cooper explained: "In order to encourage the young to improve and better their condition, I have provided for a continued course of lectures, discussions and recitations in the most useful and practical sciences, to be open and *free to all*..." (emphasis added).

59. In a pamphlet published by The Cooper Union on October 9, 1956, the then Trustees presented Peter Cooper's April 29, 1859 letter "on the eve of the a major effort to prepare The Cooper Union to enter its second century of *free educational service to the people of America*. Whoever reads this letter can better understand the far-reaching vision of Peter Cooper, which is fundamental to the aspirations of The Cooper Union today," (emphasis added).

60. In 1864, when Peter Cooper addressed his first graduating class, he again emphasized that he viewed the school as "an institution where a course of instruction would be open and free to all."

61. The founding documents also provided specific guidance with respect to the manner in which The Cooper Union's finances were to be handled.

62. The original Charter forbade the Trustees to take on debt of more than $5,000 and provided that if they did, those who voted for it would be personally liable.

63. The Charter also prohibited the Trustees from mortgaging the original building. Likewise, the 1902 endowment of the land beneath what is now the Chrysler Building also prohibited mortgaging that property.

64. With regard to transparency, the Charter commanded that every Trustee "shall be at all times at liberty, in his discretion, freely to publish any matter within his knowledge relating to the institution herein contemplated, or to its management in any respect, including any discussions in the Board of Trustees."

65. In addition, the Deed of Trust and the Charter provided for the Trustees to create a society, "The Associates of The Cooper Union for the Advancement of Science and Art" (the "Society"). The Associates' Society was to include graduates and Trustees of The Cooper Union.

66. Pursuant to the Charter, the Associates' Society was to annually elect a Council of the Associates of The Cooper Union for the Advancement of Science and Art (the "Council"). The Council was to be made up of at least twenty-four members of the Society.

67. The Deed of Trust provided that majority of the Council was to have the power to remove trustees.

68. Neither the Society nor the Council currently exists.

69. As provided for in the original Deed of Trust, the responsibility for governing The Cooper Union in accordance with these principles is held by the Board of Trustees.

70. The Current Board has twenty-five Trustees (including President Jamshed Bharucha) and five Trustees emeritus (who do not have the right to vote).

71. The Current Board holds regular trustee meetings at which the Trustees make decisions as a group with respect to the school.

72. The Trustees have a fiduciary duty of undivided and undiluted loyalty and obedience to carry out the purposes of Peter Cooper's Deed of Trust. That fiduciary duty limits their discretion and powers such that they cannot act in contravention of the stated purpose of the Deed of Trust.

73. From the outset, The Cooper Union's goal has been to admit undergraduates solely on the basis of merit and to award full scholarships to all enrolled students.

74. With the small exception of an amateur art class for women that existed from 1860 to 1885, The Cooper Union has been tuition-free since it began. As the First Annual Report of Trustees noted in 1860, this art class was "a departure from the invariable rule in the other department of the Union, that the instruction *shall in all cases* be entirely gratuitous," (emphasis added), which the Trustees reluctantly agreed to when the pre-existing art class was folded in to The Cooper Union.

75. Year after year, for almost 155 years, the Trustees acknowledged their duty to honor Peter Cooper's vision, and the school became known for its full-tuition scholarships.

76. The Cooper Union's unique legacy of a tuition-free education has attracted a large and unusually talented applicant pool to its art, architecture, and engineering schools. Some were unable to afford tuition at top-tier colleges. Others were attracted by the principle of a truly meritocratic institution where there are no "legacy" students, and all who attend have to maintain the highest standards. Students came together as a community of equals, committed to intellectual growth and creative expression, creating a uniquely egalitarian culture.

77. Alumni of The Cooper Union make fundamental contributions to science, technology, and architecture and include major figures in the world of art. The Cooper Union's distinguished community includes Thomas Edison, Justice Felix Frankfurter, Daniel Libeskind (architect for reconstruction of the World Trade Center), Russell Hulse (Nobel Laureate in physics), Kevin Burke (President of Con Edison), Samuel Margles (inventor of the modern escalator), artist Audrey Flack (first female artist featured in Janson's "History of Art"), and renowned graphic designer Herb Lubalin.

78. Alumni of The Cooper Union overwhelmingly devote their careers to the improvement of New York City. From Cooper Union have come graduates who have served as Chief Engineer of the City; Commissioner of Water Supply, Gas and Electricity; Commissioner of Highways; and in other science and engineering government leadership roles. Many others lead private sector enterprises involved in building and sustaining the City's infrastructure.

79. Currently, The Cooper Union offers degrees in architecture, art, and engineering, and also has a Faculty of Humanities and Social Sciences.

80. Operating a university without charging tuition requires conservative financial planning. Past Trustees stewarded The Cooper Union's finances with a mixture of austerity measures and encroachments on the endowment when expenses exceeded giving and available cash. But, by 2000, the Trustees had become unsatisfied with that financial *status quo*: "Even with a modest uptick in giving and a positive record on returns from investment," they now recount on the school's website, "the deficit endured and insolvency loomed." Characterizing this situation as a "threat to The Cooper Union's future," the Trustees concluded that "reality had to be engaged and a program for a sustainable future enacted."

81. While the Board has presented a public vision of expanding deficits, the actual performance of the school's budget has fluctuated from year to year over the last decade. The audited financial statement summary for the years 1999 to 2011, released by the Board, show that the school had increases in net cash assets in 2000, 2004-2007, and 2011. While the school reported a $32 million deficit over the ten-year period, it reported a surplus in 2011 of $10.2 million.

82. The murkiness surrounding the actual state of the school's finances is due in part to the fact that, since at least 2011, some new Trustees have been required to sign non-disclosure agreements, which provide that material discussed at Board meetings is strictly confidential and prohibit the disclosure of all documents containing financial and other information concerning The Cooper Union. These non-disclosure agreements are contrary to the explicit mandate in the school's Charter commanding that every Trustee "shall be at all times at liberty, in his discretion, freely to publish any matter within his knowledge relating to the institution herein contemplated, or to its management in any respect, including any discussions in the Board of Trustees."

83. While The Cooper Union's bylaws require the President and the Treasurer to present verified reports on the school's finances at the annual meeting of the Board, on information and belief, this requirement has not been fulfilled.

84. But even assuming the Trustees' claims about the school's finances are accurate, the problem is what the Trustees' chosen solution.

85. Ignoring the purpose of the Deed of Trust (to provide free education), the Trustees chose to embark on a mixture of volatile hedge-fund investments, unsound real estate transactions, huge debt, and a plan to build an extravagant new academic building the school could not afford. In light of the facts and circumstances prevailing at the time these decisions were made, what happened next was predictable and foreseeable: these measures made the situation worse, not better.

86. In 2000-2001, the Board of Trustees adopted a "Master Plan" that called for a "change" to The Cooper Union "business model." While acknowledging that the school had "experienced financial challenges and operating deficits" throughout its history, and that by the end of the 1990s it had a growing deficit that had persisted for more than a decade and had reached $12 to $15 million, the report claimed that this was no longer sustainable over the long term.

87. To address the financial situation, the Master Plan proposed a short-term expense reduction, a capital campaign to raise $250 million, and a capital management program to "increase the cash flow from the endowment, largely invested in real estate assets."

88. The $250 million capital campaign was unrealistic and far exceeded the school's prior fundraising initiatives.

89. On information and belief, The Cooper Union campaign sought about $22,000 per alumnus, while a

contemporaneous New York University (NYU) fundraising campaign sought only $7,000 per alumnus. The previous Cooper Union campaign raised approximately $3,750 per alumnus.

90. On information and belief, the Board's own consultants warned that $250 million was not feasible.

91. The Master Plan also called for the construction of a new building for the Engineering School. The lavish plans for the building (including its celebrity architect and exorbitant design) were out of proportion to any practical benefit to The Cooper Union and obviously risky, given the school's financial situation.

92. On information and belief, there is no evidence that the Board gave any consideration to the potential impact the extravagant new building could have on the school's ability to offer free tuition, that the Board seriously explored less expensive means of upgrading the engineering facilities (such as building a more modest building), nor that the Board had a back-up plan in case the ambitious capital campaign failed to raise the money needed for the new building.

93. Nonetheless, the new building was justified by the fulfillment of The Cooper Union's mission of free education. For example, in 2002 when the City Planning Commission approved a plan by Cooper Union to build the building, the commissioners justified their decision to override local residents' concerns about its construction by arguing "the public good that Cooper Union does by offering free education for its [...] students -- most of them New Yorkers -- outweighed the impact on the community."

94. After six years of fund raising, the capital campaign had failed to reach much more than half of its goal: $130 million of its $250 million objective. Nor had a single donor made a large gift to fund the construction of the new building in exchange for his or her name on the building.

95. Given this shortfall, the Trustees had to decide whether to press forward with the construction of the new building, or pull back from it until the school was financially more stable. Given the shortfall on the unrealistic and overly ambitious fundraising campaign and the lack of available capital, to press on with the new building meant taking on new debt of $175 million.

96. On information and belief, apparently without any consideration of the importance of continuing to provide the free education at the core of Peter Cooper's vision, the Board chose to press on with construction without scaling back the extravagant plans.

97. Then-Trustee William Sandholm's company directly benefitted from the construction. Rose Associates, of which Mr. Sandholm is Chief Operating Officer, profited directly when Jonathan Rose of Rose Associates secured a $2 million contract to oversee the New Academic Building construction despite the obvious conflict of interest. Mr. Sandholm was also the Chief Executive Officer of Astor Place Holding Co., which was in charge of The Cooper Union's real estate holdings.

98. Furthermore, Jonathan Rose's mother, Sandra Priest Rose, served on the Board of Trustees while her son was in the process of supervising the construction of the new building. On information and belief, in her 2009 Board Conflict of Interest Statement, Ms. Rose stated "My son Jonathan Rose was hired as the 'owner's representative' for the construction of the new academic building, but I assume that relationship is either ended or drawing to a close." On information and belief, no action was taken to remedy this conflict.

99. With Mr. Rose at the helm, construction costs for the new building ran over budget by approximately $15 million.

100. Instead of waiting to raise the funds—or obtaining a donor to name the building— the Board decided to go into debt to build the extravagant building they could not afford.

101. In 2006, the Board of Trustees filed a *cy pres* petition in New York Supreme Court, seeking permission to modify the Deed of Trust to be able to mortgage the school's largest asset, the Chrysler Building, for a $175 million loan from MetLife.

102. The Board claimed that it needed the loan to address "outdated facilities and financial pressures."

103. The Board justified the loan, in part, on the basis that it needed additional cash because of its unique tuition-free mission. “Unlike most other schools,” the Board told the Court, “The Cooper Union does not receive any revenues in the form of tuition. All students admitted to The Cooper Union’s degree programs receive a full-tuition scholarship, which allows talented students of all economic background to attend, in accordance with Peter Cooper’s vision.”

104. The Board told the Court that it planned to construct a brand new, state of the art academic building for the School of Engineering, as well as to renovate the school’s Foundation Building, anticipating this would cost between $130 and $155 million.

105. The Board also assured the Court that the school was committed to a $250 million capital campaign, which had already raised $129 million.

106. The Trustees also claimed that the administration had committed to reducing operating expenditures by 10 percent by 2011.

107. Based on these assurances, on September 27, 2006, the Court granted the Board’s application. As part of its order (apparently drafted by the school’s attorneys), the Court indicated the loan proceeds should be used “for the construction and related costs of a new academic building, for renovations to its Foundation Building, to divest funds invested in the ground lease in the Chrysler Building, to defease the Dormitory Authority of the State of New York’s interest in the Chrysler Building in accordance with the lender’s requirements for the financing, for general working capital, and/or for its other charitable purposes.”

108. The Court’s approval of the *cy pres* relief was based on misrepresentations by the Board. Contrary to its representations to the Court, The Cooper Union did not need the lavish new building envisioned by the Trustees, and its promises for fiscal responsibility were either manifestly unrealistic or false, or both.

109. Most significantly, the promised reduction of expenses never occurred. Instead, expenses steadily rose from $43.7 million in 2006, to $66.8 million in 2010. Even excluding debt service and depreciation, the rise was from $39.4 million to $49.8 million. Non-full time faculty salaries and wages (including those of the school’s growing administrative staff) also rose substantially during a similar time period, from $12.5 million in 2005 to roughly $17.5 million in 2010. Meanwhile, full-time faculty wages and salaries remained flat at roughly $5 million from 2005 to 2010.

110. In 2009, then-President’s Campbell’s salary was $668,473, putting him in the top ten of the most highly compensated university chief executives in the country relative to the school’s budget. In 2011, the Board paid President Campbell $1,307,483, which made him one of the most highly compensated college presidents in the country, outranking the presidents of many elite universities such as Brown and Stanford.

111. This salary was in violation of Not-for-Profit Corporation Law § 202(a)(12) which requires that the President’s compensation package be “reasonable” and “commensurate with services performed.”

112. On information and belief, in violation of Not-for-Profit Corporation Law § 715(f), the compensation of past-President Campbell and current President Bharucha were not voted on by the entire Board.

113. The Board also acted in a fiscally imprudent way by giving authority to the administration to commit the school to contracts valued up to $10 million, without any Board approval.

114. In addition to failing to reduce expenses, the Trustees pushed forward with the plans for the extravagant new building, even though the Engineering School faculty voted against the new building and asked the President and Board to explain how the new building was to be paid for.

115. Even when it failed to attract a major donor willing to contribute a substantial amount in exchange for his or her name on the building, the Board pressed on with the plan. According to the New York Times, after failing to secure such a donor prior to construction, the Trustees mistakenly believed that a large donor eager to put his or her name on the new building would materialize later, *after* construction had commenced and the building was underway. No donor materialized.

116. Experts have said the Board had it backwards. Describing the Board's decision to build first and raise funds second, Kenneth E. Redd, director of research and policy analysis for the National Association of College and University Business Officers, stated: "I've never heard of a case where you build the building first and hope a donor comes along."

117. Despite their representations to the *cy pres* Court, the Trustees now claim that the mortgage was not used for the construction of the new building but "to support the endowment and cover operating deficits." The Trustees explain on the school's website that the $167 million for the new building was instead raised as follows: "$92 million (plus $3 million in annual payments) from the sale of 51 Astor Place (the site of the old engineering building.) An additional $60 million was raised from a building capital campaign ... and the remaining $15 million balance came from the endowment."

118. According to the Trustees now, the loan was used to pay off $25 million in dormitory bonds, while the remaining $150 million was used for "repairs and upgrades to preserve and maintain the historic Foundation Building ... [and] invested on the assumption that existing high rates of return would continue and exceed the costs of interest on the loans, resulting in a net gain." The obvious problem with this risky strategy, as the Trustees now acknowledge, was that their "expectation[s] proved overly optimistic, compounded by the ensuing financial meltdown."

119. At the time, the Trustees should have known they could not afford to pay the additional debt because the school had no surplus to afford such a loan. The mortgage locked the school into a fixed rate of nearly 6 percent, requiring crippling annual payments of over $10 million. In addition, what was on information and belief initially proposed as a short-term bridge loan turned into a long-term commitment. Despite the rate, the Trustees agreed to a mortgage that they cannot now refinance because of severe penalties.

120. At the same time that it was increasing the school's debt, the Board renegotiated the lease on the Chrysler Building in 2006.

121. The lease for the Chrysler Building was supposed to remain in effect until January 1, 2018, at which time the landlord (Cooper Union) and the tenant (Tishman Speyer) would agree upon the fair market value of the land and the rent would be 7 percent thereof.

122. Under the new lease, negotiated by the Board in 2006, rent payments will go up to $32.5 million in 2018, $41 million in 2028 and $55 million in 2038.

123. On information and belief, this new lease grossly undervalues the Chrysler Building, and the market value of the property was not properly appraised prior to renegotiation. According to The New York Times, "it doesn't seem the trustees made any serious attempt to even determine its market price."

124. The New York Times reported in 2000, six years before the Board renegotiated the lease, that Tishman Speyer valued the Chrysler Building as high as $800 million.

125. Two years after the Board renegotiated the lease with Tishman Speyer, in 2008, the Abu Dhabi Investment Council bought 90 percent of the Chrysler lease from Tishman Speyer for $800 million.

126. In addition, by comparison, the New York Times reported that "Tishman Speyer sold 666 Fifth Avenue, which hardly compares to the landmark Chrysler Building, for $1.8 billion in 2006, and bought the MetLife building in 2005 for $1.72 billion." In addition, the Empire State Building was reportedly transferred to the Empire State Realty Trust in October 2013 for $1.89 billion.

127. By contrast, according to an appraisal done in 2009, the value of the income stream from the new Chrysler Building lease with Tishman Speyer was $420 million.

128. The new lease was viewed as a windfall by tenant Tishman Speyer, which told the Wall Street Journal that "the 2018 payments represented a two-thirds discount from the value of midtown Manhattan space at the time, and the deal locked in favorable terms for 40 years."

129. On information and belief, William Sandholm of Rose Associates, then a Trustee and Chair of the Master

Planning Committee, was directly involved in the real-estate negotiations for the new Chrysler building lease with Tishman Speyer.

130. Tishman Speyer is an important client of Rose Associates. 22

131. William Sandholm was promoted to CEO of Rose Associates after the Chrysler Building lease was negotiated.

132. In 2007, the Board made a deal with Edward J. Minskoff Equities to transform 51 Astor Place (the old engineering building) into a mixed-use commercial and academic property, which was supposed to generate additional rent and revenue for the school.

133. But, by 2009, Minskoff Equities still had not developed the property and, citing the economic downturn, was pushing then-President Campbell to agree to a delay in the construction and a corresponding delay in the new revenue stream for the school.

134. The school subsequently agreed to multiple amendments to the lease, which pushed back the date of rent commencement and denied the school rental income from the property at 51 Astor Place.

135. Two years after taking out the $175 million loan on the Chrysler Building, in 2008, the college was already $4.6 million short in cash.

136. The Trustees had improvidently used loan proceeds to increase their investments in hedge funds at the top of the market.

137. With more than $100 million in hedge fund investments, The Cooper Union was paying more than $2 million a year in hedge fund management fees alone, in addition to performance fees.

138. Current emeritus Trustee Robert Bernhard was the Chair of the Board of Trustees from 1995 to 2004. During that time, in a clear conflict of interest, from 2000 to 2006, Mr. Bernhard managed approximately 20 percent of The Cooper Union's investable endowment in his money management firm, Munn Bernhard & Associates, Inc. On information and belief, the funds managed by Mr. Bernhard underperformed significantly when compared to the school's other investments.

139. In addition, the Chairman of the Board's investment committee, then-Trustee John Michaelson, was also the principal of a hedge fund group.

140. The Board has refused to disclose which hedge funds The Cooper Union has invested in.

141. Over the years, the Board has presented the press and the public with contradictory accounts of the school's finances, which highlight the need for an independent accounting.

142. For example, in 2009, just two years before they officially began exploring tuition, the Trustees boasted to the Wall Street Journal about their "conservative approach" to the school's endowment which they valued at $600 million on June 30, 2008 and which they "expected to be about the same -- or even up slightly -- when the school's fiscal year ends."

143. Even today, amidst their justifications of the financial necessity of charging tuition, the Trustees claim on the school's website that their investments in hedge funds were sound. "For fiscal years 2006 to 2012," they argue, "The Cooper Union's cash endowment, largely invested in hedge funds, returned 6.35% per annum, after fees. The average return reported by National Association of College and University Business Offices (NACUBO) for the nation's colleges and universities for the same seven years was 4.5%. In 2012 the hedge funds returned more than 10%. In the first quarter of 2013 they returned 5.3%." The Trustees boast that their "endowment not only performed markedly better than those of most American institutions of higher learning, it did this while providing necessary cash to cover operating expenses."

144. On the other hand, other Trustee statements about the endowment have been more pessimistic. For example, according to the New York Times in 2013, Trustee and Chairman of the Board's investment committee "Mr. Michaelson said Cooper Union's returns for the managed endowment, excluding the Chrysler asset and cash, were

negative 14 percent in fiscal year 2009, 10 percent in 2010 and 17 percent in 2011. Cooper Union's portfolio lost 5 percent in fiscal year 2012. That portion of the endowment fell to about $85.9 million at the end of fiscal year 2012, from about $169 million in 2008, and the total endowment dropped to $666.7 million from $710 million in 2008."

145. According to the New York Times: "In 2006, the school had $19.4 million in hedge funds. In 2007, that had ballooned to $75.6 million, which amounted to more than 60 percent of the managed portfolio, excluding the Chrysler site and cash. By 2008, the hedge fund investments amounted to almost $103 million."

146. Simon Lack, an investment adviser and author of "The Hedge Fund Mirage," described The Cooper Union's heavy reliance on hedge funds as "irresponsible."

147. By placing more than more than 60 percent of the managed portfolio, excluding the Chrysler site and cash, into high-risk hedge funds, the Trustees failed to diversify the school's assets, as required by the Prudent Investor Act.

148. In the course of a single fiscal year, from the end of FY 2008 (June 30) to the end of FY 2009 (June 30), the value of The Cooper Union's non-real estate investments declined from $180 million to $144 million. Hedge fund investment value plummeted from $103 million to $19 million.

149. "By comparison," the New York Times noted, "a simple mix of 60 percent stocks, as measured by the S.& P. 500, and 40 percent bonds, using the Dow Jones corporate bond index, performed far better: down 11.7 percent in 2009, and up 14.5 percent in 2010, 20.8 percent in 2011 and 7.9 percent in 2012."

150. One explanation for the some of the more optimistic accounts of the endowment's performance may be an accounting trick: the Trustees may have revalued the land under the Chrysler building upwards in order to mask the decline of the rest of the endowment.

151. But the losses to the endowment were not the core of Cooper's problem: the $175 million loan continued to be the anchor dragging down the school's balance sheet, along with the failure to reduce expenses as committed to in the sworn *cy pres* petition. By the end of 2010, Vice President Westcott made the following points concerning the "changes to the unrestricted net assets": "Overall expenses exceeded revenues; expense increases were due primarily to additional depreciation from 41 Cooper Square [the new engineering building], interest expenses from MetLife loan (now an operating expense) [the $175 million loan], and increases in medical benefit expenses."

152. By 2013, The Cooper Union's deficit had ballooned to more than $12 million. As of May 2013, the New York Times reported that "Cooper Union's endowment is lower than it was at the end of fiscal year 2008, even as the Standard & Poor's 500-stock index has hit new highs."

153. Mired in increasing deficit from excessive debt and bad real estate and investment decisions, the Trustees secretly began exploring the viability of charging tuition, an approach that was championed by the new president they hired in 2011, Jamshed Bharucha.

154. The search for a new president was plagued with irregularities, including the exclusion of the School of Art and School of Engineering Deans from the search committee, even though school policy required their involvement.

155. On information and belief, the Board proceeded to hire the new president, Jamshed Bharucha, in an apparently hasty and irresponsible manner, over the course of a single weekend. According to President Bharucha, he first met one of the Trustees in an informal, apparently coincidental meeting in New Hampshire on a Saturday; he was flown to New York the next day (Sunday) to meet some of the other Trustees; and the Trustees offered him the job that same night, despite the fact that the entire Board had not met him.

156. Jamshed Bharucha had never served as a college or university president and had no background in art, architecture, or engineering.

157. Following the lead of the Board that hired him, from the very beginning of his tenure President Bharucha indulged in luxuries that a school dedicated to free tuition and allegedly strapped for cash could not afford. For example, President Bharucha spent over $350,000 on his inauguration celebration ($50,000 of which went to pay celebrity guest speaker Fareed Zakaria) and over $23,000 for expensive furnishings for the President's house

(including almost $10,000 on new blinds and over $8,000 for a custom buffet). In addition, on information and belief, President Bharucha has spent excessive funds on private security, including his own personal bodyguards.

158. In addition, President Bharucha's salary is not "reasonable" and "commensurate with services performed," in violation of Not-for-Profit Corporation Law § 202(a)(12), because President Bharucha has, *inter alia*, disregarded and actively undermined the school's history and mission of providing free education, creating a divisive environment leading to the occupation of the President's office and other protests, and resulting in a petition of no-confidence containing 2,300 signatures. The Cooper Union's unique tuition-free character and resulting fiscal limitations are incompatible with exorbitant salaries for top executives.

159. On information and belief, shortly after President Bharucha assumed his position, the school began removing references to the history of free tuition from The Cooper Union's website. This was well before any plans to charge tuition had been publicly announced. After some outcry, some of the references were eventually replaced.

160. At President Bharucha's very first Board meeting, in September 2011, the Board passed a resolution that set the school on the road to charging tuition, instructing the President to develop "a long-term strategic plan considering an enrollment and financial aid model that assesses revenue and offers financial aid on the basis of the financial circumstances of applicants." This approach contrasted with The Cooper Union's long history of admitting students based solely on merit, and awarding full tuition scholarships to all students, without consideration of their "financial circumstances."

161. The Board's stated goals were to: "1) place the institution on a path to fiscal stability, 2) strengthen the financial aid packages for admitted students who might otherwise be unable to attend, and 3) ensure that the academic programs and reputation are of the highest standards of excellence." No mention was made of attempting to preserve the school's policy of free tuition, or honoring Peter Cooper's vision of education free to all.

162. That year, the Board spent $1.46 million of "unbudgeted expenses" on consultants to help support the transition to charging tuition.

163. On April 24, 2012, more than six months after the Board had instructed President Bharucha to examine the possibility of charging tuition, President Bharucha publicly announced that the school was considering charging tuition in some programs.

164. In fact, according to then-Chairman of the Board of Trustees Mark Epstein, the Board had been secretly considering the possibility of charging tuition for much longer than that.

165. Six months after his initial announcement, in August 2012, President Bharucha directed the deans of the schools of art, architecture, and engineering to develop a "reinvention plan" that included "new revenue generating programs" through tuition. When the faculty of the School of Art refused to participate and voted "no confidence" in the administration, the Executive Committee of the Board of Trustees retaliated by adopting a resolution to stop early decision notifications for School of Art applicants and directing that early decision letters for the School of Art not be sent out. The Trustees apparently adopted this resolution without regard for the negative effects it might have on prospective students or the school's ability to recruit the most talented applicants and the school's ranking among its peers.

166. On information and belief, the Board also discussed the possibility of closing the School of Art altogether.

167. Exactly one year after announcing that it was exploring the possibility of charging tuition, on April 23, 2013, the Board of Trustees announced its decision that The Cooper Union would begin charging tuition in the fall of 2014. Under this new scheme, starting with the entering class of 2014, undergraduate students will be charged $19,500 in tuition (50 percent of what the Trustees claim is actual tuition of $39,000). Although the Current Board's consultants recommended charging only 25 percent of tuition, the Trustees rejected that recommendation and decided to charge 50 percent instead, again apparently without regard for how this might affect the school's ability to recruit the most talented applicants. Under the new scheme, tuition will be charged on a sliding scale, with some students paying the full $19,500, others (purportedly estimated to be approximately 25 percent) paying nothing, and another estimated 25 percent paying some amount in between.

168. When President Bharucha and the administration announced implementation of tuition at Cooper Union, there was massive protest from students, alumni, and faculty including votes of no-confidence in the leadership of Cooper Union from the School of Art full-time faculty and the Faculty of Humanities. Part-time faculty also dissented with the administration, voting against the administration's decision to start charging tuition.

169. On information and belief, several senior level departures and/or firings related to conflicts arising from the situation have taken place.

170. Many alumni are outraged and have expressed unwillingness to support President Bharucha's vision of a tuition-charging Cooper Union with outsized and excessive administrative expenses.

171. Current students reacted with protests and demands for reform. Architecture students painted the lobby of the Architecture School black. Free Cooper Union, an association of current students, demanded that the Board abandon its plans to charge tuition, commit to increased transparency, and remove President Bharucha.

172. On July 5, 2013, The Friends of Cooper Union, a coalition of students, faculty, staff, alumni, and friends, called for the creation of the "Associates of the Cooper Union for the Advancement of Science and Art," and of the "Council of the Associates of the Cooper Union for the Advancement Science and Art," which are provided for in the Charter as a check on the power of the Board of Trustees.

173. Schoolwide, students launched a major protest, occupying the President's office. They held firm despite threats of disciplinary action, even though their own free tuition was not at risk. They fought for the scholarships for future students at Cooper Union.

174. The student standoff was finally resolved through negotiations by two Trustees who supported free tuition, who negotiated a deal resulting in the formation of a "Working Group" to explore ways to save free tuition.

175. The President and administration actively worked against the Working Group by insisting that administration representatives who were not supportive of free tuition be on the Working Group. Unlike the administration's appointees, the student, faculty, and alumni representatives to the Working Group were elected by their constituencies. The Cooper Union Chief Financial Officer who was providing financial information to the Working Group was fired in a manner that disrupted progress and was replaced by well-paid consultants reporting directly to the President. Despite this, the Working Group, with representatives from alumni, faculty, students, and the board, produced a working plan to maintain Cooper Union's free tuition.

176. Published in December 2013, the detailed fifty-four-page Working Group report was prepared by three subcommittees: the subcommittee for academic opportunities, the subcommittee for administration and compensation, and the subcommittee for space utilization.

177. Each subcommittee examined the school's operations and budgets at a granular level, then proposed cuts and re-structuring throughout the school, ranging from cutting administrative salaries that exceeded the median by 200 percent, to reallocating space to increase the amount of space available for revenue-generating rentals.

178. The Working Group plan received the support of the majority of faculty and students, as well as the full and part-time faculty unions, and the alumni association.

179. According to then-Trustee Michael Borkowsky, who was a member of both the Working Group and the Board, the Working Group plan would have had a cumulative advantage of up to $18 million in the next five years over the Board's proposal to charge tuition.

180. The Working Group plan offered certainty and concrete numbers. By contrast, it remains unclear whether the Board's plan to charge tuition will actually bring the school out of its deficit, because tuition will be charged on a sliding scale depending on admitted students' ability to pay and, the Trustees claim, the school will continue to accept students based solely on merit (although this commitment was only made for the first year). If the merit-only admissions policy is maintained, there is no way of knowing for any given year how much revenue will be generated by tuition payments, as that would depend entirely on the financial circumstances of each entering class.

181. Over the course of twenty-five years, the Working Group plan had either a smaller deficit or a larger surplus

than the Board's proposal to charge tuition.

182. The Working Group report embodied the kind of creative austerity and willingness to sacrifice that had pulled the school through financial crises in its past, providing a viable way for The Cooper Union to bridge its budgetary shortfalls.

183. On January 10, 2014 the Current Board voted against adopting the Working Group plan. 184. In a statement published on the school's website, the Trustees summarily conclude, without any underlying comparison or analysis, and without acknowledging the risks inherent in the plan to charge tuition, that "the contingencies and risks inherent in the [Working Group] proposals are too great to supplant the need for new revenue sources. Regrettably, tuition remains the only realistic source of new revenue in the near future."

185. On information and belief, Trustee Jeffrey Gural also proposed a plan by which he would make a large donation to keep the school tuition-free for one more year, to allow additional time to develop an alternative plan and avoid charging tuition. This plan was also rejected by the Board.

186. Faculty, students, and alumni have expressed their lack of confidence in the President and Board Chair in a petition with over 2,300 signatures.

187. The Board's response to the public outcry over charging tuition has been to ignore opposition and press forward.

188. The decision to charge tuition has had an immediately deleterious impact on admissions.

189. Last year, prior to the announcement that it would start charging tuition, the school received 13 applications for every student it accepted, had an acceptance rate of 7.7 percent, and was ranked number one of regional colleges in its region by U.S. News. In 2010, Newsweek ranked it as the #1 most desirable small school, and the #7 most desirable school in the United States.

190. According to the New York Times, following the Board's decision to change its policy and charge tuition, overall applications were down this year by over 20 percent and the school's acceptance rate almost doubled—from 7.7 percent last year, to 14.4 percent this year.

191. On information and belief, many admitted students have already declined their spots because of financial concerns.

192. The fact that The Cooper Union's acceptance rate has already doubled in the first year alone suggests that the decision to charge tuition may cause the school to lose its elite ranking. This increase in acceptance rate is in stark contrast to the opposite trajectory of other elite schools and is a foreboding harbinger of the school's mediocre future.

193. In addition, according to the Board's own consultants, the Oram Group, The Cooper Union's mission of providing free education is a powerful fundraising tool. The charging of tuition risks undermining the school's ability to fundraise.

194. While the Trustees have tried to justify tuition by citing economic necessity, they have always had a choice to make between cutting costs or continuing to spend and making up the difference by charging tuition. Repudiating the school's mandate and history, they chose to charge tuition.

195. In a May 2013 interview with The New York Times, Trustee and Chairman of the Board's investment committee Mr. Michaelson conceded that the school did not need to charge tuition and could have continued to use the endowment to cover deficits instead and would have survived until 2018, when the higher payments from the Chrysler lease will be triggered by the terms of the lease. If the Trustees had followed this path, he quipped: "what kind of school would you have had by then?" Peter Cooper would have answered the question simply: free.