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15
16 **SUPERIOR COURT OF ARIZONA**

17 **MARICOPA COUNTY**

18 Kristen Stewart, individually and on behalf
of all others similarly situated,

19 Plaintiff,

20 v.

21 Aspen Group, Inc., a Delaware
22 Corporation; Aspen University, Inc., a
23 Delaware corporation,

24 Defendants.

Case No.: **CV2022-004347**

Class Action Complaint

(Violation of Arizona's Consumer Fraud
Act, A.R.S. § 44-1522(A); Unjust
Enrichment)

**(Commercial Court Assignment
Requested)**

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1 Arizona resident Kristen Stewart (“Plaintiff”), by and through her attorneys
2 undersigned, brings this action individually and on behalf of all others similarly situated
3 against Defendants Aspen Group, Inc. (“Aspen Group”) and its wholly owned subsidiary
4 Aspen University, Inc. (“Aspen University”) (collectively, “Aspen”). The allegations of
5 this Complaint are based upon the personal knowledge of Plaintiff as to herself, and on
6 information and belief as to all other matters through investigation of Plaintiff’s counsel.

7 **General Allegations**

8 1. Aspen operates a for-profit registered nursing degree program in Arizona
9 known as the Pre-Licensure Bachelor of Science in Nursing program (the “BSN Program”)
10 at two campus locations:

- 11 • 19602 N. 23rd Ave., Phoenix AZ 85027 (“Main Campus”), and
12 • 11811 N. Tatum Blvd. Ste. 4001, Phoenix AZ 85028 (“HonorHealth
13 Campus”).

14 2. Aspen is licensed to provide the BSN Program by the Arizona State Board
15 for Private Postsecondary Education (“the Arizona Education Board”); specifically, License
16 No. AVD-01679 (Main Campus) and License No. AVD-01691 (HonorHealth Campus).
17 The Arizona Education Board required Aspen to post a bond of \$118,677 to ensure Aspen’s
18 financial responsibility and management capabilities.

19 3. Aspen was also issued a provisional approval for a registered nursing program
20 by the Arizona State Board of Nursing (“the Arizona Board of Nursing”) in November
21 2017, which expires July 31, 2022.

22 4. Aspen offered the BSN Program to prospective students in Arizona, like
23 Plaintiff, through its website and uniform marketing materials, which purportedly offered
24 enrolling students “the opportunity to receive a high quality, responsibly priced distance-
25 learning education for the purpose of achieving sustainable economic and social benefits
26 for themselves and their families.” Aspen specifically promoted the BSN Program by
27 promising to provide its prospective students “the essential skills needed to practice as a
28 professional registered nurse,” a curriculum anchored in “skills lab, clinical simulation,

1 seminars and community-based experiences,” and a “high quality, responsibly priced
2 distance-learning education.”

3 5. Based on Aspen’s description of the BSN Program, Plaintiff from Arizona
4 initially applied to Aspen’s BSN Program in April 2020. As alleged below, Plaintiff took
5 out a federal direct loan in April 2021 in the amount of \$4,454.00 to pay for a portion of the
6 tuition charged by Aspen.

7 6. After commencing her studies at Aspen, however, Plaintiff found that
8 contrary to Aspen’s marketing representations to her and other students, Aspen’s learning
9 opportunities, faculty resources, quality of instruction, program resources, and
10 infrastructure were completely inadequate to support student learning or successful
11 outcomes.

12 7. As a result of Aspen’s BSN Program failures, Aspen’s 2021 first time pass
13 rate for the National Counsel Licensure Examination (“NCLEX-RN”) was an abysmal
14 58.04%, which ranked last in Arizona and fell well below the state’s 80% required
15 minimum threshold set by the Arizona Board of Nursing. *See* A.A.C. R4-19-206.G
16 (requiring, *inter alia*, Arizona nursing programs to maintain at least an 80% NCLEX pass
17 rate for graduates taking the NCLEX-RN for the first time within 12 months of graduation).

18 8. Based on this abhorrent pass rate and on several whistleblower reports, the
19 Arizona Board of Nursing in December 2020 commenced a comprehensive investigation
20 into Aspen’s BSN Program. Through its investigation, the Arizona Board of Nursing
21 confirmed a list of long-standing, systemic failures in Aspen’s BSN Program (detailed in a
22 Notice of Charges dated February 18, 2022, a true and accurate copy of which is attached
23 as **Exhibit A**), including but not limited to the following:

- 24 a. Aspen’s “learning opportunities, faculty resources, quality of instruction,
25 program resources, and infrastructure were and are inadequate to support
26 student learning or successful outcomes pursuant to A.A.C. R4-19-206 and
27 R4-1-201A.6[;]”
28

- 1 b. Aspen “failed to provide the adequate resources, including personnel, to
2 orient and train new faculty, and failed to provide proper orientation and
3 training prior to faculty beginning to teach students[;]”
- 4 c. Aspen failed to provide consistent faculty instructors, resulting in “high risk
5 for fragmented student learning experiences, which is reflected in [Aspen’s]
6 students poor NCLEX pass rates, among other indicators[;]”
- 7 d. Aspen utilized “[s]everely inadequate testing practices,” and improperly
8 changed “testing procedures without adequate training of faculty or notice to
9 students regarding the new procedures, and without providing faculty or
10 students with adequate resources to prepare them for the different types of
11 examinations[;]”
- 12 e. Aspen implemented multiple “programmatic and course changes without
13 adequate notice, in violation of A.A.C. R4-19-203(C)(1), (2), (4), and (5)[,]”
14 resulting in its “faculty’s inability to adequately plan their teaching
15 schedule/assignments” and a “severe[] disrupt[ion] [to] student learning[;]”
16 and,
- 17 f. Aspen failed to provide students direct care clinical hours consistent with the
18 amount of direct care clinical hours as found in Aspen’s student clinical
19 handbook; indeed, “[s]ince [Aspen] began admitting students in July 2018, it
20 has never achieved the full direct care hours promised in its curriculum plan
21 for any of its cohorts.”

22 9. The Arizona Board of Nursing’s Notice of Charges concludes that Aspen had
23 engaged in several denominated instances of “[un]professional conduct” as defined under
24 A.R.S. § 32-1601(27) and had committed acts that “*deceive[d], defraud[ed] or harm[ed]*
25 *the public.*” **Exhibit A**, at 12 (emphasis added). The Arizona Board of Nursing further
26 specifically concluded that Aspen’s actions constituted “unprofessional conduct” based on
27 “[*f*]raud or deceit in advertising, promoting or implementing the program...” *Id.*, at 14-15
28 (emphasis added).

1 10. Unbeknownst to Plaintiff and the other members of the putative Arizona
2 Class, Aspen's BSN Program has in fact been plagued by these and other deficiencies since
3 its inception, including at the time they were induced to enter the BSN Program. As attested
4 to in the Notice of Charges, Aspen's "pedagogical approach to nursing education [has been]
5 inadequate in the preparation of prelicensure nursing students and fails to allow its students
6 to form necessary links of theoretical knowledge, clinical reasoning and practice[]" since at
7 least July 2018. In addition, Aspen has employed five different program administrators
8 since the inception of its BSN Program in July 2018.¹

9 11. On the heels of the Arizona Board of Nursing's Notice of Charges, the
10 Arizona Education Board in March 2022 requested, and Aspen agreed (i) to immediately
11 *cease enrollments* in the BSN Program until it resolved the matter before the Arizona Board
12 of Nursing; (ii) to remove start date information from its website and marketing materials;
13 and (iii) to report to the Arizona Education Board on a monthly basis (including monthly
14 student records). The Arizona Education Board further ordered Aspen to increase the
15 amount of its required bond to be filed with the State from \$118,677 to a staggering
16 \$18,287,110—an amount representing approximately 50% of Aspen's gross tuition
17 revenue. Upon information and belief, the Arizona Education Board's investigation into
18 Aspen remains ongoing.

19 12. To address the ominous signs foreshadowed by the Arizona Board of
20 Nursing's investigation, Aspen through its Chairman and Chief Executive Officer, Michael
21 Matthews, issued a formal press release on February 10, 2022, admitting in relevant part
22 Aspen's failure to meet Arizona standards:

23 Aspen University is working with the Arizona Board of Nursing to
24 remedy our mutual concerns as quickly and expeditiously as possible.
25 We all recognize that the COVID pandemic has damaged the ability of
 nearly all academic institutions to meet minimum standards much less

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¹ Research from the National Council of State Boards of Nursing shows that "a program that has more than three (3) program administrators within five (5) years may cause harm to students through inconsistent leadership. And as confirmed in the Notice of Charges, Aspen's five (5) program administrators in less than four (4) years falls below the standard of practice.

1 excel. We intend to continue to work with the Board to ensure our
2 program meets and exceeds the standards set by the State of Arizona.

3 Aspen began our program in Phoenix three and a half years ago, and our
4 initial cohort graduated in 2020 meeting all State standards. *Clearly, we
failed to meet those standards in 2021.*²

5 (Emphasis added.) As recognized by the Arizona Board of Nursing, however, Aspen's
6 attempt to attribute the failure of the Aspen BSN Program to the COVID pandemic is itself
7 false and misleading: for example, the Arizona Board of Nursing found "severe declines in
8 direct clinical learning experiences without substituting with adequate learning
9 opportunities *despite* Aspen's receipt of pandemic-related emergency waivers. *See Exhibit*
10 *A*, at 8-9.

11 13. On the same day, Aspen in a Form 8-K issued a Regulation FD Disclosure,
12 noting for the very first time that, "following a request from the Arizona Board [of Nursing],
13 Aspen University has chosen to immediately stop new student enrollments at our Main
14 Campus and HonorHealth campus and not begin our February cohorts at these campuses
15 scheduled to begin on February 15th."³ In other words, those students who, like Plaintiff,
16 had completed their first-year prerequisite courses and had paid, enrolled, and made
17 arrangements to start the core BSN Program at Aspen on February 15, 2022, were officially
18 notified five (5) days prior that there would be no classes—a development that leaves
19

20 ² <https://www.facebook.com/AspenUniversity/posts/4977872708901680> (last visited
21 April 6, 2022).

22 ³ *See* Form 8-K filed by Aspen Group, Inc. dated February 10, 2022. In its Form 8-K, Aspen
23 again attempted to excuse its system-wide failures on the spread of COVID-19, asserting:
24 "Throughout the calendar year 2021, as the spread of COVID-19 worsened, [n]ursing
25 schools were forced into primarily virtual teaching and clinical environments, a less than
26 optimal educational experience. As a result of these challenges, nationwide NCLEX-RN
27 first-time pass rates among all nursing schools dropped from 78.4% in 2020 to 71.9% in
28 2021." *Id.* Aspen's reference to the average pass rate for first time test takers in 2020 is
false. According to the NCLEX statistics from NCSBN dated February 19, 2021, despite
the COVID pandemic, the national pass-rate for first time test takers in 2020 was 86.57%.
The 71.9% figure quoted in Aspen's 8-K appears to be in reference to the NCLEX statistics
for the third quarter of 2021 for *repeat testers*. After the Arizona Board of Nursing notified
Aspen of its inaccurate reporting of nationwide first-time pass rates, Aspen later filed an
amendment to its Form 8-K essentially admitting its misstatements.

1 Plaintiff and dozens of other students enrolled in the Program with uncertain futures and in
2 the middle of what has been described by several media outlets as Aspen's "nursing school
3 nightmare" and "infrastructure collapse."

4 14. On March 30, 2022, Aspen entered into a Consent Agreement with the
5 Arizona State Board of Nursing. Among other Findings of Fact, the Consent Agreement
6 concluded that Aspen had made inaccurate statements to the Board and in its 8-K filing with
7 the SEC, and further found:

8 3. [Aspen's] NCLX first time pass rate for Calendar Year 2021
9 was 58.04% and did not meet the 80% pass rate required by Arizona
10 Administrative Code Rule 4-19.206(G).

11 4. During calendar Year 2021 to the present, Respondent's
12 learning opportunities, faculty resources, quality of instruction, program
13 resources, and infrastructure were inadequate to support student learning or
14 successful outcomes, pursuant to Arizona Administrative Code R4-19-206
15 (curriculum) and R4-19-201(A)(6) (adequate resources). Respondent
16 disputes the factual basis for these findings. Respondent asserts that its
17 program was adversely affected by the COVID-19 pandemic and that, in
18 response, it took a number of affirmative steps to improve the program.

19 15. As a result of the Consent Agreement, Aspen must increase its exam scores
20 this year and implement improvements as a precondition to admitting future students. The
21 Consent Agreement precludes Aspen from commencing the Core Program this year and
22 may only begin admissions after it achieves the required 80% minimum examination pass
23 rate for four consecutive calendar quarters.

24 16. Aspen's knowing material misrepresentations and omissions regarding the
25 features of the Aspen BSN Program were false when made, and as such constitute violations
26 of the Arizona Consumer Fraud Act, A.R.S. § 44-1522 *et seq.* ("ACFA"). Alternatively,
27 Aspen has been unjustly enriched by its retention of tuition payments made by Plaintiff and
28 the other members of the putative Arizona Class, given the widespread deficiencies
reflected in the findings and conclusions of the Arizona Board of Nursing.

17. Plaintiff accordingly seeks legal and equitable relief on behalf of both herself
and the putative Arizona Class pursuant to Ariz. R. Civ. P. 23, including actual damages,

1 statutory damages, rescissionary relief, disgorgement, exemplary damages, attorneys' fees,
2 litigation expenses, and costs of suit.

3 **Parties**

4 18. Defendant Aspen Group, Inc. is a publicly held, for-profit, post-secondary
5 and online education Delaware corporation doing business in Maricopa County, Arizona.

6 19. Defendant Aspen University, Inc. is a Delaware corporation wholly owned
7 and controlled by Defendant Aspen Group, Inc. doing business in Maricopa County,
8 Arizona.

9 20. Upon information and belief, Defendant Aspen Group exercises substantially
10 total control over the management and activities of Defendant Aspen University.⁴

11 21. Upon information and belief, Defendant Aspen Group has financed and
12 continues to finance Defendant Aspen University's operations. By way of one example
13 only, on March 15, 2022, Defendant Aspen Group closed a transaction yielding \$10 million
14 in convertible notes and another \$20 million revolving credit facility, which have been
15 earmarked to fund Defendant Aspen University's efforts "to continue expanding its national
16 footprint of BSN Pre-Licensure campuses in states with rapidly growing populations and to
17 pursue a marketing strategy to support growth of its post-licensure nursing degree
18 programs."

19 22. Upon information and belief, observance of each Defendant's purportedly
20 separate corporate forms would sanction a fraud and promote injustice.

21 23. At all times relevant to her claims, Plaintiff is and was a resident of Maricopa
22 County, Arizona. The education services subject of this action were (a) offered by Aspen
23 to Plaintiff in Maricopa County, Arizona, (b) sold by Aspen to Plaintiff in Maricopa County,
24 Arizona, and (a) rendered by Aspen to Plaintiff in Maricopa County, Arizona.

25 _____
26 ⁴ By way of one example only, Michael Mathews has served as Defendant Aspen Group's
27 Chief Executive Officer and a director since March 2012, and as Chief Executive Officer
28 of Defendant Aspen University since May 2011. Likewise, Dr. Cheri St. Arnauld has served
as Defendant Aspen Group's Chief Academic Officer since June 11, 2017. She is also listed
as Defendant Aspen University's President and Chief Academic Officer.

Jurisdiction and Applicable Law

1
2 24. This Court has original subject matter jurisdiction pursuant to A.R.S. § 12-
3 123.

4 25. Venue is appropriate in this Court pursuant to A.R.S. § 12-401.

5 26. This case is eligible for assignment to the Commercial Court under Rule
6 8.1(b)(12).

7 27. The Court has personal jurisdiction over Aspen as it regularly conducts
8 business in Maricopa County, Arizona, through and at its Main Campus and its
9 HonorHealth Campus.

10 28. Under the terms of Aspen’s “Program Enrollment Agreement,” Aspen
11 expressly agreed that the claims set forth herein are not subject to arbitration (which is in
12 all events a question for the Court), because they relate to the making of a Direct Loan and
13 Aspen’s failure to provide “educational services for which the Federal Direct Loan was
14 obtained”:

15 We agree that neither we nor anyone else who later becomes a party to
16 this predispute arbitration agreement will use it to stop you from
17 bringing a lawsuit concerning our acts or omissions regarding the
18 making of the Federal Direct Loan or the provision by us of educational
19 services for which the Federal Direct Loan was obtained. You may file
20 a lawsuit for such a claim or you may be a member of a class action
21 lawsuit for such a claim even if you do not file it. This provision does
22 not apply to other claims. We agree that only the court is to decide
23 whether a claim asserted in the lawsuit is a claim regarding the making
24 of the Federal Direct Loan or the provision of educational services for
25 which the loan was obtained.

26 29. Notwithstanding any contract provision to the contrary, the claims alleged
27 herein by Plaintiff and the other members of the Arizona Class are furthermore governed
28 by Arizona law under Section 187 of THE RESTATEMENT (SECOND) OF CONFLICT OF LAWS.
Revive You Media LLC v. Esquire Bank, No. CV-18-00541-PHX-DGC, 2018 WL 2164379,
at *3 (D. Ariz. May 10, 2018) (“Parties cannot contractually bypass the § 187 analysis.”);
see, e.g., Sherman v. PremierGarage Sys., LLC, No. CV 10-0269-PHX-MHM, 2010 WL
3023320, at *5-7 (D. Ariz. July 30, 2010); *Zounds Hearing Franchising, LLC*, 2017 WL

1 4399487 (D. Ariz. Sept. 9, 2017). Arizona public policy expressed through the broad
2 remedial purpose of the ACFA precludes voluntary waiver of its protections, especially
3 through non-negotiable provisions in adhesionary contracts in which the parties lack
4 relatively equal bargaining power.

5 **Factual Allegations Common to All Counts**

6 30. Aspen is a publicly held, for-profit post-secondary online education company.

7 31. Aspen purports to leverage its education technology infrastructure and
8 expertise to allow it “to deliver on the vision of making college affordable again.”

9 32. The Aspen BSN Program purports to be a three-year program. According to
10 its website, *annual* tuition for Aspen’s BSN Program is currently \$41,445, not including an
11 additional \$10,730 in fees.

12 33. Aspen participates under the Higher Education Act of 1965, as amended, and
13 the Federal student financial assistance programs under Title IV. For the fiscal year ended
14 April 30, 2021, 44.72% of Aspen’s cash-basis revenue for eligible tuition and fees were
15 derived from Title IV Programs, *i.e.* (a) the Federal Direct Loan program (“Direct Loan,”)
16 (b) the Federal Pell Grant program (“Pell”), (c) Federal Work Study, and (d) Federal
17 Supplemental Opportunity Grants.

18 34. Aspen began offering the BSN Program at Main Campus in Phoenix, Arizona
19 in July 2018. As a result of overwhelming demand in the Phoenix metropolitan area, in
20 January 2019 Aspen began offering both day (July, November, March) and
21 evening/weekend (January, May, September) terms, equaling six term starts per year. In
22 September 2019, Aspen opened the HonorHealth Campus in the Phoenix metropolitan area
23 in partnership with HonorHealth.

24 35. Due to the significant demand in the Phoenix area, Aspen on February 2,
25 2021, began implementing its first double cohort enrollment at its Main Campus in Phoenix.

26 36. Aspen is not currently “regionally accredited,” meaning in most instances that
27 students in Aspen’s BSN Program who have obtained course credit in that program cannot
28 freely transfer those credits to other educational institutions.

1 40. As part of its BSN Program, Aspen promises to provide its students “clinical
2 instruction that includes, at a minimum, selected and guided experiences that develop a
3 student’s ability to apply core principles of registered nursing in varied settings.”⁸

4 41. The most recent version of Aspen University’s School of Nursing Pre-
5 Licensure Clinical Handbook indicates students in the BSN Program will receive 855 hours
6 of clinical contact at a clinical site.

7 42. The same handbook nowhere references providing clinical contact hours in a
8 virtual setting or by “virtual clinical.”

9 **Aspen’s Uniform Material Misrepresentations and Omissions**

10 43. Aspen has for all times relevant hereto failed to provide its BSN Program
11 students “the essential skills needed to practice as a professional registered nurse (RN),” as
12 reflected in its low NCLEX scores for 2021.

13 44. For two of the last three graduating cohorts in 2021, Aspen’s attrition rate was
14 over 40%.

15 45. Aspen currently has a 31% 8-year graduation rate.

16 46. Aspen has failed to provide its BSN Program students a curriculum anchored
17 in “skills lab, clinical simulation, seminars and community-based clinical experiences.”

18 47. Aspen omitted from its student handbook the material fact that a significant
19 majority of its clinical hours are currently provided virtually. And it failed to disclose the
20 material fact that, since it began admitting students in July of 2018, it has never achieved
21 the full direct care hours promised in its curriculum plan for any of its cohorts. As set forth
22 in the Notice of Charges: “The standard of educational practice requires that a nursing
23 program provide students, prospective students, and the public with accurate information
24 regarding its program offerings and requirements. [Aspen] violated the standard of practice
25 by failing to disclose in its student handbook that a significant majority of its clinical hours
26 are provided virtually.” **Exhibit A**, at 5.

27 ⁸ [https://aspen.smartcatalogiq.com/en/Academic-Year-2021-2022/BSN-PL-Handbook-](https://aspen.smartcatalogiq.com/en/Academic-Year-2021-2022/BSN-PL-Handbook-Texas/BSN-Pre-Licensure-Overview/Clinical-and-Simulation-Experiences)
28 [Texas/BSN-Pre-Licensure-Overview/Clinical-and-Simulation-Experiences](https://aspen.smartcatalogiq.com/en/Academic-Year-2021-2022/BSN-PL-Handbook-Texas/BSN-Pre-Licensure-Overview/Clinical-and-Simulation-Experiences) (last visited
April 6, 2022).

1 48. Aspen concealed the lack of a consistent faculty to administer the BSN
2 Program curriculum, and that it was for all times material hereto regularly scheduling and
3 recruiting faculty via e-mail on a *pro hac*, volunteer basis, resulting in a fragmented,
4 harmful, and “high risk” student learning experience. *Id.*, at 6.

5 49. Aspen concealed its inability to provide “the adequate resources, including
6 personnel, to orient and train new faculty, and failed to provide proper orientation and
7 training prior to faculty beginning to teach students.” *Id.*

8 50. Aspen omitted that, since at least July 2018, it has failed to ensure its students
9 receive an adequate education by, among other things, discouraging or prohibiting faculty
10 from facilitating learning or teaching in lectures. “The pedagogical approach reported by
11 students and validated by faculty,” the Notice of Charges provides, “is incompatible with
12 prelicensure nursing education.” *Id.*, at 5.

13 51. Aspen hid from the public and its prospective students that, since at least July
14 2018, its “pedagogical approach to nursing education [has been] inadequate in the
15 preparation of prelicensure nursing students and fails to allow its students to form necessary
16 links of theoretical knowledge, clinical reasoning and practice.” *Id.*, at 4.

17 52. Aspen failed to provide any disclosure of Aspen BSN Program’s fragile,
18 crumbling infrastructure, including but not limited the fact that it had employed five
19 different program administrators over a span of less than four years. *Id.*, at 3.

20 53. In light of the above material omissions and violations, and in considerations
21 of the findings and conclusions in the Notice of Charges, Aspen’s stated “Program Goals”
22 are inherently misleading and deceptive with regard to its BSN Program.

23 54. At all times material hereto, Aspen knew and appreciated the materiality of
24 the foregoing misrepresentations and omissions, including those other deviations from the
25 standard of care described in the Notice of Charges, but despite being duty bound to do so,
26 Aspen made no disclosure of these critical facts and gross transgressions to its prospective
27 students, which would have been antithetical to Aspen’s stated intent to increase enrollment
28 in its BSN Program and to Aspen’s reported bottom line.

Factual Allegations Specific to Plaintiff

1
2 55. Plaintiff is a Certified Veterinary Technician who is employed as a manager
3 of a Veterinary Hospital in Phoenix, Arizona. In 2020, Plaintiff decided to pursue a career
4 in the nursing profession, with the goal of obtaining a degree and licensure as a Registered
5 Nurse and, ultimately, as a Doctor of Nursing Practice (“DNP”). As a fully employed single
6 mother, Plaintiff required an educational program providing flexible scheduling with the
7 availability of evening and weekend classes.

8 56. Plaintiff first learned about Aspen through a radio advertisement representing
9 that Aspen offered a nursing program providing a high-quality education at a low cost with
10 available evening and weekend classes. Intrigued by Aspen’s radio ad, Plaintiff researched
11 Aspen by reviewing the information on Aspen’s website, speaking with a local Aspen
12 advisor, and conferring with a representative from Aspen’s headquarters in Colorado. The
13 Aspen website and its representatives represented to Plaintiff that Aspen would provide a
14 high quality, reasonably priced education through appropriate curriculum, experienced and
15 qualified faculty, clinical placements at health care sites, and the application of core
16 registered nursing principles.

17 57. Plaintiff also was assured at the time of her consult that, although Aspen was
18 not a regionally accredited institution, it was nationally accredited and that its course credits
19 and degree would be transferrable to other institutions, including those offering DNP
20 programs.

21 58. Based on the foregoing representations, Plaintiff applied to attend Aspen in
22 Phoenix. Plaintiff entered into a Program Agreement with Aspen, using Aspen’s website
23 portal, in April of 2020. Plaintiff initially paid tuition and related educational costs from her
24 own financial resources.

25 59. Plaintiff attended her first class at Aspen on May 25, 2020. Plaintiff
26 completed the first half of the required pre-requisite classes by September 2020. After a
27 brief hiatus, Plaintiff resumed her classes at Aspen in February 2021 and completed the
28 remainder of her pre-requisite classes.

1 60. Aspen’s website advertises the availability of Federal Direct Loans for its
2 students, stating:

3 It is a goal of Aspen University to assist every eligible student in procuring
4 financial aid that enables the student to attend school. The University
5 participates in various federal and state student financial assistance
6 programs. The financial aid programs are designed to provide assistance to
7 students who are currently enrolled or accepted for enrollment, but whose
8 financial resources are inadequate to meet the full cost of their education.

9 The majority of financial aid available to students is provided by the Federal
10 Government and is called Federal Student Aid.

11 This includes the Federal Pell Grant Program and the William D. Ford
12 Federal Direct Loan [] Program.⁹

13 61. Plaintiff decided to finance her nursing education using a combination of
14 federal student loans and Pell Grants. Plaintiff applied for this financial aid using the portal
15 administered by the Aspen University Financial Aid Office. Thereafter, the Aspen
16 University Financial Aid Office acted as an intermediary and assisted Plaintiff in her
17 application for financial assistance, sending her reminders to submit required
18 documentation through the Aspen portal and confirming that Plaintiff has completed the
19 requirements for Aspen to review and confirm Plaintiff’s “Aspen University financial aid.”

20 62. Plaintiff obtained a William D. Ford Direct Loan in the principal amount of
21 \$4,454.00 issued on February 19, 2021, and a second William D. Ford Direct Loan in the
22 principal amount of \$4,454.00 issued on April 14, 2021. Plaintiff also obtained Pell Grants
23 in 2021, and another in February 2022, the latter of which was in the approximate amount
24 of \$4,745.00. Plaintiff used the funds from these Federal Direct Loans to pay for tuition and
25 other costs associated with the completion of Plaintiff’s pre-requisite classes, and to pay
26 other costs associated with Plaintiff’s anticipated enrollment in the Nursing Core classes as
27 part of the Aspen BSN Program.

28 ⁹ <https://aspen.smartcatalogiq.com/Academic-Year-2020-2021/Academic-Catalog/Financial-Aid>. (last visited April 6, 2022).

1 63. Plaintiff applied for the Federal Direct Loans and incurred the obligation to
2 repay those loans based on the representations and assurances by Aspen that its core BSN
3 Program was and would remain accredited, credentialed, and operational, that Aspen
4 complied with all applicable requirements of the Arizona Nursing Board and professional
5 and educational standards, and that Aspen would provide her with clinical opportunities and
6 the opportunity to earn a degree qualifying her for enrollment in DNP programs at other
7 institutions.

8 64. Plaintiff received written confirmation from Aspen dated December 17, 2021
9 that she had “met the preliminary entry requirements to the Nursing Core” and directing her
10 to “move forward with registering at this time.” After completing her first-year prerequisite
11 courses, Plaintiff enrolled in, and arranged to start the core BSN Program at Aspen on
12 February 15, 2022.

13 65. Shortly before the 2022 BSN Program was scheduled to begin, however,
14 Plaintiff and other Aspen students received an email stating that Aspen was halting
15 enrollment of new students in the “Nursing Core” classes, supposedly because the program
16 was full. Aspen did not disclose that, in truth, it was halting enrollments in the BSN Program
17 based on a demand from the Arizona Board of Nursing that Aspen immediately suspend its
18 BSN Program enrollments due to ongoing serious deficiencies in the program.

19 66. Aspen’s actions and omissions, as described in the Arizona Nursing Board’s
20 Notice of Charges, and those alleged herein, causing Plaintiff to incur tuition-related costs
21 and fees and to apply for and receive the Federal Direct Loans, and Aspen’s failure to
22 provide the educational services for which Plaintiff obtained the Federal Direct Loans, are
23 a direct and proximate cause of Plaintiff’s injuries alleged herein.

24 67. As a direct and proximate consequence of Aspen’s intentional conduct,
25 actions and material omissions, Plaintiff has sustained substantial damages, including but
26 not limited to her obligation to repay the Federal Direct Loans taken to defray a portion of
27 her Aspen tuition and related charges, the amounts for such charges that Plaintiff paid out-
28 of-pocket, and the amounts Plaintiff will have to pay to cover tuition-related fees and costs

1 at another educational institution for those credits Plaintiff has already earned but that do
2 not transfer from Aspen. Upon information and belief, Plaintiff will incur approximately
3 \$10,000.00 to \$12,000.00 in additional tuition expenses per year (after exhaustion of
4 available federal financial aid) to continue her education elsewhere, which Plaintiff would
5 not have otherwise incurred had Aspen fulfilled its responsibilities.

6 **Class Allegations**

7 68. Class Definition: Plaintiff brings this action pursuant to Rules 23(a) and
8 (b)(3), *Arizona Rules of Civil Procedure*, on behalf of herself and a putative Arizona Class
9 of similarly situated individuals, defined as follows: All Arizona residents who (a) were
10 accepted to Aspen's BSN Program and (b) paid their tuition to Aspen. Excluded from the
11 Arizona Class are: (a) Aspen, Aspen's agents, subsidiaries, parents, successors,
12 predecessors, and any entity in which Aspen or its parent has a controlling interest, and
13 those entities' current and former employees, officers, and directors; (b) the Judge to whom
14 this case is assigned and the Judge's immediate family; (c) any person who is precluded
15 from inclusion in the Arizona Class by an enforceable contract provision; (d) any person
16 who executes and files a timely request for exclusion from the Arizona Class; (e) any
17 persons who have had their claims in this matter finally adjudicated and/or otherwise
18 released; and (f) the legal representatives, successors and assigns of any such excluded
19 person.

20 69. Numerosity. The exact number of Arizona Class members is unknown and is
21 not available to Plaintiff at this time; however, Plaintiff estimates on information and belief
22 that there are at least 700 Class members.

23 70. Commonality & Predominance. There are numerous questions of law and fact
24 common to the claims of Plaintiff and members of the putative Arizona Class, and those
25 common questions predominate over any questions that may affect individual putative Class
26 members. Common questions include, but are not limited to the following:

- 27 a. Whether Aspen misrepresents the quality of its BSN Program;

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1 b. Whether Aspen failed to disclose the material failures, transgressions, and
2 violations, all as listed in the Notice of Charges;

3 c. Whether Aspen's misrepresentations and material omissions regarding its
4 BSN Program, as listed in the Notice of Charges, constitute an unfair and/or deceptive
5 practice under the ACFA; and

6 d. Whether Aspen's failure to provide its BSN Program students adequate
7 educational instruction and curriculum constitutes unjust enrichment under Arizona
8 common law.

9 71. Typicality. Plaintiff's claims are typical of the Arizona Class members.

10 72. All claims of the putative Class are based on the same legal and factual issues
11 concerning Aspen's challenged conduct. Plaintiff and each of the Arizona Class members
12 enrolled in the BSN Program under the same, standard and uniform contract. Moreover,
13 Aspen's misrepresentations and material omissions were uniformly made to Plaintiff and
14 the other members of the Arizona Class through Aspen's website and standardized
15 marketing materials.

16 73. Adequacy of Representation. Plaintiff will fairly and adequately represent and
17 protect the interests of the Arizona Class and has retained counsel competent and
18 experienced in complex class actions. Plaintiff has no interests antagonistic to those of the
19 Class, and Aspen has no defenses unique to Plaintiff.

20 74. Superiority. Class proceedings are superior to all other available methods for
21 the fair and efficient adjudication of this controversy because joinder of all parties is
22 impracticable. Furthermore, it would be virtually impossible for the individual members of
23 the Arizona Class to obtain effective relief because the damages suffered by individual
24 Class members are likely to be relatively smaller given the burdens and costs of individually
25 conducting the complex litigation necessitated by Aspen's acts and omissions. Even if Class
26 members were able or willing to pursue individual litigations, a class action would still be
27 preferable due to the fact that a multiplicity of individual actions would likely increase the
28 expense and time of litigation given the complex legal and factual controversies presented

1 in this Complaint. A class action, on the other hand, provides the benefits of fewer
2 management difficulties, single adjudication, economy of scale, and comprehensive
3 supervision by a single court, and would result in reduced time, effort and expense for all
4 parties and the Court, and ultimately, the uniformity of decisions.

5 75. Unless a class is certified, Aspen will retain monies received as a result of its
6 conduct that was wrongfully taken from members of the Class.

7 **Count I**

8 **Violation of the Arizona Consumer Fraud Act**

9 76. Plaintiff repeats and re-alleges Paragraphs 1-75, as through fully set forth
10 herein.

11 77. At all times relevant hereto, there was in full force and effect the Arizona
12 Consumer Fraud Act (“ACFA”), A.R.S. § 44-1522 *et seq.*

13 78. The ACFA was enacted in Arizona in 1967 “[t]o preserve the public peace,
14 health, and safety” of Arizona consumers.

15 79. The scope of the ACFA is to challenge and prevent unfairness in the
16 marketplace; the ACFA’s pertinent terms are broadly defined and interpreted to promote
17 justice. Because the ACFA is remedial in nature, the Act should not be strictly construed
18 given its purpose is to redress existing grievances and introduce regulations conducive to
19 the public good.

20 80. Under A.R.S. § 44-1522(A): “The act, use or employment by any person of
21 any deception, deceptive or unfair act or practice, fraud, false pretense, false promise,
22 misrepresentation, or concealment, suppression or omission of any material fact with intent
23 that others rely on such concealment, suppression or omission, in connection with the sale
24 or advertisement of any merchandise whether or not any person has in fact been misled,
25 deceived or damaged thereby, is declared to be an unlawful practice.”

26 81. A statement is “deceptive” if it has the tendency and capacity to convey
27 misleading impressions to consumers. Whether a statement has the tendency to mislead is
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1 determined from the perspective of the “least sophisticated reader,” in light of all that is
2 reasonably implied, not just from what is said.

3 82. Under Arizona law, when one conveys false impression by disclosure of some
4 facts and concealment of others, such concealment is in effect false representation.

5 83. The ACFA imposes an actionable duty on Aspen to refrain omitting material
6 facts with intent that others rely thereon.

7 84. Under the ACFA, an omission is material if it is logically related to the
8 transaction in which it occurs and rationally significant to the parties in view of the nature
9 and circumstances of the transaction.

10 85. For purposes of § 44-1522(A), Aspen is a “person” within the meaning of the
11 ACFA and, at all pertinent times, was subject to the requirements and proscriptions of the
12 ACFA with respect to all of its business practices described herein.

13 86. For purposes of § 44-1522(A), the courses offered under Aspen’s BSN
14 Program and sold by Aspen to Plaintiff and members of the Class qualify as the “sale” of
15 “merchandise” under the ACFA.

16 87. For purposes of § 44-1522(A), the application of student loan funds for
17 purposes of financing enrollment in Aspen’s BSN Program constitutes a transaction
18 involving a “sale.”

19 88. Aspen made the false promises, representations, and material omissions as set
20 forth herein in and in the Notice of Charges in connection with the sale, offers to sell,
21 attempts to sell and advertisement of its BSN Program.

22 89. Aspen’s knowing and intentional false promises, misrepresentations, and
23 omissions set forth herein constitute unfair and deceptive acts or practices prohibited by the
24 ACFA and, in particular, A.R.S. § 44-1522. Aspen has engaged in deceptive and unfair acts
25 or practices by, *inter alia*, knowingly misrepresenting the quality of its BSN Program, and
26 concealing from enrolled BSN Program students, like Plaintiff and the other members of
27 the putative Arizona Class, before and after their enrollment, the material deficiencies as
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1 set forth in the Notice of Charges, several of which have persisted since the BSN Program's
2 inception.

3 90. In light of its knowing and intentional false promises, misrepresentations, and
4 material omissions set forth herein and in the Notice of Charges, Aspen's provision of
5 substandard educational programming to its BSN Program students is also an unfair and
6 deceptive act or practice prohibited by the ACFA.

7 91. Aspen's intentionally false promises, misrepresentations, material omissions,
8 and practices as described herein and as set forth in the Notice of Charges were designed
9 to, and did in fact, deceive and mislead members of the public, including Plaintiff and the
10 other members of the Arizona Class, to their detriment.

11 92. The quality of Aspen's BSN Program and its representations and omissions
12 concerning the same were material to Plaintiff's and the Arizona Class members' decision
13 to enroll in the BSN Program, and Aspen had a duty to disclose the truth about the matters
14 known to it about the quality and sustainability of the BSN Program, all as set forth in
15 Notice of Charges.

16 93. Plaintiff and other members of the putative Arizona Class suffered damages
17 caused by Aspen's misconduct, because neither they nor any other reasonable person would
18 have incurred federal student debt and related out-of-pocket costs to enroll in Aspen's BSN
19 Program had they known of Aspen's violations of the ACFA as described in the Arizona
20 Board of Nursing's Notice of Charges. As a direct and proximate result of Aspen's conduct,
21 therefore, Plaintiffs and members of the putative Arizona Class have been damaged in an
22 amount to be determined at trial.

23 94. Punitive damages are also permitted for violations of the ACFA "where the
24 wrongdoer's conduct is wanton or reckless, ... or where the conduct demonstrates a reckless
25 indifference to the interests of others." *Holeman v. Neils*, 803 F. Supp. 237, 242-43 (D.
26 Ariz. 1992). Here, Aspen's conduct warrants the imposition of punitive damages, under
27 either (and both) of these two standards, because Aspen intentionally acted with an "evil
28 hand" and guided by an "evil heart" with the clear intent to injure, defraud, or deliberately

1 interfere with the legal rights and interests of Plaintiff and the other members of the putative
2 Arizona Class.

3 **Count Two**

4 **Unjust Enrichment**

5 95. Plaintiff repeats and re-alleges Paragraphs 1-75, as through fully set forth
6 herein.

7 96. Aspen's retention of tuition payments made by Plaintiff and the other
8 members of the putative Arizona Class under the circumstances alleged above constitutes a
9 directly connected but unjustified enrichment of Aspen and impoverishment of Plaintiff and
10 the other members of the putative Arizona Class.

11 97. The appropriate equitable remedy for Aspen's unjust enrichment
12 includes (a) disgorgement of its ill-gotten gains, (b) rescission and restitution at the election
13 of Plaintiff and the other members of the putative Arizona Class, and (c) other such relief
14 as the Court deems fair and reasonable under the circumstances. The appropriate equitable
15 remedy for unjust enrichment may also include, among other things, ordering Aspen to
16 conduct a self-audit.

17 **Prayer**

18 **WHEREFORE**, Plaintiff prays for an order certifying the Arizona Class as
19 requested herein and judgment:

20 A. Awarding Plaintiff and the members of the Arizona Class compensatory damages
21 in an amount to be determined at trial;

22 B. Awarding Plaintiff and the members of the Arizona Class appropriate equitable
23 relief;

24 C. Awarding Plaintiff and members of the Arizona Class attorneys' fees and costs;
25 and

26 D. Providing Plaintiff and the members of the Arizona Class with such further and
27 other relief as deemed just and proper by the Court.

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Jury Demand

Plaintiff demands a jury trial of all issues triable by right by jury.

DATED this 6th day of April, 2022.

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