

1 Robert R. Berk, Bar #010162
Charles M. Callahan, Bar #014984
2 JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue, Suite 2700
3 Phoenix, Arizona 85004
Telephone: (602) 263-7392
4 Fax: (602) 200-7865
rberk@jshfirm.com
5 ccallahan@jshfirm.com
minuteentries@jshfirm.com

6 Attorneys for Defendants Aspen Group, Inc.
7 and Aspen University, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Kristen Stewart, individually and on
11 behalf of all others similarly situated,
12 **Plaintiff,**

No.

**NOTICE OF REMOVAL OF CLASS
ACTION**

13 v.

14 Aspen Group, Inc., a Delaware
corporation; Aspen University, Inc., a
15 Delaware corporation,

16 **Defendants.**

17
18 Defendants Aspen Group, Inc. and Aspen University, Inc. hereby notice the
19 removal of the above-captioned case from Maricopa County Superior Court to this Court
20 pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, based on the Class Action Fairness Act
21 (“CAFA”) or, in the alternative, diversity of citizenship, and in support of removal states:

22 1. On April 6, 2022, Plaintiff commenced an action in the Superior Court
23 of the State of Arizona in Maricopa County under the caption *Kristen Stewart, individually*
24 *and on behalf of all others similarly situated v. Aspen Group, Inc., a Delaware*
25 *corporation; and Aspen University, Inc., a Delaware corporation*, CV2022-004347. A
26 copy of Plaintiff’s Class Action Complaint filed on April 6, 2022 is attached hereto as
27 **Exhibit A.**

1 2. Defendants were served with copies of the Class Action Complaint on
2 April 11, 2022. This Notice of Removal is filed within thirty (30) days after service of the
3 Class Action Complaint and is therefore timely filed under 28 U.S. C. § 1446(d).

4 3. This action is a civil action over which this Court has original
5 jurisdiction under 28 U.S.C. § 1332(d)(2). Specifically, pursuant to CAFA, this Court has
6 original jurisdiction over any class action that (a) has a minimum of 100 class members,
7 (b) exceeds \$5 million, and (c) includes at least one diverse plaintiff.¹ 28 U.S.C. §
8 1332(d)(2), (5). Each of those criteria are met here:

9 a. Plaintiff alleges the putative class contains “at least 700 Class
10 members.” (Exhibit A at ¶ 69.)

11 b. Plaintiff alleges, in part, damages for annual tuition charges
12 (for a three-year program) of approximately \$51,000. (Exhibit
13 A at ¶ 32.) Therefore, the aggregated amount in controversy
14 (annual tuition charges for the alleged 700 members of the
15 putative class) exceeds \$5 million. 28 U.S.C. § 1332(d)(6)

16 c. Plaintiff Kristen Stewart alleges in her Class Action Complaint
17 that she is a resident of Maricopa County, Arizona (*see* Exhibit
18 A at ¶ 23); Defendant Aspen Group, Inc. is a Delaware
19 corporation (*see* Exhibit A at ¶ 18) whose principal place of
20 business is in Wilmington, Delaware; and Defendant Aspen
21 University, Inc. is a Delaware corporation (*see* Exhibit A at ¶
22 19) whose principal place of business is in New York, New
23 York. There is, therefore, at least one diverse plaintiff. Indeed,
24 Plaintiff alleges all of the members of the putative class are
25

26
27 ¹ Defendants dispute the existence of a certifiable class. For removal purposes under
28 CAFA, however, the relevant inquiry is not the existence of an actual class but Plaintiff’s
allegations regarding the proposed class. *See* 28 U.S.C. § 1711(4); 28 U.S.C. §
1332(d)(1)(D).

1 Arizona residents such that the diversity requirement is easily
2 met. (Exhibit A at ¶ 68.)

3 4. In the alternative, this action is a civil action over which this Court
4 has original jurisdiction under 28 U.S.C. § 1332, diversity jurisdiction, which may be
5 removed to this Court by Defendants pursuant to 28 U.S.C. § 1441, in that it is an action
6 between citizens of different states.

7 5. Under CAFA, “[a] class action may be removed to a district court of
8 the United States...without regard to whether any defendant is a citizen of the State in
9 which the action is brought...” 28 U.S.C. § 1453(b).

10 6. Regardless, there is complete diversity among the parties, including
11 all members of the putative class. The citizenship of the parties is as follows: Plaintiff
12 Kristen Stewart alleges in her Class Action Complaint that she is a resident of Maricopa
13 County, Arizona (Exhibit A at ¶ 23); Plaintiff alleges the putative class consists only of
14 “Arizona residents” (Exhibit A at ¶ 68) and Plaintiff only seeks relief on behalf of herself
15 and the “Arizona Class” (Exhibit A at ¶ 17); Defendant Aspen Group, Inc. is a Delaware
16 corporation (Exhibit A at ¶ 18) whose principal place of business is in Wilmington,
17 Delaware; and Defendant Aspen University, Inc. is a Delaware corporation (Exhibit A at ¶
18 19) whose principal place of business is in New York, New York.

19 7. The amount in controversy requirement for original jurisdiction
20 (\$75,000) is met if any member of the putative class could potentially claim damages in
21 excess of \$75,000. *See Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 125
22 S.Ct. 2611 (2005). Plaintiff alleges damages of annual tuition costs (\$51,445) for
23 Defendants’ three-year Bachelor of Science in Nursing program (“BSN Program”).
24 (Exhibit A at ¶¶ 1, 32.) Any member of the putative class who claims tuition costs for two
25 or three years of the three-year BSN Program exceeds the limits for diversity jurisdiction.
26 Therefore, this action may be removed to this Court pursuant to 28 U.S.C. § 1441, *et seq.*

27 8. Although Defendants deny that Plaintiff is entitled to any relief
28 whatsoever, Defendants believe, in good faith, that the amount in controversy with respect

1 to Plaintiff's individual claims, alone, will exceed \$75,000.00, exclusive of costs and
2 interest.

3 9. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a
4 Notice of Filing Notice of Removal, a true and correct copy of which is attached hereto as
5 **Exhibit B**, in the Arizona Superior Court, Maricopa County.

6 10. Pursuant to 28 U.S.C. §1446(a), attached as **Exhibit C** are copies of
7 all process, pleadings, and orders served upon Defendants that are not otherwise previously
8 referenced in this Notice of Removal.

9 11. By filing this Notice of Removal, Defendants do not waive any
10 defenses that may be available to them.

11 WHEREFORE, Defendants Aspen Group, Inc. and Aspen University, Inc.
12 respectfully request that the above-entitled action now pending in Arizona Superior Court,
13 Maricopa County, be removed to this Court.

14
15 DATED this 11th day of May, 2022.

16 JONES, SKELTON & HOCHULI, P.L.C.

17
18 By/s/Charles M. Callahan

19 Robert R. Berk
20 Charles M. Callahan
21 40 N. Central Avenue, Suite 2700
22 Phoenix, Arizona 85004
23 Attorneys for Defendants Aspen Group,
24 Inc. and Aspen University, Inc.
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2022, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

Andrew S. Friedman
Francis J. Balint, Jr.
Bonnett, Fairbourn, Friedman & Balint, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016

William F. King
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 86016

Don Bivens
Don Bivens, PLC
15169 N. Scottsdale Road, Suite 205
Scottsdale, Arizona 85254

/s/Tammy Carbajal



EXHIBIT A

Clerk of the Superior Court
*** Electronically Filed ***
Y. Moralez, Deputy
4/6/2022 11:55:19 AM
Filing ID 14146265

1 Andrew S. Friedman (005425)
Francis J. Balint, Jr. (007699)
2 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
3 2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
4 Telephone: (602) 274-1100
Facsimile: (602) 274-1199
5 Email: afriedman@bffb.com
fbalint@bffb.com

6 William F. King (023941)
7 GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
8 Phoenix, Arizona 85016
Telephone: (602) 530-8000
9 Facsimile: (602) 530-8500
Email: bill.king@gknet.com

10 Don Bivens (005134)
11 DON BIVENS, PLLC
15169 N. Scottsdale Road, Suite 205
12 Scottsdale, Arizona 85254
Telephone: (602) 708-1450
13 Email: don@donbivens.com

14 Attorneys for Plaintiff

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)**

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
(602) 530-8000

25
26
27
28

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

26
27 ¹ Research from the National Council of State Boards of Nursing shows that "a program
28 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;

28

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
28

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
28

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.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jury Demand

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

DATED this 6th day of April, 2022.

GALLAGHER & KENNEDY, P.A.

/s/ William F. King
William F. King
2575 East Camelback Rd.
Phoenix, Arizona 85016

Andrew S. Friedman
Francis J. Balint, Jr.
BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016

Don Bivens
DON BIVENS PLLC
15169 N. Scottsdale Road, Suite 205
Scottsdale, Arizona 85254

Attorneys for Plaintiff

EXHIBIT A

ARIZONA STATE BOARD OF NURSING
1740 West Adams Street, Suite 2000
Phoenix, Arizona 85007-2607
602-771-7800

IN THE MATTER OF NURSING PROGRAM
PROVISIONAL APPROVAL ISSUED TO:

ASPEN UNIVERSITY, BSN PROGRAM

PROGRAM ADDRESS:
4615 E. Elwood St., Ste. 100, Phoenix, AZ 85040

PROGRAM NO. US96510000

RESPONDENT.

NOTICE OF CHARGES

NO. 201202RN96510000

The Arizona State Board of Nursing (“Board”) has sufficient evidence of the conduct described in the factual allegations that, if not rebutted or explained, justifies disciplinary action against Respondent’s program approval. The Board has authority, pursuant to the Nurse Practice Act (“Act”), Arizona Revised Statutes (“A.R.S.”) §§ 32-1601 – 1667, Arizona Administrative Code (“A.A.C.”) Rules 4-19-101 – 815; and specifically A.R.S. §§ 32-1606, 32-1644, 32-1663, and 32-1664, to impose disciplinary sanctions against program approval for violations of the Act.

FACTUAL ALLEGATIONS

1. Respondent holds Board-issued program provisional approval for a registered nursing program, operating in Phoenix, Arizona, receiving its original approval in 2017. Respondent’s last provisional program approval was on November 17, 2017, and expires July 31, 2022.

2. On or about December 30, 2020, the Board received an anonymous complaint via the AZBN student complaint webform. The student asserted that they were admitted to the program in August 2020 and had no in-person clinical education experiences and all clinical education experiences have been remote. In addition, the complainant reported that “We have been informed that we will not be allowed an in- person lab experience until after April 2021.”

3. On or about April 14, 2021, the Board received complaint #2 via the AZBN complaint webform. The student expressed 3 main concerns/allegations:

- 1 A. The school had not returned to in-person instruction for “seminars and
2 simulations” but students are required to attend in person for HESI exams;
3
4 B. The Community Health 2 class has had 4 different teachers and “because they
5 advised us they do not have enough staff to fill the position.”
6
7 C. There has been lack of communication from the school about its plans for return
8 to in-person instruction. “I have spoken to many students about this and they all
9 agree that we feel the school is going online fully without making us aware of
10 the situation or including us in the decision making process. We have
11 committed years of our lives and paid thousands of dollars to use simulation
12 labs and train in hospitals, but unfortunately our cohort has not seen or used any
13 of these.”

14 4. On or about September 13, 2021, complaint #3 (anonymous) was received via AZBN
15 complaint webform (possibly a current student given nature of complaint) with eight
16 concerns/allegations:

- 17 A. Testing practices are unfair (i.e. changing from open book to ‘closed book, timed, and
18 proctored’).
19
20 B. Wasn’t informed that the program is “...self-taught, that there would be no lecture or
21 guidance.”
22
23 C. Aspen has discontinued Sherpath/EAQ as a preparatory resource but the midterms were
24 still based on Sherpath.
25
26 D. Poor communication from administration to faculty (e.g. students need to achieve 75%
27 or fail the course [per faculty] which was later corrected by the Chief Nursing Officer,
28 stating that the change applied to some cohorts and not to others)
29
30 E. “...setting students up to fail...” by not providing support. “...even when following the
31 school’s guidance, and that of the school’s own NCLEX coach, still have received
32 failing grades.”
33
34 F. “Aspen has created a toxic and punitive atmosphere where students do not feel

1 supported...”; “...they should provide adequate instruction and support as other nursing
2 schools do, reviews, study guides, sufficient time to cover the material.”

3
4 G. The Chief Nursing Officer responded by email to Complainant #3 but did not address
5 Complainant #3’s concerns regarding testing.

6 H. (The Director of the Elwood Campus) is sometimes belittling and has not addressed
7 concerns.

8 5. In addition to the above complaints received from students, Board staff initiated an
9 investigation due to Respondent’s 1st time pass rate for NCLEX falling below 80%, as required in
10 Arizona Administrative Code (“A.A.C.”) R4-19-206(G).

11 6. Respondent’s NCLEX-RN first time pass rate for Calendar Year 2021, at 58.04%, has
12 fallen far below the minimum standard of 80% and is in violation of A.A.C. R4-19.206.G. A 58%
13 chance of passing NCLEX the first time is outside of normal program ranges, even for programs
14 experiencing challenges, and indicates harm to students. Between the opening of the program in 2018
15 and the present, as of January 2022, the program has had five program administrators. Research
16 conducted by the National Council of State Boards of Nursing (“NCSBN”) indicates that a program
17 that has more than *three* program administrators within five years may cause harm to students through
18 inconsistent leadership. Respondent’s five program administrators in less than four years (2018-2022)
19 falls below the standard of practice, which requires competent and stable administration to avoid
20 excessive program changes and disruptions, and likely contributed to Respondent’s extremely low
21 NCLEX scores. In addition, Respondent’s lack of adequate instruction combined with ongoing, heavy
22 reliance on virtual clinical learning experiences has contributed to inadequate instruction and severely
23 decreased hands-on learning. (Respondent has a COVID-19 pandemic emergency waiver (that would
24 permit online learning and virtual clinical experiences due to limitations associated with the
25 pandemic), issued by the Board, but this waiver still requires adequate learning experiences).
26

27 In sum, the low NCLEX first time pass rates for 2021 are the result of the following factors:

- 28 A. Rapid growth in admissions with multiple annual admissions cycles;
29 B. Decreased direct care clinical learning experiences;

- 1 C. Faculty lack of adequate orientation;
- 2 D. Scheduling faculty for direct care clinical experiences using faculty volunteers for shifts
- 3 of clinicals (rather than consistently assigned faculty);
- 4 E. Mid-course curriculum/course changes and substandard testing practices;
- 5 F. Lack of adequate student learning opportunities including lack of faculty guidance and
- 6 processing with students regarding available content;
- 7 G. Cancelled direct care clinicals with frequent conversion to virtual simulations;
- 8 H. Student confusion regarding course requirements and exams;
- 9 I. Reactive post-exam changes to grading to inflate grades; and
- 10 J. Failure of the administrator to develop with faculty policies regarding minimal requisite
- 11 nursing skills and knowledge necessary to provide safe patient care (R4-19-
- 12 203(C)(5)(a)(iii).
- 13

14 These issues are manifesting in:

- 15 A. Low predictive exam results;
- 16 B. Increasingly and unusually high student attrition;
- 17 C. Extremely low NCLEX pass rates;
- 18 D. High student stress levels and frustration/concern from faculty.

19
20 7. From in or about July 2018 to present, as demonstrated by Respondent's extremely low
21 NCLEX first time pass rate, Respondent's pedagogical approach to nursing education is inadequate in
22 the preparation of prelicensure nursing students and fails to allow its students to form necessary links
23 of theoretical knowledge, clinical reasoning and practice.

24 In a February 12, 2021, in a letter to the Board regarding its request for a COVID-19 pandemic
25 emergency waiver (that would permit online learning and virtual clinical experiences due to
26 limitations associated with the pandemic), Respondent representatives stated:

27 *Fortunately, Aspen's didactic percentage of the curriculum is delivered in a 100% online in an*
28 *asynchronous format. The process maps attached address the laboratory, simulation, and*
29 *clinical components of the curriculum, which prior to the pandemic were delivered on campus*

1 or face-to-face with our clinical partners.

2 While Respondent was approved by its accrediting body (associated with its Board provisional
3 approval) to provide content as described, the delivery and implementation of this program model has
4 been inadequate.

5 Multiple students in group sessions (held 9.20.21, 9.21.21) reported to Board staff that lectures
6 or guidance is rare and that faculty have told students that they “aren’t allowed to teach” or provide
7 study guides because it would be “giving answers” to them. Several faculty reported that they were
8 directed to not teach because the program is ‘self-taught’. Students report a high use of YouTube
9 videos as resources and minimal feedback on assignments. A student wrote (group interview,
10 9.21.21): “...we are consistently told by the instructors, and Director that ‘we signed up’ for hybrid and
11 to be self- taught. When we ask for lectures or review we are told Didactic is online - no lecture.
12 Personally, I was never informed that I would be teaching myself throughout nursing school.”
13 Comments about the lack of teaching by faculty were strongly and consistently endorsed by students
14 attending each group interview session. The National League for Nursing’s *Nurse Educator Core*
15 *Competencies for Academic Nurse Educators (2005)* clearly identifies that academic nurse educators
16 are to “facilitate learning” and to “facilitate learner development and socialization”. The pedagogical
17 approach reported by students and validated by faculty is incompatible with prelicensure nursing
18 education.
19

20 The standard of educational practice requires that nursing program faculty and administration
21 provide adequate learning opportunities for students. Respondent violated this standard of practice by
22 failing to ensure students received adequate education, by discouraging or prohibiting faculty from
23 facilitating learning, teaching in lectures, or providing study guides. Harm to students occurred, as
24 evidenced by Respondent’s low first time NCLEX passing scores and high attrition rates.

25 8. During calendar Year 2021 to present, Respondent’s learning opportunities, faculty
26 resources, quality of instruction, program resources, and infrastructure were and are inadequate to
27 support student learning or successful outcomes pursuant to A.A.C. R4-19-206 and R4-19-201A.6
28 (adequate resources), *inter alia*. Specifics are as follows:
29

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- **Faculty onboarding and mentorship:** Multiple faculty members described no or extremely minimal orientation or training prior to beginning teaching. Several faculty reported limited guidance (e.g. not being shown how to enter grades in the learning management system, cursory orientation to simulation and high reliance on online resources that faculty report ‘having to figure out on our own’, no clear orientation and accountability for knowledge about the curriculum, rushed onboarding resulting in account access issues to virtual hospital software used by the Respondent. The approach to faculty onboarding resembles what students experience: referral to online materials without adequate guidance or mentorship. The standard of educational practice requires that a nursing program provide adequate orientation and ongoing support/mentorship of faculty prior to faculty beginning to teach to ensure that faculty understand and hold basic nursing educational competencies, basic competency over the curriculum, and program processes such as how to use grading systems and technological tools. Respondent violated this standard by failing to provide the adequate resources, including personnel, to orient and train new faculty, and failed to provide proper orientation and training prior to faculty beginning to teach students.
 - **Scheduling of faculty for teaching courses:** Respondent relies heavily on email recruitment of faculty volunteers which results in fragmented, discontinuous clinical learning experiences. Respondent’s approach to faculty staffing clinical time for cohorts is similar to how hospitals staff individual patient shifts, so that multiple faculty can be assigned to a single cohort for a single clinical course on a regular basis without consistency in faculty. Scheduling faculty in this way is at high risk for fragmented student learning experiences, which is reflected in Respondent’s students’ poor NCLEX pass rates, among other indicators. Students’ ability to learn clinical judgment/reasoning/compartment relies not only on faculty clinical expertise, teaching experience and their ability to relate to students, but also continuity of faculty presence. The standard of educational practice requires that a program plan to have

1 courses taught by consistent faculty. Although events occur in which substitutions of
2 faculty may be necessary at times, regularly assigning faculty to clinical assignments
3 on a voluntary basis falls below the standard of educational practice.
4

- 5 • **Severely inadequate testing practices:** Until summer of 2021, Respondent relied on
6 open book testing and discussion board questions in most of its courses to assess
7 student learning.

- 8 ○ Beginning August Term 2021, Respondent changed to proctored midterm and
9 final exams without adequate planning and preparation for students or faculty
10 to adjust to the change in approach.

- 11 ▪ In her individual interview with Board staff, on 9.20.21, Respondent's
12 Interim Director at Honor Health campus and Chief Nursing Officer
13 indicated that faculty were beginning to be trained in writing NCLEX-
14 style test questions – this was being initiated more than three years after
15 the first class was admitted to the program.

- 16 ○ Student lack of preparation for proctored exams was evident in massive student
17 failures of midterm exams in the Fall 2021 Adult Health I and Adult Health II,
18 and general student complaints and statements regarding their confusion and
19 lack of preparation for these exams. Out of 4 sections, only five out of 100
20 students were able to achieve the 75% or above passing benchmark set by
21 Respondent for Adult Health.

- 22 ▪ Testimony by the lead faculty of Adult Health content indicated that she
23 had been directed by the Interim Director of Honor Health
24 Campus/Chief Nursing Officer and Director of Elwood Campus to
25 create exams for course sections in which she was not the faculty of
26 record and that she did not involve the faculty record in test
27 construction.

- 28 ▪ One faculty of record affirmed that she was not involved in test
29

1 construction for her course, nor did she know what test questions were
2 being administered. She also reported that she was not aware of the
3 grades students had achieved on the exams for the course she taught.
4 She indicated that she was an evaluator of students' other assignments
5 in the course and that was her only role.
6

- 7 ○ The standard of educational practice requires that a nursing program provide
8 adequate preparation for students and faculty for changes in testing procedures,
9 including timely notice and explanation of changes, and adequate training
10 regarding procedures. Respondent violated this standard by changing the
11 testing procedures without adequate training of faculty or notice to students
12 regarding the new procedures, and without providing faculty or students with
13 adequate resources to prepare them for the different type of examinations.
14 Additionally, the standard of educational practice requires that a nursing
15 program permit faculty to either have involvement in test construction or, at
16 minimum, be aware of test questions being administered and grading processes
17 for the students in their courses. Respondent violated this standard of practice
18 by excluding faculty from involvement in construction of an exam for her
19 course and not providing the faculty member with access to the test questions
20 to be administered to her students.
21

- 22 ● **Severe decline of direct care clinical learning experiences without substituting**
23 **with adequate learning opportunities:** Data provided by Respondent demonstrates
24 that Respondent's program provided only a small portion of its published direct care
25 clinical hours, as found in Respondent's student clinical handbook. Respondent's
26 report of direct care clinical hours for five cohorts that graduated in 2021 showed
27 overall declining direct care hours over the year: 396 (January 2021 cohort), 402
28 (March 2021 cohort), 348 (May 2021 cohort), 294 (July 2021 cohort) and 270
29 (September 2021 cohort) direct clinical hours, compared with the 945 direct clinical

1 hours published in the student handbook. This reduction of hours represents a 63%
2 decline in clinical hours for Respondent's program, when other Arizona schools
3 reported only a 15.1% decrease of hours over the same time period. While Respondent
4 had obtained a COVID-19 pandemic- related emergency waiver to permit substitution
5 of direct clinical hours during the pandemic emergency, the requirements of the waiver
6 include the following statement:
7

- 8 ○ *The program's application for temporary waiver of requirements must describe*
9 *all requested program modifications, and how the modification will provide*
10 *adequate learning opportunities.* (Emphasis added.)

11 Respondent's failure to provide adequate learning opportunities is reflected in its low NCLEX scores
12 for 2021, its failure to provide clinical experiences at a rate similar to those of other Arizona nursing
13 programs, and other programmatic deficiencies, as described in this and the other factual allegations
14 listed above and below.

15 9. In or about Calendar Year 2021, faculty and students reported a high number of
16 programmatic and course changes without adequate notice, which is a violation of administrator duties
17 in A.A.C. R4-19-203(C)(1), (2), (4), and (5). A series of email exchanges between Faculty #1 and
18 Respondent administration in October and December 2021 shows that Respondent instituted multiple
19 changes to courses after courses started. Making changes to a syllabus after a course has begun is a
20 violation of standard educational practice that requires notice to students prior to the beginning of a
21 course which provides details about course content, class sessions, assignments, deadlines, course
22 policies, testing, student expectations, etc. Course details should remain unchanged for the duration of
23 the course. Programmatic and course changes without proper notice and without adequate time for
24 faculty and students to adjust to changes results in faculty's inability to adequately plan their teaching
25 schedule/assignments and severely disrupts student learning. Faculty #1 (12.15.21 email) summarizes
26 this problematic dynamic well:
27

28 I share the same frustration that the students do. As a faculty, it is impossible to do my job and
29 provide clear expectations to the students, when the expectations literally change from session

1 to session and with no regard to where the students are at in the session. The students can
2 never rely on what they see of their course syllabus in the beginning of each course... Because
3 it changes constantly.
4

5 From their perspective, students report confusion about assignments and an inability to plan
6 their study and clinical schedules resulting in high stress and a diminished ability to learn critical
7 course content. Much of this disruption occurred with the implementation of high-stakes (i.e.
8 inadequate scores result in students failing the course and program) HESI exams in July 2021, as well
9 as proctored midterm and final exams in August 2021 across all cohorts without adequate student
10 preparation. Respondent's low NCLEX first time pass rate scores and high attrition rate of over 40%
11 in 2 of its last 3 graduating cohorts in 2021 demonstrate the harm to students as a result of these
12 violations of the standards of educational practice. Students are being harmed from a poor return on
13 investment of their time and financial resources in a program with high attrition and extremely low
14 NCLEX scores. When a graduate is not able to pass NCLEX, they cannot obtain licensure and work as
15 nurses, leaving them with student loans but no ability to work under the license for which they have
16 completed their studies.
17

18 10. During the Summer of 2021, Respondent changed their overall testing practices without
19 adequate notice to students or faculty, in conflict with Elsevier recommendations (Elsevier is the
20 vendor for HESI exit exams) and standards of educational practice for fair testing.

21 Respondent's students' performance has averaged 41% for 1st time HESI takers (i.e. 41% of
22 the class was predicted to pass NCLEX) and, after remediation, only 57% of the students taking the
23 predictor exam were predicted to pass NCLEX. In response to these low results on HESI predictor
24 exams, Respondent implemented the '*HESI RN Exit Remediation Contract, v1 09.07.2021*' which is a
25 learning contract implemented after a student has achieved 900 (later changed to 850 due to poor
26 student performance) or better on the HESI RN Exit Predictor exam. The remediation process is
27 described as 'student driven' (i.e. "Students are responsible for initiating, creating and submitting
28 remediation plans then following through on them in a timely manner.") and requires student
29 participation. The learning contract specifies that students cannot "...progress to N455B (Transition to

1 Professional Practice) and will have to re-take N455A (Transition to Professional Practice)...” and that
2 they will not be able to graduate from the program without successfully completing the HESI RN Exit
3 Predictor exam. At the signature line, students are required to agree with this statement: “I have read
4 and understand the School of Nursing HESI Testing and Remediation Policy. My signature is proof of
5 my commitment to adhere to this policy. My signature is proof of my commitment to remediation.”
6

7 A 9.23.21 email from the Nursing Education Specialist with Elsevier, indicated that the HESI
8 exit exam should not be used in this manner (i.e. determining if a student can pass a course or graduate
9 from the program, otherwise known as “high stakes testing”): “Elsevier doesn’t support students’
10 achievement of a particular score on any exam in order to graduate. We don’t and have never
11 suggested to programs that students are in any way hindered from graduating because of a HESI
12 exam.”

13 In addition to using the HESI exit exam in a way that is not recommended, this approach
14 violated prevailing nursing education practice. The standard of educational practice requires that a
15 nursing program use multiple sources of evidence to evaluate students on basic nursing competence,
16 rather than making high-stakes decisions, such as progression or graduation, based upon one
17 assessment alone. Respondent violated the standard of educational practice when it elected to begin
18 denying progression or graduation to enrolled students through use of the HESI examination, which is
19 not recommended by either the HESI vendor or the National League for Nursing.
20

21 11. In September, 2021, despite Respondent providing a significant majority of clinical
22 hours virtually, Respondent’s student handbooks do not mention the use of virtual clinicals

- 23 ● Respondent’s “BSN Pre-licensure Clinical Handbook (Arizona)” (hereafter ‘student
24 handbook’), (1.1.2021, pp. 33-36), indicates that students complete 945 hours of
25 “clinical contact” at a “clinical site” during their program of study
- 26 ● In a 2020 statewide AZBN nursing education program survey, Respondent reported
27 that their program plan (pre-pandemic) provides 945 direct patient care hours (defined
28 as “faculty supervised face-to-face [in-person] with clients during pre-pandemic times”)
29 and 8 hours of simulation.

1 fiscal, physical, learning resources and adequate human resources to recruit, employ and retain
2 sufficient numbers of qualified faculty members to support program processes and outcomes necessary
3 for compliance with this Article; R4-19-203 C. The administrator shall have the authority and
4 responsibility to direct the program in all its phases, including: 1. Administering the nursing education
5 program, 2. Directing activities related to academics, personnel, curriculum, resources, facilities,
6 services, program policies, and program evaluation, 4. Evaluating nursing program faculty members at
7 a minimum: a. Annually in the first year of employment and every three years thereafter, b. Upon
8 receipt of information that a faculty member, in conjunction with performance of their duties, may be
9 engaged in conduct that is or might be: i. Below a pattern of conduct the standards of the program or
10 the parent institution, ii. A pattern of conduct that is inconsistent with nursing professional standards,
11 or iii. Any conduct that is potentially or actually harmful to a patient or a student, and c. In the areas of
12 teaching ability and application of nursing knowledge and skills relative to the teaching assignment,
13 and 5. Together with faculty: a. Developing, implementing, consistently enforcing, evaluating, and
14 revising, as necessary: i. Equivalent student and faculty policies necessary for safe patient care,
15 including faculty supervision of clinical activities, and to meet clinical agency requirements regarding
16 student and faculty physical and mental health, criminal background checks, substance use screens,
17 and functional abilities, ii. The program of learning including the curriculum and learning outcomes of
18 the program, standards for the admission, progression, and graduation of students, and written policies
19 for faculty orientation, continuous learning and evaluation and iii. Student and faculty policies
20 regarding minimal requisite nursing skills and knowledge necessary to provide safe patient care for the
21 type of unit and patient assignment; R4-19-203 (C) The administrator shall have the authority and
22 responsibility to direct the program in all its phases, including: (5) Together with faculty: a.
23 Developing, implementing, consistently enforcing, evaluating and revising, as necessary: iii. Student
24 and faculty policies regarding minimal requisite nursing skills and knowledge necessary to provide
25 safe patient care of the type of unit and patient assignment; R4-19-205 (A) The number of students
26 admitted to a nursing program shall be determined by the number of qualified faculty, the size, number
27 and availability of educational facilities and resources, and the availability of the appropriate clinical
28
29

1 learning experiences for students, (C) A nursing program and parent institution shall: 2. Provide
2 accurate and complete written information that is readily available to all students and the general
3 public about the program, including: a. The nature of the program, including course sequence,
4 prerequisites, co-requisites and academic standards and e. A clear statement regarding any technology
5 based instruction and the technical support provided to students and (D) A nursing program shall
6 communicate changes in policies, procedures and program information clearly to all students,
7 prospective students and the public and provide advance notice in a time-frame that allows those who
8 are or may be affected to comply with the changes; R4-19-206 (Curriculum) (B) A nursing program
9 administrator and faculty members shall ensure that the curriculum: (1) Is designed so that the student
10 is able to achieve program objectives within the curriculum plan; 2. Is logically consistent between and
11 within courses and structured in a manner whereby each course builds on previous learning; 4. Is
12 designed sot that a student who completes the program will have the knowledge and skills necessary to
13 function in accordance with the definition and scope of practice specified in A.R.S . . . for a registered
14 . . . nurse, as applicable. (C) A nursing program shall provide for progressive sequencing of classroom
15 and clinical instruction sufficient to meet the goals of the program and be organized in such a manner
16 to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and practice.
17 R4-19.206.G. A nursing program shall maintain at least a 80% NCLEX® passing rate for graduates
18 taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation; and R4-
19 19-211. Unprofessional Conduct in a Nursing Program; Reinstatement or Reissuance: A disciplinary
20 action, or denial of approval, may be issued against a nursing, refresher, pilot, or distance learning
21 program for any of the following acts of unprofessional conduct: (1) A pattern of failure to maintain
22 minimum standards of acceptable and prevailing educational or nursing practice, or any such failure
23 related to student or patient health, welfare, or safety; (2) A pattern of deficiencies in compliance with
24 the provisions of this Article, or any such deficiency related to student or patient health, welfare, or
25 safety; (5) Failure to provide the variety and number of clinical learning opportunities necessary for
26 students to achieve program outcomes or minimal nursing competence, (6) Student enrollments
27 without necessary faculty, facilities, or clinical experiences to achieve program outcomes or minimal
28
29

1 nursing competence; (7) Ongoing or repetitive employment of unqualified faculty or program
2 administrator; (9) Fraud or deceit in advertising, promoting or implementing the program; (10)
3 Material misrepresentation of fact in any application or information submitted to the Board; (12) Any
4 other evidence that the program's conduct may be a threat to the safety and well-being of students,
5 faculty, patients or potential patients; and (13) violation of any other state of federal laws, rules, or
6 regulations that may indicate a threat to the safety or wellbeing of students, faculty, patients or
7 potential patients.
8

9 **RESPONSE TO ALLEGATIONS**

10 *If you wish to challenge the allegations in this Notice of Charges, file a written request for*
11 *hearing with the Board within 30 days after service of this Notice* to the Hearing Department,
12 Arizona State Board of Nursing, 1740 West Adams Street, Suite 2000, Phoenix, AZ 85007-2607.

13 For questions regarding the Notice of Charges, contact Board staff at the Hearing Department:
14 (602) 771-7844.

15 Dated this 18th day of February, 2022.

16
17
18 SEAL

19 ARIZONA STATE BOARD OF NURSING

20 *Joey Ridenour R.N. M.N. F.A.A.N.*

21 _____
22 Joey Ridenour, R.N., M.N., F.A.A.N.
23 Executive Director

24 A COPY mailed this 18th day of February, 2022, by First Class Mail, by
25 Certified Mail No. 7020 2450 0001 4320 2635 and by e-mail to:

26 Aspen's Elwood Campus
27 4615 E. Elwood St, Ste. 100
28 Phoenix, AZ 85040
29 Email: gsturr@omlaw.com

By: G. Carroll
Legal Secretary

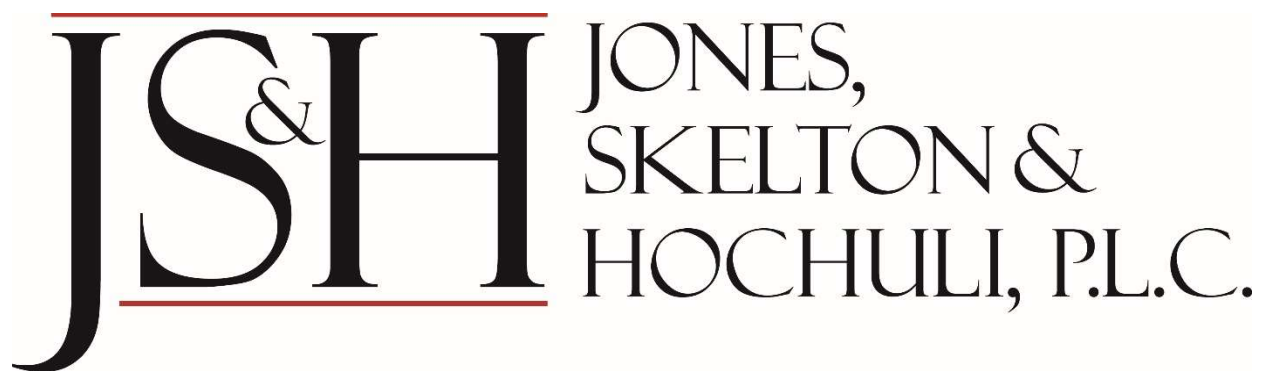


EXHIBIT B

1 Robert R. Berk, Bar #010162
Charles M. Callahan, Bar #014984
2 JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue, Suite 2700
3 Phoenix, Arizona 85004
Telephone: (602) 263-7392
4 Fax: (602) 200-7865
rberk@jshfirm.com
5 ccallahan@jshfirm.com
minuteentries@jshfirm.com

6 Attorneys for Defendants Aspen Group, Inc.,
7 and Aspen University, Inc.

8
9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **COUNTY OF MARICOPA**

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

12 Plaintiff,

13 v.

14 Aspen Group, Inc., a Delaware corporation;
15 Aspen University, Inc., a Delaware
corporation,

16 Defendants.

NO. CV2022-004347

**NOTICE OF REMOVAL TO FEDERAL
DISTRICT COURT**

(Assigned to the Honorable Danielle Viola)

17
18 Defendants Aspen Group, Inc. and Aspen University, Inc., pursuant to 28 U.S.C. §
19 1441 *et seq.*, notifies this Court that it has filed a Notice of Removal of Class Action of this matter
20 to the United States District Court for the District of Arizona. A copy of the Notice of Removal
21 of Class Action (exclusive of exhibits) is attached as Exhibit A. Pursuant to 28 U.S.C. § 1446 (d),
22 the attached Notice of Removal of Class Action “shall effect the removal and the State court shall
23 proceed no further unless and until the case is remanded.”
24
25

1 DATED this 11th day of May, 2022.

2 JONES, SKELTON & HOCHULI P.L.C.

3
4 By/s/ *Charles M Callahan*

5 Robert R. Berk
6 Charles M. Callahan
7 40 N. Central Avenue, Suite 2700
8 Phoenix, Arizona 85004
9 Attorneys for Defendants Aspen Group, Inc., and
10 Aspen University, Inc.

11 ORIGINAL of the foregoing electronically filed
12 this 11th day of May, 2022.

13 COPY of the foregoing mailed/e-mailed
14 this 11th day of May, 2022, to:

15 Andrew S. Friedman
16 Francis J. Balint, Jr.
17 Bonnett, Fairbourn, Friedman & Balint, P.C.
18 2325 East Camelback Road, Suite 300
19 Phoenix, Arizona 85016
20 Attorneys for Plaintiff

21 William F. King
22 Gallagher & Kennedy, P.A.
23 2575 East Camelback Road
24 Phoenix, Arizona 85016
25 Attorneys for Plaintiff

26 Don Bivens
Don Bivens, PLLC
15169 N. Scottsdale Road, Suite 205
Scottsdale, Arizona 85254
Attorneys for Plaintiff

/s/ Tammy Carbajal

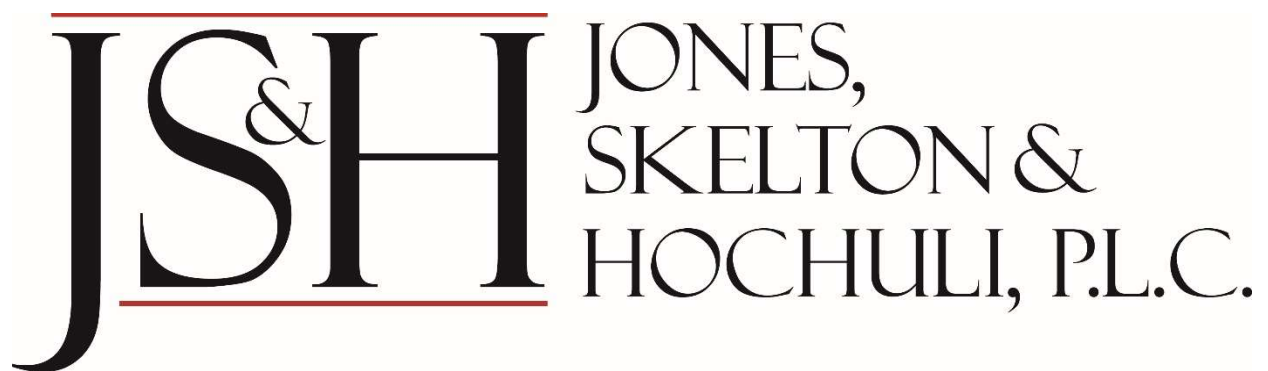


EXHIBIT C

Clerk of the Superior Court
*** Electronically Filed ***
Y. Moralez, Deputy
4/6/2022 11:55:19 AM
Filing ID 14146268

Person/Attorney Filing: William F. King
Mailing Address: 2575 E Camelback Rd, Ste 1100
City, State, Zip Code: Phoenix, AZ 85016
Phone Number: (602)530-8070
E-Mail Address: bill.king@gknet.com
[] Representing Self, Without an Attorney
(If Attorney) State Bar Number: 023941, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Kristen Stewart
Plaintiff(s),

Case No. CV2022-004347

v.

Aspen Group, Inc., et al.
Defendant(s).

SUMMONS

To: Aspen Group, Inc.

WARNING: THIS AN OFFICIAL DOCUMENT FROM THE COURT THAT AFFECTS YOUR RIGHTS. READ THIS SUMMONS CAREFULLY. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY FOR LEGAL ADVICE.

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers were served on you with this Summons.
2. If you do not want a judgment taken against you without your input, you must file an Answer in writing with the Court, and you must pay the required filing fee. To file your Answer, take or send the papers to Clerk of the Superior Court, 201 W. Jefferson, Phoenix, Arizona 85003 or electronically file your Answer through one of Arizona's approved electronic filing systems at <http://www.azcourts.gov/efilinginformation>. Mail a copy of the Answer to the other party, the Plaintiff, at the address listed on the top of this Summons.
Note: If you do not file electronically you will not have electronic access to the documents in this case.
3. If this Summons and the other court papers were served on you within the State of Arizona, your Answer must be filed within TWENTY (20) CALENDAR DAYS from the date of service, not counting the day of service. If this Summons and the other court papers were served on you outside the State of Arizona, your Answer must be filed within THIRTY (30) CALENDAR DAYS from the date of service, not counting the day of service.

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

GIVEN under my hand and the Seal of the Superior Court of the State of Arizona in and for the County of MARICOPA

SIGNED AND SEALED this Date: *April 06, 2022*

JEFF FINE
Clerk of Superior Court

By: *YVETTE MORALES*
Deputy Clerk



Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

If you would like legal advice from a lawyer, contact Lawyer Referral Service at 602-257-4434 or <https://maricopabar.org>. Sponsored by the Maricopa County Bar Association.

Clerk of the Superior Court
*** Electronically Filed ***
Y. Moralez, Deputy
4/6/2022 11:55:19 AM
Filing ID 14146267

Person/Attorney Filing: William F. King
Mailing Address: 2575 E Camelback Rd, Ste 1100
City, State, Zip Code: Phoenix, AZ 85016
Phone Number: (602)530-8070
E-Mail Address: bill.king@gknet.com
 Representing Self, Without an Attorney
(If Attorney) State Bar Number: 023941, Issuing State: AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Kristen Stewart
Plaintiff(s),

Case No. CV2022-004347

v.

Aspen Group, Inc., et al.
Defendant(s).

**CERTIFICATE OF
COMPULSORY ARBITRATION**

I certify that I am aware of the dollar limits and any other limitations set forth by the Local Rules of Practice for the Maricopa County Superior Court, and I further certify that this case IS NOT subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this

By: William F. King /s/
Plaintiff/Attorney for Plaintiff

CLERK OF THE
SUPERIOR COURT
RECEIVED CCC #3
NIGHT DEPOSITORY

22 APR 12 PM 12:12

Gallagher & Kennedy PA
2575 E Camelback Rd Suite 1100
Phoenix, AZ 85016
(602) 530-8597

FILED
BY S Myers DEP.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

KRISTEN STEWART

Plaintiff,

Case Number: CV2022-004347

AFFIDAVIT OF SERVICE

vs.

ASPEN GROUP, INC., et.al.

Defendant.

Received by HOT SHOT DELIVERY INC. on the 8th day of April, 2022 at 10:13 am to be served on Aspen University, Inc. c/o Corporation Service Company, Stat Agent, 8825 North 23rd Avenue, Suite 100, Phoenix, AZ 85021.

I, Christopher Turnage Badge no. MC-8160, being duly sworn, depose and say that on the 11th day of April, 2022 at 9:14 am, I:

PERSONALLY: served by delivering a true copy of the **SUMMONS, CLASS ACTION COMPLAINT, CERTIFICATE OF COMPULSORY ARBITRATION** with the date and hour of service endorsed thereon by me, to: **Kelye Springstead as Service of Process Coordinator for Corporation Service Company**, registered agent for **Aspen University, Inc.** at the address of: **8825 North 23rd Avenue, Suite 100, Phoenix, AZ 85021**, and informed said person of the contents therein in compliance with state statutes and stating to me at the time of service that he/she is authorized to accept service of process.


Description of Person Served: Age: 25, Sex: F, Race/Skin Color: White, Height: 5-10, Weight: 130, Hair: Black, Glasses: N

I certify that I am over the age of 21, have no interest in the above action, and am a Licensed Process Server, within the county of Maricopa, State of ARIZONA, in good standing and am fully qualified to serve process in this cause.

"I Declare under Penalty of Perjury that the foregoing is true and correct".

Subscribed and Sworn to before me on the 11th day
of April, 2022 by the affiant who is
personally known to me.

[Handwritten Signature]
NOTARY PUBLIC

 **KATRINA PRENTICE**
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission # 559437
Expires February 26, 2023

[Handwritten Signature]

Christopher Turnage Badge no. MC-8160
Licensed Process Server

HOT SHOT DELIVERY INC.
236 East Pima Street
Suite 106
Phoenix, AZ 85004
(602) 277-4747

Our Job Serial Number: DEK-2022000713
Ref: Stewart v Aspen Group



CLERK OF THE
SUPERIOR COURT
RECEIVED CCC #3
NIGHT DEPOSITORY

22 APR 12 PM 12:11

Gallagher & Kennedy PA
2575 E Camelback Rd Suite 1100
Phoenix, AZ 85016
(602) 530-8597

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

FILED
BY S Myers DEP.

KRISTEN STEWART

Case Number: CV2022-004347

Plaintiff,

AFFIDAVIT OF SERVICE

vs.

ASPEN GROUP, INC., et.al.

Defendant.

Received by HOT SHOT DELIVERY INC. on the 8th day of April, 2022 at 10:13 am to be served on Aspen Group, Inc. c/o Corporate Creations Network, Inc., Stat Agent, 3260 N. Hayden Road, Suite 210, Scottsdale, AZ 85251.

I, Christopher Turnage Badge no. MC-8160, being duly sworn, depose and say that on the 11th day of April, 2022 at 8:20 am, I:

Served by delivering a true copy of the **SUMMONS, CLASS ACTION COMPLAINT, CERTIFICATE OF COMPULSORY ARBITRATION** to: Jonni Webb as Statutory Agent Operations Manager for Aspen Group, Inc. c/o Corporate Creations Network, Inc., Stat Agent at the address of: 3260 N. Hayden Road, Suite 210, Scottsdale, AZ 85251, and informed said person of the contents therein in compliance with state statutes and stating to me at the time of service that he/she is authorized to accept service of process.

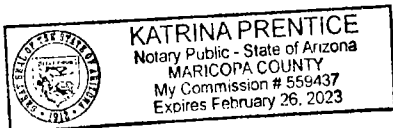
Description of Person Served: Age: 40, Sex: F, Race/Skin Color: White, Height: 5-5, Weight: 175, Hair: Lt Brn, Glasses: N

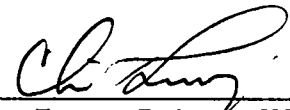
I certify that I am over the age of 21, have no interest in the above action, and am a Licensed Process Server, within the county of Maricopa, State of ARIZONA, in good standing and am fully qualified to serve process in this cause.

"I Declare under Penalty of Perjury that the foregoing is true and correct".

Subscribed and Sworn to before me on the 11th day
of April, 2022 by the affiant who is
personally known to me.


NOTARY PUBLIC





Christopher Turnage Badge no. MC-8160
Licensed Process Server

HOT SHOT DELIVERY INC.
236 East Pima Street
Suite 106
Phoenix, AZ 85004
(602) 277-4747

Our Job Serial Number: DEK-2022000714
Ref: Stewart v Aspen Group



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Aspen University Hit with Class Action After Nursing Program Suspended](#)
