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*Attorneys for Plaintiffs Haley Martinez,
Matthew Sheridan, and the Class*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HALEY MARTINEZ and MATTHEW
SHERIDAN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

UNIVERSITY OF SAN DIEGO,

Defendant.

CASE NUMBER: **'20CV1946 GPC WVG**

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiffs Haley Martinez and Matthew Sheridan (“Plaintiffs”) bring this action
on behalf of themselves and all others similarly situated against Defendant University

1 of San Diego (“USD”), and complain and allege upon personal knowledge as to
2 themselves and their own acts and experiences, and, as to all other matters, upon
3 information and belief, including investigation conducted by their attorneys, and say:

4 **I. NATURE OF THE CASE**

5 1. USD is a prestigious private university in San Diego, California,
6 providing higher education in the arts, sciences, law, business, nursing and health
7 science, engineering, leadership and education, and peace studies. Plaintiffs are
8 students at USD’s Paralegal Certificate Program.

9 2. On March 12, 2020, USD announced that it was canceling in-person
10 classes due to the pandemic of the Coronavirus Disease 2019 (“COVID-19”).

11 3. Plaintiffs do not dispute that USD’s decision to cease in-person
12 instruction was warranted. Plaintiffs ask merely to be refunded the money they spent
13 for educational services that were not provided.

14 4. Prior to its March 12, 2020 announcement that it would cease in-person
15 instruction, USD forbade students from transferring credits earned through an online
16 format.¹ For the few classes for which USD provided online instruction, USD charged
17 far less in tuition. For example, USD charged \$1,580 per unit of on-campus classes for
18 its Master of Science in Health Care Informatics, but charged *41% less* – \$925 per unit
19 – for the online version of the same class, for the same degree.²

20
21 _____
22 ¹ USD Petition to Transfer Credits, *available at*
23 [http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-](http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-resources/transferring-credits.php)
24 [resources/transferring-credits.php](http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-resources/transferring-credits.php) (last viewed 9/22/2020). *See also* USD School of
25 Business Requirements (“Currently, the School of Business does not accept any
26 online courses or hybrid courses for continuing students at the undergraduate level.”)
available at [https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-](https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-administration/#requirementstext)
[administration/#requirementstext](https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-administration/#requirementstext) (last viewed 9/22/20).

27 ² Financial Aid for Graduate Students at USD, *available at*
28 <https://onlinedegrees.sandiego.edu/become-a-student/tuition-financial-aid/> (last
viewed 9/24/2020).

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5. Though USD could no longer provide the promised hours of instruction, USD demanded that students pay the full tuition price.

6. Adding insult to injury, USD in fact *increased* its tuition.

7. Similarly, students paid fees for services and access to facilities and equipment over the full semester. Though USD provided these services and facility/equipment access for only part of the semester, and could not provide them for the full semester, USD demanded that students pay fees for the entire semester.

8. While the effects of the COVID-19 crisis are shared by all individuals and institutions across the country, USD has failed to apportion the burden in an equitable manner or consistent with its obligations as an educational institution.

9. USD is not entitled, by either contract or equitable principles, to pass the entire cost of its COVID-19 related closure to its students and their families. Plaintiffs and the putative class are entitled to a partial refund of the tuition, fees, and other related payments for in-person educational services, access to facilities, and/or related opportunities for which they paid that USD did not provide.

10. USD's deeply discounted online course tuition reflects the inability of online classes to replicate the full academic opportunities and experiences of in-person

1 instruction. Remote learning options cannot replace the comprehensive educational
2 experience promised by USD. Access to facilities, materials, laboratories, faculty,
3 student collaboration, and the opportunity for on campus living, school events,
4 dialogue, feedback and critique are essential to the in-person educational experience.

5 11. Plaintiffs and the putative class contracted and paid for an education, not
6 course credits. They paid for the robust education and full experience of academic life
7 on USD's campus; remote online learning cannot provide the same value as in-person
8 education.

9 12. As a result, USD has financially damaged Plaintiffs and the putative class
10 members. Plaintiffs bring this suit because Plaintiffs and the class members did not
11 receive the full value of the services for which they paid. They lost the benefit of their
12 bargain and/or suffered out-of-pocket loss. They are entitled to recover compensatory
13 damages, trebling where permitted, and attorneys' fees and costs.

14 13. Plaintiffs seek, for themselves and the putative class members, a return
15 of a prorated portion of the tuition, fees and other related costs, proportionate to the
16 diminished value of online classes and the amount of time in the Spring 2020 and
17 following semesters when USD ceased in-person classes, campus services and access
18 to campus facilities, continuing through to such time as USD reinstates in-person
19 classes.

20 **II. JURISDICTION AND VENUE**

21 14. The Court has original jurisdiction of this action pursuant to the Class
22 Action Fairness Act, 28 U.S.C. § 1332(d), because at least one member of the Class,
23 as defined below, is a citizen of a different state than USD, there are more than 100
24 members of the Class, and the aggregate amount in controversy exceeds five million
25 dollars (\$5,000,000.00), exclusive of interest and costs.

26 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
27 USD is headquartered in this district.

28

1 curricular changes. Thus, curricular changes must be approved prior to the March 1
2 catalog deadline in order for those changes to go into effect in the following Fall
3 semester.”³

4 22. USD also committed to not revising existing courses unless the revisions
5 are submitted and approved by the responsible USD committee.⁴

6 23. Plaintiffs accepted USD’s offer.

7 24. Plaintiffs substantially performed their contractual obligations. USD did
8 not.

9 **B. Closure of Campus and Suspension of In-Person Education**

10 25. On March 12, 2020, USD announced it was canceling all in-person
11

12 ³ USD Timeline for Course Approvals through the CCC, *available at*
13 <https://www.sandiego.edu/curriculum/core/core-submission/> (last viewed
14 9/24/2020). *See also* USD Curriculum and Academic Planning, *available at*
15 [https://www.sandiego.edu/cas/faculty/faculty-](https://www.sandiego.edu/cas/faculty/faculty-resources/chair/curriculum.php#accordion-panel11)
resources/chair/curriculum.php#accordion-panel11 (last viewed 9/24/2020).

16 ⁴ *See* USD Undergraduate Curriculum Committee (UCC) Procedures and
17 Policies, *available at* [https://www.sandiego.edu/curriculum/documents/UCC-](https://www.sandiego.edu/curriculum/documents/UCC-Procedures-2020-2021.pdf)
18 Procedures-2020-2021.pdf (last viewed 9/24/2020); USD Graduate Studies
19 Committee (GSC) Curriculum Procedures, *available at*
20 <https://www.sandiego.edu/curriculum/documents/gsc-procedures.pdf> (last viewed
9/24/2020).

21 Course changes can cause a school to lose its accreditation. For example, USD
22 promised Plaintiffs a paralegal program that is accredited by the American Bar
23 Association. However, USD’s changes to its paralegal classes require USD to
24 document and submit its changes to the American Bar Association, which continues
25 to require certain number of hours of “structured instructional activities” above and
26 beyond “[w]ork that would normally be done outside of class . . .” American Bar
Association, Template to Report COVID-19 Related Changes, *available at*
[https://www.americanbar.org/content/dam/aba/administrative/paralegals/covid19rep-](https://www.americanbar.org/content/dam/aba/administrative/paralegals/covid19reportingtemplate.docx)
27 ortingtemplate.docx (last viewed 9/29/20).

28 USD’s changes to its Paralegal Certificate Program have not yet been
approved by the American Bar Association.

1 classes and effectively closed its campus.

2 26. While USD’s decision to close campus and end in-person classes was
3 warranted by circumstances, it effectively breached or terminated the contract USD
4 had with each and every student and tuition provider, who paid for the opportunity to
5 participate fully in the academic life on the USD campus.

6 27. Though all in-person instruction ended after USD’s March 12, 2020
7 announcement, some classes were taught in an online format beginning March 23,
8 2020. Even students with concentrations in areas where in-person instruction is
9 especially crucial (such as music, theatre, and the sciences), USD provided either no
10 instruction or only remote, online instruction.

11 28. For example, while USD provided online instruction for some of Plaintiff
12 Sheridan’s Spring 2020 classes after its March 12, 2020 closure announcement, it
13 provided fewer hours of instruction and fewer days of instruction than promised.

14 29. As a result of the closure of USD’s campuses and facilities, USD has
15 failed to deliver the educational services, facilities, access and/or opportunities for
16 which Plaintiffs and the putative class contracted and paid, either directly or through
17 a third-party on their behalf.

18 30. On July 29, 2020, less than a month before the Fall semester began for
19 most students, USD canceled all in-person classes for the Fall 2020 semester and
20 announced that all Fall 2020 semester courses would be taught only online.

21 31. Though Plaintiffs and members of the Class paid USD tuition in
22 exchange for a full semester of in-person education, USD ceased to provide the in-
23 person education it promised, and thus has failed to uphold its side of the agreement.
24 Nonetheless, USD insists that students uphold their side of the agreement, and refuses
25 to refund tuition and related expenses.

26 32. In so doing, USD is attempting to replace the irreplaceable – on-campus
27 life at an elite university – with “virtual learning” via online classes, and is attempting
28 to pass off this substitute educational experience as the same as or just as good as full

1 participation in the university’s academic life.

2 33. Plaintiffs and members of the Class paid USD tuition in reliance on its
3 promise of teaching a certain number of courses in an in-person course format and
4 with in-person facility access. Plaintiffs did not choose to attend and/or pay tuition for
5 an online institution of higher learning, but instead chose to attend USD’s institution
6 and enroll on an in-person basis.

7 **C. Inferiority of Online Educational Experience**

8 34. At least one academic study found that “[o]nline courses do less to
9 promote academic success than do in person courses.” The study found that:

- 10 a) Taking a course online reduced student achievement in that course
11 by .44 points on the traditional four-point grading scale, a full one-
12 third of a standard deviation;
- 13 b) Specifically, students taking the in-person course earned roughly a
14 B- (2.8 GPA) versus a C (2.4 GPA) for students taking an online
15 version of the same course;
- 16 c) Taking a course online also reduces future grades by 0.42 points
17 for courses taken in the same subject area in the following semester;
18 and
- 19 d) Taking an online course reduced the probability of the student
20 remaining enrolled in the university a year later by over ten
21 percentage points.

22 Eric P. Bettinger *et al.*, *Virtual Classrooms: How Online College Courses Affect*
23 *Student Success*, AMERICAN ECONOMIC REVIEW, Vol. 107, No. 9, p. 2857.

24 35. The move to online-only classes deprived students of the opportunity to
25 benefit from a wide variety of academic and student events, on-campus entertainment,
26 facilities, and athletic programs, which provided considerable value to Plaintiffs and
27 the Class members.

28 36. The online learning options USD offered for the Spring 2020, Summer

1 2020, and Fall 2020 semesters, though consistent with safety measures, cannot provide
2 the academic and collegiate experience USD extols.

3 37. For example, USD lauds its Paralegal Certificate Program as giving
4 students “[i]nternships to gain real world experience and hit the ground running.”⁵
5 Plaintiff Sheridan attended the internship program at USD in the Summer 2020
6 semester. But instead of providing the “real world” internship as promised, USD
7 provided only a “simulated” internship.

8 38. USD itself recognized that the “simulated” internship it provided was not
9 reasonably equivalent to its promised internship; USD instructed students such as
10 Plaintiff Sheridan that while the normal internship program qualified as “experience”
11 and could be listed as such in their resume, the internship program USD actually
12 provided qualified only as “education,” and could not be listed as “experience” in their
13 resume.

14 39. USD’s own policies recognize the inferiority of online classes. For
15 example, as of June 2020, USD forbade students from transferring course credits
16 earned through an online format.⁶

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18 ⁵ USD Paralegal Program, Prospective Students, “Why Choose USD’s Paralegal
19 Program?” *available at*
20 [https://www.sandiego.edu/law/academics/paralegal/prospective-](https://www.sandiego.edu/law/academics/paralegal/prospective-students.php#content-accordion3)
21 [students.php#content-accordion3](https://www.sandiego.edu/law/academics/paralegal/prospective-students.php#content-accordion3) (last viewed 9/29/20). *See also* USD Paralegal
22 Studies, Curriculum (“each student in the day program completes an internship in a
23 corporation, law office, legal clinic or government agency.”), *available at*
<https://catalogs.sandiego.edu/graduate/colleges-schools/paralegal-studies/#text> (last
viewed 9/29/20).

24 ⁶ USD Petition to Transfer Credits, *available at*
25 [http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-](http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-resources/transferring-credits.php)
26 [resources/transferring-credits.php](http://web.archive.org/web/20200611012018/https://www.sandiego.edu/cas/student-resources/transferring-credits.php) (last viewed 9/22/2020). *See also* USD School of
27 Business Requirements (“Currently, the School of Business does not accept any
28 online courses or hybrid courses for continuing students at the undergraduate level.”)
available at [https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-](https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-administration/#requirementstext)
[administration/#requirementstext](https://catalogs.sandiego.edu/undergraduate/colleges-schools/business-administration/#requirementstext) (last viewed 9/22/20).

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Transfer Requirements
 No online courses accepted

40. As another example, its Law School Academic Rules specifically define class attendance as meaning “physical presence.”⁷

XIV. ATTENDANCE AND PREPARATION
A. Class Attendance. Attendance is expected in all classes. Attendance means physical presence in the classroom. Regular and punctual class attendance is necessary to satisfy the class hour’s requirement.

41. As yet another example, so as to provide “meaningful student-faculty interactions,” USD requires its College of Arts and Sciences faculty to be physically present for office hours.⁸

- “It is a primary duty of each faculty member to be available to students for help and guidance. Consequently, the faculty member will be on campus and available beyond the hours of actual classroom instruction.”
- “The number of scheduled, face-to-face office hours is at least five per week regardless of teaching load.”
- “Faculty may hold additional ‘virtual’ office hours, but these shall not replace or be in lieu of on campus office hours.”

⁷ USD Law School Academic Rules, August 2020, at 31, available at <https://www.sandiego.edu/law/documents/academics/academic-rules-august-2020.pdf> (last viewed 9/24/2020) (highlights added).

⁸ USD Guidelines for Faculty Scheduling, available at <https://www.sandiego.edu/cas/faculty/faculty-resources/chair/faculty.php#accordion-panel10> (last viewed 9/24/2020).

1 **D. Lower Tuition for Online Education**

2 42. In-person education is worth more than online education.

3 43. Accordingly, the tuition and fees for in-person instruction at USD are
4 higher than tuition and fees for its own online classes and for other online institutions.
5 Such costs cover not just the academic instruction, but encompass an entirely different
6 experience which includes but is not limited to:

- 7 a) Face to face interaction with professors, mentors, and peers;
- 8 b) Access to facilities such as libraries, laboratories, computer labs,
9 and study rooms;
- 10 c) Student governance and student unions;
- 11 d) Extra-curricular activities, groups, intramural sports, etc.;
- 12 e) Student art, cultures, and other activities;
- 13 f) Social development and independence;
- 14 g) Hands on learning and experimentation; and
- 15 h) Networking and mentorship opportunities.

16 44. The fact that USD students paid a higher price for an in-person education
17 than they would have paid for an online education is illustrated by the vast price
18 difference in USD's in-person, on-campus programs versus USD's own online
19 learning program.

20 45. For example, USD charged \$1,580 per unit of on-campus classes for its
21 Master of Science in Health Care Informatics, but charged 41% less – \$925 per unit –
22 for the online version of the same class, for the same degree.⁹

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24 _____
25 ⁹ Financial Aid for Graduate Students at USD, *available at*
26 <https://onlinedegrees.sandiego.edu/become-a-student/tuition-financial-aid/> (last
27 viewed 9/24/2020). *Compare* USD Undergraduate Educational Cost, *available at*
28 <https://www.sandiego.edu/one-stop/tuition-and-fees/undergraduate.php> (last viewed
9/24/2020); USD Graduate and Doctoral Educational Cost, *available at*
<https://www.sandiego.edu/one-stop/tuition-and-fees/graduate.php> (last viewed
9/24/2020); USD School of Law Cost of Attendance, *available at*

1 **E. Damages**

2 46. Through this lawsuit, Plaintiffs seek for themselves and Class members
3 USD’s disgorgement of the pro-rated portion of tuition and fees, proportionate to the
4 amount of time that remained in the Spring 2020 semester when classes moved online
5 and campus services ceased being provided, accounting for the diminished value of
6 educational opportunities, the reduced hours of instruction, as well as for each
7 subsequent semester and continuing until USD resumes in-person classes. Plaintiffs
8 seek return of these amounts on behalf of themselves and the Class as defined below.

9 47. Plaintiffs also seek damages relating to USD’s passing off an online,
10 “virtual” college experience as similar in kind to full immersion in the academic life
11 of a college campus.

12 **V. CLASS ACTION ALLEGATIONS**

13 48. Plaintiffs seeks to represent a class defined as:

14 Any person who paid or caused to be paid tuition and/or fees to
15 attend the University of San Diego when classes and/or
16 coursework were limited in whole or in part to online attendance
as a result of or in connection with COVID-19.

17 Specifically excluded from the Class are USD, USD’s officers, directors, trustees and
18 agents, the judge assigned to this action, and any member of the judge’s immediate
19 family.

20 49. Subject to additional information obtained through further investigation
21 and discovery, the foregoing definition of the Class may be expanded or narrowed by
22 amendment or amended complaint.

23 50. **Numerosity.** The members of the Class are geographically dispersed and
24 are so numerous that individual joinder is impracticable. Upon information and belief,
25 Plaintiffs reasonably estimate that there are thousands of members in the Class.
26

27 _____
28 <https://www.sandiego.edu/law/financial-aid/cost-of-attendance/> (last viewed
9/24/2020).

1 Although the precise number of Class members is unknown to Plaintiffs at this time,
2 the true number of Class members is known by USD and may be determined through
3 discovery. Class members may be notified of the pendency of this action by mail and/or
4 publication through the distribution records of USD and third-party retailers and
5 vendors.

6 **51. Existence and predominance of common questions of law and fact.**

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

- 10 a) whether USD accepted money from Class members in exchange
11 for the promise to provide services;
12 b) whether USD provided the services for which Class members
13 contracted;
14 c) whether Class members are entitled to a refund for that portion of
15 the tuition and fees that was contracted for services that USD did
16 not provide; and
17 d) whether USD is liable to Plaintiffs and the Class for unjust
18 enrichment.

19 **52. Typicality.** Plaintiff's claims are typical of the claims of the other
20 members of the Class in that, among other things, all Class members were similarly
21 situated and were comparably injured through USD's wrongful conduct as set forth
22 herein. Further, there are no defenses available to USD that are unique to Plaintiff.

23 **53. Adequacy of Representation.** Plaintiffs will fairly and adequately
24 protect the interests of the Class. Plaintiffs have retained counsel that is highly
25 experienced in complex consumer class action litigation, and Plaintiffs intend to
26 vigorously prosecute this action on behalf of the Class. Furthermore, Plaintiffs have no
27 interests that are antagonistic to those of the Class.

28 **54. Superiority.** A class action is superior to all other available means for the

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

13 55. In the alternative, the Class may also be certified because:

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

COUNT I

Breach of Contract

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3 56. Plaintiffs restate, reallege, and incorporate by reference the allegations
4 contained in all preceding paragraphs of this complaint as if fully set forth herein.

5 57. Plaintiffs bring this claim individually and on behalf of the members of
6 the Class against USD.

7 58. Through its policies, the admission agreement, and payment of tuition
8 and fees, Plaintiffs and each member of the Class entered into a binding contract with
9 USD.

10 59. As part of the contract, and in exchange for the aforementioned
11 consideration, USD promised to provide in-person education services, including in-
12 person instruction and access to on-campus resources, for the full duration of the
13 Spring 2020 semester, and continuing into the 2020-2021 academic year.

14 60. Plaintiffs and Class members fulfilled their end of the bargain when they
15 paid monies due for tuition, fees, and related expenses.

16 61. USD has failed to provide the contracted-for services but has retained
17 tuition monies paid by Plaintiffs and the Class, and refuses to issue a corresponding
18 tuition adjustment.

19 62. Plaintiffs and members of the Class have suffered damage as a direct and
20 proximate result of USD's breach, including but not limited to deprivation of the
21 education, experience, and services that they were promised and for which they have
22 already paid.

23 63. As a direct and proximate result of USD's breach, Plaintiffs and the Class
24 are entitled to damages, to be decided by the trier of fact in this action, to include but
25 not be limited to reimbursement of certain tuition, fees, and other expenses that were
26 collected by USD for services that USD has failed to deliver.

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COUNT II

Unjust Enrichment

64. Plaintiffs restate, reallege, and incorporate by reference the allegations contained in all preceding paragraphs of this complaint as if fully set forth herein.

65. Plaintiffs bring this claim individually and on behalf of the members of the Class against USD, and in the alternative to Count I.

66. Plaintiffs and members of the Class conferred a benefit on USD in the form of monies paid for tuition, fees, and related expenses in exchange for certain service and promises. This tuition was intended to cover in-person educational services for the academic semester.

67. USD voluntarily accepted and retained this benefit by accepting payment.

68. USD has retained this benefit even though it ceased providing the full education, experience, and services for which the tuition and fees were collected.

69. The online education services USD substituted for the in-person education for which Plaintiffs and class members paid has a substantially lesser value, but USD has nonetheless retained full payment.

70. It would be unjust and inequitable for USD to retain benefits in excess of the services it provided, and USD should be required to disgorge any tuition, fees and related expenses that exceed the value of online education.

COUNT III

Unfair and Deceptive Acts and Practices

71. Plaintiffs restate, reallege, and incorporate by reference the allegations contained in all preceding paragraphs of this complaint as if fully set forth herein.

72. This cause of action is brought pursuant to California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

73. Plaintiffs and the other members of the Class are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought USD’s educational services for personal purposes. USD is a “person” under Cal. Civ. Code §

1 1761(c).

2 74. USD’s educational services are “services” under Cal. Civ. Code §
3 1761(b). Plaintiffs, the other members of the Class, and USD have engaged in
4 “transactions,” as that term is defined by California Civil Code § 1761(e). These
5 transactions all occurred on in the State of California.

6 75. The conduct alleged in this Complaint constitutes unfair methods of
7 competition and unfair and deceptive acts and practices for the purposes of the CLRA,
8 and the conduct was undertaken by USD in transactions intended to result in, and
9 which did result in, the sale of services to “consumers,” as that term is defined in the
10 CLRA.

11 76. USD’s false and fraudulent representations and omissions have violated,
12 and continue to violate the CLRA because they extend to transactions that are intended
13 to result, or have resulted, in the sale of services to consumers, including the Plaintiffs
14 and the Class members.

15 77. USD’s conduct violates Cal. Civ. Code § 1770(a)(5), which prohibits
16 “[r]epresenting that . . . services have . . . characteristics . . . that they do not have,”
17 and Cal. Civ. Code § 1770(a)(7), which prohibits: “[r]epresenting that . . . services are
18 of a particular standard, quality, or grade . . . if they are of another,” causing injury to
19 Plaintiffs and the Class.

20 **COUNT IV**

21 **Violation of California’s Unfair Competition Law**

22 78. Plaintiffs restate, reallege, and incorporate by reference the allegations
23 contained in all preceding paragraphs of this complaint as if fully set forth herein.

24 79. This cause of action is brought pursuant to California’s Unfair
25 Competition Law (the “UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*

26 80. By committing the acts and practices alleged herein, USD has engaged in
27 deceptive, unfair, and unlawful business practices in violation of the UCL and similar
28 statutes.

1 81. Plaintiffs have standing to pursue this claim as they have suffered injury
2 in fact and have lost money or property as a result of USD's actions as set forth above.
3 Class members also have suffered injury in fact and have lost money or property as a
4 result of USD's actions as set forth above.

5 82. The violation of any law constitutes an "unlawful" business practice
6 under Cal. Bus. & Prof. Code § 17200 and similar statutes.

7 83. USD has violated the UCL's proscription against engaging in unlawful
8 conduct as a result of its violations of, *inter alia*, the CLRA and similar statutes, as
9 alleged above.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
12 situated, seeks judgment against USD as follows:

13 A. For an order certifying the Class under Rule 23 of the Federal Rules of
14 Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs'
15 attorneys as Class Counsel to represent the Class;

16 B. A declaration that USD is financially responsible for notifying members
17 of the Classes of the pendency of this suit;

18 C. An order requiring an accounting for, and imposition of a constructive
19 trust upon, all monies received by USD as a result of the conduct alleged herein;

20 D. For an order finding in favor of Plaintiffs and the Class on all counts
21 asserted herein;

22 E. For actual, compensatory, and punitive damages in amounts to be
23 determined by the Court and/or jury;

24 F. For prejudgment interest on all amounts awarded;

25 G. For an order of restitution and all other forms of equitable monetary relief,
26 including disgorgement;

27 H. For injunctive and declaratory relief as the Court may deem proper;

28 I. For an order awarding Plaintiffs and the Class reasonable attorneys' fees

1 and expenses and costs of suit; and

2 J. All other relief to which Plaintiffs and members of the Class may be
3 entitled by law or in equity.

4 **JURY DEMAND**

5 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by
6 jury of any and all issues in this action so triable of right.

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Dated: October 1, 2020

Respectfully submitted,

HALEY MARTINEZ and MATTHEW
SHERIDAN, *on behalf of themselves and
all others similarly situated.*

By: /s/Tammy Hussin
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By: /s/Yvette Golan
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By: /s/James A. Francis
James A. Francis*
John Soumilas*
David A. Searles*
Edward H. Skipton*
**FRANCIS MAILMAN SOUMILAS,
P.C.**

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**Pro hac vice forthcoming*

Attorneys for Plaintiff

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

Haley Martinez and Matthew Sheridan, on behalf of themselves and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tammy Hussin (SBN 155290), Hussin Law Firm, 1596 N. Coast Highway 101, Encinitas, CA 92024, Tel(877)677-5297

DEFENDANTS

University of San Diego

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

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

Attorneys (If Known)

'20CV1946 GPC WVG

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

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 <hr/> 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 <hr/> 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 Constitutional of State Statutes	
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<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	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 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 USC Section 1332(d)

Brief description of cause:

Breach of contract; unjust enrichment; unfair and deceptive acts and practices

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

10/01/2020

SIGNATURE OF ATTORNEY OF RECORD

s/ Tammy Hussin, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [University of San Diego Students Seek Tuition and Fee Refunds for COVID-19-Affected Semesters](#)
