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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9
10 ANDREW BOLLAND, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 SEATTLE PACIFIC UNIVERSITY,

15 Defendant.

NO. 2:20-cv-00741

COMPLAINT—CLASS ACTION

JURY DEMAND

16
17 Plaintiff Andrew Bolland (“Plaintiff”) brings this action on behalf of himself and all
18 others similarly situated against Defendant Seattle Pacific University (“SPU” or “Defendant”).
19 Plaintiff makes the following allegations pursuant to the investigation of his counsel and based
20 upon information and belief, except as to the allegations specifically pertaining to himself,
21 which are based on personal knowledge.

22 **NATURE OF THE ACTION AND FACTS COMMON TO ALL CLAIMS**

23 1. This is a class action lawsuit on behalf of all people who paid tuition and/or fees
24 for the 2020 Winter and/or Spring Quarters at SPU, and who, because of Defendant’s response
25 to the novel coronavirus disease 2019 (“COVID-19”) pandemic, lost the benefit of the
26

1 education for which they paid, and/or the services for which their fees were paid, without
2 having their tuition and/or fees refunded to them.

3 2. SPU is a private university with a total enrollment of approximately 3,500
4 students. SPU offers more than 170 academic programs: 71 undergraduate majors, 59
5 undergraduate minors, and 44 graduate degree programs and certificates.
6

7 3. SPU does not traditionally offer online courses as part of its regular curriculum.
8 All, or almost all, of SPU's courses are conducted in-person.

9 4. SPU operates on academic quarters. The 2020 Winter Quarter began on January
10 6, 2020 and ran through March 13, 2020. The 2020 Spring Quarter began April 13 and runs
11 through June 11, 2020.
12

13 5. On March 6, 2020, SPU announced through a campus-wide email that, because
14 of the global COVID-19 pandemic, its campus would be closed and courses would transition to
15 online and remote learning. On March 12, 2020, SPU announced that the upcoming Spring
16 Quarter courses also would be available only online or remotely.

17 6. SPU has not held any in-person classes since March 6, 2020, at the latest.
18 Classes that have continued have been in an online format, with no in-person instruction.
19

20 7. As a result of the closure of SPU's facilities, SPU has not delivered the
21 educational services, facilities, access, and opportunities that Plaintiff and the putative class
22 contracted and paid for. The online learning options offered to SPU students provide less to
23 students than SPU's in-person courses in multiple aspects, including lack of facilities and
24 materials, limited access to faculty, and loss of the many learning experiences that require in-
25 person interaction among faculty and students. Students have been deprived of the opportunity
26 for collaborative learning and in-person dialogue, feedback, and critique. The remote learning
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1 options are in no way the equivalent of the in-person education that Plaintiff and the putative
2 class members contracted and paid for.

3 8. Plaintiff and the putative class are therefore entitled to a refund of tuition and
4 fees for in-person educational services, facilities, access, and opportunities that SPU has not
5 provided. Even if SPU claims that it did not have a choice in cancelling in-person classes, it
6 nevertheless has improperly retained funds for services it is not providing.
7

8 9. Through this lawsuit Plaintiff seeks, for himself and Class members, SPU's
9 disgorgement of the pro-rated portion of tuition and fees proportionate to the amount of time
10 they did not receive the in-person education they paid for because SPU moved its classes online
11 and ceased providing campus services. Plaintiff seeks a return of these amounts on behalf of
12 himself and the Class as defined below.
13

14 **PARTIES**

15 10. Plaintiff Andrew Bolland is a citizen of Washington who resides in Bonney
16 Lake, Washington. Mr. Bolland is an undergraduate student at Seattle Pacific University. Mr.
17 Bolland is pursuing a degree in Theater Performance. The Theater Performance program at
18 SPU relies extensively on in-person instruction, meaningful student presentations, peer
19 collaboration, and access to other university facilities. None of these resources are available to
20 Mr. Bolland while in-person classes are suspended. Mr. Bolland paid Defendant over \$14,000
21 per quarter for tuition and fees for the 2020 Winter and Spring Quarters. SPU has not provided
22 Mr. Bolland any refund of tuition or other mandatory fees, even though in-person classes have
23 not been held since March 6, 2020.
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25 11. Defendant Seattle Pacific University is a Washington nonprofit corporation
26 located in Seattle, Washington.
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JURISDICTION AND VENUE

12. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class, as defined below, is a citizen of a different state than Defendant, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

13. This Court has personal jurisdiction over Defendant because SPU is a citizen of Washington with its principal place of business in this District.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant is a resident of this District. Moreover, many of the acts and transactions giving rise to this action occurred in this District, and Plaintiff is a resident of this District.

FACTUAL ALLEGATIONS

A. Plaintiff and Class Members Paid Tuition and Fees for the Winter 2020 and Spring 2020 Quarters

15. Plaintiff and Class members are individuals who paid the cost of tuition and other mandatory fees for the 2020 Winter and/or Spring Quarters at SPU.

16. Winter 2020 classes at SPU began on or about January 6, 2020 and ended March 12, 2020. Spring 2020 classes began on or about April 13, 2020 and run through July 11, 2020.

17. Plaintiff and Class members paid the cost of tuition for the Winter 2020 and/or Spring 2020 Quarters, as well as associated fees and costs.

18. Examples of approximate tuition costs at SPU for the 2020 Winter and Spring Quarters are as follows:

- Tuition: \$14,868 per quarter
- Technology Fee: \$55 per quarter
- Student Activities Fee: \$103 per quarter

19. The tuition and fees described in the paragraphs above are provided by way of example; total damage amounts—which may include other fees that are not listed herein but that were not refunded—will be proven at trial.

B. In Response to COVID-19, SPU Closed Its Campus and Cancelled All In-Person Classes

20. On March 6, 2020, SPU announced through a campus-wide email that, because of the global COVID-19 pandemic, its campus would be closed and courses would transition to online and remote learning. On March 12, 2020, SPU announced that Spring Quarter courses would also be available only online or remotely.

21. SPU has not held any in-person classes since March 6, 2020. Classes that have continued have been offered only in an online format, with no in-person instruction.

22. As a result of the closure of Defendant’s facilities, Defendant has not delivered the educational services, facilities, access, and opportunities that Plaintiff and the putative class contracted and paid for. Plaintiff and the putative class are therefore entitled to a refund of all tuition and fees for services, facilities, access, and opportunities that Defendant has not provided. Even if Defendant claims that it did not have a choice in cancelling in-person classes, it nevertheless has improperly retained funds for services it is not providing.

23. Plaintiff and members of the Class chose not to attend an online institution of higher learning but instead chose to attend Defendant’s institution and enroll on an in-person basis.

1 24. Defendant markets SPU’s on-campus experience as a benefit of enrollment on
2 its website:

3
4 **CORE THEME 2: TRANSFORMATIVE AND HOLISTIC STUDENT
5 EXPERIENCE**

6 Seattle Pacific University will enhance and strengthen co-curricular learning
7 experiences by integrating academics, student life, and university ministries, to help
8 students develop a sense of vocation and effectively transition to post-college life.



21 25. The online learning options being offered to SPU students are subpar compared
22 to SPU’s in-person courses. The online learning options offered to SPU students provide less
23 to students than SPU’s in-person courses in in multiple aspects, including lack of facilities and
24 materials, limited access to faculty, and loss of the many learning experiences that require in-
25 person interaction among faculty and students.
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1 26. The remote learning options are in no way the equivalent of the in-person
2 education putative class members contracted and paid for. The online education being
3 provided is not worth nearly the amount charged Class members in tuition and fees for the 2020
4 Winter and Spring Quarters. The tuition and fees for in-person instruction at SPU are higher
5 than tuition and fees for other online institutions because such costs cover not only the
6 academic instruction but also an entirely different experience that includes but is not limited to:

- 8 • Face-to-face interaction with professors, mentors, and peers;
- 9 • Access to facilities such as libraries, laboratories, computer labs, and
10 study room;
- 11 • Student governance and student unions;
- 12 • Extra-curricular activities, groups, intramural sports, etc.;
- 13 • Student art, cultures, and other activities;
- 14 • Social development and independence;
- 15 • Hands-on learning and experimentation;
- 16 • Networking and mentorship opportunities.

17
18 27. The fact that SPU students paid a higher price for an in-person education than
19 they would have paid for an online education. This is clearly illustrated by the fact that SPU
20 does not traditionally offer online courses, nor does it have an established online education
21 program.

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23 28. Through this lawsuit Plaintiff seeks, for himself and Class members,
24 Defendant's disgorgement of the pro-rated portion of tuition and fees proportionate to the
25 amount of time they did not receive the in-person education they paid for because SPU moved
26 its classes online and ceased providing campus services. Plaintiff seeks return of these amounts
27 on behalf of himself and the Class, as defined below.

CLASS ALLEGATIONS

1
2 29. Plaintiff seeks to represent a class defined as all people who paid SPU tuition
3 and/or fees for in-person educational services to be provided for SPU’s Winter 2020 Quarter
4 and/or its Spring 2020 Quarter that SPU failed to provide, and whose tuition and/or fees have
5 not been refunded (the “Class”). Specifically excluded from the Class are Defendant,
6 Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts,
7 representatives, employees, principals, servants, partners, joint ventures, or entities controlled
8 by Defendant, and their heirs, successors, assigns, or other persons or entities related to or
9 affiliated with Defendant and/or Defendant’s officers and/or directors, the judge assigned to
10 this action, and any member of the judge’s immediate family.
11

12
13 30. Plaintiff also seeks to represent a subclass consisting of Class members who
14 reside in Washington (the “Subclass”).

15 31. Subject to additional information obtained through further investigation and
16 discovery, the foregoing definition of the Class and Subclass may be expanded or narrowed by
17 amendment or amended complaint.

18 32. **Numerosity.** The members of the Class and Subclass are geographically
19 dispersed throughout the United States and are so numerous that individual joinder is
20 impracticable. Upon information and belief, Plaintiff reasonably estimates that there are
21 thousands of members in the Class and Subclass. Although the precise number of Class
22 members is unknown to Plaintiff, the true number of Class members is known by Defendant
23 and may be determined through discovery. Class members may be notified of the pendency of
24 this action by mail and/or publication through records in Defendant’s possession.
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1 **33. Existence and predominance of common questions of law and fact.**

2 Common questions of law and fact exist as to all members of the Class and Subclass and
3 predominate over any questions affecting only individual Class members. These common legal
4 and factual questions include, but are not limited to, the following:
5

- 6 (a) whether Defendant accepted money from Class and Subclass members in
7 exchange for the promise to provide services;
- 8 (b) whether Defendant has provided the services for which Class and Subclass
9 members contracted;
- 10 (c) whether Class and Subclass members are entitled to a refund for that portion of
11 the tuition and/or fees that was paid for services that Defendant did not provide;
- 12 (d) whether Defendant has unlawfully converted money from Plaintiff, the Class
13 and Subclass; and
- 14 (d) whether Defendant is liable to Plaintiff, the Class, and Subclass for unjust
15 enrichment.

16 **34. Typicality.** Plaintiff's claims are typical of the claims of the other members of
17 the Class in that, among other things, all Class and Subclass members were similarly situated
18 and were comparably injured through Defendant's wrongful conduct as set forth herein.

19 Further, there are no defenses available to Defendant that are unique to Plaintiff.

20 **35. Adequacy of Representation.** Plaintiff will fairly and adequately protect the
21 interests of the Class and Subclass. Plaintiff has retained counsel that is highly experienced in
22 complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this
23 action on behalf of the Class and Subclass. Furthermore, Plaintiff has no interests that are
24 antagonistic to those of the Class or Subclass.

25 **36. Superiority.** A class action is superior to all other available means for the fair
26 and efficient adjudication of this controversy. The damages or other financial detriment
27 suffered by individual Class and Subclass members are relatively small compared to the burden

1 and expense of individual litigation of their claims against Defendant. It would thus be
2 virtually impossible for the Class or Subclass to obtain effective redress for the wrongs
3 committed against the members on an individual basis. Furthermore, even if Class or Subclass
4 members could afford such individualized litigation, the court system could not. Individualized
5 litigation would create the danger of inconsistent or contradictory judgments arising from the
6 same set of facts. Individualized litigation would also increase the delay and expense to all
7 parties and the court system from the issues raised by this action. By contrast, the class action
8 device provides the benefits of adjudication of these issues in a single proceeding, economies
9 of scale, and comprehensive supervision by a single court, and presents no unusual
10 management difficulties under the circumstances.
11

12 37. In the alternative, the Class and Subclass may also be certified because:

- 13 (a) the prosecution of separate actions by individual Class and Subclass members
14 would create a risk of inconsistent or varying adjudications with respect to
15 individual Class members that would establish incompatible standards of
16 conduct for the Defendant;
- 17 (b) the prosecution of separate actions by individual Class and Subclass members
18 would create a risk of adjudications with respect to them that would, as a
19 practical matter, be dispositive of the interests of other Class members not
20 parties to the adjudications, or substantially impair or impede their ability to
21 protect their interests; and/or
- 22 (c) Defendant has acted or refused to act on grounds generally applicable to the
23 Class as a whole, thereby making appropriate final declaratory and/or injunctive
24 relief with respect to the members of the Class as a whole.

25 **COUNT I**
26 **Breach of Contract**
27 **(On Behalf of the Class and Subclass)**

38. Plaintiff hereby incorporates by reference the allegations contained in
paragraphs 1-37 of this complaint.

1 39. Plaintiff brings this claim against Defendant individually and on behalf of the
2 members of the Class and Subclass.

3 40. Through the payment of tuition and/or fees, Plaintiff and each member of the
4 Class and Subclass entered into a binding contract with Defendant.

5 41. As part of that contract, and in exchange for the aforementioned consideration,
6 Defendant promised to provide certain services, all as set forth above. Plaintiff and members
7 of the Class and Subclass fulfilled their end of the bargain when they paid monies due for
8 Winter and/or Spring 2020 tuition and/or fees. The tuition and fees were intended to cover in-
9 person educational services from January through March for the Winter Quarter and April
10 through June 2020 for the Spring Quarter. In exchange for the monies paid, Plaintiff and the
11 Class and Subclass members were entitled to in-person educational services for the entirety of
12 each Quarter for which they paid.
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15 42. Defendant has failed to provide the contracted-for services and has otherwise
16 not performed under the contract as set forth above. Defendant has retained monies paid by
17 Plaintiff and the Class and Subclass members for their Winter and/or Spring 2020 tuition and/or
18 fees, without providing them the benefit of their bargain.

19 43. Plaintiff and members of the Class and Subclass have suffered damage as a
20 direct and proximate result of Defendant's breach, including but not limited to being deprived
21 of the education, experience, and services that they were promised and for which they have
22 already paid.

23 44. As a direct and proximate result of Defendant's breach, Plaintiff and members
24 of the Class and Subclass are entitled to damages, to be decided by the trier of fact in this
25 action, to include but not be limited to reimbursement of certain tuition, fees, and/or other
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1 expenses that were collected by Defendant for services that Defendant has failed to deliver.
2 Defendant should return the pro-rated portion of any Winter and/or Spring 2020 tuition and/or
3 fees for education services not provided since SPU ceased its on-campus classes on March 6,
4 2020.

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6 45. Defendant's performance under the contract is not excused due to COVID-19.
7 Indeed, Defendant should have refunded the pro-rated portion of any education services not
8 provided. Even if performance was excused or impossible, Defendant would nevertheless be
9 required to return the funds received for services not provided.

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11 **COUNT II**
Unjust Enrichment
(On Behalf of the Class and Subclass)

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13 46. Plaintiff hereby incorporates by reference the allegations contained in
14 paragraphs 1-45 of this complaint.

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16 47. Plaintiff brings this claim against Defendant individually and on behalf of the
16 members of the Class and Subclass.

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18 48. Plaintiff and members of the Class and Subclass conferred a benefit on
19 Defendant in the form of monies paid for Winter and/or Spring 2020 tuition and/or fees in
20 exchange for certain services and promises. The tuition and fees were intended to cover in-
21 person educational services from January through March for the Winter Quarter and April
22 through June 2020 for the Spring Quarter. In exchange for the monies paid, Plaintiff and the
23 Class and Subclass members were entitled to in-person educational services for the entirety of
24 each Quarter for which they paid.

25
26 49. Defendant voluntarily accepted and retained this benefit by accepting payment.
27

- 1 E. For prejudgment interest on all amounts awarded;
- 2 F. For an order of restitution and all other forms of equitable monetary relief;
- 3 G. For injunctive relief as the Court may deem proper; and
- 4 H. For an order awarding Plaintiff and the Class and Washington Subclass their
- 5 reasonable attorneys' fees and expenses and costs of suit.
- 6

7 **DEMAND FOR TRIAL BY JURY**

8 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of

9 any and all issues in this action so triable of right.

10 DATED: May 16, 2020.

11 **SAVITT BRUCE & WILLEY LLP**

12

13 By s/Miles A. Yanick

s/Jacob P. Freeman

Miles A Yanick, WSBA #26603
Jacob P. Freeman, WSBA #54123
1425 Fourth Avenue Suite 800
Seattle, Washington 98101-2272
Telephone: 206.749.0500
Facsimile: 206.749.0600
Email: myanick@sbwllp.com
jfreeman@sbwLLP.com

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19 **BURSOR & FISHER, P.A.**

20

21 By s/Frederick J. Klorczyk III

By s/Brittany S. Scott

Frederick J. Klorczyk III (*pro hac vice* forthcoming)
Brittany S. Scott (*pro hac vice* forthcoming)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: fklorczyk@bursor.com
bscott@bursor.com

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27 *Attorneys for Plaintiff Andrew Bolland*

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

ANDREW BOLLAND, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Seattle Pacific University

Defendant(s)

Civil Action No. 2:20-cv-00741

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Seattle Pacific University
c/o Assistant Vice President for Risk Management & University Counsel
Registered Agent
3307 3rd Avenue West
Seattle, Washington 98119

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Miles A. Yanick
Jacob P. Freeman
Savitt Bruce & Willey LLP
1425 Fourth Avenue, Suite 800
Seattle, WA 98101
(206) 749-0500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANDREW BOLLAND, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Pierce County, WA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Miles A. Yanick & Jacob P. Freeman, Savitt Bruce & Willey LLP 1425 Fourth Avenue, Suite 800, Seattle, WA 98101 (206) 749-0500

DEFENDANTS

SEATTLE PACIFIC UNIVERSITY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and categories.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)(a)

Brief description of cause: Breach of contract, unjust enrichment, conversion

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ >\$5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/16/2020 SIGNATURE OF ATTORNEY OF RECORD s/Miles A. Yanick

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE