

1 Carney R. Shegerian, State Bar No. 150461
 CShegerian@Shegerianlaw.com
 2 Anthony Nguyen, State Bar No. 259154
 ANguyen@Shegerianlaw.com
 3 Cheryl A. Kenner, State Bar No. 305758
 CKenner@Shegerianlaw.com
 4 **SHEGERIAN & ASSOCIATES, INC.**
 145 South Spring Street, Suite 400
 5 Los Angeles, California 90012
 Telephone Number: (310) 860-0770
 6 Facsimile Number: (310) 860-0771

7 Attorneys for Plaintiff
 CATHERINE HOLDEN, individually,
 8 and on behalf of all others similarly situated

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

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.
 22

Case No.: '20CV2169 BEN LL

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

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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 Alcalá 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.¹

27
28 ¹ <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.² 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 school³, \$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.⁴

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 student⁵, \$481 for USD law
10 school students⁶, \$237 for Masters and Doctoral students⁷. 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 ² <https://www.sandiego.edu/one-stop/tuition-and-fees/undergraduate.php>

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

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

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

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

28 ⁷ <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.⁸

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, 2020.⁹

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).¹⁰

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

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

28 ¹⁰ <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).¹¹

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.”¹²

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

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

1 intimate setting.”¹³

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 ACT¹⁴, 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 ¹³ <https://www.sandiego.edu/admissions/why-usd.php>

28 ¹⁴ <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.

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.

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1 **VII. SECOND CAUSE OF ACTION**

2 **Unjust Enrichment**

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

4 62. Plaintiff re-alleges and incorporates by reference all previous allegations as
5 though set forth in full herein.

6 63. Plaintiff and Class members conveyed money to Defendant in the forms of tuition
7 and fees for on-campus instruction and facilities that Defendants did not provide and is
8 not providing. Defendants have continued to retain these monies, despite not providing
9 the full benefit of on-campus classroom instruction and campus services and facilities.

10 64. Through the conduct, Defendants have been unjustly enriched at the expense of
11 Plaintiff and Class members.

12 65. Between the parties (Defendants and the Class members), it would be inequitable
13 to permit Defendants to retain all of the benefits Plaintiff and Class members conferred on
14 Defendants the form of tuition and fees paid.

15 66. Plaintiff and Class members are entitled to and hereby pray for an order of partial
16 restitution as redress for Defendants' unjust enrichment. Plaintiff prays for the estab-
17 lishment of a Court-ordered and -supervised common fund from which the claims of
18 affected Class members may be paid and the attorneys' fees and costs of suit expended by
19 class counsel, as approved by the Court, may be awarded and reimbursed.

20 67. Defendants continue to falsely represent on their web site that they offer campus
21 facilities with significant benefit and value to students and continue to falsely represent
22 the value of their in-person on-campus classroom instruction. This false in that such on-
23 campus instruction is not being offered. Defendants also continue to defy and deny
24 requests for partial tuition or fee reimbursement, claiming that it is offering the same
25 services for which Plaintiff and Class members bargained. Thus, Defendants are
26 continuing to demand full tuition and fees despite announcing that they will not be
27 providing any on-campus instruction for the summer sessions and is uncertain of whether
28 it will do so for the Fall 2020 term. Unless restrained by way of injunctive relief,

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
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XI. DEMAND FOR JURY TRIAL

Plaintiff CATHERINE HOLDEN, on behalf of herself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: October 29, 2020

SHEGERIAN & ASSOCIATES, INC.

By: /s/ Carney Shegerian
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

Attorneys for Plaintiff CATHERINE HOLDEN, on behalf of herself and all others similarly situated

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

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

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Carney Shegerian, Esq.
Shegerian & Associates, Inc.
145 South Spring Street, Suite 400, Los Angeles, CA 90012
(310) 860-0770

DEFENDANTS

University of San Diego, a California Corporation; and DOES 1 to 10, inclusive,

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

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

Attorneys (If Known)

'20CV2169 BEN LL

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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. Section 1332 - Class Action Fairness Act of 2005; Breach of Contract; Restitution Based on Quasi Contract; Conversion; Unfair Business Practices in Violation of CA Bus. & Prof. Code Section 17200, et seq.
 Brief description of cause:
 Breach of Contract; Restitution Based on Quasi Contract; Conversion; Unfair Business Practices in Violation of CA Bus. & Prof. Code Section 17200, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Larry Alan Burns DOCKET NUMBER 3:20-cv-1946

DATE 10/29/2020 SIGNATURE OF ATTORNEY OF RECORD

Carney Shegerian

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____