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CATHERINE HOLDEN, individually,  
8 and on behalf of all others similarly situated

9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 CATHERINE HOLDEN, on behalf of  
13 herself and all others similarly situated,

14  
15 Plaintiffs,

16 vs.

17  
18 UNIVERSITY OF SAN DIEGO, a  
California Corporation; and DOES 1  
19 through 10 inclusive,

20  
21 Defendant.

Case No.: '20CV2169 BEN LL

**CLASS ACTION COMPLAINT FOR:**

- 12 (1) **BREACH OF CONTRACT;**
- 13 (2) **UNJUST ENRICHMENT;**
- 14 (3) **CONVERSION;**
- 15 (4) **VIOLATION OF CALIFORNIA'S**
- 16 **UNFAIR COMPETITION LAW**
- 17 **("UCL"), BUSINESS AND**
- 18 **PROFESSIONS CODE §§ 17200,**
- 19 ***et seq.*;**

20 **DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

1		
2		<b>Page</b>
3	I. NATURE OF THE ACTION	1
4	II. PARTIES AND JURISDICTION	2
5	III. JURISDICTION AND VENUE	3
6	IV. FACTUAL ALLEGATIONS	3
7	A. University of San Diego	3
8	B. Coronavirus Disease 2019 (COVID-19)	5
9	C. Defendants Continue to Charge Full Tuition and Fees Despite the Pandemic.	6
10	V. <u>Class Action Allegations</u>	7
11	Class Definition	7
12	Numerosity and Ascertainability	8
13	Adequacy	8
14	Typicality	9
15	Superiority	9
16	Commonality and Predominance	10
17	VI. <u>FIRST CAUSE OF ACTION</u>	11
18	Breach of Contract (Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)	11
19		
20	VII. <u>SECOND CAUSE OF ACTION</u>	14
21	Unjust Enrichment (Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)	14
22		
23	VIII. <u>THIRD CAUSE OF ACTION</u>	15
24	Conversion (Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)	15
25	IX. <u>FOURTH CAUSE OF ACTION</u>	16
26	Violation of California’s Unfair Competition Law (“UCL”), California Business and Professions Code §§ 17200, <i>et seq.</i> (Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)	16
27		
28	X. PRAYER FOR RELIEF	18

XI. DEMAND FOR JURY TRIAL

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1 Plaintiff CATHERINE HOLDEN, on behalf of herself and all others similarly  
2 situated, by and through her attorneys, Shegerian & Associates, Inc., hereby file the Class  
3 Action Complaint against Defendant UNIVERSITY OF SAN DIEGO, a California  
4 corporation (“USD”); and DOES 1 through 10 inclusive, (collectively, “Defendants”), and  
5 states as follows:

6 **I. NATURE OF THE ACTION**

7 1. The is an action for breach of contract, unjust enrichment, conversion, and  
8 violation of the California’s Unfair Competition Law (“UCL”) brought by Plaintiff on  
9 behalf of herself and all others similarly situated, that is, all students enrolled at  
10 Defendants’ educational institution. Defendants have shut down all of its campus  
11 facilities, discontinued all live in-classroom instruction of all courses at any of Defendants’  
12 campus and schools, and instead moved all instruction to virtual online pre-recorded  
13 and/or live streaming video instruction. While these actions are attributable to the  
14 COVID-19 pandemic and the shelter-in-place order in effect in the State of California,  
15 Defendants have continued holding Plaintiff and all students liable for the full pre-  
16 shutdown tuition and fee obligations, despite the fact that Defendants are unable to  
17 provide, and are not providing, the services and facilities that the students bargained for  
18 and are being billed for as part of their tuition and fees—fees and tuition costs that easily  
19 amount to thousands of dollars per student but less than \$75,000 each at the time.

20 2. While Defendants may not bear culpability for the campus closures or the  
21 inability to provide any classroom instruction, neither do the enrolled students. Yet, while  
22 Defendants have used the current COVID-19 shutdown circumstances to excuse their duty  
23 to perform fully the obligations of their bargain with their students, Defendants continues  
24 to demand that all students fully perform their contractual bargain to pay in full all tuition  
25 and fees without any reduction for Defendants’ lack of full performance. This contrary to  
26 ordinary tenets of contract law. The indefensible breach is saddling wholly innocent  
27 students with mounting debt as a result of having to pay tuition and fees for services they  
28 are not receiving and facilities and services that are not being provided. In so acting,

1 Defendants are unjustly enriching themselves at the expense of Plaintiff and putative Class  
2 members she seeks to represent.

3 3. California law recognizes the proposition that the relationship between a  
4 matriculated student and Defendants is a contractual one: “By the act of matriculation,  
5 together with payment of required fees, a contract between the student and the institution  
6 is created.” *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809,  
7 824. In addition to any express enrollment contract that may exist between the students  
8 and Defendants, the law recognizes an implied-in-fact contract brought about by the  
9 conduct of the parties during the students’ enrollment. *Id.*

10 4. Defendants have breached their contractual duties by ceasing all in-classroom  
11 instruction at all campuses, shutting down campus facilities, and evicting students in  
12 student housing, while continuing to assess and collect full tuition and fees from Plaintiff  
13 and class members as if full performance had been rendered to them. Undoubtedly,  
14 however, the performance now being provided by Defendants and Defendants’ campus  
15 facilities is different from and of lesser value than what was bargained for at the time of  
16 Plaintiff’s and class members’ enrollment.

17 5. Plaintiff therefore brings the action on behalf of herself and all other similarly  
18 situated students of Defendants to seek redress for Defendants’ breach of contract, unjust  
19 enrichment, acts amounting to the action of money had and received, and violations of the  
20 UCL.

## 21 II. PARTIES AND JURISDICTION

22 6. Plaintiff Catherine Holden (“Holden”) Holden is a resident of Los Angeles  
23 County. Plaintiff Holden was an undergraduate student at the University of San Diego  
24 during the 2019-2020 academic year. Plaintiff Holden completed her Bachelor of Arts  
25 Degree in Communications and Marketing in May 2020.

26 7. Defendant the University of San Diego (“USD”) is a private university  
27 incorporated in the State of California. Defendant is doing business in the State of  
28 California, operating in the State of California, and is availing itself of the privileges and

1 obligations associated therewith.

2 **III. JURISDICTION AND VENUE**

3 8. The Court has jurisdiction over the subject matter presented by the Complaint  
4 because it is a class action arising under the Class Action Fairness Act of 2005  
5 (“CAFA”), which confers original jurisdiction on federal courts over a class action with  
6 at least 100 putative class members, minimal diversity in which any member of the  
7 putative class is a citizen of a state different from any defendant, and in which the  
8 amount in controversy exceeds in the aggregate sum of \$5,000,000.00, exclusive of  
9 interest and costs.

10 9. Plaintiff alleges that there are at least 100 putative class members with student  
11 enrollment in the thousands.

12 10. Plaintiff alleges that the amount in controversy exceeds \$5,000,000.00, pursuant  
13 28 U.S.C. § 1332(d)(2) and (6).

14 11. Plaintiff alleges that minimal diversity exists with members of the proposed class  
15 residents of states other than California and further that less than two-thirds of the  
16 proposed class are residents of California.

17 12. Venue within this District is proper because Defendant USD is located at 5998  
18 Alcala Park, San Diego, California 92110, which is within this District, is operating a  
19 university at its San Diego campus, and the acts complained of occurred within the  
20 District.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. University of San Diego**

23 13. Defendant the University of San Diego is a private university with an enrollment  
24 of approximately 9,181 students during the 2019-2020 academic year, which includes  
25 approximately 5,919 undergraduate students, 2,080 graduate students, and 1,078 doctoral  
26 and juris doctorate students.<sup>1</sup>

27  
28 <sup>1</sup> <https://www.sandiego.edu/facts/quick/2019/school.php>

1 14. The rate of annual tuition paid by undergraduate students during the 2019-2020  
2 academic year was \$50,450, or \$25,225 for the semester.<sup>2</sup> The rate of annual tuition for  
3 other specialized degree programs USD offered varied by the program, including \$56,230  
4 each year for USD's law school<sup>3</sup>, \$1,520 per unit for USD's Masters in Business  
5 Administration tuition, and \$1,535 per unit for USD's School of Nursing and Health  
6 Science Master's program.<sup>4</sup>

7 15. Additionally, Defendants assessed a variety of fees to its students for the 2019-  
8 2020 academic term. The estimated fees charged to undergraduate students at USD for  
9 the 2019-2020 academic year was approximately \$744 per student<sup>5</sup>, \$481 for USD law  
10 school students<sup>6</sup>, \$237 for Masters and Doctoral students<sup>7</sup>. These fees are assessed to  
11 students for services rendered, including student center fees and other resources available  
12 to students on campus.

13 16. Defendants also assessed certain housing fees to putative Class members living  
14 in USD's student housing.

15 17. Plaintiff and Class members paid all that they owe for tuition and fees. Plaintiff  
16 registered and paid for in-person classes for the Spring semester based on Defendants'  
17 representations made in admissions brochures and materials online. Plaintiff and putative  
18 Class members expected Defendants to provide in-person instruction for the entire term  
19 and enrolled for the term and paid all fees and tuition based on such expectations and  
20 representations.

21 18. Plaintiff brings this action on behalf of herself and similarly situated students who  
22

23 <sup>2</sup> <https://www.sandiego.edu/one-stop/tuition-and-fees/undergraduate.php>

24 <sup>3</sup> <https://www.sandiego.edu/law/financial-aid/cost-of-attendance/2019-20.php#accordion-panel1>

25 <sup>4</sup> <https://www.sandiego.edu/one-stop/tuition-and-fees/graduate.php>

26 <sup>5</sup> <https://www.sandiego.edu/one-stop/tuition-and-fees/undergraduate.php>

27 <sup>6</sup> <https://www.sandiego.edu/law/financial-aid/cost-of-attendance/2019-20.php#accordion-panel1>

28 <sup>7</sup> <https://www.sandiego.edu/one-stop/tuition-and-fees/graduate.php>

1 enrolled in USD during the Spring 2020 academic term and/or Summer 2020 or Fall 2020  
2 academic terms.

3 **B. Coronavirus Disease 2019 (COVID-19)**

4 19. In December 2019, the Chinese government identified a novel coronavirus found  
5 in the Wuhan province called sever acute respiratory syndrome coronavirus 2 (SARS-  
6 CoV-2). This strain of coronavirus caused Coronavirus disease 2019 (“COVID-19”), an  
7 easily spread and unusually lethal disease in certain population groups.<sup>8</sup>

8 20. This disease quickly and explosively spread due to its ability to survive in small  
9 respiratory droplets and the World Health Organization characterized COVID-19 as a  
10 “public health emergency of international concern” in late January and as a pandemic on  
11 March 11, 2020.<sup>9</sup>

12 21. On March 4, 2020, California Governor Gavin Newsom entered an executive  
13 order declaring a state of emergency to exist in California relating to COVID-19.

14 22. On March 19, 2020, California Governor Newsom entered an Executive Order  
15 requiring all individuals living in California to stay home or at their place of residence  
16 except as needed to maintain continuity of operations of critical infrastructure sectors (in  
17 which case, physical distancing must be practiced).<sup>10</sup>

18 23. The spread of the 2019 coronavirus (COVID-19) has radically changed life in  
19 this country with profound impacts on nearly every segment of American life. In response  
20 to the pandemic, colleges and universities have taken aggressive measures, which include  
21 eliminating in-person classroom instruction and replacing it with online instruction, which  
22 is in the form of a combination of pre-recorded or live-streamed video instruction.

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25 \_\_\_\_\_  
26 <sup>8</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7128332/>.

27 <sup>9</sup> <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

28 <sup>10</sup> <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>



1                   **C. Defendants Continue to Charge Full Tuition and Fees**  
2                   **Despite the Pandemic.**

3           24. On March 19, 2020, California Governor Newsom entered an Executive Order  
4 requiring all individuals living in California to stay home or at their place of residence  
5 except as needed to maintain continuity of operations of critical infrastructure sectors (in  
6 which case, physical distancing must be practiced).<sup>11</sup>

7           25. The spread of the 2019 coronavirus (COVID-19) has radically changed life in  
8 this country with profound impacts on nearly every segment of American life. In response  
9 to the pandemic, colleges and universities have taken aggressive measures, which include  
10 eliminating in-person classroom instruction and replacing it with online instruction, which  
11 is in the form of a combination of pre-recorded or live-streamed video instruction.

12           26. In particular, Defendants instituted mandatory “virtual” classes and ceased to  
13 provide on-campus resources to students—including access to laboratories, libraries,  
14 dining halls, fitness centers, and various student learning services.

15           27. On or about March 12, 2020, Defendants announced that “the university is  
16 mandating campus-wide remote teaching effective March 23, 2020, through the end of the  
17 spring semester” and that “[they] are cancelling all classes from March 14-22.”  
18 Additionally, on March 12, 2020, Defendants announced that “all USD students who live  
19 in the residence halls must relocate from campus no later than March 22.”<sup>12</sup>

20           28. Defendants ended all in-person classroom instruction and drastically changed the  
21 educational opportunities available to students, severely crippling Plaintiff and Class  
22 members from receiving the education for which they paid.

23           29. Defendants attract students to its programs by emphasizing its campus life, with  
24 “stunning, panoramic views,” where “students study and collaborate in an inspiring and  
25  
26

27 <sup>11</sup> <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

28 <sup>12</sup> <https://www.sandiego.edu/president/documents/emails/2020/coronavirus-mar12-update.html>

1 intimate setting.”<sup>13</sup>

2 30. By and large, the commitments promised to students were and are left unfulfilled  
3 with Defendants barring students from campuses and imposing mandatory virtual classes.  
4 In short, the plethora of resources bargained and paid for by students have been denied.

5 31. As a result of the transition to virtual learning online, the quality of education  
6 Plaintiff and Class members have received has suffered.

7 32. Despite closing its campuses and failing to offer in-person classes, Defendants  
8 continue to charge full tuition and fees. While students enrolled and paid for a  
9 comprehensive educational experience at Defendants’ campuses, Defendants have,  
10 instead, provided a limited online experience, lacking invaluable in-person learning  
11 opportunities.

12 33. Despite Defendants being allocated to receive \$4,426,552.00 in federal assistance  
13 under the CARES ACT<sup>14</sup>, Defendants have refused to reimburse Plaintiff and similarly  
14 situated students for failing to provide the services and educational opportunities paid for  
15 by the students. Defendants are thus profiting from the pandemic while further burdening  
16 students and families, many of whom have been financially and/or physically impacted by  
17 COVID-19.

18 34. Consequently, Plaintiff and Class members have suffered harm by losing the  
19 education, services, and other experiences Defendants promised to their students. Plaintiff  
20 and similarly situated students seek disgorgement of their payments for unused services  
21 and refund of the tuition for the inadequate, subpar educational instruction provided in lieu  
22 of the quality education for which they bargained.

23 **V. Class Action Allegations**

24 **Class Definition**

25 35. Plaintiff brings this action pursuant to 28 U.S.C. § 1332(d) on behalf of a  
26

27 <sup>13</sup> <https://www.sandiego.edu/admissions/why-usd.php>

28 <sup>14</sup> <https://www2.ed.gov/about/offices/list/ope/allocationsforsection18004a1ofcaresact.pdf>

1 proposed class of persons (the “Class”), defined as:

2 All students enrolled at a USD campus who paid tuition and mandatory  
3 campus and student services fees for the Spring term of 2020 and  
4 thereafter for classes scheduled for in-person instruction who were  
5 denied that instruction for any part of the Spring Term of 2020 and  
6 thereafter.

7 36. Excluded from the Class are Defendants, any of its past or present officers,  
8 directors, agents, and affiliates, any judge who presides over the action, and all counsel of  
9 record.

10 37. Plaintiff reserves the right to expand, limit, modify, or amend the definitions of  
11 the class as may be desirable or appropriate during the course of the litigation.

12 38. Class certification is proper because the question raised by the Complaint is one  
13 of a common or general interest affecting numerous persons so that it is impracticable to  
14 bring them all before the Court.

#### 15 **Numerosity and Ascertainability**

16 39. The class is sufficiently numerous, as Defendants boast an enrollment of approxi-  
17 mately 9,181 students. Class members may be identified through objective means, such  
18 as Defendants’ records, and notified of the action by recognized methods of notice, such  
19 as mail or e-mail, or publication in print or on the Internet. Furthermore, Defendants  
20 maintain rosters of all of its attending students and their financial obligations and  
21 payments.

#### 22 **Adequacy**

23 40. Plaintiff and her counsel are adequate representatives of the interests of the  
24 putative Class. Plaintiff is a student at USD who is being charged tuition or fees as part  
25 of her enrollment. She contends that USD has breached its agreement with students by  
26 continuing to charge and demand full tuition and fees, even though USD is not providing  
27 any in-person classroom instruction at its campus and not making campus facilities  
28 available for students.

1 41. Plaintiff has retained counsel experienced in class action litigation to litigate and  
2 represent the interests of the Class.

3 **Typicality**

4 42. Plaintiff's claims are typical of the claims being raised on behalf of the absent  
5 Class members. Like all absent Class members, Plaintiff seeks redress for Defendants'  
6 failure to provide any in-person campus instruction or campus facility, while continuing  
7 to charge full tuition and fees. The claims Plaintiff asserts are the same as and co-extensive  
8 with the claims raised on behalf of Class members.

9 **Superiority**

10 43. A class action is superior to other available methods for the fair and efficient  
11 adjudication of the controversy. Here, classwide litigation is superior to individually  
12 litigating and adjudicating the dispute, because the cost of litigating an individual claim  
13 for partial refund of tuition or fees makes such individual litigation unfeasible, given the  
14 costs of bringing such an action relative to the amount of damages recoverable in an  
15 individual action.

16 44. A class action is also superior to other available methods for the fair and efficient  
17 adjudication of the controversy because it eliminates the prospect of inconsistent rulings  
18 that would unsettle the legal obligations or expectations of Defendants, Plaintiff, and Class  
19 members.

20 45. Because the damages suffered by each individual class member may be relatively  
21 small, the expense and burden of individual litigation would make it very difficult or  
22 impossible for individual class members to redress the wrongs done to each of them  
23 individually, so that the prosecution of specific actions and the burden imposed on the  
24 judicial system by individual litigation by the Class would be significant, making class  
25 adjudication the superior option.

26 46. The conduct of the action as a class action presents far fewer management  
27 difficulties, far better conserves judicial resources and the parties' resources, and far more  
28 effectively protects the rights of each class member than would piecemeal litigation.

1 Compared to the expense, burdens, inconsistencies, economic infeasibility, and  
2 inefficiencies of individualized litigation, any challenge of managing the action as a class  
3 action is substantially outweighed by the benefits to the legitimate interests of the parties,  
4 the Court, and the public of class treatment, making class adjudication superior to other  
5 alternatives.

### 6 **Commonality and Predominance**

7 47. Plaintiff's Complaint raises questions of fact or law common to the class that  
8 predominate over questions affecting only individual class members. Among these  
9 predominating common questions are:

10 a. Whether the relationship between Defendants and Plaintiff and members of  
11 the Class is contractual;

12 b. What tuition and mandatory fees Plaintiff and Class members paid to  
13 Defendants;

14 c. What tuition and mandatory fee refunds, if any, Defendants issued to Plaintiff  
15 and class members;

16 d. Whether Defendants breached their agreements with Plaintiff and Class  
17 members when Defendants failed to deliver to Plaintiff and Class members in-person  
18 instruction and the services for which they paid tuition and mandatory fees and  
19 subsequently refused to refund;

20 e. Whether the refunds, if any, Defendants issued to Plaintiff and Class  
21 members were adequate to account for the cessation in in-person classroom instruction  
22 and services and the closure of campus facilities;

23 f. Whether Defendants ceased providing in-person classroom instruction to  
24 Plaintiff and Class members;

25 g. Whether Defendants deprived Plaintiff and Class members of the use and  
26 enjoyment of campus services and facilities;

27 h. Whether the value of online instruction is not equivalent to the value of the  
28 in-person classroom instruction that Plaintiff and Class members bargained for and for

1 which they were and are continuing to be charged;

2 i. Whether the value of campus facilities that Plaintiff and Class members were  
3 charged has been lessened as a result of Defendants' closing campus facilities;

4 j. Whether Defendants' action in continuing to charge and demand full tuition  
5 and fees has harmed Plaintiff and Class members;

6 k. Whether a method of computing classwide damages or restitution exists;

7 l. Whether Defendants was unjustly enriched by retaining tuition and  
8 mandatory fee payments when Plaintiff and Class members did not receive the services  
9 for which they paid tuition and mandatory fees;

10 m. Whether Plaintiff and Class members are entitled to declaratory or injunctive  
11 relief against Defendants;

12 n. Whether Defendants have unjustly enriched themselves at the expense of  
13 Plaintiff and Class members; and

14 o. Whether Defendants engaged in unfair business practices in violation of  
15 California law in refusing to refund any portion of the tuition and fees paid for services  
16 not offered to Plaintiff.

17 48. In the event that the Court were to find the proposed class definition inadequate  
18 in any way, Plaintiff respectfully prays for certification of any other alternative, narrower  
19 class definition or for the certification of subclasses, as appropriate.

20  
21 **VI. FIRST CAUSE OF ACTION**

22 **Breach of Contract**

23 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

24 49. Plaintiff re-alleges and incorporates by reference all previous allegations as  
25 though set forth in full herein.

26 50. By the act of matriculation, together with payment of required fees, a contract  
27 between Plaintiff and Class members, on the one hand, and Defendants, on the other hand,  
28 was created. Thus, in addition to any enrollment contract that may exist between

1 Defendants and the Plaintiff and Class members, an implied-in-fact contract independently  
2 exists between the parties as a matter of California law.

3 51. By ceasing all in-person classroom instruction, relegating Plaintiff and Class  
4 members to online instruction only and shutting off campus facilities to Plaintiff and Class  
5 members, Defendants have failed to provide the services that plaintiff bargained for in  
6 entering her contractual relationship with Defendants.

7 52. Although Defendants may not bear culpability for the campus closures or the  
8 inability to provide any classroom instruction, neither do the enrolled students. Yet, while  
9 Defendants have used the current COVID-19 shutdown circumstances to excuse its  
10 obligation to fully perform the obligations of their bargain with their students, Defendants  
11 continue to demand that all students fully perform their contractual obligations to pay in  
12 full all tuition and fees, without any reduction for Defendants' failure to fully perform their  
13 contractual obligations. This is contrary to the tenets of contract law.

14 53. The nature of the instruction provided by Defendants at the time Plaintiff and  
15 Class members enrolled (*i.e.*, in-person classroom instruction), as well as the campus  
16 facilities Defendants offer across its schools and campuses, were and are material terms  
17 of the bargain and contractual relationship between students and Defendants.

18 54. Defendants' failure to provide any in-person classroom instruction and its  
19 shutdown of campus facilities amount to a material breach of the contract.

20 55. As a result of Defendants' material breach—regardless of whether Defendants'  
21 performance may be excused—Plaintiff and Class members are not to be held liable for  
22 continuing to perform their contractual obligations. That is, regardless of whether  
23 Defendants' failure to offer in-person classroom instruction or to provide campus facilities  
24 is to be excused as a result of the COVID-19 pandemic, Defendants cannot continue to  
25 demand full payment of tuition and fees from Plaintiff and Class members for services and  
26 facilities that Defendants are indisputably failing to provide.

27 56. Defendants' breach and continued demand for full payment from Plaintiff and  
28 the Class members are the proximate causes of Plaintiff's and Class members' injury.

1 57. Plaintiff and Class members have all been harmed as a direct, foreseeable, and  
2 proximate result of Defendants' actions because Plaintiff and Class members are being  
3 charged full tuition and fees for services that Defendants are not providing.

4 58. Plaintiff and Class members are entitled to an award of money damages or partial  
5 restitution in an amount to be determined at trial as redress for Defendants' breach. Plain-  
6 tiff prays for the establishment of a Court-ordered and Court-supervised common fund  
7 from which the claims of affected Class members may be paid and the attorneys' fees and  
8 costs of suit expended by class counsel, as approved by the Court, may be awarded and  
9 reimbursed.

10 59. Defendants continue to insist that full tuition and fees are due from plaintiff and  
11 the students, despite Defendant's failure to fully perform its contractual obligations.  
12 Unless restrained by way of injunctive relief, Defendants' conduct is reasonably likely to  
13 lead to irreparable harm. Plaintiff and Class members are entitled to and hereby pray for  
14 injunctive relief to enjoin Defendants' continued conduct.

15 60. Defendants continue to represent falsely on its web site that it offers campus  
16 facilities with significant benefit and value to students and continues to represent falsely  
17 the value of its in-person on-campus classes. Unless restrained by way of injunctive relief,  
18 Defendants' conduct is reasonably likely to lead to irreparable harm. Plaintiff and Class  
19 members are entitled to and hereby pray for injunctive relief to enjoin Defendants'  
20 continued conduct.

21 61. Defendants dispute their obligation to refund tuition and fees to Plaintiff and  
22 Class members. Given the dispute and the contractual relationship between the parties,  
23 Plaintiff and Class members are entitled to and hereby pray for declaratory relief to have  
24 the Court declare the parties' respective obligations.

25 ///

26 ///

27 ///

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1 Defendants' conduct is reasonably likely to lead to irreparable harm. Plaintiff and Class  
2 members are entitled to and hereby pray for injunctive relief to enjoin Defendants'  
3 continued conduct.

4  
5 **VIII. THIRD CAUSE OF ACTION**

6 **Conversion**

7 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

8 68. Plaintiff re-alleges and incorporates by reference all previous allegations as  
9 though set forth in full herein.

10 69. Defendants received money from Plaintiff and Class members in the form of  
11 tuition and fee payments.

12 70. The money Plaintiff and Class members paid to Defendants was supposed to be  
13 used for the benefit of Plaintiff and Class members for Defendants' provision of on-  
14 campus university classroom instruction and to make available to Plaintiff and Class  
15 members campus services and facilities.

16 71. Defendants wrongfully exercised control over and/or intentionally interfered  
17 with the rights of Plaintiff and Class members by effectively closing their campuses to in-  
18 person classroom instruction and switching to a virtual online-only format, discontinuing  
19 paid-for services, and evicting students from campus housing.

20 72. Defendants received and wrongfully kept the money Plaintiff and Class members  
21 paid for tuition and fee payments, because Defendants have not provided campus facilities  
22 or on-campus instruction for the Winter/Spring term. More specifically, Defendants failed  
23 to provide to Plaintiff and Class members the benefits—such as in-person classroom  
24 instruction and related academic activities, access to campus services, facilities, and in-  
25 person extracurricular, athletic, and other student activities—that Plaintiff and Class  
26 members paid the tuition and mandatory campus and student services fees to secure.

27 73. Plaintiff and/or Class members have requested that Defendants issue refunds.

28 74. Defendants refused to return, and has thus wrongfully retained, a portion of

1 tuition and mandatory campus and student services fees. Defendants, therefore, are  
2 indebted to Plaintiff and Class members for the failure to provide on-campus classroom  
3 instruction and campus facilities.

4 75. Defendants' actions have damaged Plaintiff and Class members in the amounts  
5 of the tuition and mandatory campus and student services fees that defendant improperly  
6 withheld.

7 76. Plaintiff and Class members hereby pray for the full panoply of remedies  
8 available as redress for conversion, including a constructive trust over such monies had  
9 and received for which the benefit was not provided, restitution or disgorgement, as  
10 appropriate, and declaratory and injunctive relief.

11  
12 **IX. FOURTH CAUSE OF ACTION**

13 **Violation of California's Unfair Competition Law ("UCL"), California Business**  
14 **and Professions Code §§ 17200, *et seq.***

15 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

16 77. Plaintiff re-alleges and incorporates by reference all previous allegations as  
17 though set forth in full herein.

18 78. California's Unfair Competition Law ("UCL"), California Business and  
19 Professions Code sections 17200, *et seq.*, prohibits an "unlawful, unfair or fraudulent  
20 business act or practice."

21 79. Defendants violated the Unfair Competition Law by committing an unlawful act  
22 by breaching their contracts with Plaintiff and Class members, failing to provide services  
23 paid for, including in-person classroom instruction and access to Defendants' facilities,  
24 and failing to refund tuition, fees, and costs.

25 80. Defendants' conduct in representing that it offers campus facilities and on-  
26 campus instruction to Plaintiff and Class members when, in fact, it did not do so, but  
27 continuing to charge and demand full tuition and fees as if such services and facilities were  
28 being provided, amounts to an unlawful, unfair, or deceptive business practice within the

1 meaning of California’s UCL. Defendants’ conduct of failing to reimburse students some  
2 portion of tuition and applicable fees that correspond to the duration during which they  
3 received virtual learning instead of in-person instruction constitutes an unfair business  
4 practice in violation of the UCL.

5 81. Had Defendants disclosed that they would not be offering on-campus facilities or  
6 in-classroom instruction before it charged Plaintiff and Class members full tuition and fees  
7 and decided to retain them, Plaintiff and Class members either would not have enrolled at  
8 Defendants’ educational institution or would not have agreed to pay the same amounts of  
9 tuition and fees for services and facilities they would not receive.

10 82. Defendants’ practices are fraudulent because Defendant represented that it would  
11 offer in-person instruction and access to Defendants’ campus facilities. Plaintiff and Class  
12 members paid for the Winter/Spring 2020 term and college experience advertised.  
13 However, Plaintiff and Class members did not receive the services they paid for—  
14 Defendant moved all classes online, restricted student access to university facilities, and  
15 evicted students from campus housing.

16 83. Plaintiff and Class members conveyed money to Defendants in the forms of  
17 tuition and fees while Defendants were engaged in the unlawful, unfair, or deceptive  
18 business practice.

19 84. Plaintiff and Class members have been and continue to be injured by Defendants’  
20 unlawful, unfair, or deceptive business practices because they are not receiving the in-  
21 struction or facilities for which they conveyed money to Defendant.

22 85. Plaintiff and Class members are entitled to and pray for an order of partial  
23 restitution as redress for Defendant’s violations of the UCL.

24 86. Plaintiff and Class members pray for the establishment of a Court-ordered and -  
25 supervised common fund from which the claims of affected Class members may be paid  
26 and the attorneys’ fees and costs of suit expended by class counsel, as approved by the  
27 Court, may be awarded and reimbursed.

28 87. Defendants continue to charge full tuition and fees as if full services and facilities

1 were being provided, collecting millions of dollars from students deprived of the full  
2 benefit of their payments.

3 88. Defendants continue to represent falsely on its web site that it offers campus  
4 facilities with significant benefit and value to students and continues to represent falsely  
5 the value of its in-person on-campus classes. Defendants also continue to defy and deny  
6 all requests for partial tuition reimbursement, claiming falsely that it is offering the same  
7 services as Plaintiff and Class members had bargained for. Thus, Defendants are  
8 continuing to demand full tuition and fees, even though Defendants have already  
9 announced that they will not be providing any on-campus instruction for the summer  
10 sessions and is uncertain of whether it will do so for the Fall 2020 term. Unless restrained  
11 by way of injunctive relief, Defendants' conduct is reasonably likely to lead to irreparable  
12 harm. Plaintiff and Class members are entitled to and hereby pray for injunctive relief to  
13 enjoin Defendants' continued conduct.

14 89. As a direct and proximate result of Defendants' unlawful and unfair business acts  
15 and practices, Plaintiff and Class members have suffered and will continue to suffer actual  
16 damages.

17 90. Plaintiff and Class members are entitled to and seek disgorgement and restitution  
18 of the benefits unjustly retained, whether in whole or in part, including through refunds  
19 for tuition, fees, and/or room and board.  
20

## 21 X. PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated,  
23 respectfully requests that the Court finds against Defendants as follows:

24 1. An order certifying the action as a class action as defined herein, appointing  
25 Plaintiff as Class representative, her counsel as Class counsel, and directing that notice be  
26 disseminated to the absent Class members;

27 2. For judgment in favor of Plaintiff and Class members and against Defendants on  
28 all counts and claims for relief;

1           3. For compensatory, consequential, general, and special damages and/or restitution  
2 in an amount to be determined at trial;

3           4. For statutory damages, treble damages, and special or exemplary damages to the  
4 extent permitted by law;

5           5. Pre-judgment and post-judgment interest at the maximum legal rates; and

6           6. For the establishment of a Court-ordered and -supervised common fund to be  
7 funded by Defendant and from which claims of all eligible class members will be paid,  
8 attorneys' fees awarded to class counsel will be paid, costs of suit approved by the Court  
9 and incurred by Class counsel will be reimbursed, and any award of interest will be  
10 disbursed;

11           7. For interest as permitted by law;

12           8. For an award of attorneys' fees;

13           9. For costs of suit;

14           10. For declaratory relief, to have the Court declare the obligations of the parties;

15           11. For injunctive relief to enjoin Defendants' ongoing conduct; and

16           12. For all such other relief as the Court deems just and proper.

17  
18 Dated: October 29, 2020

**SHEGERIAN & ASSOCIATES, INC.**

19  
20 By: /s/ Carney Shegerian

Carney R. Shegerian

Anthony Nguyen

Cheryl A. Kenner

21  
22  
23 Attorneys for Plaintiff CATHERINE  
24 HOLDEN, on behalf of herself and all  
25 others similarly situated  
26  
27  
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