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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000291

DAVIA BUNCH and CASEY KELLY,
Individually and on behalf of
others similarly situated Appellant,

v.

THE UNIVERSITY OF SOUTH CAROLINA Respondent.

**RECORD ON APPEAL
VOLUME I (1-428)**

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**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

DAVIA BUNCH, PETER KELLY,
TERRY KELLY, individually
and on behalf of others similarly situated,

Plaintiffs,

vs.

THE UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

Civil Action No. 2020-CP-40-02330

**[PROPOSED] ORDER
DENYING THE UNIVERSITY
OF SOUTH CAROLINA'S MOTIONS
TO DISMISS**

Before the Court is Defendant The University of South Carolina's (the "University" or "Defendant") Motion to Dismiss and Supplemental Motion to Dismiss Plaintiffs' First Amended Complaint for failure to state a claim. After careful consideration, and as more fully set forth herein, Defendant's Motions to Dismiss are **DENIED**.

1. The University argued that the doctrine of sovereign immunity completely bars Plaintiffs' breach of contract, unjust enrichment, and conversion claims. The Court disagrees. Upon review of the Plaintiffs' allegations, the Court finds that the doctrine of sovereign immunity does not require dismissing the Plaintiffs' First Amended Complaint under Rule 12(b)(6).

2. The University argued that Plaintiffs' claims amount to an "educational malpractice" challenge to the quality of education the University provided and should therefore be dismissed. The Court disagrees. The Court finds that the Plaintiffs' First Amended Complaint addresses the University's decision to transition "in person" students to online education pursuant to the complications that arose as a result of the COVID-19 pandemic. This is a case of first

impression in South Carolina, which necessarily makes the issue outlined in the First Amended Complaint novel. Novel questions of law should not be ordinarily resolved on a Rule 12(b)(6) motion. *Chestnut v. AVX Corp.*, 413 S.C.224, 227-28, 776 S.E.2d 82, 84 (2015).

3. The University argued that Plaintiffs' breach of contract claims should be dismissed, alleging that Plaintiffs had not identified the source of their contractual rights to in-person education and access to the University's on-campus amenities. The Court disagrees. In South Carolina, "[i]t is commonly held that a contract exists between a university and its students." *Carter v. Univ. of South Carolina*, 360 S.C. 428, 432 n. 4, 602 S.E. 2d 59, 61 n. 4 (Ct. App. 2004). The Court finds that Plaintiffs adequately alleged that the University's mission statement, academic enrollment materials, public statements, course catalogs, and marketing materials, among other things, created a contractual obligation between the University and Plaintiffs for in-person education and on-campus amenities in exchange for payment of tuition and fees. *See* Plaintiffs' First Amended Complaint ¶¶ 25-27, 36. These allegations are sufficient to state a claim for breach of contract.

4. The University argued that Plaintiffs' unjust enrichment claims should be dismissed. The Court disagrees. These claims were pleaded in the alternative, which is permitted under South Carolina law. *See Enhance-It, L.L.C. v. Am. Access Tech., Inc.*, 413 F.Supp.2d 626, 632 (D.S.C. 2006). Plaintiffs' unjust enrichment claims were properly pleaded. Specifically, Plaintiffs alleged that the University had been unjustly enriched, Plaintiffs conferred a benefit on the University in the form of monies paid for tuition and fees, those tuition and fee payments were intended to cover in-person educational services and on-campus amenities and services, and the University retained this benefit even though it failed to provide the education, experience, and

services for which the tuition and fees were collected. *See id.* ¶¶ 20-23, 26, 30, 36, 37-39. The Court finds that Plaintiffs have sufficiently pleaded a claim for unjust enrichment.

5. The University argued that Plaintiffs' conversion claims should be dismissed. The Court disagrees. Plaintiffs have adequately pleaded their claim for conversion by alleging identifiable legal rights to the funds they paid for an in-person education and on-campus facilities, the University's retention of those funds, to the exclusion of Plaintiffs, and that such retention was unauthorized because the University did not use those funds for the particular purpose for which they were paid. *See* Plaintiffs' First Amended Complaint ¶¶ 25-27, 29-30, 36, 38-40, 45, 48-49. The Court finds that these allegations are sufficient to state a claim for conversion.

6. The University argued that Plaintiffs Peter and Terry Kelly lack standing to pursue claims against the University as tuition paying parents. The Court disagrees. Plaintiffs pleaded Peter and Terry Kelly paid tuition and fees to the University in exchange for services that were not provided, and that as a consequence they were injured by the University's failure to provide those services and by the University's retaining said tuition and fees. The Court finds that Plaintiffs have properly pleaded an injury-in-fact sufficient to withstand Defendant's Motions to Dismiss.

Given the foregoing, the Court finds and holds that the University's Motions to Dismiss are hereby **DENIED**.

IT IS SO ORDERED this ____ day of _____, 2021.

The Honorable R. Kirk Griffin
Assigned Circuit Court Judge



Richland Common Pleas

Case Caption: Davia Bunch vs University Of South Carolina

Case Number: 2020CP4002330

Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH and CASEY KELLY,	)	Civil Action No. 2020-CP-40-02330
individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<u>ORDER GRANTING</u>
	)	<u>THE UNIVERSITY OF SOUTH</u>
THE UNIVERSITY OF SOUTH	)	<u>CAROLINA'S MOTION FOR</u>
CAROLINA,	)	<u>SUMMARY JUDGMENT</u>
	)	
Defendant.	)	

This matter comes before the Court on a motion filed by Defendant The University of South Carolina (“USC”) on June 14, 2023, seeking summary judgment on all of Plaintiffs’ claims (“USC’s Motion for Summary Judgment”). The Court has carefully reviewed the parties’ filings and the arguments of counsel at the hearing on November 20, 2023. Having considered all arguments and submissions, the Court grants USC’s Motion for Summary Judgment for the reasons stated below.

FACTUAL BACKGROUND

In response to the COVID-19 pandemic, USC, like other colleges and universities in South Carolina and across the nation, closed its campus for a portion of the Spring 2020 semester to everyone except those with extenuating circumstances and transitioned all on-campus classes and services to virtual operation, which required cooperation of all eight USC campuses in 20 locations across South Carolina. (Exhibit A to USC’s Brief in Support of Its Motion for Summary Judgment (“USC’s Brief”), Wilner Rpt. at 4-5.) This closure was consistent with the executive order issued by the South Carolina Governor on March 15, 2020, requiring the closure of all state-supported

universities and authorizing university officials to establish a “means to deliver virtual instruction and remote learning.” (Exhibit C to USC’s Brief, Henry McMaster, Executive Order No. 2020-09 at p. 2, § 2 (Mar. 15, 2020).) The executive order was continued until at least June 26, 2020, making it unlawful for students to be on campus throughout the remainder of the Spring 2020 semester. (Exhibit S to USC’s Brief, Henry McMaster, Executive Order No. 2020-42 at p. 12, § 1(I) (June 26, 2020).)

USC provided prorated refunds to students for non-academic fees related to university housing, meal plans, and parking permits for a portion of the semester beginning March 16, the first day the campus was closed following spring break. (Exhibit E to USC’s Brief, USC_00004993-4; Exhibit F to USC’s Brief, USC_00005126-7.) In total, USC issued more than \$20.7 million in prorated refunds. (Exhibit A to USC’s Brief, Wilner Rpt. at 6.) USC did not refund tuition and other fees assessed during the Spring 2020 semester.

Importantly, USC charged the same amounts for tuition and fees for online instruction and face-to-face instruction. The cost per credit hour was the same no matter the mode of instruction, and tuition rates remained the same whether a student signed up for all in-person courses, all online courses, or a mix of in-person and online courses.¹

Plaintiff Bunch was an undergraduate senior studying Political Science at USC’s Columbia campus in the Spring 2020 semester. (Exhibit A to USC’s Brief, Wilner Rpt. at 7.) After she

¹ For example, it is undisputed that Plaintiff Davia Bunch chose to enroll in two online courses, in addition to three in-person courses, but was charged the same tuition and fees for these online courses as she was for her in-person courses. (Exhibit H to USC’s Brief, Bunch Dep. at 18:9-22; Exhibit A to USC’s Brief, Wilner Rpt. at 7-8.) It is further undisputed that Plaintiffs Davia Bunch and Casey Kelly both paid a technology fee for the Spring 2020 semester—a fee paid by all students, even those taking all online classes or enrolled in USC’s online degree completion program through its Palmetto College. (Exhibit H to USC’s Brief, Bunch Dep. at 72:2-24 and 94:23-95:11; Exhibit G to USC’s Brief, Defendant’s Answer to Int. 8.)

graduated, Plaintiff Bunch filed this class action lawsuit,² purporting to represent a proposed class of undergraduate, graduate, and professional students at the eight different universities and colleges within USC's system and seeking partial refunds of tuition and fees as a result of USC's transition to virtual instruction. Plaintiff Casey Kelly, who was an undergraduate senior at USC Columbia's School of Visual Arts and Design in Spring 2020 (Exhibit A to USC's Brief, Wilner Rpt. at 7), was later added as a named plaintiff. Plaintiffs bring claims against USC for breach of contract, unjust enrichment, promissory estoppel, and conversion.³

It is undisputed that USC's transition to online instruction protected the health and safety of its community and enabled its more than 49,000 students, including Plaintiffs Bunch and Kelly, to complete their courses and make uninterrupted progress toward their degrees. Plaintiffs not only continued their Spring 2020 coursework at USC after the transition and earned the same credits they would have received had the instruction continued in-person, but they also increased their cumulative GPAs, graduated, and accepted employment upon graduation. (Exhibit O to USC's Brief, Cavanagh Rpt. at 3, 8, and 17; Exhibit A to USC's Brief, Wilner Rpt. at 7.)

LEGAL STANDARD

It is well-settled that summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Rule 56(c) further "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of

² Plaintiffs filed a Motion for Class Certification on April 5, 2023, which is now moot in light of this Order.

³ Plaintiffs expressly conceded that summary judgment is appropriate on their conversion claims. (Plaintiffs' Response in Opposition at 36 n. 18.)

an element essential to [a claim] . . . on which that party [bears] the burden of proof.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citations and internal quotation marks omitted). A party opposing a motion for summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C.340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (citations and internal quotation marks omitted). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Id.* at 355, 559 S.E.2d at 336. Reliance on self-serving allegations in a pleading is insufficient to overcome a motion for summary judgment. *See* Rule 56(e), SCRCP. Moreover, “[a] party cannot escape summary judgment on the mere hope that something may develop at trial.” *Champion Int’l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (Ct. App. 1987) (citation and internal quotation marks omitted).

FINDINGS

Having reviewed and carefully considered the parties’ arguments and positions in support of and in opposition to summary judgment, the Court concludes that Plaintiffs have failed to establish a genuine issue of material fact or otherwise defeat USC’s Motion for Summary Judgment, and the Court finds that USC is entitled to summary judgment in its favor on all of Plaintiffs’ claims as a matter of law for the reasons outlined below.

I. Plaintiffs have failed to demonstrate any cognizable damages that do not implicate the educational malpractice doctrine.

A student who has not suffered damages may not bring a claim against a university because the student lacks standing. *See Gardner v. S.C. Dep’t of Revenue*, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 (2003) (“A plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant.”). Standing is a “fundamental requirement in instituting an action.”

Pres. Soc'y of Charleston v. S.C. Dep't. of Health and Env't Control, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020) (citation and quotation marks omitted). "Once it is determined a plaintiff has no standing to prosecute, the court must dismiss the action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994). A showing of damage is also a necessary element of each of Plaintiffs' causes of action. *See, e.g., Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) (stating that proof of damages is necessary element of breach of contract claim); *Barnes v. Johnson*, 402 S.C. 458, 474, 742 S.E.2d 6, 14 (Ct. App. 2013) (noting that promissory estoppel requires that promisee sustain an injury); *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 124, 678 S.E.2d 430, 435 (2009) (affirming dismissal of unjust enrichment claim where appellants suffered no injury). Here, summary judgment is appropriate as to all of Plaintiffs' causes of action because Plaintiffs have failed to demonstrate that they suffered any cognizable damages.

To succeed on any of their claims, Plaintiffs must show they were injured as a result of the transition to remote learning. However, Plaintiffs cannot rely on a purported difference in value or quality of the instruction they received because such alleged injuries amount to damages for educational malpractice, which is not cognizable in South Carolina. *See Hendricks v. Clemson Univ.*, 353 S.C. 449, 460, 578 S.E.2d 711, 716 (2003). It is undisputed that USC did not stop instruction or cease operations; rather, USC merely shifted instruction and services to an online platform due to the danger posed by the worldwide pandemic. Plaintiffs admittedly received the same courses for the same credits taught by the same faculty at the same cost per credit after the switch to online instruction.⁴ (Exhibit O to USC's Brief, Cavanagh Rpt. at 3 and 8; Exhibit A to

⁴ Plaintiff Bunch herself chose to enroll in two online courses, in addition to three in-person courses, for the Spring 2020 semester, and she was charged the same tuition and fees for these online courses as she was for her in-person courses. (Exhibit H to USC's Brief, Bunch Dep. at

USC’s Brief, Wilner Rpt. at 7.) Plaintiffs have not submitted any evidence – much less enough to create a genuine issue of material fact – showing how they were harmed by the switch to online instruction.⁵ Plaintiffs do not and cannot contend that USC’s shift to virtual classrooms prevented them from completing their coursework or being awarded the expected credits toward graduation. Instead, Plaintiffs maintain that they were harmed because they received something different (online education) from what they expected (in-person instruction). But “different” is not necessarily harmful, and Plaintiffs must show actual harm to meet the damages element of all of their claims. Plaintiffs cannot have their cake and eat it too by insisting that they are not seeking damages for receiving an inferior education (and hence not barred by the educational malpractice doctrine), while simultaneously alleging they were damaged because they received an education that is materially *different* from what they signed up for. In arguing their alleged injury was not receiving the “product” for which they contracted, Plaintiffs fail to explain how they can establish they were damaged without comparing the value of the two (supposedly) different products and

18:9-22; Exhibit A to USC’s Brief, Wilner Rpt. at 7.) As for Plaintiff Kelly, the syllabi for two of her courses stated they would be taught in a hybrid format, rather than exclusively in person, and she chose not to drop them—which she could have done at no cost—after learning about the mode of instruction. (Exhibit Z to USC’s Brief, FAMS 308 Syllabus, at USC_00047903; Exhibit AA to USC’s Brief, SPAN 122 Syllabus, at USC_00047918-9; Exhibit N to USC’s Brief at USC_00002318.)

⁵ Plaintiffs do not dispute that they accomplished all of their course objectives during the Spring 2020 semester, received full academic credit, increased their cumulative GPAs, and accepted employment upon graduation. (Exhibit O to USC’s Brief, Cavanagh Rpt. at 3, 8, and 17; Exhibit A to USC’s Brief, Wilner Rpt. at 7.) Plaintiff Kelly surpassed her cumulative GPA of 3.42 to earn a 3.8 GPA during Spring 2020. (Exhibit O to USC’s Brief, Cavanagh Rpt. at 8.) Similarly, Plaintiff Bunch outperformed her 3.728 cumulative GPA by earning a 3.9 GPA for the Spring 2020 semester. (*Id.*) Prior to graduating, Plaintiff Bunch accepted a job as a finance manager at a political consulting firm in Charleston, South Carolina. (Exhibit A to USC’s Brief, Wilner Rpt. at 7.) Plaintiff Kelly similarly accepted an offer before graduating to work in Qualcomm’s marketing department in San Diego, California starting in June 2020. (*Id.*; Exhibit P to USC’s Brief, CKELLY0000007.)

showing that what they received purportedly had less value or worse quality than what they bargained for. Indeed, the only way for Plaintiffs to show actual harm would be to show they received inferior instruction because they received a portion of a semester's teaching remotely instead of in-person. Such an evaluation would necessarily require the Court to make judgments about the quality of the academic curriculum, including faculty members, student engagement and learning, and other qualitative factors, which is precisely where this Court cannot venture under the educational malpractice doctrine.

In sum, Plaintiffs have failed to show a genuine issue of material fact with respect to the basic elements of all of their claims that require Plaintiffs to show they suffered a cognizable injury. Further, because Plaintiffs have not met their burden of demonstrating that they incurred any cognizable damages, Plaintiffs lack standing to bring their causes of action.

In addition, it is undisputed that Plaintiff Bunch did not pay USC any out-of-pocket tuition or fees (Exhibit A to USC's Brief, Wilner Rpt. at 65-67, including Figure 12.) USC could have no obligation to disgorge tuition and fees that she did not pay in the first place. Thus, Plaintiff Bunch has not suffered a concrete injury in fact, and therefore, has no standing. *See Patel v. Univ. of Vermont & State Agric. Coll.*, No. 5:20-CV-61, 2021 WL 4523683, at *1, 6 (D. Vt. Oct. 1, 2021) (denying motion to reconsider dismissal of non-paying plaintiffs in a similar COVID-19 tuition class action because "they lack constitutional standing to seek the return of tuition they had not actually paid").⁶

⁶ Similarly, the shift to virtual learning did not have any impact on Plaintiff Kelly's Internship in the Media Arts class (MART 499) because she was able to complete this internship by obtaining enough of the required hours of work, despite the closure of the USC campus during the pandemic. Plaintiff Kelly testified that she continued her internship for two weeks after all the students were sent home so that she could obtain credit and complete the course. (Exhibit L to USC's Brief, C. Kelly Dep. at 113:7-114:19.)

II. Plaintiffs have failed to point to any contractual language promising in-person instruction and educational services.

In addition to failing to show damages, Plaintiffs have not identified a specific contractual term that USC breached, and, therefore, USC is entitled to summary judgment as a matter of law on Plaintiffs' causes of action for breach of contract. To prevail on a claim for breach of contract, a plaintiff must establish "the existence of the contract, its breach, and damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). Here, Plaintiffs have failed to show facts supporting the existence of specific contractual provisions USC allegedly breached. *See Ferguson v. Waffle House, Inc.*, 18 F.Supp.3d 705, 731 (D.S.C. May 8, 2014) ("Under South Carolina law, in order to prevail on a breach of contract claim, the Plaintiff bears the burden of establishing the existence and terms of the contract [and] the Defendant's breach of one or more of the contractual terms") (citations omitted)). Specifically, Plaintiffs have not identified any contractual promise in the Academic Bulletin, course registration, Statement of Financial Responsibility, or any other publication or document⁷ obligating USC to provide a particular mode of delivery for its curriculum or to provide its educational services covered by fees (as opposed to *non-academic* services related to meals, housing, and parking, for which fees USC issued a prorated refund) exclusively on-campus or in any particular fashion. And Plaintiffs have pointed to no contractual provision entitling students to refunds of tuition or fees

⁷ While Plaintiffs quote snippets from brochures and refer to generalized statements regarding the college experience from USC's website (Second Am. Compl. ¶¶ 26-27), Plaintiffs have seemingly abandoned this argument as they did not raise it in their Response in Opposition or at the hearing. In any event, these descriptive documents do not constitute contractual promises and, regardless, do not promise exclusively in-classroom instruction or access to on-campus facilities. (*See* USC's Brief at 23-24.)

this far into the semester for any reason. The Court finds that this failure is fatal to their claims as a matter of law.

A. *The Statement of Financial Responsibility and subsequent course registration do not contain a contractual promise of in-person instruction or on-campus services.*

Plaintiffs attempt to rely on the Statement of Financial Responsibility and subsequent course registration processes to support their contention that USC promised in-person instruction and on-campus services. The record reflects that each semester, as a precondition to registering for classes, students are required to accept the Statement of Financial Responsibility, which is an express contract, and pursuant to which they expressly agree to “accept the responsibility for all charges billed to [their] account” by “submitting course registration.” (Exhibit V to USC’s Brief, USC_00001466.)

If a contract’s “language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and [its] language determines the instrument’s force and effect.” *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). “Where an agreement is clear and capable of legal interpretation,” this Court’s “only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.” *Id.* (citation and internal quotation marks omitted). Whether a contract’s language is ambiguous is a question of law. *See S.C. Dept of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). The “construction of a clear and unambiguous” contract is a “question of law for the court.” *Id.*

The Court finds that the plain language of the Statement of Financial Responsibility is clear and unambiguous, and therefore, the construction of its terms is a question of law for the Court. The Court finds that Plaintiffs’ interpretation is untenable. Nothing in the Statement of Financial

Responsibility promises students in-person courses or on-campus services, unfettered access to campus buildings and facilities, or the right to take their courses in any particular modality. And the Statement of Financial Responsibility does not promise that USC, under all circumstances, will provide educational services for which students paid fees in a particular fashion, nor that classes will be conducted in exactly the same way as they are described in Self Service Carolina.⁸

Plaintiffs' contract and promissory estoppel claims depend entirely on their contention that the Statement of Financial Responsibility "incorporates course registration." (Plaintiffs' Response in Opposition ("Response") at 27.) The Court finds that it does no such thing. The Statement of Financial Responsibility merely states, "**By submitting course registration** I am entering into a financial arrangement" (emphasis added). The Statement of Financial Responsibility's reference to the act of submitting course registration is only in the context of triggering the students' duty to pay tuition and fees if they register for courses. This sentence **does not incorporate** into the contract a student's choices made during course registration, such as a student's selection of a class with a particular mode of instruction, at a certain location, and taught by a specific professor. The phrase "by submitting" does not mean "hereby incorporating." The term "to submit" is not a synonym of the term "to incorporate." This is a far cry from contractual language that actually incorporates terms and conditions.⁹ To conclude that the Statement of

⁸ Self Service Carolina is USC's web-based platform through which most USC students, among other things, register for classes. (See Exhibit W to USC's Brief, Marterer Aff., ¶ 4.)

⁹ Plaintiffs' argument that they entered into a "clickwrap" agreement by electronically submitting their class registration likewise fails. Choosing classes in the registration process did not embody the formalities necessary for the formation of a contract, and a "clickwrap" agreement, like any other contract, only arises where the requisite formalities exist and a meeting of the minds is reached. See *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 877 S.E.2d 486 (Ct. App. 2022), *reh'g denied* (Aug. 30, 2022) (citing *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993 F.3d 253 (4th Cir. 2021)). The undisputed facts show that the instructional method was not identified anywhere as a term having legal significance at all. The class registration information in Self Service Carolina does not show an "I agree" box, it does not state that the instructional method

Financial Responsibility, by requiring students to agree to pay tuition and fees as a prerequisite to submitting their course registration, contractually obligates USC to provide every class and every service in every detail as described in the registration process is not consistent with the plain language of the Statement of Financial Responsibility, and the Court rejects Plaintiffs' contentions that the mode of instruction information supplied in the registration process constitutes a contractual offer or promise. The plain meaning of the Statement of Financial Responsibility does not support Plaintiffs' arguments.

Moreover, Plaintiffs do not dispute that students sign the Statement of Financial Responsibility *before* course registration—meaning they accept the financial responsibility of paying the costs of their tuition and fees before ever seeing or knowing the method of instruction for their classes. (*See* Response at 10.) In fact, the uncontroverted evidence submitted by USC demonstrates that students might not even see the instructional method at all after signing the Statement of Financial Responsibility because the mode of instruction would be visible only if the student clicked certain links when navigating the course registration process. (*See* Exhibit W to USC's Brief, Marterer Aff., ¶ 12, 16, and 30; USC's Brief at 26-28.)¹⁰

In addition, to accept Plaintiffs' untenable interpretation of the Statement of Financial Responsibility would open USC to breach of contract claims every time it did not provide the same professor for a class as indicated in the registration process, or when the location of a class changed

is a contractual offer (much less a promise), and nothing in the course registration process indicates that the information about classes or the student's selection of classes will have any effect on the parties' legal rights and obligations.

¹⁰ Plaintiffs argue that the Court should disregard the affidavit of Aaron Marterer, USC System Registrar, establishing the different ways to register, stating that his affidavit conflicts with his prior testimony. The Court, however, finds that nothing in his affidavit actually contradicts his prior testimony. Thus, the Court concludes that Plaintiffs have failed to offer any evidence to contradict Mr. Marterer's affidavit. (*See* USC's Brief at 12-14; Exhibit W to USC's Brief, Marterer Aff.; Exhibit F to Plaintiffs' Motion for Class Certification, Marterer Dep. at 31:23-32:13.)

after registration or even mid-semester, or when the registration portal incorrectly indicates a course is online when it is actually hybrid, or when a course is reflected as face-to-face, but is actually hybrid or online. Such an interpretation is unsupported and would “be unwise, considering the great potential for embroiling schools in litigation that such [a finding] would create.” *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003) (rejecting a claim for damages based upon negligent advice provided by an academic adviser).

Moreover, in similar COVID-19 tuition refund cases in other jurisdictions, courts have rejected arguments that are remarkably similar to Plaintiffs’ assertions here, finding that the financial responsibility statements and attendant course registration processes do not create an express promise of face-to-face instruction. *See, e.g., Zwiker v. Lake Superior State Univ.*, 986 N.W.2d 427 (Mich. Ct. App. 2022) (oral argument scheduled by Michigan Supreme Court on application for leave to appeal) (finding “no error in the trial courts’ conclusions that the financial agreements between the parties [that referenced course registration] were unambiguous and did not promise live, in-person instruction”); *Bergeron v. Rochester Inst. of Tech.*, No. 20-CV-6283 (CJS), 2023 WL 1767157 (W.D.N.Y. Feb. 3, 2023) (appeal filed) (finding that financial responsibility agreements did “not contain any promises of the provision of in-person, on-campus instruction or services,” and that “listings of specific physical classroom locations in course descriptions and the university course registration system” did “not constitute a specifically designated, discrete promise that [the institute] will provide an entire semester of on-campus, in-person instruction and experiences, and are not proof of the existence of such a promise”); *Lindner v. Occidental Coll.*, No. CV 20-8481-JFW(RAOX), 2020 WL 7350212 (C.D. Cal. Dec. 11, 2020) (finding that plaintiff could not rely on course schedules and syllabi as evidence of in-person nature of college’s course offerings because, although they stated a specific room where each class would

meet, they did “not promise in-person instruction or that the courses will always meet in the specific rooms stated”); *Miller v. Lewis Univ.*, 533 F. Supp. 3d 678 (N.D. Ill. 2021) (dismissing student’s breach of contract claim, finding that “notations regarding instructional method” contained in university’s “course schedule” during “recurring course registration process” were “hardly sufficient to form a binding contract as they cannot be confused with definite and concrete promises,” and that “[w]ithout more, these notations are informative rather than promissory and [student] cannot transform such statements into a binding contract” promising “in-person education” (citation and internal quotation marks omitted)).

In summary, the unambiguous terms of the contract simply do not include a promise of face-to-face instruction or provision of educational services covered by fees in any particular fashion, and after careful consideration of all of Plaintiffs’ arguments to the contrary, the Court finds that USC is entitled to summary judgment on Plaintiffs’ breach of contract claims.

B. USC expressly reserved the right to amend its courses, policies, and procedures.

In addition to the foregoing, USC expressly reserved the right to amend its course offerings, policies, and procedures at any time. USC’s 2019-2020 Academic Bulletins are the official documents of record concerning USC’s academic programs and regulations and are provided to students during course registration in Self Service Carolina. (Exhibit N to USC’s Brief at USC_00001467.) All of USC’s Academic Bulletins for the 2019-2020 academic year across the USC system contained an express disclaimer that USC “reserves the right to make changes in curricula, degree requirements, course offerings, or academic regulations at any time when, in the judgment of the faculty, the president, or the Board of Trustees, such changes are in the best interest of the students and [USC].” (*Id.*) Thus, class locations, meetings times, professors, and modes of instruction are all subject to change by USC if circumstances require and it is in the best interest

of its students. In fact, the evidence in the record shows that USC’s professors had the authority to plan and provide a mode of instruction that differed from the instructional method listed when students registered for classes. Long after the registration process was completed, professors could still change the instructional method via syllabi given to students on the first day of class once the course actually started. (Exhibit O to USC’s Brief, Cavanagh Rpt. at 4.) Contrary to Plaintiffs’ argument, USC’s reservation of the right to make changes to the curriculum and coursework is the opposite of a bait-and-switch. Having expressly informed students that it could make changes when circumstances warranted, USC cannot be guilty of a bait-and-switch after making changes to adapt to the COVID pandemic. And to counterbalance this right, pursuant to USC’s rules and regulations, “students have the ability to add and remove courses from their schedule through Self Service Carolina . . . during the official first day of the course and . . . to a minimum of 6% of the Part of Term in which the course is scheduled.” (Exhibit N to USC’s Brief, USC_00002338.)

Plaintiffs’ assertion that USC’s reservation of rights is unenforceable because it also states that the “bulletin is for information purposes only and does not constitute any contractual agreement between a student and [USC]” is also unavailing. The Academic Bulletins make explicit that the course registration details are not contractual by stating that USC can make changes to curricula and courses whenever needed. For the Court to find the class registration details are a part of the contract as Plaintiffs insist, the Court would have to find a meeting of the minds, and the express statement of USC that it reserves the right to make changes to those details when they are justified proves that there was no meeting of the minds between USC and its students such that USC was contractually bound to provide face-to-face instruction at all times whenever a student registered for a class that was described in Self Service Carolina as face-to-face. Another court in a similar COVID-19 tuition refund case held, “if [the university] has the ability to change the

underlying policies and procedures that create the implied contractual term, it follows that the implied term itself is subject to change.” *Dixon v. Univ. of Miami*, 75 F.4th 1204, 1209 (11th Cir. 2023). The same logic applies here. If USC objectively intended to be contractually bound to honor at all times every detail about the classes and services reflected in Self Service Carolina during registration, it would not have reserved the flexibility to change the curricula and course offerings whenever it was in the best interests of USC and the students to do so.

The Court finds that USC’s reservation of its right to make changes allowed USC to shift to online operation in the face of the COVID-19 pandemic. Because of this express reservation, USC cannot be held liable for exercising its right to make the necessary changes to its curriculum and offerings in the midst of a global pandemic. *See Dixon*, 75 F.4th at 1208-1210 (find that “Miami cannot be held liable for switching to remote learning at the time and under the conditions that it did” because “Miami retained ‘the express right to alter or amend its procedures or policies’”). For this additional reason, USC is entitled to summary judgment on Plaintiffs’ breach of contract claims.

III. Plaintiffs’ claims are barred by South Carolina’s educational malpractice doctrine.¹¹

Educational malpractice claims have been rejected in South Carolina and by virtually all courts in other jurisdictions. *See Hendricks*, 353 S.C. at 457, 578 S.E.2d at 715 (stating the majority

¹¹ Plaintiffs argue that because this Court rejected educational malpractice and sovereign immunity as grounds for dismissal of their complaint at the motion to dismiss stage, that ruling somehow is dispositive now. This argument is not correct. “[T]he denial of a motion to dismiss does not establish the law of the case and the issue[s] raised by the motion can be raised again at a later stage of the proceedings.” *McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 (1994) (citing 21 C.J.S. Courts, 149, p. 183 (1990)); *see also DeClemente v. Assistive Tech. Med. Equip. Servs., LLC*, No. 2018-001413, 2020 WL 5412892, at *1 (S.C. Ct. App. Sept. 9, 2020) (citing *McLendon*, 313 S.C. at 526 n.2, 443 S.E.2d at 540 n.2) (“We find no merit to Appellant’s argument that Judge Nicholson erred in [granting summary judgment and] overruling Judge Dennis’s ruling on the statute of limitations. Judge Dennis’s order denying Respondents’ motion to dismiss did not establish the law of the case.”).

of states refuse to recognize claims brought by students alleging an inadequate education); *Ross v. Creighton Univ.*, 957 F.2d 410, 414 (7th Cir. 1992) (acknowledging “the overwhelming majority of states that have considered this type of claim have rejected it”). While it is true that there is currently a split in decisions among the COVID-19 tuition refund cases in other jurisdictions with regard to whether students’ claims implicate the educational malpractice doctrine, most of the decisions declining to apply the educational malpractice doctrine have done so in the early stages of the litigation and have not fully considered the implications of the students’ inability to prove damages without straying into the impermissible territory of educational quality and processes.¹²

In any event, in South Carolina, the law on educational malpractice is clear, and this Court need go no further than simply applying the straightforward principles set forth by the South Carolina Supreme Court in *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 716 (2003). In South Carolina, a student’s claim that “calls for an adjudication of the *deficiency* of [a university’s] services” cannot proceed because it “would invite courts to engage in just the type of subjective analysis that courts prohibiting educational malpractice claims in tort and contract have avoided.” *Hendricks*, 353 S.C. at 461, 578 S.E.2d at 717. Our Supreme Court has identified several policy concerns with recognizing these types of claims, including: “(1) the lack of a satisfactory standard of care by which to evaluate educators; (2) the inherent uncertainties of the cause and nature of damages; and (3) the potential for a flood of litigation against already beleaguered schools.” *Id.* at 457, 578 S.E.2d at 715 (citations omitted). This Court finds that these same policy concerns apply to Plaintiffs’ claims for tuition and fee refunds here. Plaintiffs have not advanced an objective

¹² The cases cited by Plaintiffs themselves in their Response demonstrate this. (See USC’s Reply Brief at 14-15 n.9.) Moreover, other courts in similar COVID-19 tuition refund cases have dismissed such complaints as impermissible educational malpractice suits. (See USC’s Brief at 16-17.)

standard of care by which the online instruction would be measured because their argument that online instruction is a “different product” from face-to-face instruction necessitates a qualitative analysis of the two forms of instruction and calls for an adjudication of the alleged deficiencies of online instruction. Further, Plaintiffs’ failure to articulate what harm they experienced from having to take their classes online for the remainder of the Spring 2020 semester implicates the policy concern related to the uncertainties of the cause and nature of damages. And to allow claims like those of Plaintiffs to proceed would open the floodgates of litigation, which is precisely what our State’s highest court sought to avoid in precluding educational malpractice claims. South Carolina unequivocally does not recognize such claims, regardless of whether they are based in contract, quasi-contract, or tort. *See id.* at 460, 578 S.E.2d at 716. There is simply no basis for the Court to deviate from this well-established precedent.

Plaintiffs’ argument that their claims are “objective” because there exists “a specific, identifiable contractual promise that the University failed to honor” (Response at 20) fails. As the Court found above, Plaintiffs are unable to identify any term of the contract that constitutes an objective promise that USC will provide classes and on-campus services in the exact manner as indicated in the online registration information under any circumstance, but particularly when flexibility is required, as when a professor is no longer available to teach a class as expected at the time of registration, or when there are fires, floods, hurricanes, pandemics, or other extenuating circumstances. Plaintiffs are further unable to identify any term of the contract constituting an objective promise that USC will provide educational services covered by fees in a particular fashion. The Court finds that no such promises exist objectively.

Plaintiffs next attempt to get around the clear educational malpractice bar by arguing that their claims are not tied to the subjective quality of the education they received. (Response at 20.)

However, Plaintiffs allege throughout their Response that the so-called “promised” educational product of face-to-face instruction was substituted by “an inferior product.” (*Id.*) Plaintiffs simply cannot have it both ways. Plaintiffs specifically seek a “disgorgement of the difference between the value of the online learning which is being provided versus the value of the live in-person instruction in a physical classroom on [USC’s] campus that was contracted for.” (Second Am. Compl. ¶ 67.) Plaintiffs’ allegations also repeatedly criticize the online instruction USC provided after the transition.¹³ Further, the report of Plaintiffs’ own expert, Ted Tatos, is replete with references claiming there is a quality difference between “Emergency Remote Teaching”¹⁴ (hereinafter, “ERT”) and both face-to-face instruction and courses designed in advance to be online. (Exhibit D to Plaintiffs’ Motion for Class Certification, Tatos Rpt. at 30-34.) In fact, much of Mr. Tatos’ 86-page report is dedicated to his discussions on the alleged “quality differential” of ERT. Mr. Tatos’ entire methodology for computing Plaintiffs’ alleged damages is based on his assumption that the benefits of ERT are less than the benefits of normal face-to-face instruction.¹⁵ Importantly, the uncontroverted evidence in the record reflects that USC did not charge less for

¹³ See Second Am. Compl. ¶ 28 (referring to emergency remote instruction as “doubtlessly inferior”); see also *id.* ¶¶ 46, 64, 66, 67 (making allegations about the character, differences, and value of online learning compared to face-to-face instruction).

¹⁴ Mr. Tatos refers to the online instruction provided by USC during the roughly 49 days of the Spring 2020 semester after the pandemic and governmental orders forced USC to close its campuses as “Emergency Remote Teaching.” (Exhibit D to Plaintiffs’ Motion for Class Certification, Tatos Rpt. at 10-11.)

¹⁵ Mr. Tatos purports to quantify the amount of tuition and fees that should be disgorged based upon “the amount that students overpaid for the education benefits they received versus those for which they paid.” (*Id.* at 51.) He counts 49 days during which instruction was provided solely online for face-to-face classes after the pandemic (“the 49 days”). (*Id.*, Table 6.) He claims that ERT provided during the 49 days was a “difference in kind of educational instruction and experience,” and that damages can be calculated as a measure of “the difference in the benefits attendant to the instruction and college experience agreed upon versus the benefits, or lack thereof, that accompanied [ERT].” (*Id.* at 48.)

online instruction than for face-to-face instruction. Instead, USC assessed students tuition and fees based on campus, residency, and status as either a part-time or full-time student, regardless of whether they signed up for a class with an instructional method of “face-to-face” or some online modality. (Exhibit A to USC’s Brief, Wilner Rpt. at 9-10.)¹⁶ As a result, an assessment of Plaintiffs’ alleged damages would be impossible without an arbitrary calculation of the value of the educational experience delivered by USC after the implementation of the COVID-19 emergency action plan compared to its in-person counterpart. The Court finds that Plaintiffs’ claims fit squarely into the category of claims barred by the educational malpractice doctrine which prohibits a qualitative valuation of the educational instruction and services provided by USC in the later part of the Spring 2020 semester.

Plaintiffs’ citation to *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992) for the argument that the Court need not delve into the “nuances of educational processes and theories” to determine whether USC failed to deliver its alleged specific promise of face-to-face instruction misses the mark. In *Ross*, which was cited with approval by the South Carolina Supreme Court in *Hendricks*, the Seventh Circuit explained, “[I]f the defendant took tuition money and then provided no education, or alternately, promised a set number of hours of instruction and then failed to deliver, a breach of contract action may be available.” *Id.* at 417. The Court finds that this scenario is the antithesis of this case. Plaintiffs here do not contend that USC provided *no* educational instruction and services, or fewer credit hours than they expected; they challenge the *type* and *quality* of the instructional and service methods USC used after the transition. USC did not cancel

¹⁶ For example, Plaintiff Bunch chose to enroll in two online courses, in addition to three in-person courses, for the Spring 2020 semester but was charged the same tuition and fees for these online courses as she was for her in-person courses. (Exhibit H to USC’s Brief, Bunch Dep. at 18:9-22; Exhibit A to USC’s Brief, Wilner Rpt. at 7.)

classes for the remainder of the semester, nor did it cease operations and academic services for which various fees are paid. Rather, USC shifted instruction and services to an online platform and continued to teach course materials and to award academic credit to students. Plaintiffs do not and cannot contend that USC's shift to virtual classrooms prevented students from completing their coursework or receiving expected credits toward graduation. To the contrary, Plaintiffs achieved grade point averages for the Spring 2020 semester that were higher than their cumulative averages, received full course credit, and earned their degrees. (Exhibit O to USC's Brief, Cavanagh Rpt. at 3 and 8.) Thus, USC did provide Plaintiffs with instruction in the courses for which Plaintiffs registered. That is, USC did provide educational instruction and services notwithstanding the required closure of the campus and its inability to have face-to-face instruction. *See Ross*, 957 F.2d at 417 (cited with approval in *Hendricks*, 353 S.C. at 460, 578 S.E.2d at 716) (explaining that to state a claim for breach of contract against a university, "the plaintiff's complaint would not be that the institution failed to perform adequately a promised educational service, but rather that it *failed to perform that service at all.*" (emphasis added)). The question here is not whether USC performed, but whether the performance was materially inferior, and, therefore, Plaintiffs' "claim[s] call[] for an adjudication of the *deficiency* of [USC's] services," which is expressly disallowed under South Carolina law. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 461, 578 S.E.2d 711, 717 (2003).

The Court is also unpersuaded by Plaintiffs' argument that because USC purportedly did not provide any education and services at all for one week following spring break, Plaintiffs may pursue damages for that one week of tuition and fees without running afoul of the educational malpractice bar. The evidence in the record reflects that this week was part of the transition process during which USC undertook various efforts to shift all instruction online. (Exhibit O to USC's

Brief, Cavanagh Rpt. at 8-11; Exhibit A to USC's Brief, Wilner Rpt. at 4-5; Exhibit B to USC's Brief, USC_00008841-2; Exhibit J to USC's Brief, S. Kelly Dep. 42:17-20.) Thus, USC did provide educational services during this additional week of spring break. Further, using this one-week period to transition to online instruction would not constitute a material breach in this case. The one-week closure is no different than a university's temporary shut-down occasionally necessitated by more common outside occurrences such as snowstorms, wildfire, flooding, or hurricanes. (Exhibit O to USC's Brief, Cavanagh Rpt. at 11-12.) More importantly, Plaintiffs are not complaining that they did not receive the *quantity* of instruction, and Plaintiffs have not pointed to any contractual obligation by USC to provide any fixed number of hours in class or fixed amount of educational services covered by fees. In any event, Plaintiffs completed all their courses and got their full credits.

As for Plaintiffs' argument that they are entitled to the return of academic fees for services not provided by USC after the transition to remote instruction in Spring 2020, Plaintiffs have failed to demonstrate a genuine issue of material fact to survive summary judgment in this regard. In South Carolina, the educational malpractice bar applies equally to tuition and fees that are collected in relation to the provision of education. *See Hendricks*, 353 S.C. at 460-61, 578 S.E.2d at 717-18. In this case, both parties have treated tuition and fees related to education (as opposed to *non-academic* fees for meals, housing, and parking, for which USC did issue a prorated refund) without making a meaningful distinction. For example, Plaintiffs assert, "In exchange for the courses and instructional methods they selected during registration, Plaintiffs paid the University the tuition and fees it assessed pursuant to the Financial Responsibility Statement, including mandatory 'technology' and 'lab' fees." (Response at 13.) It is undisputed that Plaintiffs received the educational services for which they paid fees during the first part of the Spring 2020 semester. The

record further reflects, and Plaintiffs have not been able to controvert, that Plaintiffs continued to receive certain benefits of educational services covered by fees both during and after the transition to virtual education. (*See* Exhibit A to USC’s Brief, Wilner Rpt. at 40-44; Exhibit O to USC’s Brief, Cavanagh Rpt. at 4-5; *see also* USC’s Brief at 4-5.) Plaintiffs have not met their burden of showing a genuine issue of material fact with respect to how they were damaged by any alleged failure to deliver the academic services covered by fees for only a portion of Spring 2020 that would not call for an impermissible determination of the deficiency of such services. Thus, the Court finds no basis on which to make a different ruling with respect to fees related to educational services, and the Court holds that the educational malpractice doctrine equally bars Plaintiffs’ claims related to fees and tuition.

IV. The doctrine of impossibility excused USC’s performance as a matter of law.

It is undisputed that the closure of all state-supported universities, including USC, was required by law by virtue of the Governor’s executive orders in response to the COVID-19 pandemic. Governor McMaster’s March 15, 2020 executive order specifically directed the closure of all state-supported universities and authorized university officials to establish a “means to deliver virtual instruction and remote learning.” (Exhibit C to USC’s Brief, Henry McMaster, Executive Order No. 2020-09 at p. 2, § 2 (Mar. 15, 2020).) The Court holds that even if Plaintiffs were able to identify a contractual term obligating USC to provide in-person instruction and on-campus services at all times, the global pandemic and the Governor’s resulting executive orders, in turn, would have substantially frustrated the purpose of any such alleged contract, making performance impossible. *See, e.g., Burt v. Bd. of Trs. of the Univ. of R.I.*, 84 F.4th 42 (1st Cir. 2023) (affirming trial court’s discharge of university’s duty to perform in related COVID-19 case, and holding that pandemic and governor’s resulting orders “substantially frustrated the principal

purpose of the contracts – the provision of in-person, on-campus instruction – and made performance of the contract impracticable”); *see also Restatement (Second) of Contracts* § 261 (1981), including comment b., illustration 1 and comment d., illustration 7.

Under South Carolina law, “[t]he doctrine of impossibility excuses performance when the thing to be done cannot by any means be accomplished” *Morin v. Innegrity, LLC*, 424 S.C. 559, 567, 819 S.E.2d 131, 136 (Ct. App. 2018) (citation and internal quotation marks omitted). “A party to a contract must perform its obligations under the contract unless its performance is rendered impossible by an act of God, the law, or by a third party.” *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 593, 493 S.E.2d 875, 879 (Ct. App. 1997) (“Impossibility must be real and not a mere inconvenience.”). Here, there is no genuine issue of material fact that USC’s performance was rendered impossible both by “an act of God” (the unprecedented global pandemic) and by “the law” (the Governor’s executive orders). (*See* Exhibit C to USC’s Brief, Henry McMaster, Executive Order No. 2020-09 at p. 2, § 2 (Mar. 15, 2020).) The threat to the health of students, professors, and personnel posed far too great of a risk to continue to provide face-to-face instruction. And in any event, the Court finds that doing so was simply not possible because it would be illegal, not just unsafe, and would require USC to violate state law.

Plaintiffs’ argument that it was somehow “not impossible for the University to perform on its promise to provide face-to-face instruction and access to campus services” is unconvincing. (Response at 34.) The fact that it *may* still be possible for USC to perform if, for example, it was willing to break the law and risk the consequences, does not bar USC from claiming discharge. *See Restatement (Second) of Contracts* § 264, comment a. (1981). USC was required to stop in-person instruction and on-campus services to comply with the Governor’s executive orders—laws with which USC and all students were required to comply—beginning March 16, 2020, and until

at least June 26, 2020, which was 8 weeks after the last day of classes at USC in Spring 2020. (*See* USC’s Brief at 32-34.) Because of that requirement, the law mandates the conclusion that any contractual obligation USC may have had to provide in-person, on-campus instruction and services prior to the Governor’s orders going into effect was discharged once USC’s performance was made impossible. *See Restatement (Second) of Contracts* § 264, comment a. (1981) (“if supervening governmental action prohibits a performance or imposes requirements that make it impracticable, the duty to render the performance is discharged. . . .”); *see also White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371-72, 601 S.E.2d 342, 345 (2004) (citing to § 264 of the Restatement while noting that “[w]hen a contract is originally legal, but performance becomes illegal due to a change in the law, any subsequent performance is against public policy and the party who has agreed to perform is excused from doing so”). Plaintiffs inevitably concede that the Governor’s executive orders required USC to stop in-person instruction. (Response at 19.)

Plaintiffs’ attempt to claim that, even if performance were impossible, USC “would still be liable to return the portion of tuition and fees it collected for services not rendered” (Response at 35), is likewise unavailing. Nothing in the law, including the Restatement, states that Plaintiffs should be entitled to restitution. Further, the Court finds that Plaintiffs have not shown that they would be entitled to any restitution. Rather than ceasing its educational activities and services altogether, USC continued to act in good faith by supplying the only possible substantially equivalent substitute performance by continuing to provide educational instruction and services to its students while keeping them and the rest of the USC community safe and complying with the Governor’s orders. Moreover, as discussed above, Plaintiffs have failed to proffer a theory of restitutional damages that does not impermissibly stray into the province of educational

malpractice. Thus, the Court finds that the doctrine of impossibility excused USC's performance as a matter of law, and Plaintiffs have not demonstrated that any restitution is recoverable.

V. The doctrine of sovereign immunity bars Plaintiffs' claims against USC.¹⁷

In South Carolina, the General Assembly determines when and under what circumstances the State may be sued. *See* S.C. Const., Art. X, § 10 ("The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted."); *see also id.* at Art. XVII, § 2. The State and its subdivisions are thus immune from suit subject only to limited waivers provided by statute. *See, e.g.,* S.C. Code Ann. § 15-78-20(b) (statute affording the State "immunity from liability and suit for any tort except as waived by this chapter"). USC is an arm of the state of South Carolina. *See* S.C. Code Ann § 59-107-10 (including USC in the definition of "state institution"). Plaintiffs do not contest that USC is a governmental entity entitled to sovereign immunity. (*See* Response at 16-19.) Plaintiffs' only dispute is whether this immunity was waived.

In 1978, the South Carolina Supreme Court eliminated the State's immunity from suit based upon its contractual obligations. In *Kinsey Constr. Co. v. S.C. Dep't of Mental Health*, the court held: "[W]hen a State secures itself the benefits of a contract, it implicitly assumes the corresponding liabilities." 272 S.C. 168, 171, 249 S.E.2d 900, 902 (1978). USC argues that the Supreme Court subsequently overruled *Kinsey's* general waiver of sovereign immunity for breach of contract claims in *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001), holding that the State waives its immunity related to a breach of contract claim only when a statute governs the specific contract at issue. Plaintiffs disagree with USC's interpretation of the *Unisys* holding, arguing that *Unisys* overruled only the venue portion of the

¹⁷ *See* Footnote 11, above.

Kinsey decision and did not overrule the portion of *Kinsey* that waived the State's sovereign immunity for breach of contract claims.

The Court, however, need not resolve this issue here because even if Plaintiffs were correct that South Carolina law allows the State to implicitly consent to being sued by entering into contracts not covered by statutory authority, Plaintiffs have failed to identify a waiver of USC's sovereign immunity for claims arising from the switch to online instruction and operation in the Spring 2020 semester in response to the COVID-19 pandemic. As the Court found above, USC's contract with Plaintiffs did not include an express contractual promise to provide educational instruction and services in person or in any specific modality. *See, e.g., Goldstein v. Univ. of Central Fla. Bd. of Trs.*, No. 6D23-1203, 2023 WL 5492043, at *2 (Fla. Dist. Ct. App. Aug. 25, 2023) (affirming trial court's order of dismissal on sovereign immunity grounds and in favor of university where plaintiff failed to show any documents "containing express terms requiring UCF to provide on-campus or in-person services in exchange for fees"). When no "express, written" contractual term exists, "even if the conduct between the parties suggests an agreement, it is merely an implied contract and sovereign immunity protections remain in force." *Id.* at *1 (citations and internal quotation marks omitted). Because there is no specific contractual term obligating USC to provide in-person instruction and services and, thereby, waiving USC's sovereign immunity as to its alleged breach of said term, the doctrine of sovereign immunity bars Plaintiffs' claims against USC for breach of contract.

The doctrine of sovereign immunity also bars Plaintiffs' unjust enrichment and promissory estoppel claims. Unjust enrichment and promissory estoppel are equitable doctrines. *See Dema v. Tenet Physician Servs.—Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) ("Unjust enrichment is an equitable doctrine"); *Rushing v. McKinney*, 370 S.C. 280, 289, 633 S.E.2d

917, 922 (Ct. App. 2006) (“The doctrine of promissory estoppel is equitable in nature.” (citation and internal quotation marks omitted)). The General Assembly has not waived sovereign immunity for equitable claims seeking monetary relief against governmental entities. The South Carolina Tort Claims Act does not include a waiver of sovereign immunity for non-tort claims for unjust enrichment or promissory estoppel, nor has the General Assembly enacted any other legislation that expressly or implicitly waives sovereign immunity for such equitable claims. Here, USC has not waived sovereign immunity to equitable actions by contract or otherwise. Thus, the doctrine of sovereign immunity bars Plaintiffs’ claims for unjust enrichment and promissory estoppel.

VI. Plaintiffs waived their right to bring this lawsuit by acquiescing to virtual instruction.

The Court finds that Plaintiffs have failed to demonstrate a genuine issue of material fact to combat summary judgment based on Plaintiffs’ waiver of their right to bring the claims asserted in this action by acquiescing to USC’s provision of remote instruction necessitated by the COVID-19 pandemic and accepting all of the resulting benefits. A plaintiff who does not object to actions inconsistent with his “rights” acquiesces to those actions and cannot later seek relief. *See Seabrook Island Prop. Owners Ass’n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987) (“If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence, and it estops him from later seeking relief.”).

Here, USC argues and Plaintiffs do not contest that Plaintiffs: (1) failed to lodge any objection to USC’s shift to virtual instruction or ask for reimbursement at the time of the transition to remote instruction in Spring 2020; (2) decided not to explore or seek any alternative options, such as sitting out the remainder of the semester, or pursuing a refund under the applicable policies and pursuing an appeal of any denials; (3) voluntarily remained enrolled in their courses after the

pivot to online learning; (4) continued their Spring 2020 semester coursework online; (5) accepted the prorated refunds that USC issued to students for non-academic fees related to university housing, meals, and parking; and (6) accepted and enjoyed all the benefits that USC provided for the remainder of the Spring 2020 semester, which included, among other things, the provision of full course credits and degrees. While this lawsuit was filed shortly after the end of the Spring 2020 semester, it only further highlights the fact that Plaintiffs waited to object *until after* they received all their credits and degrees from USC. Because of Plaintiffs' acquiescence and silence, as well as their acceptance and enjoyment of the benefits provided by USC that represent USC's change in position, the Court finds that Plaintiffs are estopped from now attempting to seek relief. *See e.g., Facelli v. Se. Mktg. Co.*, 284 S.C. 449, 451-52, 327 S.E.2d 338, 339 (1985) (holding that employee who was notified orally and in writing that his commission rate was being changed impliedly consented to the changed rate by continuing to work for employer and thus was estopped from seeking damages in breach of contract suit for employer's refusal to compensate him under former rate).

Plaintiffs' argument that USC did not rely to its detriment on Plaintiffs' acquiescence to the switch to online learning because USC would have pivoted to virtual instruction regardless of whether Plaintiffs objected misses the mark. Instead, the requisite change in position and reliance to its detriment are in the fact that USC undisputedly expended numerous efforts to continue providing the classes and services to Plaintiffs in the midst of the global pandemic, allowed Plaintiffs to make uninterrupted progress toward their degrees, and did in fact provide the course credits and awarded the degrees to Plaintiffs *before* Plaintiffs lodged any objection or expressed their dissatisfaction. *See Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987) (holding that property owner was "estopped to claim a refund"

of assessments paid to property owners association in excess of what was due under bylaws, finding as follows: “[The owner] had constructive knowledge that the maintenance charges were not being assessed in accordance with the restrictive covenants and bylaws. Nevertheless, he acquiesced in the method of assessment and paid the charges. The Association expended the moneys for purposes authorized by the bylaws. [The owner] received the benefit of those expenditures . . . [and] cannot now return the benefits or restore the Association to its former position.”). *See also Acosta v. Dist. Bd. of Trustees of Miami-Dade Cmty. Coll.*, 905 So. 2d 226, 228–29 (Fla. Dist. Ct. App. 2005) (“[E]ven if we assume that there was a valid and enforceable contract in this case, the students, through their conduct, by commencing the program, satisfying all their course requirements, and eventually graduating, may be held to have acquiesced to the higher tuition.”). As a result, Plaintiffs have not shown a genuine issue of material fact to combat Plaintiffs’ waiver of their right to bring these claims through acquiescence.

VII. Plaintiffs’ equitable claims fail as a matter of law because the parties’ relationship is governed by contract, and because Plaintiffs have failed to show genuine issues of material fact as to the necessary elements of these claims.

The Court found above that the equitable claims are barred by sovereign immunity and by the educational malpractice doctrine. As additional grounds for summary judgment on these equitable claims, the Court holds that Plaintiffs have failed to meet the necessary elements with material facts, and Plaintiffs cannot maintain both breach of contract claims and equitable causes of action based upon the same facts.

The Court finds that Plaintiffs’ equitable claims are subject to summary judgment because Plaintiffs failed to show genuine issues of material fact with respect to the requisite elements of these causes of action. First, as to both their promissory estoppel and unjust enrichment claims, as addressed in more detail above, the Court finds that Plaintiffs have not satisfied the “injury”

element of these claims because they have not shown that they suffered any damages that would not touch on the value and quality of the educational instruction and services they received in Spring 2020, which is expressly prohibited by the educational malpractice doctrine.

Further, with respect to Plaintiffs' promissory estoppel claims, as the Court found above, Plaintiffs have not shown that USC made an unambiguous promise to continue providing at all times in-person instruction and on-campus academic services for which fees are paid, even during the pandemic and in violation of state law. To establish a claim of promissory estoppel, a plaintiff must show: "(1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." *N. American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379-80, 769 S.E.2d 237, 242 (2015). The requisite unambiguous promise is one with "clearly articulated, definite terms." *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 11-12 (Ct. App. 2013). An "implied" or "vague promise" is "insufficient to support a promissory estoppel claim" because "promissory estoppel does not rest on an implied contract." *A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 589, 812 S.E.2d 759, 764 (Ct. App. 2018). Here, the Court finds that at most, Plaintiffs have attempted to show an "implied" or "vague promise" that is simply "insufficient to support a promissory estoppel claim." *Id.*¹⁸

¹⁸ In addition, Plaintiff Kelly cannot show an unambiguous promise – nor reliance to her detriment – that her FAMS 308 and SPAN 122 classes would be exclusively face-to-face during the Spring 2020 semester because the syllabi for these courses plainly and clearly stated that the courses would be taught in a hybrid format. (Exhibit Z to USC's Brief, FAMS 308 Syllabus, at USC_00047903; Exhibit AA to USC's Brief, SPAN 122 Syllabus, at USC_00047918-9.) Similarly, Plaintiff Kelly cannot show any liability on the part of USC with respect to her Internship in Media Arts (MART 499) class because she completed the internship and explicitly agrees that the move to online instruction in Spring 2020 did not affect this course at all. (Exhibit L to USC's Brief, C. Kelly Dep. at 114:2-19.)

The Court finds that Plaintiffs' unjust enrichment claims likewise fail because Plaintiffs have not and cannot establish that there was a conferral of a benefit on USC that would be inequitable for USC to retain. To recover on a theory of unjust enrichment, a "plaintiff must show: (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff its value." *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012) (quoting *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988)). Here, the Court finds that Plaintiffs have not demonstrated a genuine issue of material fact showing that it is inequitable for USC to retain payment of full tuition and academic fees for the Spring 2020 semester. Plaintiffs fail, for example, to combat the undisputed fact that despite the unprecedented circumstances of a worldwide pandemic, USC provided Plaintiffs exactly what they paid for – the right and ability to complete their courses at USC and earn the necessary college credits toward graduation without any delays – and Plaintiffs received all the same credits they would have received in an in-person environment. Importantly, tuition and fees at USC are based on credit hours, not the mode of instruction, and, in fact, tuition and fees remained the same whether a student signed up for all in-person courses, all online courses, or a mix of in-person and online courses. (Exhibit A to USC's Brief, Wilner Rpt. at 7-8; Footnote 1, above.) Furthermore, USC informed students that it reserved the right to make changes in the curriculum if circumstances so warranted. The Court finds that as a matter of law, it would not be unjust under these circumstances for USC to retain amounts paid

to support the educational programs and services it provided before, during, and after the transition to virtual instruction.¹⁹

In addition, the Court holds that Plaintiffs' equitable claims fail as a matter of law because the parties' relationship is governed by contract. An unjust enrichment claim is not cognizable where a plaintiff has an available claim for breach of contract. *See, e.g., Atherton v. Tenet Healthcare Corp.*, No. 2005-UP-362, 2005 WL 7084013, at *5 (S.C. Ct. App. May 25, 2005) (acknowledging unjust enrichment is an equitable remedy and is unavailable where there is an express contract covering the relevant issue); *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (Ct. App. 2012) (holding unjust enrichment is not an available remedy when a relationship is governed by a contract). Likewise, promissory estoppel is not an available remedy when a relationship is governed by contract. *See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001).

The Court finds that Plaintiffs' Second Amended Complaint does not plead their equitable claims *in the alternative* to their breach of contract claims. Instead, Plaintiffs incorporate within their counts for unjust enrichment and promissory estoppel allegations regarding their contractual relationship with USC,²⁰ thus impermissibly attempting to *reframe* their breach of contract claims

¹⁹ Other courts in COVID-19 tuition refund cases have rejected plaintiffs' unjust enrichment claims against universities for similar reasons. (*See* USC's Brief at 42-44 (citing *Dixon v. Univ. of Miami*, 75 F.4th 1204, 1211 (11th Cir. 2023); *Beck v. Manhattan College*, No. 20 CIV. 3229 (LLS), 2023 WL 4266015, at *3 (S.D.N.Y. June 29, 2023) (appeal filed); *Bergeron v. Rochester Inst. of Tech.*, No. 20-CV-6283 (CJS), 2023 WL 1767157, at *11 (W.D.N.Y. Feb. 3, 2023) (appeal filed); *Hewitt v. Pratt Inst.*, No. 20-cv-2007, 2021 WL 2779286, at *4 (E.D.N.Y. Jul. 2, 2021); *De Leon v. New York Univ.*, No. 21 CIV 05005 (CM), 2022 WL 179812, at *13 (S.D.N.Y. Jan. 20, 2022); *Polley v. Nw. Univ.*, 560 F. Supp. 3d 1197, 1209 (N.D. Ill. 2021)).)

²⁰ *See, e.g.*, Second Am. Comp. ¶¶ 71, 101 (referencing the "benefit of the bargain" in their causes of action for unjust enrichment) and ¶¶ 86, 115 (referencing the Statement of Financial Responsibility, which Plaintiffs admit in their Response "is a binding arrangement" between USC and Plaintiffs, in their causes of action for promissory estoppel).

as equitable claims. *See Atherton*, 2005 WL 7084013, at *5-6. Simply put, Plaintiffs' equitable claims are based exactly on the same, albeit faulty, facts and premise as their breach of contract claims, which is that USC allegedly promised in-person instruction and provision of academic services in a particular fashion.

As the Court discussed above, the contractual relationship between Plaintiffs and USC is firmly established and undisputed here. Plaintiffs' argument that "the existence of the contract is contested" (Response at 37) because its *terms* are disputed misses the mark. Plaintiffs cannot rely on equitable theories to fill purported gaps in a contract, contradict a contract's terms, correct their failure to identify a specific term of the contract that was supposedly breached, or fabricate a term of the contract that does not actually exist. Even though the contract does not contain a promise of in-person instruction, it does cover the subject matter of Plaintiffs' claims. Thus, Plaintiffs' sole potential remedy is under their breach of contract claims, even if that contract does not actually entitle them to the relief they seek. *See, e.g., Goldberg v. Pace Univ.*, No. 21-1377, 2023 WL 8494254, at *8 (2d Cir. Dec. 8, 2023) (affirming district court's finding that student's unjust enrichment and promissory estoppel claims warranted dismissal in similar COVID-19 tuition refund case because "they were impermissibly duplicative of his breach of contract claim," finding there was no dispute over existence of contract where university acknowledged contract's existence and only contended that promise of in-person instruction was not one of its terms); *Zwiker v. Lake Superior State Univ.*, 986 N.W.2d 427 (Mich. Ct. App. 2022) (oral argument scheduled by Michigan Supreme Court on application for leave to appeal) (first holding that the financial responsibility agreement, which was similar to the one at issue in this case, "did not promise live, in-person instruction," and then finding that because it "specifically addressed student payment obligations when registering for courses" and "governed the same subject matter

as [the students'] equitable claims," grant of summary judgment on the students' equitable claims was proper because "[c]ourts may not imply a contract under an unjust-enrichment theory."). Accordingly, the Court finds that the parties' relationship and the subject matter of Plaintiffs' claims are governed by contract that forecloses Plaintiffs' equitable claims.

CONCLUSION

For the foregoing reasons, it is hereby ordered that USC's Motion for Summary Judgment is granted in all respects, final judgment is entered in favor of USC, and Plaintiffs' Motion for Class Certification, which is pending before the Court, is denied as moot.

IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Davia Bunch vs University Of South Carolina

Case Number: 2020CP4002330

Type: Order/Summary Judgment

So Ordered

Jocelyn Newman

Electronically signed on 2024-02-02 09:43:03 page 35 of 35

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, individually and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
	)	
Defendant.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 1017 Chuck Dawley Blvd., Ste. 200, Mount Pleasant, SC 29464, within 30 days after the service hereof, exclusive of the day of such service, and if your fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

BY: s/ Daniel R. Dalton

Daniel R. Dalton
Attorney for Plaintiff
South Carolina Bar No. 103752
danny@mickelsendalton.com

MICKELSEN DALTON LLC
1017 Chuck Dawley Boulevard
Suite 200
Mount Pleasant, SC 29464

Mount Pleasant, South Carolina
Dated: May 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, individually and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiff,	)	CLASS ACTION COMPLAINT
	)	(Jury Trial Demanded)
vs.	)	
	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
	)	
Defendant.	)	

CLASS ACTION COMPLAINT

1. Davia Bunch (“Plaintiff”), by and through undersigned counsel, brings this action against the University of South Carolina (“Defendant”) on behalf of herself and all others similarly situated, and makes the following allegations based upon information, attorney investigation and belief, and upon Plaintiff’s own knowledge:

PRELIMINARY STATEMENT

2. Plaintiff brings this case as a result of Defendant’s decision to close campus, constructively evict students, and transition all classes to an online/remote format as a result of the Novel Coronavirus Disease (“COVID-19”) while refusing to refund the portion of tuition and fees Plaintiff and other members of the class paid for benefits and services that they never received.

3. Although closing campus and transitioning to online classes may have been prudent, this decision deprived Plaintiff and other members of the classes from recognizing the benefits of in-person instruction, access to campus facilities, student activities, and other benefits and services in exchange for which they had already paid fees and tuition.

4. Defendant has either refused to provide reimbursement for the tuition, fees and other costs that Defendant is no longer providing, or has provided inadequate and/or arbitrary reimbursement that does not fully compensate Plaintiff and members of the classes for their losses.

5. This action seeks refunds of the amount Plaintiff and other members of the classes are owed on a pro-rata basis, together with other damages as pleaded herein.

PARTIES

6. Defendant is an agency of the state of South Carolina with its primary campus located in Richland County, Southern Carolina.

7. Upon information and belief, the Defendant as an estimated endowment of nearly \$1 billion.

8. Moreover, upon information and belief, the Defendant received federal stimulus under the CARES Act in the amount of \$21,415,130.¹ The Act directs that approximately \$14 billion be distributed to colleges and universities based upon enrollment and requires that institutions must use at least half of the funds they receive to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due COVID-19.

9. Plaintiff is an individual and a resident and citizen of the state of South Carolina.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action because at least some of the events giving rise to these causes of action occurred in Richland County, South Carolina.

11. At least some of the injuries suffered by Plaintiff and the proposed members of the classes occurred and will continue to occur in Richland County, South Carolina.

12. Venue is proper because Plaintiff was harmed in Richland County, South Carolina,

¹ <https://www.greenvilleonline.com/story/news/local/2020/04/10/coronavirus-sc-universities-receive-millions-dollars-cares-act/5126092002/> (last accessed May 12, 2020).

and the events giving rise to said harm occurred in Richland County, South Carolina.

FACTUAL ALLEGATIONS

13. Plaintiff is a graduating senior who was enrolled as a full-time student during the Spring 2020 semester.

14. Plaintiff has paid substantial tuition and fees for the Spring 2020 semester.

15. There are hundreds, if not thousands, of institutions of higher learning in this country.

16. Some institutions of higher learning provide curriculum and instruction that is offered on a remote basis through online programming which do not provide for physical attendance by the students.

17. Defendant's institution offers an in-person, hands on curriculum.

18. Plaintiff and members of the Proposed Tuition and Fee Classes did not choose to attend another institution of higher learning, or to seek an online degree, but instead chose to attend Defendant's institution and enroll on an in-person basis.

19. Defendant markets the on-campus experience as a benefit of enrollment.

20. The level and quality of instruction an educator can provide through an online format is lower than the level and quality of instruction that can be provided in person.

21. As noted in a July 9, 2017 study by Eric Betting and Susanna Loeb of the Brookings Institute (the "Brookings Study")², the promises of online courses are "far from fully realized." Of note, the Brookings Study uses data from DeVry Defendant, comparing both DeVry's online and in-person courses. The results are telling and provide evidence that students learn less in the online setting:

² See <https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/> (last accessed May 12, 2020).

- **Taking courses online reduces student grades** by 0.44 points on the traditional four-point grading scale, a 0.33 standard deviation decline relative to taking courses in-person.
- Specifically, **students taking the course in-person earned roughly a B-(2.8) grade on average while if they had taken it online, they would have earned a C (2.4).**
- **Taking a course online reduces a student's GPA** the following term by 0.15 points, with larger drops of 0.42 points and 0.32 points respectively in the next term's grades for courses taken in the same subject area or for courses in which the online course is a prerequisite.
- **Taking a course online, instead of in-person, increases the probability that the student will drop out of school**, citing that students are approximately 9% less likely to remain enrolled in the semester after taking an online course.

22. The Brookings Study concludes that the “analyses provide evidence that students in online courses perform substantially worse than students in traditional in-person courses and that experiences in these online courses impact performance in future classes and their likelihood of dropping out of college as well.

23. Moreover, a true collegiate experience encompasses much more than just the credit hours and degrees. The collegiate experience consists of, among other things:

- a. Face-to-face interaction with professors, mentors, and peers;
- b. Access to learning facilities such as computer labs, study rooms, laboratories, and libraries;
- c. Student governance and student unions;
- d. Extra-curricular activities, groups, intramurals, *etc.*;
- e. Student art, cultures, and other activities;
- f. Social development and lessons in independence;
- g. Hands on learning and experimentation; and
- h. Networking and mentorship opportunities.

24. Plaintiff's education has involuntarily been transitioned from in-person, hands-on learning to online instruction.

25. Even before the COVID-19 pandemic, Defendant offered online courses alongside their standard on-campus degree program.

26. Although these same classes, upon information and belief, are intended to teach the same general subject matter, Defendant charged different amounts for tuition and fees for online instruction.

27. For example, in the 2019-2020 school year, Defendant is charging \$5,199 in tuition for full-time South Carolina resident students and \$10,428 in tuition for full-time non-resident students attending Defendant's online undergraduate program. Full-time students attend in-person classes at the University of South Carolina-Columbia are charged \$6,144 and \$16,764, respectively.

28. Plaintiff's online instruction is simply not commensurate with the same classes being taught in person, as reflected by the differences in tuition.

29. In addition to tuition, Plaintiff was required to pay certain mandatory fees, including but not limited to technology fees.

30. At Defendant's request and direction, its campus was closed on March 11, 2020, and Plaintiff has had no access to any on-campus facilities or services since that date.

31. As a result of the campus being closed and classes moving online, Plaintiff no longer has the benefit of the services for which the fees have been paid.

32. By way of example but not limitation, Defendant states that Technology Fee revenue is used to support upgrades to computer laboratories and to provide Wi-Fi access on campus. But Plaintiff could not utilize these paid-for services once Defendant was closed because

of COVID-19.

33. On information and belief, Defendant has saved certain monies as a result of its shutdown of certain services facilities, including monies related to computing laboratories.

34. On the section of its web site addressing “FAQs Relating to COVID-19 Crisis”, Defendant asserts its position regarding a refund of tuition or fees because of the campus closure: “Q: Will students receive a refund for tuition and other academic fees? A: Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.”³

35. As a result of the COVID-19 pandemic, Defendant transitioned all classes to online delivery and closed all campus evens as of March 11, 2020.

36. However, Defendant has refused and continue to refuse to offer any pro-rated tuition discounts due to moving classes online.

37. Although Defendant is still offering some level of academic instruction via online classes, Plaintiff and members of the Proposed Tuition Class have paid for tuition for a first-rate education and educational experience, with all the appurtenant benefits offered by a first-rate university, and were provided a material deficient and insufficient alternative.

38. All university in-person events, meetings and travel have been canceled and all face-to-face instruction in lectures, discussion sections, labs, seminars and other similar classroom settings have been suspended. Similarly, the Russell House University Union and the campus recreation facilities have been closed.

39. Plaintiff and members of the proposed Fee Class have been and will be deprived of utilizing these services for which they have already paid.

³ https://sc.edu/about/offices_and_divisions/bursar/frequently_asked_questions/covid19_faqs.php (last accessed May 12, 2020).

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rule 23 of the South Carolina Rules of Civil Procedure on behalf of the following classes:

The Tuition Class:

All individuals who paid tuition for or on behalf of students enrolled in classes at the Defendant for the spring 2020 Semester who were denied live in-person instruction and forced to use online distance learning platforms from the date that the Defendant imposed online instruction.

The Fees Class:

All individuals who paid fees for or on behalf of students enrolled in classes at the Defendant for the Spring 2020 semester.

41. Excluded from the classes are The Board of Trustees of the Defendant and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and the judicial officers, and their immediate family members and Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during this litigation.

42. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

43. This action has been brought and may be properly maintained on behalf of the two classes proposed herein under Rule 23 of the South Carolina Rules of Civil Procedure.

Numerosity: SCRP Rule 23(a)(1)

44. The members of the two classes are so numerous and geographically dispersed the individual joinder of all class members is impracticable. Plaintiff is informed and believes that there are thousands of members of each class, the precise number being unknown to Plaintiff, but

such number being ascertainable from Defendant's records. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

Commonality: SCRP Rule 23(a)(2)

45. This action involves common questions of law and fact, which predominate over any questions affecting individual class members, including, without limitation:

- a. Whether Defendant engaged in the conduct alleged herein;
- b. Whether there is a difference in value between online distance learning and live in-person instruction;
- c. Whether Defendant breached their contracts with Plaintiff and other members of the Tuition Class by retaining the portion of their tuition representing the difference between the value of online distance learning and live in-person instruction;
- d. Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiff and the Tuition Class representing the difference between the value of online distance learning and live in-person instruction;
- e. Whether Defendant breached their contracts with Plaintiff and the other members of the Fees class by retaining fees without providing the services the fees were intended to cover;
- f. Whether Defendant was unjustly enriched by retaining fees payments of Plaintiff and the Fees Class without providing the services the fees were intended to cover;
- g. Whether certification of any or either of the classes proposed herein is appropriate under Rule 23 of the South Carolina Rules of Civil Procedure;
- h. Whether Class members are entitled to declaratory, equitable, or injunctive relief,

and/or other relief; and

- i. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

Typicality: SCR 23(a)(3)

46. Plaintiff's claim is typical of the other class members claims because, among other things, all class members were similarly situated and were comparably injured through Defendant's wrongful conduct as set forth herein.

Adequacy: SCR 23(a)(4)

47. Plaintiff is an adequate class representative because her interests do not conflict with the interests of other members of the class she seeks to represent. Plaintiff has retained counsel competent and experienced in complex and class action litigation; and plaintiff intends to prosecute the action vigorously. The two classes' interests will be fairly and adequately protected by Plaintiff and her counsel.

Amount in Controversy: SCR 23(a)(5)

48. Plaintiff is informed and believes that the amount in controversy for each class member exceeds one hundred dollars. Plaintiff paid over \$6,000.00 in tuition fees for the Spring 2020 semester and at least \$200 in fees.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Tuition Class)**

49. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

50. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

51. Plaintiff and the Tuition Class entered into contracts with the Defendant which

provided that Plaintiff and other members of the Tuition Class would pay tuition, and, in exchange, the Defendant would provide live in-person instruction in a physical classroom.

52. Plaintiff and other members of the Tuition Class fulfilled their end of the bargain when they paid tuition for the Spring 2020 Semester out-of-pocket, through student loan financing, or through other means.

53. The Defendant breached the contract with Plaintiff and the Tuition Class by moving all classes for the Spring 2020 semester to online distance learning platforms, without reducing or refunding tuition accordingly.

54. The Defendant retained tuition monies paid by Plaintiff and other members of the Tuition Class, without providing them the full benefit of their bargain.

55. Plaintiff and other members of the Tuition Class have suffered damage as a direct and proximate result of the Defendant's breach, including but not limited to being deprived of the value of the services the tuition was intended to cover, namely live in-person instruction in a physical classroom.

56. As a direct and proximate result of Defendant's breach, Plaintiff and the Tuition Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of the difference between the value of the online learning which is being provided versus the value of the live in-person instruction in a physical classroom that was contracted for.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Tuition Class)**

57. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

58. Plaintiff brings this count on behalf of herself and other members of the Tuition

Class.

59. In the alternative to its claim for breach of contract, Plaintiff and the members of the Tuition Class assert that Defendant has received a benefit at the expense of Plaintiff and other members of the Tuition Class to which it is not entitled.

60. In particular, Plaintiff and other members of the Tuition Class paid substantial tuition for live in-person instruction in physical classrooms and did not receive the full benefit of the bargain.

61. Plaintiff and other members of the Tuition class conferred this benefit on Defendant when they paid the tuition.

62. Plaintiff and other members of the Tuition Class did not confer this benefit gratuitously.

63. Defendant has realized this benefit by accepting such payment.

64. Defendant has retained this benefit even though Defendant has failed to provide the access and services for which the tuition was collected, making Defendant's retention unjust under the circumstances.

65. Equity and good conscience require that Defendant return a portion of the monies paid in tuition to Plaintiff and other members of the Tuition Class.

66. Defendant should be required to disgorge this unjust enrichment.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Tuition Class)**

67. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

68. "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the

exclusion of the owner's rights.” *Regions Bank v. Schmauch*, 354 S.C. 648, 667 (Ct. App. 2003). “Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property.” *Id.*

69. Plaintiff and members of the Tuition Class have an ownership right to the portion of the tuition funds for live-in person education services that Defendant has not provided since March 11, 2020.

70. Defendant wrongfully detained these tuition funds when it moved all classes to an online format and discontinued in-person educational services for which tuition and fees were intended to pay.

71. Plaintiff and members of the Tuition Class demand the return of the pro-rated portion of any Spring Semester 2020 tuition for education services not provided since the closure on March 11, 2020. Defendant has stated on its web site that tuition and certain funds will not be returned “[d]ue to the continuity of classes being offered and with the advisement on Higher Education.”

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Fees Class)**

72. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

73. Plaintiff brings this count on behalf of herself and other members of the Fees Class.

74. Plaintiff and the Fees Class entered into contracts with the Defendant which provided that Plaintiff and other members of the Fees Class would pay certain fees, including technology fees, for or on behalf of students and, in exchange, the Defendant would provide access and services related to those fees.

75. Plaintiff and other members of the Fees Class fulfilled their end of the bargain when

they paid fees for the Spring 2020 Semester out-of-pocket, through student loan financing, or through other means.

76. Defendant breached the contract with Plaintiff and the Fees Class by moving all classes for the Spring 2020 semester to online distance learning platforms, constructively evicting students from campus, and closing most campus building and facilities.

77. Defendant retained fees paid by Plaintiff and other members of the Fees Class, without providing them the full benefit of their bargain.

78. Plaintiff and other members of the Fees Class have suffered damage as a direct and proximate result of the Defendant's breach, including but not limited to being deprived of the value of the benefits and services the fees were intended to cover.

79. As a direct and proximate result of Defendant's breach, Plaintiff and the Fees Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of the pro-rata amount of fees that were collected but for which access and services were not provided.

**FOR A FIFTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Fees Class)**

80. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

81. In the alternative to its claim for breach of contract, Plaintiff and the members of the Fees Class assert that Defendant has received a benefit at the expense of Plaintiff and other members of the Fees Class to which it is not entitled.

82. In particular, Plaintiff and other members of the Fees Class paid substantial student fees for on campus benefits and services and did not receive the full benefit of the bargain.

83. Plaintiff and other members of the Fees class conferred this benefit on Defendant

when they paid the fees.

84. Plaintiff and other members of the Fees Class did not confer this benefit gratuitously.

85. Defendant has realized this benefit by accepting such payment.

86. Defendant has retained this benefit even though Defendant has failed to provide the access and services for which the tuition was collected, making Defendant's retention unjust under the circumstances.

87. Equity and good conscience require that Defendant return a pro-rata portion of the monies paid in fees to Plaintiff and other members of the Fees Class.

88. Defendant should be required to disgorge this unjust enrichment.

**FOR A SIXTH COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Fees Class)**

89. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

90. Plaintiff and members of the Fees Class have an ownership right in the fees for the Spring 2020 semester that Plaintiff and other members of the Fees class paid for in exchange for access and services related to those fees, such as access to student activities, athletics, wellness centers, libraries, *etc.*

91. Defendant wrongfully detained these fees when it closed the campus and discontinued the services for which the fees were intended to pay.

92. Plaintiff and members of the Fees Class demand the return of fees for the Spring Semester 2020. Defendant has stated on its web site that tuition and certain funds will not be returned "[d]ue to the continuity of classes being offered and with the advisement on Higher Education."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Classes, pray for judgment in their favor and against Defendant as follows:

- a. Certifying the Classes as proposed herein, designating Plaintiff as Class representative, and appointing undersigned counsel as Class Counsel;
- b. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this action;
- c. Declaring that Defendant has wrongfully kept monies paid for tuition and fees;
- d. Requiring that Defendant disgorge amounts wrongfully detained for tuition and fees to Plaintiff and the class members;
- e. Awarding Plaintiff and class members actual damages as permitted by contract;
- f. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies paid for tuition, and fees;
- g. Scheduling a trial by jury in this action;
- h. Awarding Plaintiff's reasonable attorneys' fees, costs and expenses, as permitted by contract and law.
- i. Awarding pre and post judgment interest on any amounts awarded, as permitted by law; and
- j. Awarding such other and further relief as may be just and proper.

This 13th day of May, 2020.

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Respectfully submitted,

BY: s/ Daniel R. Dalton

Daniel R. Dalton
Attorney for Plaintiff
South Carolina Bar No. 103752
danny@mickelsendalton.com

MICKELSEN DALTON LLC
1017 Chuck Dawley Boulevard
Suite 200
Mount Pleasant, SC 29464

Mount Pleasant, South Carolina
Dated: May 13, 2020

*Attorneys for Plaintiff, individually and on
behalf of all others similarly situated*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, individually and	)	
on behalf of others similarly situated,	)	
	)	FIRST AMENDED CLASS
Plaintiff,	)	ACTION COMPLAINT
	)	
vs.	)	
	)	Civil Case No. 2020CP4002330
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
	)	
Defendant.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

1. Davia Bunch, Peter Kelly, and Terry Kelly (“Plaintiffs”), by and through undersigned counsel, bring this class action against the University of South Carolina (“Defendant” or the “University”) on behalf of themselves and all others similarly situated, and make the following allegations based upon information, attorney investigation and belief, and Plaintiffs’ own knowledge:

PRELIMINARY STATEMENT

2. Plaintiffs are an in-state student, and the parents of an out-of-state student, at the University of South Carolina. Plaintiffs paid full tuition to the University in exchange for on-campus, live classes at the University. Plaintiffs also paid certain fees to Defendant (set out in detail below) for specific on-campus benefits and services at the University.

3. In response to the Novel Coronavirus Disease (“COVID-19”), the University closed its campus, constructively evicted its resident students, transitioned all classes from live on-campus classroom to online/remote instruction, and cancelled certain on-campus services and

benefits.

4. Although the University cancelled all on-campus classes and replaced them with exclusively online classes, Defendant did not discount or refund any part of the cost of tuition for on-campus classes to Plaintiffs or the putative classes.

5. Although the University cancelled all on-campus activities, Defendant did not refund the cost of fees paid for those now-cancelled on-campus services and benefits.

6. Closing the campus and transitioning to online classes was prudent, but it had the consequence of depriving Plaintiffs and other members of the classes from specific, objective benefits and services for which they had already paid tuition and fees.

7. Defendant has refused to discount or refund the cost of tuition and fees even though it is no longer providing the benefits and services promised in exchange for that tuition and those fees.

8. Defendant's decision to cancel in-person classes and on-campus activities, but also to charge full tuition and fees for those unprovided benefits and services, breaches its agreement with Plaintiffs and the putative classes, unjustly enriches Defendant at the expense of Plaintiffs and the putative classes, and takes money belonging to Plaintiffs and the putative classes and improperly provides it to Defendant.

9. Defendant's decision also unfairly shifts the financial burden of COVID-19 onto students and their parents, many of whom are already suffering financially.

10. The University should be setting an example to its students, who are future leaders of the State of South Carolina and the United States of America, by not shifting the financial burden of these changes onto financially vulnerable students and parents. Instead, the University has deliberately engaged in a money grab at the expense of its own students and their parents.

11. This class action lawsuit seeks simple fairness. It asks Defendants to return the money it took from its students and their parents for objective benefits and services it failed to provide them.

PARTIES

12. Defendant is an agency of the state of South Carolina with its primary campus located in Richland County, South Carolina.

13. Plaintiff Davia Bunch is an individual and a resident and citizen of the State of South Carolina.

14. Plaintiffs Peter Kelly and Terry Kelly are individuals and residents and citizens of the State of California.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action because at least some of the events giving rise to these causes of action occurred in Richland County, South Carolina.

16. Some or all of the injuries suffered by Plaintiffs and the proposed members of the classes occurred and will continue to occur in Richland County, South Carolina.

17. Venue is proper because Plaintiffs were harmed in Richland County, South Carolina, and the events giving rise to said harm occurred in Richland County, South Carolina.

FACTUAL ALLEGATIONS

18. Plaintiff Davia Bunch is a graduating senior who was enrolled as a full-time student during the Spring 2020 semester.

19. Plaintiffs Peter Kelly and Terry Kelly are parents whose daughter was enrolled as a full-time student during the Spring 2020 semester.

20. Plaintiffs paid substantial tuition and fees for the Spring 2020 semester.

21. Plaintiff Davia Bunch paid \$6,144 in resident tuition, and Plaintiffs Peter Kelly and Terry Kelly paid \$16,744 in non-resident tuition on behalf of their daughter for the Spring 2020 semester.

22. Plaintiff Davia Bunch paid fees of \$200. Plaintiffs Peter Kelly and Terry Kelly paid fees of \$2,155.

23. Traditionally, Defendant has offered remote online programming for certain undergraduate degrees through its Palmetto College branch.¹

24. By contrast, Defendant has also traditionally offered an in-person, on-campus, hands-on curriculum, instruction, and educational experience.

25. As part of its on-campus curriculum, Defendant touts that its in-person classes “form the basis of our educational requirements. As you experience new things and share your experience with others, you will form powerful connections both in the classroom and beyond.”²

26. Plaintiffs and the members of the putative classes did not choose to attend an institution of higher learning which offered on-line classes, nor did they seek an online degree through Defendant’s Palmetto College branch. Instead, Plaintiffs and the members of the putative classes chose to attend, enrolled in, and paid full tuition and fees to Defendant for an in-person college experience at the University of South Carolina.

27. Defendant markets the on-campus experience as a benefit of enrollment, offering that it “leads the way in providing all students with the highest-quality education, including . . . through engagement in nationally and internationally ranked research, scholarship, community

¹ University of South Carolina–Palmetto College: About Us, https://sc.edu/about/system_and_campuses/palmetto_college/about/index.php (last visited June 1, 2020).

² University of South Carolina–Academic Overview: Undergraduate Education, https://www.sc.edu/study/academic_overview/undergraduate_education/index.php (last visited June 1, 2020).

outreach, and artistic creation.”³

28. As noted in a July 9, 2017 study by Eric Betting and Susanna Loeb of the Brookings Institute (the “Brookings Study”)⁴, the promises of online courses are “far from fully realized.” The Brookings Study concludes that students in online courses perform substantially worse than students in traditional in-person courses and that experiences in these online courses impact performance in future classes and their likelihood of dropping out of college as well.

29. Moreover, a true collegiate experience encompasses much more than just the credit hours and degrees. As recognized by Defendant, the collegiate experience consists of, among other things:

- a. Face-to-face interaction with professors, mentors, and peers;
- b. Access to learning facilities such as computer labs, study rooms, laboratories, and libraries;
- c. Student governance and student unions;
- d. Extra-curricular activities, groups, intramurals, etc.;
- e. Student art, cultures, and other activities;
- f. Social development and lessons in independence;
- g. Hands on learning and experimentation; and
- h. Networking and mentorship opportunities.

30. Nonetheless, Plaintiffs’ claims are not based on the (doubtlessly inferior) quality of the education they received through their online classes. Instead, Plaintiffs’ claims are more simple and straightforward: Plaintiffs paid tuition for in-person classes, Defendant obligated itself

³ University of South Carolina—Our Mission, https://sc.edu/about/south_carolina_at_a_glance/our_mission.php (last visited June 1, 2020).

⁴ See <https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/> (last visited June 1, 2020).

to provide these in-person classes in exchange for that payment, and Defendant failed to provide those in-person classes.

31. Defendant itself recognizes the objective difference in kind and value between in-person and online classes because it charges substantially less for online classes as compared to in-person classes.

32. In the 2019-2020 school year, Defendant charged \$5,199 in tuition for full-time South Carolina resident students and \$10,428 in tuition for full-time non-resident students attending Defendant's online undergraduate program.

33. In clear recognition of the objective difference between in-person and online education, Defendant charged \$945 less in resident tuition (\$6,144 for on-campus resident tuition v. \$5,199 for online resident tuition) and \$6,336 less in non-resident tuition (\$16,764 for on-campus non-resident tuition v. \$10,428 for online non-resident tuition) to attend Defendant's online undergraduate program as compared to its in-person undergraduate program.

34. At Defendant's request and direction, its campus was closed on March 11, 2020, and Plaintiffs have had no access to any on-campus facilities or services since that date.

35. As a result of the campus being closed and classes moving online, Plaintiffs no longer had the benefit of the services for which they paid specific service fees.

36. By way of example but not limitation, Plaintiffs and class members paid certain of the following fees for objective benefits and services that were not provided by Defendant:

- a. Technology Fee of \$200. Defendant states that the Technology Fee it charges students is used to support upgrades to on-campus computer laboratories, and to provide on-campus Wi-Fi access.
- b. Laboratory Fee of \$330 including but not limited to Language Laboratory Fee of

\$130 and Art Education Laboratory Fee of \$200. Defendant states that these Laboratory Fees’ “sole purpose . . . is to provide an enhanced educational experience for our students. The fees provide for laboratory equipment, supplies, instruction, and upkeep.”⁵ The equipment, supplies, instruction, and upkeep are only provided on-campus.

c. Greek Meal Plan Fee of \$1,575. The Greek Meal Plan Fee is paid in exchange for meal services for on-campus Greek students.

37. On information and belief, Defendant has saved significant money as a result of its shutdown of many on-campus services facilities, including but not limited to money related to the on-campus operation of the language, art, and computing laboratories.

38. Even though Defendant did not offer these promised services and benefits, Defendant collected the fees for these services and benefits and refused to refund or discount these fees.

39. On the section of its web site addressing “FAQs Relating to COVID-19 Crisis,” Defendant asserts its position regarding a refund of tuition or fees because of the campus closure: “Q: Will students receive a refund for tuition and other academic fees? A: Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.”⁶

40. As a result of the COVID-19 pandemic, Defendant transitioned all classes to online delivery and closed all campus events as of March 11, 2020.

41. Upon information and belief, Defendant has an estimated endowment of \$1 billion

⁵ University of South Carolina–Bursar’s Office: Department Fees, https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/uofsc_columbia_fees_academic/departments_fees/index.php (last visited June 1, 2020).

⁶ University of South Carolina–Bursar’s Office: Frequently Asked Questions https://sc.edu/about/offices_and_divisions/bursar/frequently_asked_questions/covid19_faqs.php (last visited June 1, 2020).

dollars.

42. Moreover, upon information and belief, Defendant received federal stimulus under the CARES Act in the amount of \$21,415,130.⁷ The Act directs that approximately \$14 billion be distributed to colleges and universities based upon enrollment and requires that institutions must use at least half of the funds they receive to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due COVID-19.

43. Plaintiffs and members of the putative classes paid for tuition in exchange for an in-person, on-campus classroom and educational experience.

44. There is a distinct and objective difference between providing promised on-campus college classes, and not providing on-campus classes and replacing them with on-line college classes.

45. Defendant has recognized this distinct and objective difference in its pre-COVID-19 pricing, which offered different tuition for the on-campus college experience and the on-line college experience.

46. There is a distinct and objective difference between providing promised on-campus services, and not providing on-campus services.

47. Defendant's refusal to refund or discount any tuition or service fees has prompted public complaints from students and families who made these payments yet received an inferior educational experience.⁸

- If the Universities are allocated millions of dollars in funds due to Covid, an amount should be allocated to the students who have also suffered hardship.
- My daughter is an Art student and most of her classes are in studio and hands on with an extensive charge for supplies. Per class fees are associated with

⁷ See <https://www.greenvilleonline.com/story/news/local/2020/04/10/coronavirus-sc-universities-receive-millions-dollars-cares-act/5126092002/> (last accessed May 12, 2020).

⁸ See <https://www.facebook.com/thestatenews/posts/10158159432705575> (last visited June 1, 2020).

this and these should have been adjusted because there were no in studio classes held yet they kept the fees and continue to charge these for summer classes not held on campus.

48. All University in-person events, meetings and travel have been canceled and all face-to-face instruction in lectures, discussion sections, labs, seminars and other similar classroom settings have been suspended. Similarly, the Russell House University Union and the campus recreation facilities have been closed.

49. Plaintiffs and members of the proposed classes have been and will be deprived of utilizing these services for which they have already paid.

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rule 23 of the South Carolina Rules of Civil Procedure on behalf of the following classes:

The Tuition Subclass:

All individuals who paid tuition for or on behalf of students enrolled in classes at the University of South Carolina for the Spring 2020 Semester who were denied on-campus, in-person instruction, and instead only offered on-line instruction, from the date that the University of South Carolina cancelled on-campus instruction to the date a class is certified.

The Fees Subclass:

All individuals who paid fees for or on behalf of students enrolled in classes at the University of South Carolina for the Spring 2020 Semester in exchange for on-campus benefits or services that were not provided, from the date that the University of South Carolina cancelled on-campus instruction to the date a class is certified.

51. Excluded from the classes are The Board of Trustees of the Defendant and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and the judicial officers, and their immediate family members and Court staff assigned to this case. Plaintiffs reserve the right to modify or amend the Class definitions, as

appropriate, during this litigation.

52. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

53. This action has been brought and may be properly maintained on behalf of the two classes proposed herein under Rule 23 of the South Carolina Rules of Civil Procedure.

Numerosity: SCRP Rule 23(a)(1)

54. The members of the two putative classes are so numerous and geographically dispersed the individual joinder of all class members is impracticable. Plaintiffs are informed and believe that there are thousands of members of each class, the precise number being unknown to Plaintiffs, but such number being ascertainable from Defendant's records. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

Commonality: SCRP Rule 23(a)(2)

55. This action involves common questions of law and fact, which predominate over any questions affecting individual class members, including, without limitation:

- a. Whether Defendant engaged in the conduct alleged herein;
- b. Whether Defendant breached its contracts with Plaintiffs by requiring full tuition despite failing to provide on-campus instruction;
- c. Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiffs after failing to provide on-campus instruction;
- d. Whether Defendant breached its contracts with Plaintiffs by requiring payment of service fees without providing the services paid for;

- e. Whether Defendant was unjustly enriched by retaining payment of service fees without providing the services paid for;
- f. Whether certification of any or either of the classes proposed herein is appropriate under Rule 23 of the South Carolina Rules of Civil Procedure;
- g. Whether Plaintiffs are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
- h. The amount and nature of relief to be awarded to Plaintiffs.

Typicality: SCRP Rule 23(a)(3)

56. Plaintiffs' claims are typical of the other class members claims because, among other things, all class members were similarly situated and were comparably injured through Defendant's wrongful conduct as set forth herein.

Adequacy: SCRP 23(a)(4)

57. Plaintiffs are adequate class representatives because their interests do not conflict with the interests of other members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in complex and class action litigation; and Plaintiffs intend to prosecute the action vigorously. The two subclasses' interests will be fairly and adequately protected by Plaintiffs and their counsel.

Amount in Controversy: SCRP 23(a)(5)

58. Plaintiffs are informed and believe that the amount in controversy for each class member exceeds one hundred dollars. Plaintiff Davia Bunch paid over \$6,000.00 in tuition for the Spring 2020 semester and at least hundreds of dollars in fees. Plaintiffs Peter Kelly and Terry Kelly paid over \$16,000 in tuition fees for the Spring 2020 semester on behalf of their daughter and at least hundreds of dollars in fees.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiffs and Other Members of the Tuition Subclass)**

59. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

60. Plaintiffs bring this count on behalf of themselves and other members of the Tuition Class.

61. Plaintiffs and the Tuition Subclass entered into contracts with the Defendant which provided that Plaintiffs and other members of the Tuition Subclass would pay tuition, and, in exchange, the Defendant would provide live in-person instruction in a physical classroom on-campus.

62. These contracts were formed when students formally registered for courses offered by Defendant, in light of the quoted tuition pertaining to such registration, and Defendant thereafter accepted those registrations by sending bills for tuition to Plaintiffs and other members of the Tuition Subclass.

63. To that end, Defendant required all students to “acknowledge the financial arrangement between the student and the University. By submitting course registration, [Plaintiffs and the Tuition Class] enter[ed] into a financial arrangement with the University of South Carolina and accept[ed] the responsibility for all charges billed to [their] account.”⁹

64. Defendant’s class registration includes course descriptions indicating on-campus instruction, with designations such as “Face-to-Face Instruction Instructional Method.”¹⁰

⁹ University of South Carolina–Student Statement of Financial Responsibility, https://www.sc.edu/about/offices_and_divisions/bursar/my_bill/student_statement_of_financial_responsibility/index.php (last visited June 1, 2020)

¹⁰ See, e.g., https://ssb.onecarolina.sc.edu/BANP/bwckschd.p_disp_dyn_sched (last visited Aug. 18, 2020) (searchable database of courses providing “Face-to-Face Instruction” as the “Instructional Method” for certain classes).

65. Plaintiffs and other members of the Tuition Subclass fulfilled their end of the bargain when they paid tuition for the Spring 2020 Semester out-of-pocket, through student loan financing, or through other means.

66. Defendant breached the contract with Plaintiffs and the Tuition Subclass by moving all classes for the Spring 2020 semester to online distance learning platforms, and failing to deliver on-campus instruction as promised, without providing a reduction or refund of full tuition.

67. On-campus educational instruction and on-line educational instruction are objectively distinct and different.

68. Defendant retained tuition monies paid by Plaintiffs and other members of the Tuition Subclass, without providing them the full benefit of their bargain.

69. Plaintiffs and other members of the Tuition Subclass have suffered damage as a direct and proximate result of the Defendant's breach.

70. As a direct and proximate result of Defendant's breach, Plaintiffs and the Tuition Subclass are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of some or all tuition paid for on-campus instruction that was not delivered.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiffs and Other Members of the Tuition Subclass)**

71. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

72. Plaintiffs bring this count on behalf of themselves and other members of the Tuition Subclass.

73. In the alternative to their claim for breach of contract, Plaintiffs and the members of the Tuition Subclass assert that Defendant has received a benefit at the expense of Plaintiffs and

other members of the Tuition Subclass to which it is not entitled.

74. In particular, Plaintiffs and other members of the Tuition Subclass paid substantial tuition for live in-person instruction in physical classrooms and did not receive the full benefit of the bargain.

75. Plaintiffs and other members of the Tuition subclass conferred this benefit on Defendant when they paid the tuition for an in-person and on-campus educational experience.

76. Plaintiffs and other members of the Tuition subclass did not confer this benefit gratuitously.

77. Defendant has realized this benefit by accepting such payment.

78. Defendant has retained this benefit even though Defendant has failed to provide the access and services for which the tuition was collected, making Defendant's retention unjust under the circumstances.

79. Equity and good conscience require that Defendant return a prorated portion of the monies that Plaintiff and members of the Tuition Subclass paid in tuition for an in-person educational experience that they did not receive for the duration of the campus closure.

80. Defendant should be required to disgorge this unjust enrichment.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
CONVERSION**

(Plaintiffs and Other Members of the Tuition Subclass)

81. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

82. "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Regions Bank v. Schmauch*, 354 S.C. 648, 667 (Ct. App. 2003). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal

property.” *Id.*

83. Plaintiffs and members of the Tuition Subclass have an ownership right to the portion of the tuition funds for live, in-person, on-campus education services that Defendant has not provided since March 11, 2020.

84. Defendant wrongfully detained these tuition funds when it moved all classes to an online format and discontinued in-person, on-campus educational services for which tuition was intended to pay.

85. Plaintiffs and members of the Tuition Subclass demand the return of the portion of any Spring Semester 2020 tuition for education services not provided since the closure on March 11, 2020. Defendant has stated on its web site that tuition and certain funds will not be returned “[d]ue to the continuity of classes being offered and with the advisement of Higher Education.”

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiffs and Other Members of the Fees Subclass)**

86. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

87. Plaintiffs bring this count on behalf of themselves and other members of the Fees Subclass.

88. Plaintiffs and the Fees Subclass entered into contracts with the Defendant which provided that Plaintiffs and other members of the Fees Subclass would pay certain fees, including, but not limited to, technology fees, laboratory fees, Greek Meal Plan Fee, Greek Village Student Fee, and other fees, for or on behalf of students and, in exchange, the Defendant would provide access and services related to those fees.

89. Plaintiffs and other members of the Fees Subclass fulfilled their end of the bargain when they paid fees for the Spring 2020 Semester out-of-pocket, through student loan financing,

or through other means.

90. Defendant breached the contract with Plaintiffs and the Fees Subclass by moving all classes for the Spring 2020 semester to online distance learning platforms, constructively evicting students from campus, and closing most campus building and facilities.

91. Defendant failed to deliver the services and benefits promised in exchange for payment of fees, including but not limited to use of on-campus wifi and other technology, use of on-campus laboratories, use of on-campus Greek meals and other benefits, and the like.

92. Defendant retained fees paid by Plaintiffs and other members of the Fees Subclass, without providing them the full benefit of their bargain.

93. Plaintiffs and other members of the Fees Subclass have suffered damage as a direct and proximate result of the Defendant's breach, including but not limited to being deprived of the value of the benefits and services the fees were intended to cover.

94. As a direct and proximate result of Defendant's breach, Plaintiffs and the Fees Subclass are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of the fees that were collected for benefits and services which were not provided.

**FOR A FIFTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiffs and Other Members of the Fees Subclass)**

95. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

96. In the alternative to its claim for breach of contract, Plaintiffs and the members of the Fees Subclass assert that Defendant has received a benefit at the expense of Plaintiffs and other members of the Fees Subclass to which it is not entitled.

97. In particular, Plaintiffs and other members of the Fees Subclass paid substantial

student fees for on-campus benefits and services and did not receive the full benefit of the bargain.

98. Plaintiffs and other members of the Fees subclass conferred this benefit on Defendant when they paid the fees.

99. Defendant failed to deliver the services and benefits promised in exchange for payment of fees, including but not limited to use of on-campus wifi and other technology, use of on-campus laboratories, use of on-campus Greek meals and other benefits, and the like.

100. Plaintiffs and other members of the Fees Subclass did not confer this benefit gratuitously.

101. Defendant has realized this benefit by accepting such payment.

102. Defendant has retained this benefit even though Defendant has failed to provide the access and services for which the fees were collected, making Defendant's retention unjust under the circumstances.

103. Equity and good conscience require that Defendant return a pro-rata portion of the monies paid in fees to Plaintiffs and other members of the Fees subclass.

104. Defendant should be required to disgorge this unjust enrichment.

**FOR A SIXTH COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiffs and Other Members of the Fees Subclass)**

105. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

106. Plaintiffs and members of the Fees Subclass have an ownership right in the fees for the Spring 2020 semester that Plaintiffs and other members of the Fees class paid for in exchange for access and services related to those fees, such as access to student activities, athletics, wellness centers, libraries, etc.

107. Defendant wrongfully detained these fees when it closed the campus and

discontinued the services for which the fees were intended to pay.

108. Plaintiffs and members of the Fees Subclass demand the return of fees for the Spring Semester 2020. Defendant has stated on its website that tuition and certain funds will not be returned “[d]ue to the continuity of classes being offered and with the advisement of Higher Education.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Classes, pray for judgment in their favor and against Defendant as follows:

- a. Certifying the Classes as proposed herein, designating Plaintiffs as Class representatives, and appointing undersigned counsel as Class Counsel;
- b. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this action;
- c. Declaring that Defendant has wrongfully kept monies paid for tuition and fees;
- d. Requiring that Defendant disgorge amounts wrongfully detained for tuition and fees to Plaintiffs and the Class members;
- e. Awarding Plaintiffs and Class members actual damages as permitted by contract;
- f. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the tuition and fees for benefits and services not provided, and enjoining Defendant from charging tuition and fees for benefits and services not provided in the future;
- g. Scheduling a trial by jury in this action;
- h. Awarding Plaintiffs’ reasonable attorneys’ fees, costs and expenses, as permitted by contract and law.

- i. Awarding pre and post judgment interest on any amounts awarded, as permitted by law; and
- j. Awarding such other and further relief as may be just and proper.

This 19th day of August, 2020.

Respectfully submitted,

BY: /s/ Daniel R. Dalton

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, PETER KELLY, and	)	Civil Action No. 2020-CP-40-02330
TERRY KELLY, individually and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiffs,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S SUPPLEMENTAL</u>
vs.	)	<u>MOTION TO DISMISS FIRST</u>
	)	<u>AMENDED COMPLAINT</u>
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

The University of South Carolina ("Defendant"), by and through its undersigned counsel, supplements its pending Motion to Dismiss Plaintiffs' First Amended Class Action Complaint and states as follows:

1. On September 4, 2020, pursuant to Rules 8(a)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"), Defendant filed a motion to dismiss asserting Plaintiffs failed to state facts sufficient to constitute a cause of action. In addition to the grounds stated therein, dismissal of Plaintiffs Peter Kelly and Terry Kelly is also warranted for lack of standing.

2. "To have standing, one must have a personal stake in the subject matter of the lawsuit," *i.e.*, be a "real party in interest." *Mulherin-Howell v. Cobb*, 362 S.C. 588, 597, 608 S.E.2d 587, 592 (Ct. App. 2005); *see also* Rule 17(a), SCRCP ("Every action shall be prosecuted in the name of the real party in interest."). "A real party in interest is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Townsend v. Townsend*, 323 S.C. 309, 314, 474 S.E.2d 424, 427 (1996) (internal quotation marks and citation omitted).

3. Plaintiffs Peter Kelly and Terry Kelly present no justiciable controversy. Plaintiffs' Amended Complaint admits that Peter and Terry Kelly were not enrolled at the University during the Spring 2020 semester. Because no relationship exists between these plaintiffs and Defendant and because the Kellys have suffered no injury that this lawsuit could redress, the Kellys should be dismissed.

For the foregoing reasons, this Court should dismiss Plaintiffs Peter Kelly and Terry Kelly. This motion is supported by Defendant's Motion to Dismiss, the pleadings, applicable law, documents referred to or identified in the Amended Complaint, any forthcoming memoranda Defendant submits prior to the hearing, and all other materials permitted by the SCRCPP and/or the Court at the hearing on Defendant's motions.

[SIGNATURE ON FOLLOWING PAGE]

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Charleston, South Carolina
January 6, 2020

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

DAVIA BUNCH, PETER KELLY,	)	
TERRY KELLY, individually	)	
and on behalf of others similarly situated,	)	
	)	Civil Action No. 2020-CP-40-02330
Plaintiffs,	)	
	)	
	)	
vs.	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
	)	
Defendant.	)	

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
THE UNIVERSITY OF SOUTH CAROLINA'S
MOTIONS TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

Plaintiffs Davia Bunch, Peter Kelly, and Terry Kelly, by and through their undersigned counsel, hereby submit this Opposition to the Motions to Dismiss and Brief in Support thereof filed by the University of South Carolina. For the reasons set forth herein, the Court should deny the University of South Carolina's Motions to Dismiss in their entirety.

I. INTRODUCTION

Everyone has been a victim of this pandemic. The University of South Carolina (“Defendant” or “University”) is not the only entity or person affected; the parents and students in the University community, and, indeed, every person and business in the State of South Carolina and throughout the United States of America has been affected by the economic (and in many sad cases, the personal) costs of these events.

This class action lawsuit is about fairness, honesty, and the benefit of the bargain. It is simply wrong, legally and morally, to take the hard-earned money of parents and students during ordinary times in exchange for the specific, objective promise of in-person classes and services at the University, and then, when it chose (rightly or wrongly) not to deliver those in-person classes and services, to **keep** the full payments of those parents and students. It is even worse to do so explicitly on the grounds that the University prefers to shift the financial burden of the pandemic onto ordinary folks like its students and their families, who are in many cases already struggling far more than large, endowed entities like the University. The bottom line is that, of course, the University did not have to provide in-person classes when the pandemic hit. But once it made a decision to only offer online classes and discontinue certain on-campus services, the University should have reimbursed or refunded its parents and students the difference between what it charged for the products and services it promised and price of the entirely different products and services that it delivered.¹ This lawsuit seeks to compel the University to do the right thing.

¹ If a tenant pays for a year residency in an apartment, but a hurricane destroys the building, the apartment company does not get to erect a tent with a cot and keep the full rent. If a student pays for a month of Karate lessons at a world class dojo, and the instructor gets pneumonia and cannot roll on the mat with the student and spar, the instructor does not get to suggest the student watch some videos on You Tube and keep the full tuition. These are different products, and the difference is in kind, not degree. Why does the University believe special, unique rules apply to it, and

University student Davia Bunch and parents Peter and Terry Kelly (collectively, “Plaintiffs”) paid for or accepted in-person education at the University, and seek to represent two classes of other similarly-situated parents and students in this action. Although Plaintiffs could have enrolled in one of the country’s many online learning institutions at a far cheaper cost—including one offered by the University itself—Plaintiffs contracted and paid significantly more for an in-person, face-to-face education, which included access to on-campus classes, laboratories, and technology centers, among other resources that were specifically promised in their contracts with the University. Indeed, the University specifically markets its physical campus, the campus’ location, and on-campus student activities as benefits students will receive if they pay their tuition and related fees. In response to the 2019 Novel Coronavirus (“COVID-19”), however, the University switched to distanced learning mid-way through the Spring 2020 semester, yet it refused to refund the tuition and fees Plaintiffs paid for in-person instruction. At this point in the pandemic, there should be no person left in America who does not understand that in person college classes are entirely different products from online college classes.

The University apparently believes that its students and their families should bear all the costs of its unilateral decision to stop providing specific, identifiable services it had promised to provide and accepted money to provide. That is against the law. As shown below, the allegations in the Amended Complaint regarding the University’s failure to reimburse students for the tuition and fee difference between in-person and online learning are more than sufficient to support claims for breach of contract, unjust enrichment, and conversion. Plaintiffs respectfully submit that dismissing the Amended Complaint would be clear error.

nobody else, at the expense of its own students and their families? Sovereign immunity does not mean that one must pretend a tent is an apartment, a You Tube video is a sparring session, or a Zoom lecture is an in-person college classroom.

First, it is black letter South Carolina law that the State of South Carolina has waived sovereign immunity for claims sounding in contract. Indeed, the University’s own counsel has acknowledged the same in prior briefing. *See* Exh. C. Any assertion to the contrary is based on a fundamental misreading of the applicable South Carolina Supreme Court decisions. If, as the University posits, the rule was otherwise, the University could act with impunity on all contracts, leaving the buyer without recourse. Similarly, pursuant to the South Carolina Tort Claims Act (“SCTCA”), the University cannot avoid liability for its tortious conduct. The University’s decision to withhold tuition and fee reimbursement is actionable under the SCTCA, and its assertion that this conduct was justified by statutory exception(s) to the SCTCA is an affirmative defense presenting factual disputes that cannot be resolved on the pleadings.

Second, Plaintiffs’ claims do not assert an “educational malpractice” challenge to the quality of education the University provided. Tellingly, the University’s argument relies entirely on cherry-picking three words from one allegation forty-seven (47) paragraphs into Plaintiffs’ eighteen (18) page First Amended Complaint. It ignores the forty-six (46) paragraphs before, and the sixty (60) paragraphs after. Consequently, the University wildly mischaracterizes both the gravamen of Plaintiffs’ legal claims and ignores Plaintiffs’ clear factual allegations explaining the basis for their claims.² Plaintiffs’ First Amended Complaint does not hide the ball on this point, and explicitly states that Plaintiffs’ claims are “not based on the (doubtlessly inferior) quality of the education they received through their online classes.” First Amended Complaint ¶ 30.

² To be clear, the University’s decision to keep full tuition and fees despite refusing to provide the products and services for which that tuition and fees were paid is reprehensible and wrong, and the alternative product provided instead is inferior. But this reality, while true, is not the legal claim set out in the Amended Complaint. Nor are these facts the factual allegations supporting the legal claim. Respectfully, the actual legal claims and factual allegations are not difficult to find: they are set out in the other one hundred and seven (107) paragraphs in the Amended Complaint.

Plaintiffs’ claims—and the objective basis upon which those claims rest—could not be clearer. The University’s decision to cancel face-to-face classes and on-campus activities, but also charge and retain full tuition and fees for those unprovided benefits and services, breached its agreement with Plaintiffs, unjustly enriched the University, and converted the tuition and fee monies Plaintiffs paid for that purpose. Contrary to the University’s assertion, these are the precise type of “objective” claims contemplated by the South Carolina Supreme Court. To wit, the University failed to provide a specifically promised service—in-person education tied to specific, identifiable fee structures that differ from the University’s online education fee structure—and, thus, the relevant inquiry is whether the service was provided at all, not whether it was adequate or appropriate. Courts examining similar COVID-19 tuition reimbursement actions have universally reached this conclusion.

Third, despite the University’s unsurprising mischaracterization, Plaintiffs have also identified the existence of a contract between them and the University. The University promised in-person education (and advertised its attendant benefits) through brochures, circulars, its mission statement, course listings, and other marketing materials, all of which comprise identifiable contractual terms that it breached by mandating online distance learning for all students, in lieu of the in-person educational experience Plaintiffs paid for. More specifically, the University’s course listings for the Spring 2020 semester represented that certain courses, which Plaintiffs enrolled in, would feature “face-to-face” instruction. Additionally, Plaintiffs paid certain identifiable fees that were specifically tied to upgrades to on-campus computer laboratories, on-campus Wi-Fi, laboratory equipment, supplies, lab instruction, and upkeep, none of which were accessible after the University closed its campus. Thus, Plaintiffs allege specific promises from the University that it would provide in-person education, on-campus activities, and other related services, breach

of those promises through its unilateral decision to shift to remote learning without reimbursement, and economic damages. These allegations are sufficient to state a claim for breach of contract.

Fourth, as an alternative to their breach of contract claim, Plaintiffs have sufficiently alleged the predicate facts necessary to establish claims for unjust enrichment and conversion. That is, Plaintiffs have alleged the University was unjustly enriched based on its inequitable retention of in-person tuition and fee monies while mandating remote learning. Further, in the alternative, Plaintiffs have sufficiently alleged conversion based on the University's possession of those funds, to the exclusion of Plaintiffs, despite failing to provide the services and experience for which those funds were paid.

Finally, Plaintiffs Peter and Terry Kelly have standing to pursue these claims, as they suffered an injury-in-fact because they paid non-resident tuition (and other fees) for in-person and on-campus education for their daughter, the University's failure to provide in-person and on-campus education caused their economic injury, *i.e.*, caused the Kellys to lose the benefit of their bargain, and they would obtain redress by receiving a pro-rated refund of the tuition and fee payments they made to the University. In these circumstances, the University's promises should be understood to extend not only to the Kelly's daughter but to her tuition-paying parents. At the very least, the standing issue raises a factual dispute that is inappropriate for resolution on a motion to dismiss.

The crux of the University's Motion to Dismiss is that, as a state educational institution, it is subject to its own special set of laws that grant it near immunity from performance of its contracts or its commission of torts. But that is not the law of South Carolina. Rather, South Carolina law provides Plaintiffs with a clear path, in contract or in tort, to assert the claims asserted in this action for the purpose of recovering money that Plaintiffs and the putative classes paid for services that

the University promised and accepted money for but did not provide. Accordingly, the University's motion(s) should be denied in their entirety.

II. PROCEDURAL HISTORY AND RELEVANT FACTUAL BACKGROUND

Plaintiffs are University of South Carolina students and parents who enrolled—and/or paid for—on-campus classes for the Spring 2020 semester. First Amended Complaint (“FAC”), ¶¶ 18-21. To enroll, Plaintiffs were contractually required to pay tuition and fees. *Id.* ¶¶ 21-22. Plaintiff Davia Bunch paid \$6,144 in tuition and Plaintiffs Peter Kelly and Terry Kelly paid \$16,744 in tuition on behalf of their daughter for the Spring 2020 semester. *Id.* ¶ 21. Plaintiffs also paid various fees, including a \$200 technology fee (“Technology Fee”), \$330 laboratory fee (“Laboratory Fee”), and \$1,575 Greek Meal Plan Fee (“Meal Plan Fee”). *Id.* at ¶ 21-22, 36. The University represented that: (1) the Technology Fee supported upgrades to on-campus computer laboratories and provided on-campus Wi-Fi; (2) the Laboratory Fee’s “sole purpose” was to enhance the educational experience by providing laboratory equipment, supplies, instruction, and upkeep; and (3) the Meal Plan Fee was paid in exchange for meal services for on-campus Greek students. *Id.* ¶ 36.

The University offers both in-person on-campus education, as well as a remote online learning for undergraduate degrees through its Palmetto College branch and treats these two modes of conducting undergraduate courses as distinct, subject to different tuition and fee structures. *Id.* ¶¶ 23-24, 32-33. Plaintiffs, however, chose to attend, enrolled in, and/or paid tuition and fees to the University for an in-person educational experience. *Id.* ¶ 26. Plaintiffs made this decision, in part, because of the University’s academic enrollment materials representing that its on-campus in-person classes “form the basis of [the University’s] educational requirements.” *Id.* ¶ 25 (citing University of South Carolina-Academic Overview: Undergraduate Education,

www.sc.edu/study/academic_overview/undergraduate_education/index.php.). The University proudly notes in its mission statement that it “leads the way in providing all students with the highest-quality education including . . . through engagement in nationally and internationally ranked research, scholarship, community, outreach and artistic creation.” *Id.* ¶ 27 (citing University of South Carolina-Our Mission, https://sc.edu/about/south_carolina_at_at_glance/our_mission.php). Further, the University recognizes that the collegiate experience consists of, among other things, face-to-face interaction with professors, mentors, and peers, access to learning facilities (including those covered by the Technology Fee and Laboratory Fee), and hands-on learning and experimentation. *Id.* ¶ 29. Additionally, the University represented that certain classes would be in-person in its course listings; for example, Plaintiff Davia Bunch paid Spring 2020 tuition to attend courses, including Mass Communications Research, International PR, and Politics and Mass Media, all of which represented that the “instructional method” would be “face-to-face instruction.” *See* Exhs. A (Davia Bunch Spring 2020 Classes) & B (course listings).³ In clear recognition of these benefits and the objective difference between in-person education and online education, the University charges **significantly less** for the exact same online education through its Palmetto College branch. *Id.* ¶ 33.

However, despite Plaintiffs’ payment of the tuition and fees referenced above, the University closed its campus on March 11, 2020, in response to the COVID-19 pandemic. While Plaintiffs do not dispute the rationale or reason for the closure of campus, the impact was to deny Plaintiffs access to the in-person education and on-campus facilities and services for which they

³ The Court may consider Plaintiff’s schedule and the course listings when deciding the University’s motions to dismiss, as these are documents which form the basis of the contract. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 491 n.2 (2014) (noting that court could consider contract documents when deciding motion to dismiss) (citing *Stahl v. U.S. Dept. of Agriculture*, 327 F.3d 697, 700 (8th Cir. 2003)).

paid significant tuition and fees. *Id.* ¶ 34, 38. Moreover, Defendant affirmatively stated it would not be providing a refund of any portion tuition and other fees even as it transitioned to online classes and closed its campus. *Id.* ¶¶ 39-40. This stance ensured that there was no burden split between the University and the students/parents, but instead placed the entire financial burden on students and their parents. As a result of the University's decision to shut down its campus and transition to online classes, Plaintiffs filed the instant suit, seeking to recoup the monetary benefit of the services they contracted and paid for. *Id.* ¶¶ 59-108.

III. ARGUMENT AND CITATION TO AUTHORITY

A. Legal Standard.

In evaluating a motion to dismiss, the Court must base its decision upon the allegations set forth in the complaint. *Jarrell v. Petoseed Co. Inc.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). As such, “[t]he question to be considered is whether in the light most favorable to the Plaintiff, and with every doubt resolved on its behalf, the complaint states any valid claim for relief.” *Holy Loch Distrib., Inc. v. Hitchcock*, 332 S.C. 247, 252, 503 S.E.2d 787, 790 (Ct. App. 1998), *rev’d on other grounds*, *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 28, 531 S.E.2d 282, 286 (2000); *see also Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698-99 (1987); *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001) (trial court’s ruling on 12(b)(6) motion must be “bottomed and premised solely upon allegations set forth by plaintiff”). Additionally, the Court may consider documents which form the basis of the contract that is in dispute within Plaintiffs’ complaint. *Bishop of Charleston*, 407 S.C. at 134 n.2, 754 S.E.2d at 497 n.2.

“The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on **any** theory.” *Baird v. Charleston Cnty.*, 333 S.C. 519,

527, 511 S.E.2d 69, 73 (1999) (emphasis supplied); *see also McCormick v. England*, 328 S.C. 627, 633, 494 S.E.2d 431, 434 (Ct. App. 1997) (same). Likewise, a pleading may not be dismissed merely because the Court doubts that plaintiff will prevail in the action. *Id.*; *Toussaint v. Ham*, 292 S.C. 415, 415, 357 S.E.2d 8, 9 (1987).

B. The University Cannot Use Sovereign Immunity to Escape Liability.

As a threshold matter, under controlling South Carolina law, the University cannot use sovereign immunity to shield itself from Plaintiffs' claims. As to Plaintiffs' breach of contract claim, when the State of South Carolina enters a contract, it implicitly consents to be sued and waives sovereign immunity to the extent of its contractual obligations. *See Kinsey Constr. Co. v. S.C. Dep't of Mental Health*, 272 S.C. 168, 171, 249 S.E.2d 900, 902 (1978), *partially overruled on other grounds*, *Unisys Corp. v. S.C. Budget and Control Bd.*, 346 S.C. 158, 166, 551 S.E.2d 263, 268 (2001); *see also Hodges v. Rainey*, 341 S.C. 79, 92, 533 S.E.2d 578, 585 (2000) ("We eliminated the State's immunity from suit based upon its contractual obligation in 1978 in *Kinsey* . . ."); *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 118 n.6, 659 S.E.2d 158, 164 n.6 (2008) ("A sovereign is not immune from a suit based on its breach of a contractual obligation."); *see also Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (unjust enrichment claim sounds in quasi-contract); S.C. Code Ann. § 59-101-10 (showing University of South Carolina is an arm of the state).

The University's contention that *Unisys* overruled *Kinsey* on this point, *see* University's Brief in Support at 20 n.6, is incorrect. *Kinsey* had two relevant holdings: (1) the state waives sovereign immunity on contract claims by virtue of its entry into the contract; and (2) private parties may bring claims on contracts secured pursuant to the procurement process in circuit court. *Kinsey*, 272 S.C. at 171, 249 S.E.2d at 902. *Unisys* overruled *Kinsey* **only** as to the second of these holdings. *See Unisys*, 346 S.C. at 166, 551 S.E.2d at 268. *Kinsey*'s first holding—that the State

waives sovereign immunity on contract claims by virtue of its entry into the contract—was not altered by *Unisys*. And, even if Defendant’s position were accurate, *Sloan* restored *Kinsey*.⁴

Further, although the University cites to *Thomas v. State of S.C.*, No. 2015-CP-40-07269 (S.C. Ct. Com. P. Apr. 2, 2019) for the proposition that South Carolina is infinitely immune from contractual claims, that decision: (1) is non-binding; and (2) contrary to the South Carolina Supreme Court’s decisions on this issue, as outlined above. Likewise, the University’s citation to North Carolina law—holding that quantum meruit claims against North Carolina are barred by sovereign immunity—is equally unavailing. In South Carolina, “when a State secures itself the benefits of a contract, it implicitly assumes the corresponding liabilities.” *Kinsey*, 272 S.C. at 171, 249 S.E.2d at 902. Accordingly, the State of South Carolina implicitly consented to be sued by entering contracts with the University’s students. As the Court noted in *Kinsey*, “[t]o hold otherwise would be to endorse an obvious contradiction, for it cannot be true that the State is empowered to contract with individuals and yet retains the power to avoid its obligations.” *Id.*

Similarly, under the South Carolina Tort Claims Act, South Carolina is liable for its “torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages and exemptions from liability and damages contained herein.” S.C. Code Ann. § 15-78-40; *see also Summers v. Harrison Const.*, 298 S.C. 451, 454, 381 S.E.2d 493, 495 (Ct. App. 1989) (“The South Carolina Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity. . . to the extent mandated by the Act.”). But the immunity provided by the Act is an affirmative defense. *Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004). And South Carolina courts allow such defenses to

⁴ This is the exact position taken by Nelson, Mullins, Riley, & Scarborough in prior litigation before a South Carolina state court. *See* Exh. C at 12-16 (arguing that South Carolina is not immune from breach of contract claims).

be raised in a motion to dismiss under Rule 12(b) **only** where “there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings.” *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). As is made clear further below, this standard is not met in this case.

Specifically, although the University may have been required to stop in-person instruction to comply with the Governor’s executive orders, Plaintiff’s conversion claim is premised on the University’s **subsequent decision** to retain the tuition differential and other fees paid in connection with on-campus activity. *See* FAC ¶¶ 81-85. Indeed, the University does not claim (much less show) that the Governor also required it to retain all tuition and fees students paid for in-person instruction and other on-campus activities. It is simply not apparent on the face of Plaintiff’s Amended Complaint that the SCTCA absolves the University of that decision, and, as such, the University’s argument that sovereign immunity requires dismissal of Plaintiffs’ conversion claim at the pleadings stage is contrary to law. *See Spence*, 368 S.C. at 123, 628 S.E.2d at 878.

Therefore, the University is precluded from using sovereign immunity as a bar to Plaintiffs’ breach of contract and unjust enrichment claims (to the extent that unjust enrichment sounds in contract) and may not utilize the affirmative defense of the SCTCA’s statutory exemptions at the pleadings stage.

C. Plaintiffs Do Not Allege a Veiled Claim for “Educational Malpractice.”

Contrary to the University’s mischaracterization of the First Amended Complaint, Plaintiffs allege straightforward breach of contract, unjust enrichment, and conversion claims based on well-established principles of law. Plaintiffs allege that they paid tuition and other fees to the University in exchange for specific, objective services that were promised but not delivered. FAC ¶¶ 34, 38-40. At the outset, Plaintiff’s Amended Complaint makes clear that “Defendant’s decision to cancel in-person classes and on-campus activities, but also to charge full tuition and

fees for those unprovided benefits and services, breaches its agreement with Plaintiffs and the putative classes, unjustly enriches Defendant at the expense of Plaintiffs and the putative classes, and takes money belonging to Plaintiffs and the putative classes and improperly provides it to Defendant.” FAC ¶ 7. Contrary to the University’s attempt to mischaracterize Plaintiffs’ allegations, the FAC goes on to clarify that ***Plaintiffs’ claims are not tied to the subjective quality of the education they received.*** *Id.* ¶ 30. “Instead, Plaintiffs’ claims are more simple and straightforward: Plaintiffs paid tuition for in-person classes, Defendant obligated itself to provide these in-person classes in exchange for that payment, and Defendant failed to provide those in-person classes.” *Id.*; *see also* FAC ¶¶ 36-39, 86-108.

Under black-letter South Carolina law, “objective” claims—*i.e.*, claims like those at issue in this case, where students are alleged to have contracted for ““specific services for which [they] allegedly paid and [the university] failed to provide””—are permissible. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456-57, 578 S.E.2d 711, 716-717 (2003) (citing *Cencor Inc. v. Tolman*, 868 P.2d 396, 398-99 (Colo. 1994)).⁵ In *Hendricks*, the South Carolina Supreme Court explicitly acknowledged that the relationship between student and university can be contractual in nature and outlined the difference between “subjective claims” against a university, which are prohibited, and “objective claims,” which are allowed. *Id.* at 716. *Hendricks*’ endorsement of objective claims against universities specifically permits Plaintiffs to bring them. *Id.*

⁵ *Cencor* involved a breach of contract claim where student plaintiffs alleged that a Colorado college had obligated itself to provide certain tangible services such as access to modern equipment, the opportunity to work under the supervision of qualified faculty, and computer training for all students, which the college did not provide. *See* 868 P.2d at 399. The Colorado Supreme Court held that, to the extent these obligations constituted educational services for which plaintiffs allegedly paid and which the college allegedly failed to provide, plaintiffs sufficiently stated a breach of contract claim. *Id.* at 400.

As shown above, Plaintiffs allege that they have been deprived of the objective services that the University specifically promised to them under valid, enforceable contracts, services for which they paid, but the University failed to deliver. *See generally* FAC ¶¶ 21-22, 34, 36, 38-40. Thus, the Amended Complaint confirms that Plaintiffs' claims are tied to the University's alleged breach of its objective promise to provide in-person, classroom educational services.

To avoid Plaintiffs' clear allegations that the University breached specific, objective, identifiable promises it made to them, the University sets up a strawman argument and attempts to recast Plaintiffs' legal theory as one of "educational malpractice" based on cherry-picked snippets from the Amended Complaint. To wit, the University has excerpted three words from one paragraph of Plaintiffs' eighteen (18) page Amended Complaint, cited three additional paragraphs, and attempts to argue that this transforms Plaintiff's well-pleaded claims into "educational malpractice" claims. But, viewed in context, the University's strawman falls apart. First, the excerpted allegation simply noted that the University's "refusal to refund or discount any tuition or service fees **has prompted public complaints from students and families who made these payments** yet received an inferior educational experience," and cited several of those public complaints. *Id.* ¶ 47. The University attempts to color the entirety of Plaintiff's lawsuit as "educational malpractice" based on that allegation, despite the allegation's clarity that the cited public opinions, not Plaintiffs, characterized the educational experience as inferior.

The University's other citations to Plaintiffs' allegations are similarly misleading. For example, in paragraph 28, Plaintiffs simply alleged that, according to a Brookings Institute study, students do better in traditional in-person classes than online courses. *Id.* ¶ 28. And, in paragraphs 44 and 67, Plaintiffs alleged that there is an objective difference between providing in-person, on-campus classes and replacing them with on-line collective classes, *i.e.*, one features bargained-for

face-to-face instruction and one does not. *Id.* ¶¶ 44, 67. Viewed on their face, none of these allegations premise Plaintiffs’ claims on the quality of education they received.⁶

Even setting this aside, the University ignores (again) Plaintiffs’ objective allegation that: “Plaintiff’s claims are **not** based on the (doubtlessly inferior) quality of the education they received through their online classes. Instead, Plaintiffs’ claims are more simple and straightforward: Plaintiffs paid tuition for in-person classes, Defendant obligated itself to provide these in-person classes in exchange for that payment, and Defendant failed to provide those in-person classes.” *Id.* ¶ 30. Plaintiffs also alleged that they paid specific fees tied to objective benefits and services that were not provided by the University, including the Technology Fee, Laboratory Fee, and Greek Meal Plan Fee. *Id.* ¶ 36. The University’s mischaracterization of Plaintiffs’ claims is unavailing and should be rejected out of hand.

Moreover, even if the University’s mischaracterization of Plaintiffs’ Amended Complaint could be credited (and it cannot), it is telling that the University ***has not cited to a single COVID-19 tuition reimbursement decision in support of its argument.*** See Defendant’s Brief in Support of Motions to Dismiss at 7-10. The reason for this omission is simple: courts across the country considering identical claims in the COVID-19 context have universally held they are ***not educational malpractice claims.*** See *Cross v. Univ. of Toledo*, No. 2020-00274-JD, 2020 WL 4726814, at *3 (Ohio Ct. Cl. Jul. 8, 2020) (“Cross’s Complaint presents claims of breach of contract and unjust enrichment—not ‘tuition refund’ or ‘educational malpractice’ claims, as asserted by UT.”); *Milanov v. Univ. of Michigan*, No. 20-000054-MK, 2020 Mich. Ct. Cl. LEXIS,

⁶ Again, if an apartment complex is destroyed in a hurricane and offers tenants a tent and a cot instead of an apartment, it is offering an objectively different product and it is a breach of contract to keep the full rent. Yes, a tent and a cot are inferior to an apartment. But the claim is not based on the inferiority of the product; it is based on the failure to provide what was promised and paid for, and to instead provide something objectively different.

at *1 (Mich. Ct. Cl. Jul. 27, 2020) (“[Plaintiffs] are arguing that the university promised one method of instruction, charged tuition and fees commensurate with that method of instruction, yet provided a different (allegedly lesser) method of instruction. This is a claim potentially sounding in contract or in quasi-contract.”); *McDermott v. Ohio State Univ.*, No. 2020-00286JD, 2020 WL 5239892, at *2 (Ohio Ct. Cl. Aug. 24, 2020) (“Plaintiff’s complaint does not merely assert that the education she received was substandard due to the clinic being closed. Rather, plaintiff alleges that defendant charged a fee specifically to support the dental clinic and then closed the clinic.”); *Salerno v. Florida Southern College*, No. 8:20-cv-1494, 2020 WL 5583522, at *5 (M.D. Fla. Sept. 16, 2020) (“This case is simply about an alleged promise to provide in-person learning that was allegedly breached.”); *Rosado v. Barry Univ. Inc.*, No. 1:20-cv-21813, 2020 WL 6438684, at *4 (S.D. Fla. Oct. 30, 2020) (“This is kind of like purchasing a Cadillac at full price and receiving an Oldsmobile. Although both are fine vehicles, surely it is no consolation to the Cadillac buyer that the ‘Olds’ can also go from Point A to Point B.”); *Saroya v. Univ. of the Pacific*, No. 5:20-cv-03196, 2020 WL 7013598, at *4 (N.D. Cal. Nov. 27, 2020) (“[C]onstruing the [First Amended Complaint] in the light most favorable to Plaintiff, his claim is not that [defendant] failed to provide students with an adequate education, but that it failed to provide certain services as promised.”); *Ford v. Rensselaer Polytechnic Inst.*, No. 1:20-cv-470, 2020 WL 7389155, at *6 (N.D.N.Y. Dec. 16, 2020) (“All [plaintiffs]’ argue is that regardless of fault, the value of the on-campus experience defendant plausibly promised them is greater than the value of the remote experience they received. That can be true even if defendant made every choice reasonably, or even perfectly.”).⁷

⁷ Courts have allowed similar claims to proceed even outside the COVID-19 factual context. *See Ross v. Creighton Univ.*, 957 F.2d 410, 416-17 (7th Cir. 1992) (academically challenged student-athlete promised academic-assistance services in exchange for attending the university that were not provided); *Ansari v. New York Univ.*, No. 96-cv-5280, 1997 WL 257473, at *3 (S.D.N.Y. May

These types of claims require no professional judgment on the quality of the education the University provided; rather, they merely require application of routine principles of law that courts are fully accustomed to providing. *See Smith v. Ohio State Univ.*, No. 2020-00321JD, 2020 WL 5694224, at *2 (Oh. Ct. Cl. Sept. 9, 2020) (“The essence of plaintiff’s breach of contract claim is that she contracted for in-person classes and received online classes instead. The mere mention of possible consequences to plaintiff’s educational or professional future does not render plaintiff’s complaint a claim for educational malpractice.”); *Ross*, 957 F.2d at 417 (“Ruling on this issue would not require an inquiry into the nuances of educational processes and theories, but rather an objective assessment of whether the institution made a good faith effort to perform on its promise.”); *Gibson v. Lynn Univ., Inc.*, --- F.Supp.3d ---, 2020 WL 7024463, at *4 (S.D. Fla. Nov. 29, 2020) (“The Court emphasizes that this not a case about the quality of the education [defendant] provided students during the Spring 2020 semester . . . [r]ather, Plaintiff’s claim is based on [defendant’s] alleged failure to provide in-person, on-campus instruction and access to campus facilities and resources.”).

Finally, the objective nature of Plaintiffs’ breach of contract claim is supported by the University’s own recognition of the difference between in-person, on-campus instruction and the

16, 1997) (claim that defendant failed to deliver promised hands-on training and facilities “does not require an evaluation of uniquely professional academic decisions such as the adequacy of the courses or methods of instruction. Rather, plaintiff’s claim requires an evaluation of whether defendants promised to provide services and failed to do so.”); *Kashmiri v. Regents of Univ. of Cal.*, 156 Cal. App. 4th 809, 815 (Cal. Ct. App. 2007) (university “raised professional education fees for continuing students after promising on its website and in its catalogues that such fees would not be raised for the duration of the students’ enrollment in the professional program”); *Cencor*, 868 P.2d at 400 (university “obligated itself to provide modern equipment in good working condition, qualified instructors, and computer training for all students, but did not fulfill those obligations”); *Zumbrun v. Univ. of S. Cal.*, 25 Cal. App. 3d 1, 7 (Cal. Ct. App. 1972) (professor failed to teach course due to engagement in faculty strike); *Johnson v Schmitz*, 119 F. Supp. 2d 90, 96 (D. Conn. 2000) (university failed contractual duties to “safeguard students from academic misconduct” where plaintiff’s idea misappropriated by faculty).

remote online learning as offered by its Palmetto College branch. FAC ¶¶ 23-24, 33. The University charges far less for remote instruction. *Id.* ¶ 33. Thus, Plaintiffs are not asking the Court to measure the worth of the education they received, they are asking for reimbursement for the tuition and fee differential the University itself has objectively quantified.

Based on this framework, Plaintiffs’ allegations do not assert an educational malpractice claim; they state “objective claim[s]” directly contemplated under *Hendricks*.

D. Plaintiffs Have Adequately Alleged a Breach of Contract Claim.

Plaintiffs have adequately alleged their breach of contract claim, including the identifiable promises from the University that were breached. To plead breach of contract under South Carolina law, a plaintiff must allege: (1) the existence of a contract; (2) its breach; and (3) damages caused by such breach. *Hotel & Motel Holdings, LLC v. BJC Enter., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). As a threshold matter, “[i]t is commonly held that a contract exists between a university and its students.” *Carter v. Univ. of South Carolina*, 360 S.C. 428, 432 n. 4, 602 S.E.2d 59, 61 n. 4 (Ct. App. 2004). South Carolina law explicitly acknowledges that students may maintain breach of contract claims against state universities. *See Hendricks*, 353 S.C. at 456-57, 578 S.E.2d at 716-717; *see also CenCor*, 868 P.2d at 398-99; *Ansari*, 1997 WL 257473, at *3. Indeed, the University cites to *Carter* in its brief, but attempts to have it both ways by (1) denying the existence of a contract and Plaintiffs’ rights under the same and (2) arguing that the equitable remedy designed for such a situation (unjust enrichment) should be dismissed because there is a potentially viable claim for breach of contract.

Setting aside the obvious legal defects in the University’s argument, it is indisputable that Plaintiffs have alleged the existence of a contract between them and the University—*i.e.*, the University’s mission statement, academic enrollment materials, public statements, course catalogs,

and marketing materials touting the benefits of its in-person educational experience. *See* FAC ¶¶ 25-27, 36. Specifically, among other allegations, Plaintiffs allege:

- The University promised that its Technology Fee and Lab Fees covered upgrades to on-campus computer laboratories, on-campus Wi-Fi, laboratory equipment, supplies, **instruction**, and upkeep.” FAC ¶ 36 (emphasis added).
- Additionally, the University promised that certain classes would be in-person in its course listings. *See* Exhs. A (Davia Bunch Spring 2020 Classes) & B (course listings).
- The University represented that its in-person classes “form[] the basis of our educational requirements. As you experience new things and share your experience with others, you will form powerful connections both in the classroom and beyond.” FAC ¶ 25.
- The University marketed that it “leads the way in providing all students with the highest-quality education, including . . . through engagement in nationally and internationally ranked research, scholarship, community outreach, and artistic creation.” *Id.* ¶ 27.

Accordingly, Plaintiff’s allegations are sufficient to state a breach of contract claim at this early stage. The University’s publications, such as a course catalogs, bulletins, or other advertisements are written documents that set forth the terms of the contractual agreement between a student and a private university. *See Salerno*, 2020 WL 5583522, at *5 (“Throughout the amended complaint, Murillo alleges that the College’s publications clearly implied that courses would be conducted in-person. The College’s materials also touted its many resources and facilities—all of which were located on the campus thereby implying in-person participation. These allegations are sufficient at this early stage . . .”); *Doe v. Bradley Univ.*, No. 20-1264, 2020 WL 7634159, at *2 (C.D. Ill. Dec. 22, 2020) (“Courts have largely denied universities’ motions to dismiss on nearly identical breach of contract claims because they found there were sufficient facts to allege a contract for in-person instruction based on university handbooks, catalogs, and brochures.”) (citing *Ford*, 20220 WL 7389155, at *7); *Rosado*, 2020 WL 6438684, at *3 (same);

Chong v. Northeastern Univ., No. CV 20-10844-RGS, 2020 WL 7338499, at *3 (D. Mass. Dec. 14, 2020) (same); *Zahn v. Ohio Univ.*, No. 2020-00371JD, 2020 WL 6163919, at *3 (Ohio Ct. Cl. Oct. 19, 2020) (same); *Milanov*, 2020 WL 7135331, at *5 (same); *Mellowitz v. Ball State Univ.*, No. 49D14-2005-PL-015026, 2020 WL 5524659, at *1 (Ind. Super. Ct. Aug. 14, 2020)) (same).⁸

Additionally, the University's contention that the Financial Agreement and Plaintiff's reliance on the same, *see* FAC ¶ 63 n.9, somehow forecloses the breach of contract claim is incorrect. The University does not point to an integration clause anywhere, much less in the Financial Arrangement. Accordingly, the Financial Agreement is simply one component of the contract between Plaintiffs and the University, to be considered along with the University's course listings, handbooks, mission statements, circulars, brochures, and other materials. Further, if the University is disputing "the universe of terms and conditions governing the parties' relationship," this supports denying the motion(s) to dismiss. *See Evans v. State*, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001) (dismissal on novel issue of law should only be granted where development of the record would not aid in resolution of the issue); *Gibson*, 2020 WL 7024463, at *4 (where the terms and conditions governing the parties' relationship is a disputed matter it should be "resolved when the full factual record is before the Court—not on a motion to dismiss").

⁸ Courts across the country have made similar findings even outside the COVID-19 context. *See also Villard v. Capella Univ.*, No. 6:17-cv-1429-Orl-41GJK, 2017 WL 9253388, at *2 (M.D. Fla. Dec. 21, 2017), *report and recommendation adopted*, 2018 WL 2011433 (M.D. Fla. Apr. 30, 2018) (the terms of the contract include, among other items "the university's catalogs, student manuals, student catalogs, and other policies and procedures"); *Madej v. Yale Univ.*, No. 3:20-cv-133 (JCH), 2020 WL 1614230, at *9 (D. Conn. Mar. 31, 2020) (explaining that the course catalog "forms part of its contract with" the student); *Breyer v. Pac. Univ.*, No. 3:17-cv-0036-AC, 2017 WL 3429395, at *4 (D. Or. Aug. 9, 2017) ("Statements in course catalogs, student handbooks, and similar documents may establish terms of the contractual agreement."); *Suhail v. Univ. of the Cumberlands*, 107 F. Supp. 3d 748, 755 (E.D. Ky. 2015) ("The nature of an implied contract between a University and its students is determined by looking at the brochures, course offering bulletins, and other official statements, policies and publications of the institution.").

Simply put, the University explicitly represented that the services for which Plaintiffs were paying tuition and associated fees would be in-person and on-campus, and the University failed to deliver on that promise, breaching its contract with Plaintiffs. *See Rosado*, 2020 WL 6438684, at *3 (allegations that plaintiff paid more for in-person education and attended in-person classes until March 2020 when they were discontinued sufficient to state breach of contract claim); *Salerno*, 2020 WL 5583522, at *5 (similar). Plaintiffs allege the precise types of damages to which they are entitled: (1) reimbursement of the tuition differential between the on-campus, in-person classes they paid for based on the objective value the University sets for its online undergraduate program offered through its Palmetto branch; and (2) reimbursement of the specific, identifiable fees Plaintiffs paid for services that the University failed to provide due to its transition to remote learning. FAC ¶¶ 23, 30-34, 36, 59-70, 86-94. Accordingly, Plaintiffs have adequately alleged a claim for breach of contract.

E. Plaintiffs Have Adequately Alleged a Claim for Unjust Enrichment.

An adequately pled claim for unjust enrichment should survive a motion to dismiss even when there is also an adequately pled claim for breach of contract. Although the University argues that an unjust enrichment claim is barred where the parties' relationship is governed by contract, (the existence of which the University concedes when it suits it), this argument has been repeatedly rejected at the motion to dismiss stage; under South Carolina law, "[e]ven if Defendant is correct, at this stage, the question is not whether Plaintiff may ultimately recover on unjust enrichment, or even whether an unjust enrichment claim is meritorious. The question is simply whether an unjust enrichment claim may legally move forward." *Melton v. Carolina Power & Light*, No. 4:11-cv-00270, 2012 WL 2401635, at *3 (D.S.C. June 25, 2012) (refusing to dismiss unjust enrichment claim where defendant contended that dispute was governed by written easement); *King v. Carolina First Bank*, 26 F.Supp.3d 510, 519 (D.S.C. 2014) (declining to dismiss unjust enrichment

claim even where claim was based on same allegations that supported breach of contract claim); *Besley v. FCA US, LLC*, No. 1:15-cv-01511, 2016 WL 109887, at *3 (D.S.C. Jan. 8, 2016) (similar finding that dismissal of unjust enrichment claim would be “premature”). “Under South Carolina law, ‘when an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both.’” *Enhance—It, L.L.C. v. Am. Access Tech., Inc.*, 413 F.Supp.2d 626, 632 (D.S.C. 2006) (quoting *Minyard Enter., Inc. v. Se. Chemical & Solvent Co.*, 184 F.3d 373, 381 (4th Cir. 1999)). Generally, a party is not required to make an election of remedies until after the verdict is entered and prior to the entry of judgment. *Id.* (citing *Minyard Enter.*, 184 F.3d at 381).

The South Carolina cases the University cites to the contrary are inapposite. In *Atherton v. Tenet Healthcare Corp.*, No. 2005-UP-362, 2005 WL 7084013, at *6 (Ct. App. 2005), the Court held that plaintiff’s unjust enrichment claim ***could not survive summary judgment*** where an express contract covered the compensation at issue. Similarly, in *Skelly*, 400 S.C. at 327-28, 734 S.E.2d at 181, the Court held that, ***at trial***, a plaintiff could not recover under both breach of contract and quantum meruit theories. Thus, Plaintiffs may maintain both their breach of contract and unjust enrichment claims at this stage, even if they will only be able to recover under one or the other. *See Skelly*, 400 S.C. at 327-28, 734 S.E.2d at 181 (breach of contract and unjust enrichment may be maintained as alternative claims but “[c]ase law bars *recovering* under both theories”) (emphasis in original).

Moreover, to the extent the University relies on other COVID-19 tuition reimbursement cases that have dismissed unjust enrichment claims, those decisions are outliers and should not be followed, especially where the University disputes the existence of a contract in the first instance. *See Gibson*, 2020 WL 7024463, at *6 (“[A]n undisputed express or implied-in-fact contract has

yet to be established at this stage in the proceedings—and, therefore, dismissal of Plaintiff’s unjust enrichment claim is not warranted.”); *Bergeron v. Rochester Inst. of Tech.*, No. 20-cv-6283, 2020 WL 7486682, at *9 (W.D.N.Y. Dec. 18, 2020) (“The Court declines to dismiss Plaintiffs’ unjust enrichment claims at this juncture, as they have adequately pled the elements of unjust enrichment and – as noted above in the breach of contract discussion – there is a dispute over the existence, scope, or enforceability of the alleged contract in this case.”); *Bradley Univ.*, 2020 WL 7634159, at *4 (“Especially since the existence of the underlying contract is in dispute, it would be premature for the Court to dismiss Plaintiff’s unjust enrichment claim pled in the alternative”); *Salerno*, 2020 WL 5583522, at *5 (allowing unjust enrichment claim against university to proceed in the alternative); *Rosado*, 2020 WL 6438684, at *6 (same).

Plaintiffs have also alleged sufficient facts stating a claim for unjust enrichment. “A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” *Dema v. Tenet Physician Serv.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). To recover for unjust enrichment, a plaintiff must allege: (1) a benefit conferred upon the defendant by plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for it to retain the benefit. *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (Ct. App. 1988).

Here, there is no dispute that Plaintiff and members of the putative classes conferred a benefit on the University in the form of monies paid for Spring Semester 2020 tuition and other fees in exchange for certain services and promises. FAC ¶¶ 20-23. These tuition and fee payments were intended to cover in-person educational services from January 2020 through May 2020, as represented by the University in its course listings, mission statement, and enrollment materials.

Id. ¶¶ 26, 30, 36; Exhs. A & B. The University has retained this benefit (*i.e.*, receipt of the tuition and fees) even though it has failed to provide the education, experience, and services for which the tuition and fees were collected, making the University’s retention unjust under the circumstances. *Id.* ¶¶ 37-39. Equity and good conscience require disgorgement not because the University switched to online learning, but because the University did so while retaining the tuition and fees Plaintiffs paid for an in-person educational experience. *Gibson*, 2020 WL 7024463, at *6 (allegations that tuition and fees were at least in part intended to cover services, resources, and access to facilities that university did not provide or only partially provided sufficient to state claim for unjust enrichment). Taking Plaintiff’s factual allegations and all reasonable inferences therefrom as true, Plaintiffs have sufficiently pled a claim for unjust enrichment.

F. Plaintiffs Have Adequately Alleged a Claim for Conversion.

Under South Carolina law, “conversion is the unauthorized assumption of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner’s rights.” *Simmons v. Danhauer & Assocs., LLC*, No. 8:08-cv-03819-JMC, 2010 WL 4238856, at *3 (D.S.C. Oct. 21, 2010), *aff’d*, 477 F. App’x 53 (4th Cir. 2012) (citing *Moseley v. Oswald*, 276 S.C. 251, 254, 656 S.E.2d 380, 382 (2008)). “To establish conversion, the plaintiff must show either title to or right to the possession of the personal property, and the plaintiff must demonstrate that the defendant exercised unauthorized control over the plaintiff’s property.” *Id.* Money may be the subject of a conversion claim if the money is capable of being identified. *See Moore v. Weinberg*, 383 S.C. 583, 587-88, 681 S.E.2d 875, 878 (2009).

Despite the University’s argument, Plaintiffs allege identifiable legal rights to an in-person, on-campus experience when they paid tuition and fees in exchange for that particular purpose—*i.e.*, funds to which they had a right to possess. *See* FAC ¶¶ 25-27, 29-30, 36. Plaintiffs also allege that the University retained possession of those funds, to the exclusion of Plaintiffs, and that such

retention was unauthorized because the University failed to use the funds for the particular purpose for which they were paid. *Id.* ¶¶ 38-40, 45, 48-49. These allegations are sufficient to establish a claim for conversion. *See Big Red Box, LLC v. Square*, No. 3:18-cv-758, 2020 WL 465928, at *8 (D.S.C. Jan. 22, 2020) (allegations that individual defendant to whom funds were entrusted improperly retained and expended those funds without plaintiff's permission stated a claim for conversion). Therefore, Plaintiffs have properly pled a claim for conversion.⁹

G. Plaintiffs Peter Kelly and Terry Kelly Have Standing.

Plaintiffs Peter and Terry Kelly have standing in this case as they paid the tuition and fees that were not reimbursed, they paid these funds to the University, and a finding for the Plaintiffs would redress the financial injury they have suffered. As the University correctly notes, to have standing, Plaintiffs Peter Kelly and Terry Kelly must demonstrate that they (1) suffered an injury in fact; (2) there is a causal connection between the injury and the challenged conduct; and (3) it is likely the injury will be addressed by a favorable decision. *See S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 117-18, 804 S.E.2d 854, 858 (2017). Contrary to the University's argument, Plaintiffs Peter and Terry Kelly readily satisfy each of these elements. First, they suffered an injury-in-fact because they paid approximately \$16,744 in non-resident tuition, along with the associated fees, for in-person and on-campus education for their daughter, which the University failed to provide for approximately half the semester. FAC ¶¶ 21, 26, 30, 34-35. Second, the Kellys' injury is traceable to the University's conduct because the University's failure

⁹ Indeed, the Higher Education Act, Title IV, requires that when a student withdraws partway through the enrollment period, the institution must refund a certain portion of the charges to account for its reduced educational obligations toward the student. *Career Coll. Ass'n v. Riley*, 74 F.3d 1265, 1269 (D.C. Cir. 1996). Thus, it is beyond dispute that any college or university receiving any tuition payments through government-provided financial aid must be able to account for what was paid for each individual student. This means that each student's tuition funds must be capable of being separately identified and sequestered and a claim for conversion of those funds can be properly sustained.

to provide in-person and on-campus education caused their economic injury, *i.e.*, caused them to lose the benefit of their bargain. *See id.* ¶¶ 34-35, 43-45. Third, if the Court entered judgment in favor of the Plaintiffs, the Kellys would obtain redress by receiving a pro-rated refund of the tuition and fee payments they made to the University. *Id.*

Although there is no South Carolina decision directly on point,¹⁰ other courts have regularly allowed tuition-paying parents to sue educational institutions for “reimbursement of tuition payments made by [a parent] on behalf of [their child].” *Uddin v. New York Univ.*, 6 N.Y.S.3d 900, 900-01 (N.Y. App. Term 2014) (holding parent plaintiff stated “a viable breach of contract claim”); *Zumbrun*, 25 Cal.App.3d at 11 (recognizing that a non-minimal “departure from a projected course of study” would “entitle the student (***or his parent who paid for it***) to recover the tuition paid or any part of it”) (emphasis added); *Christensen v. S. Normal Sch.*, 790 So. 2d 252, 255 (Ala. 2001) (considering certified question from federal court: “Because a school and a student ***or the student’s parents*** rarely use a formal, written contract, the general nature and terms of the contract between a school and the student ***or parents*** are usually implied. Thus, the catalogs, bulletins, circulars, and regulations a school provides to its students are evidence of the contract it has with the student ***or the parents.***”) (emphasis added). Additionally, in *Verlanga v. Univ. of San Francisco*, Case No. CGC-20-584829 (Cal. Super. Ct. Nov. 12, 2020), a California court ruled that a parent had standing to pursue claims against a school for failure to provide a refund after moving courses online during the COVID-19 epidemic.

¹⁰ Although the University cites *Runge v. Sanford*, No. 6:08-231, 2009 WL 9083917, at *1 (D.S.C. Feb. 25, 2009) in support of its standing argument, that decision is not binding on this Court. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 n.9 (2009) (federal decisions not binding on state courts).

This result makes good sense, as courts—including the South Carolina Supreme Court—recognize that parents often pay for the college tuition of their children, such that the college’s promises can be understood to extend not only to the student but to the tuition-paying parent, and the State has an incentive in encouraging the same. *See McLeod v. Starnes*, 396 S.C. 647, 658, 723 S.E.2d 198, 204-05 (2012) (South Carolina retains power to require parent to pay for child’s college education due, in part, to “State’s interest in having college-educated citizens”); *see also In re Knight*, No. 15-21646, 2017 WL 4410455, at *4 (Bankr. D. Conn. Sept. 29, 2017) (“[College Tuition] payments fulfill a parent’s social obligation to maintain their family unit.”); *Trizechahn Gateway, LLC v. Oberdick (In re Oberdick)*, 490 B.R. 687, 712 (Bankr. W.D. Pa. 2013) (referencing “a societal expectation that parents will assist with such expense if they are able to do so.”). Indeed, Plaintiffs affirmatively allege that the University’s promises and representations regarding in-person instruction induced the Kellys to pay tuition for in-person, on-campus education on behalf of their daughter. *See* FAC ¶ 26.

The University reaped the benefits of these tuition payments made by parents and now attempts to escape liability for the breach of the promises that induced these payments. If a parent can choose to pay tuition, it is logical that a parent should be able to sue a university for a failure to provide the services that were promised in exchange for that tuition (and fees). At the very least, Plaintiffs’ factual allegations raise a dispute that is inappropriate for resolution on a motion to dismiss. *See Flexiteek Americas, Inc. v. PlasTEAK, Inc.*, No. 08-60996, 2009 WL 890613, at *1 (S.D. Fla. Apr. 1, 2009) (deferring the standing inquiry to summary judgment where “the standing issue raised in the Motion to Dismiss is clearly a factual dispute”). For these same reasons, Plaintiffs Peter Kelly and Terry Kelly have standing, and the Court should not dismiss them from the action.

H. In the Alternative, Plaintiffs Request the Opportunity to Amend and Substitute New and Additional Class Representatives.

Should the Court grant the University's motions to dismiss in any respect, Plaintiffs request leave to amend. "The plaintiff in most cases should be given an opportunity to file and serve an amended complaint." *Spence*, 368 S.C. at 129, 628 S.E.2d at 881 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). As such, the preferred remedy is for a plaintiff's complaint to be dismissed without prejudice, subject to amendment. *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019) ("[A] complaint dismissed for failure to state facts upon which relief can be granted should be dismissed without prejudice in order for plaintiff to decide whether to serve an amended complaint."). Indeed, a complaint "is not subject to dismiss[al] with prejudice unless it appears **to a certainty** that no relief can be granted under any set of facts that can be proved in support of its allegations." *Id.* (emphasis in original). Accordingly, Plaintiffs request leave to amend, to the extent the Court grants any portion of the University's motions to dismiss. Plaintiffs would respectfully request ninety (90) days to amend if necessary.

IV. CONCLUSION

For the reasons outlined above, Plaintiffs respectfully request that the Court deny the University's motions to dismiss in their entirety. However, if the motions are granted in any part, Plaintiffs request leave to amend.

DATED: January 13, 2021.

Respectfully submitted,

BY: /s/ Daniel R. Dalton

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Dated: January 13, 2020

*Attorneys for Plaintiffs, individually and on
behalf of all others similarly situated*

EXHIBIT A



TERM
Spring 2020

Bursar's Office
University of South Carolina
1244 Blossom St.
Columbia, SC 29208

USC ID: H50038436

Name: Ms. Davia E. Bunch

Date: 05-07-2020 12:05:57

CHARGES		ACCOUNT INFORMATION ***		CREDITS/ANTICIPATED CREDITS	
COL Technology Fee	200.00	Fed Direct Unsubsidized Loan	990.00		
COL UG Resident Tuition	6,144.00	Federal Direct Subsidized Loan	2,721.00		
Electronic Refund	1,339.00	Federal Pell Grant	2,972.00		
		USC Achievement Schl	1,000.00		
*** Account Information is real-time					
	7,683.00				7,683.00
Authorized Aid	0.00	Other Memos	0.00		
Other/Previous Term balance	0.00	Current Term Balance	0.00		

Authorized aid and other memos are funding for the current term that is scheduled for disbursement, with all the disbursement requirements completed. Authorized aid and other memos have been deducted from the total amount due on your bill. You only need to pay the amount listed as Current Term Balance. If the Current Term Balance is a negative number, you do not need to pay an amount at this time.

PART OF TERM	COURSE REGISTRATION NUMBER	COURSE	COURSE TITLE	COURSE CAMPUS	CREDIT HOURS	STATUS
30	41259	DANC 101	Dance Appreciation	COL	3.00	RW
30	45532	JOUR 332	Mass Communications Resea	COL	3.00	RW
30	49540	POLI 365	State Government	COL	3.00	RW
30	52920	POLI 362	Politics and the Mass Med	COL	3.00	RW
30	56115	JOUR 499	Special Topics	COL	3.00	RW

EXHIBIT B

ELECTRONICALLY FILED - 2021 Jan 13 2:59 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

<https://banner.onecarolina.sc.edu/StudentRegistrationSsb/ssb/classSearch/classSearch>

Search Again

Search Results 243 Classes

CRN	Subject	Course Number	Section	Title
50308	JOUR	499	005	Topic: Media Management
52383	JOUR	499	006	Topic: Business Reporting and Writing
52385	JOUR	499	007	Topic: Long-form Photo Story

Close

Details for Topic: International PR JOUR - Journalism 499 018

Term: 202001 | CRN: 56115

Associated Term: Spring 2020

CRN: 56115

Campus: USC Columbia

Schedule Type: Lecture

Instructional Method: Face-to-Face Instruction

Section Number: 018

Subject: JOUR - Journalism

Course Number: 499

Title: Topic: International PR

Credit Hours: 3

Grade Mode: No Section specified grade mode, please see Catalog link below for more information.

Class Details

Bookstore Links

Course Information

Syllabus

Attributes

Restrictions

Enrollment

Corequisites

Prerequisites

Cross Listed Courses

Fees

Close

Journalism & Mass Comm Room: 310 Start Date: 01/13/2020

Journalism & Mass Comm Room: 225 Start Date: 01/13/2020

3

8 of 20 seats remain.

M

T

W

T

F

S

04:25 PM - 05:40 PM Type: Class Building: Sch of Journalism & Mass Comm Room: 310 Start Date: 01/13/2020

Search Again

Search Results 243 Classes

CRN	Subject	Course Number	Section	Title	
45532	JOUR	332	002	Mass Communications Research	3
45533	JOUR	332	003	Mass Communications Research	3
45534	JOUR	332	005	Mass Communications Research	3

Close

Details for Mass Communications Research JOUR - Journalism 332 002

Term: 202001 | CRN: 45532

Associated Term: Spring 2020

CRN: 45532

Campus: USC Columbia

Schedule Type: Other

Instructional Method: Face-to-Face Instruction

Section Number: 002

Subject: JOUR - Journalism

Course Number: 332

Title: Mass Communications Research

Credit Hours: 3

Grade Mode: No Section specified grade mode, please see Catalog link below for more information.

Class Details

Bookstore Links

Course Information

Syllabus

Attributes

Restrictions

Enrollment

Corequisites

Prerequisites

Cross Listed Courses

Fees

Close

31 of 45 seats remain.

M

T

W

T

F

S

09:40 AM - 10:30 AM Type: Class Building: Sch of Journalism & Mass Comm Room: 115 Start Date: 01/13/2020 End Date: 01/13/2020

EXHIBIT C

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Renewable Water Resources,	)	Civil Action No. 2016-CP-23-5905
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN OPPOSITION
	)	TO MOTION TO TRANSFER CASE
Insurance Reserve Fund, a Division of	)	TO NON-JURY DOCKET
the State Fiscal Accountability Authority	)	
of South Carolina,	)	
	)	
Defendant.	)	

Plaintiff Renewable Water Resources (“ReWa”), by and through its undersigned counsel, respectfully submits this Memorandum in Opposition to Defendant Insurance Reserve Fund’s (“IRF”) Motion to Transfer the Case to the Non-Jury Docket (“Motion”).

ReWa is entitled to a jury trial on its causes of action against the IRF. Furthermore, the IRF waived its right to contest a jury trial because it intentionally delayed in making its Motion and engaged in dilatory litigation tactics in order to prevent or postpone the trial of this case. As such, the IRF’s Motion should be denied.

BACKGROUND AND PROCEDURAL HISTORY

This case arises out of a polychlorinated biphenyl (“PCB”) contamination that occurred in the Upstate of South Carolina in 2013 as a result of vandalism by one or more third parties illegally introducing the contaminants into ReWa’s system. ReWa, a special purpose district that provides wastewater treatment services in the Upstate, discovered the presence of PCBs at three of its facilities during routine testing practices. Upon discovery of the PCBs in its treatment system, ReWa immediately notified the United States Environmental Protection Agency (“EPA”) and South Carolina Department of Health and Environmental Control (“SCDHEC”).

The PCB contamination resulted in direct physical loss and damage to ReWa's facilities, including fixtures, machinery, equipment, biosolids, and other personal property at its three plants. In response, ReWa incurred extensive expenses in repairing and restoring the facilities, machinery, and equipment to usable condition, and in removing and disposing of the resulting contaminated material. ReWa maintained a Building and Personal Property Policy and General Tort Liability Policy with the IRF at the time the PCB contamination occurred. ReWa properly and timely notified the IRF of its damages, and kept the IRF apprised of its ongoing efforts to eradicate the PCB contamination to prevent any further harm. The IRF denied coverage under these policies, other than \$30,000 under an additional coverage provision for pollutant cleanup and removal. The costs ReWa incurred are over \$9 million. ReWa therefore filed the instant lawsuit, alleging causes of action for declaratory judgment, breach of contract, and bad faith.

In November of 2017, by consent of the parties, this case was placed on the jury trial roster for the May 21, 2018 term of court. On April 12, 2018, a mere month away from trial, the IRF filed this Motion to Transfer the Case to the Non-Jury Roster.¹

LEGAL STANDARD

"Whether a party is entitled to a jury trial is a question of law." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). Under Article I, § 14 of the South Carolina Constitution, "[t]he right of trial by jury shall be preserved inviolate."

The South Carolina Constitution only preserves jury trials in cases which were allowed at the time of adoption of the Constitution. *Com'rs v. Seabrook*, 2 Strob (33 SCL) 560. In other words, whether a party is entitled to a trial by jury depends on whether the right to a jury was

¹ Judge Miller was removed as a presiding judge for the May 21, 2018 term of court on April 26, 2018. Because Judge Stilwell has recused himself, the case was removed from the May 21, 2018 jury trial roster.

secured at the time of the adoption of our State Constitution. *See, e.g., Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 150, 621 S.E.2d 344, 348 (2005). The right to a jury trial encompasses forms of action that have arisen since the adoption of the Constitution if the actions are of like nature to actions which were triable at common law at the time of the adoption of the Constitution. *Id.*

“Generally, the relevant question in determining the right to a trial by jury is whether the action is legal or equitable.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). When a party seeks both money damages and equitable relief, characterization of the action as equitable or legal depends on the party’s “main purpose” in bringing the action. *Insurance Financial Services, Inc. v. South Carolina Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978).

ARGUMENT

I. The IRF Waived Its Right to Contest a Jury Trial.

ReWa filed its Complaint with a jury trial demanded on October 17, 2016. In November 2017, the IRF consented to this case being placed on the jury trial roster for the May 21, 2018 term of court. The parties submitted an agreed-upon Status Conference Form on November 16, 2017, attached hereto as **Exhibit A**. The Greenville County Jury Trial Coordinator, Lyndall Coker, notified the parties on November 17, 2017 that the case had in fact been set on the May 21, 2018 term of court. (Nov. 17, 2017 Email, attached hereto as **Exhibit B**).

Five months later, on April 10, 2018, counsel for the IRF emailed counsel for ReWa and asked for a continuance to the June 11, 2018 term of court. (Apr. 10, 2018 Email, attached hereto as **Exhibit C**). Counsel for ReWa notified counsel for the IRF that it did not consent to a continuance, and wished to proceed with the trial as scheduled the following month. Two days

later, on April 12, 2018, the IRF filed a Motion to Transfer the Case to the Non-Jury Docket. (Apr. 12, 2018 Email, attached hereto as **Exhibit D**).

The IRF did not make this Motion until five months after the case was set on the jury trial roster, and a mere month away from the scheduled trial. ReWa believes that the IRF intentionally postponed the filing of this Motion in order to improperly delay the trial of this case. After its failed attempt to obtain a continuance, the IRF filed this Motion in an effort to postpone trial.

This Court should deny the IRF's Motion due to the IRF's dilatory conduct and find that the IRF has waived its right to contest a jury trial. "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). Waiver "may be expressed or implied by a party's conduct." *Parker*, 313 S.C. at 487, 443 S.E.2d at 391 (citing *Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (1991)). "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." *Lyles v. BMI, Inc.*, 292 S.C. 153, 158–59, 355 S.E.2d 282, 285 (Ct. App. 1987) (citing *Pitts v. N.Y. Life Ins. Co.*, 247 S.C. 545, 148 S.E.2d 369 (1966)). Based on the circumstances of this case and the authority cited above, the IRF's excessive delay in filing the instant Motion constituted a waiver of its right to contest a jury trial.

At this point, the PCB contamination at ReWa's facilities occurred five years ago. If the Court grants the IRF's Motion and further progress of this case is halted, then ReWa will be prejudiced by the extended delay of a trial. The memories of pertinent witnesses will fade and ReWa and the IRF will continue to experience turnover in employees that have relevant knowledge regarding the facts of this case. Furthermore, ReWa will be forced to expend additional resources,

and will remain wholly uncompensated for the damages that it sustained in response to the PCB contamination, which ReWa contends were fully covered under its insurance policies with the IRF.

This Court should not condone the conduct of the IRF. By filing this Motion, the IRF has attempted to impede ReWa's right to a fair and expeditious determination of its claims. As stated in Article I, Section 9 of the South Carolina Constitution, "[e]very person shall have speedy remedy therein for wrongs sustained." The South Carolina Supreme Court has recognized the long-accepted adage that "justice delayed is justice denied." *Maner v. Maner*, 278 S.C. 377, 379, 296 S.E.2d 533, 535 (1982) (citing *Rylee v. Marett*, 121 S.C. 366, 378, 113 S.E.2d 483, 487 (1922)). For these reasons, the Court should deny the IRF's Motion and should order that this case remain set for a jury trial.

II. ReWa is Entitled to a Jury Trial.

The IRF seeks to transfer the entirety of this case to the non-jury roster. The IRF argues in its Motion that there is no constitutional right to a jury trial in an action against the sovereign not recognized at the time the Constitution was adopted. Because the State enjoyed complete sovereign immunity at the inception of the Constitution, the IRF asserts, in effect, that the doctrine of sovereign immunity entirely eradicates ReWa's right to a jury trial. However, the IRF has misinterpreted the right to a jury trial and has misconstrued the relevant case law. For the subsequent reasons, ReWa is entitled to a jury trial and the IRF's Motion must be denied.

A. The Right to a Jury Trial is Claim Specific.

The IRF's Motion makes the general contention that "[t]he causes of action asserted by the Plaintiff in this action were not recognized and/or could not be pursued against the State at the time of the adoption of the constitution in 1868." The IRF does not assess each of ReWa's causes of action separately to determine whether ReWa has a right to a jury trial on each claim. Instead,

the IRF groups all of ReWa's claims together, and broadly states that ReWa does not have a right to a jury trial on any of its claims. In support of this contention, the IRF cites to only one case that deals distinctly with a breach of contract action under the procurement code. *See Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 551 S.E.2d 263 (2001).

The right to a jury trial is claim specific. Therefore, if even one of ReWa's causes of action should be heard before a jury, then the IRF's Motion must be denied, and the case must remain on the jury trial roster. The IRF did not ask this Court to bifurcate ReWa's claims for trial, such that certain claims be heard before a jury and others heard non-jury. Instead, the IRF made an expansive assertion that ReWa is not entitled to a jury trial on *any* of its claims. Based on the analysis below, ReWa is entitled to a jury trial on all, or at the very least some, of its causes of action, and therefore the IRF's Motion must be denied.

B. ReWa Has the Right to a Jury Trial on its Bad Faith Causes of Action.

ReWa is entitled to a jury trial on its bad faith causes of action. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, “[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts **in the same manner** and **to the same extent** as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.” S.C. Code Ann. § 15-78-40 (emphasis added). Thus, whether ReWa has the right to a jury trial on its bad faith claims follows the same analysis as whether an insured suing a private insurance company under like circumstances would have the right to a jury trial on a bad faith claim.

In *Nichols v. State Farm Mutual Automobile Insurance Company*, the South Carolina Supreme Court held that “if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover

consequential damages in a tort action.” 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983), *rev’d on other grounds*. The Court further held that whether the insurer acted in bad faith in failing to pay a claim was a question for the jury. *Id.*

The South Carolina Supreme Court has previously found that the State Budget and Control Board “may be liable under a claim of bad faith failure to pay a claim.” *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993) (citing S.C. Code Ann. § 15-78-40 which states that a state agency is liable for its torts in the same manner and to the same extent as a private individual under like circumstances subject to the limitations contained with the South Carolina Tort Claims Act). The Supreme Court noted in its decision that a bad faith claim is undoubtedly a tort action. *Id.* at 7–8, 437 S.E.2d at 9–10 (citing *Nichols*, 279 S.C. 336, 306 S.E.2d 616).

Even though a claim for bad faith was not recognized at the time of the adoption of the Constitution, the cause of action is similar in nature to other tort actions which were triable at common law at the time of the adoption of the Constitution. Furthermore, a bad faith claim is a legal, rather than equitable, action. *See Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (holding that the relevant question in determining the right to a trial by jury is whether the action is legal or equitable). Therefore, ReWa is undoubtedly entitled to a jury trial on its bad faith causes of action.

C. ReWa Has the Right to a Jury Trial on its Breach of Contract Causes of Action.

ReWa is also entitled to a jury trial on its breach of contract causes of action because any ambiguities in the insurance policies at issue in this case are latent ambiguous.

In a typical contract dispute, the meaning of an ambiguous contract is a question of fact that is resolved by the jury. *See, e.g., Café Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d

162, 164 (1991) (“As a general rule, written contracts are to be construed by the Court; but where a contract is ambiguous or capable of more than one construction, the question of what the parties intended becomes one of fact, and the question should be submitted to the jury.”).

This general rule applies in cases involving insurance disputes. *See Waters v. S. Farm Bureau Life Ins. Co.*, 365 S.C. 519, 524, 617 S.E.2d 385, 388 (2005). However, only latent ambiguities in an insurance policy are resolved by a jury. *Hann v. Carolina Cas. Ins. Co.*, 252 S.C. 518, 526, 167 S.E.2d 420, 423 (1969). Patent ambiguities are still determined by the court and must be resolved in favor of the insured. *Id.*; *see also Beaufort Cnty. School Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95–96 (Ct. App. 2011) (“Interpretation of an unambiguous policy, or a policy with a patent ambiguity, is for the court.”).

A patent ambiguity is one where the uncertainty as to meaning “arises upon the words of the will, deed, or other instrument as looked at in themselves, and before any attempt is made to apply them to the object which they describe.” *Id.* at 524, 167 S.E.2d at 422 (citing *Jennings v. Talbert*, 77 S.C. 454, 58 S.E. 420 (1907)). A latent ambiguity, on the other hand, is one where “the uncertainty arises, not upon the words of the will, deed, or other instrument as looked at in themselves, but upon those words when applied to the object or subject which they describe.” *Id.* Latent ambiguities are “developed by facts extrinsic and collateral to the policy.” *Hastings v. Union Fire Ins. Co.*, 130 S.C. 326, 125 S.E. 923, 924 (1924).

If it is determined that the provisions in the policy are patently ambiguous, then the court must resolve the ambiguity in favor of the insured. *See, e.g., Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 639, 594 S.E.2d 455, 459 (2004) (“Where the words of an insurance policy are capable of two reasonable interpretations, the construction most favorable to the insured should be adopted.”); *Hann*, 252 S.C. at 525, 167 S.E.2d at 423 (“It is settled beyond

cavil in this jurisdiction that the terms of an insurance policy should be construed most liberally in favor of the insured, and that in case of conflict or ambiguity, a construction will not be adopted that defeats recovery if the policy is reasonably susceptible of a meaning that will permit recovery. We uniformly give the insured the benefit of any doubt in the construction of the terms used in an insurance policy.”). If the court determines that the ambiguities are patent, and further finds that coverage was provided under the policy, then the amount of the loss becomes a jury issue. *Hann*, 252 S.C. at 525, 167 S.E.2d at 423.

While ReWa contends that the terms of the Building and Personal Property Policy and General Tort Liability Policy expressly provide coverage for ReWa’s claims, any potential ambiguities that may arise in this case are latent ambiguities. The uncertainty of whether the terms of the Policies provide coverage arises from the application of the Policies’ language to the exact facts of this case—the illegal dumping of PCBs which resulted in the contamination of ReWa’s wastewater treatment system. While the language in the Policies appears clear, application of the language to the facts and circumstances surrounding the contamination and resulting damages muddles the language’s clarity and creates ambiguities as to the language’s application in this unusual event. *See Hann*, 252 S.C. at 524, 167 S.E.2d at 422. In other words, any potential ambiguities in this case do not arise until facts extrinsic and collateral to the policy are developed and applied. *See Hastings*, 130 S.C. 326, 125 S.E. at 924 (1924).

For example, the Building and Personal Property Policy states as follows:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

- a. **Building**, meaning in the building or structure described in the Declarations, including:
 - (2) Fixtures, including outdoor fixtures;
 - (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- b. **Your Business Personal Property** located in or on the building described in the Declarations...consisting of the following...:
 - (1) Furniture and fixtures;
 - (2) Machinery and equipment;
 - (4) All other personal property owned by you and used in your business;

ReWa contends that the above policy language provides coverage for ReWa's damages. The IRF will pay for direct physical loss of or damage to the insured's property caused by a covered cause of loss. Covered property includes the building, and any fixtures or permanently installed machinery and equipment, as well as business personal property, like furniture, machinery and equipment, or other property owned by the insured and used in its business.

However, any conceivable ambiguities that might arise in interpreting this language occur only when the policy language is applied to the facts of this case. For instance, the IRF asserts that the presence of PCB contamination in ReWa's storage tanks did not cause "direct physical loss of or damage to" the tanks. ReWa, however, contends that PCB contamination physically damaged its storage tanks, caused physical loss to its biosolids, and rendered the tanks unusable for an extended period of time. Until the facts of this unusual case are applied to the policy language, the language appears to be straightforward. However, the PCB contamination that occurred at ReWa's facilities is a rare circumstance, and it is the application of these unusual facts which are the root of any possible ambiguities that might arise.

ReWa also contends that the General Tort Liability Policy covers this episode of environmental contamination. For example, the General Tort Liability Policy provides as follows:

The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of ... B. Property Damage to which this applies caused by an occurrence.

...

“**Occurrence**” means an accident, including continuous or repeated exposure to conditions, which result in personal injury or property damage neither expected nor intended from the standpoint of the insured.

ReWa claims that its damages are covered as an “occurrence” because the PCB contamination was neither expected nor intended from its standpoint. The IRF contends, among other things, that the vandalism which caused the PCB contamination is not an “occurrence.” Thus, only when this policy language is applied to the facts of this case can potential latent ambiguities arise. The IRF has never been confronted with applying this policy language to an instance of PCB contamination. However, ReWa contends that case law on this point requires environmental contamination to be covered under the General Tort Liability Policy. Therefore, any potential ambiguities do not arise until extrinsic facts are applied to the terms of the Policy.

ReWa is entitled to a jury trial on its breach of contract causes of action. While ReWa claims that its damages resulting from the PCB contamination are plainly covered under the Policies, the IRF disputes that coverage exists. Any potential ambiguities under the Policies are latent ambiguities because they arise only when the rare facts of this case are applied to the terms of the Policies.

1. The IRF is Not Immune from a Breach of Contract Claim.

As an initial matter, the South Carolina Supreme Court has held that when the State enters into a contract, the State implicitly consents to be sued and waives its sovereign immunity to the extent of its contractual obligations. The South Carolina Supreme Court originally eliminated the State’s immunity from suit based upon its contractual obligations in *Kinsey Construction Co. v.*

S.C. Dep't of Mental Health, 272 S.C. 168, 249 S.E.2d 900 (1978).² The Court held that “where the legislature has by statute authorized the State to enter into certain contracts, the State, by entering such a contract, thereby consents to be sued if it breaches the contract to the damage of the other contracting party. Thus, when a State secures itself the benefits of a contract, it implicitly assumes the corresponding liabilities.” *Id.* at 171, 249 S.E.2d at 902. The Court found that its decision was supported by *Chesterfield Cnty. v. State Highway Dep't*, 181 S.C. 323, 187 S.E. 548 (1936), which held that statutes authorizing county and highway commissions to enter into agreements, whereby funds have been advanced for construction of highways, by implication confers upon either contracting party the power to sue the other for breach of contract.

In 1985, the Supreme Court further abolished sovereign immunity with respect to torts in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to *McCall*, the South Carolina legislature adopted the Tort Claims Act, which waived the State’s sovereign immunity in tort under limited circumstances. However, the South Carolina legislature never responded to the Court’s ruling in *Kinsey*.

In *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 551 S.E.2d 263 (2001), the Supreme Court overruled *Kinsey* to a limited extent. The Supreme Court declined to follow *Kinsey*’s interpretation of S.C. Code Ann. § 15-77-50, which vests exclusive jurisdiction over actions and controversies affecting State agencies with the circuit court. *Id.* at 166–67, 551 S.E.2d at 268–69. The Court reaffirmed an interpretation of § 15-77-50 which held that the statute was “essentially a venue statute governing instances where the State is subject to suit,” and overruled

² *Kinsey* was overruled on other limited grounds in *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 551 S.E.2d 263 (2001), as discussed in further detail below.

Kinsey to the extent it conflicts with that basic principle and holds that § 15-77-50 is a general waiver of sovereign immunity. *Id.*

Unisys only overruled *Kinsey* in this limited context. Thus, it is still good law that “wherever the State of South Carolina pursuant to statutory authority enters into a valid contract, the State implicitly consents to be sued and waives its sovereign immunity to the extent of its contractual obligations.” *Kinsey*, 272 S.C. at 172, 249 S.E.2d at 903. The IRF received statutory authority to provide tort liability insurance to governmental entities in S.C. Code Ann. § 1-11-140 and to insure public buildings and contents in S.C. Code Ann. § 10-7-10, *et seq.* These statutes do not establish that the IRF is immune from breach of contract lawsuits. Therefore, the State has implicitly consented to be sued by creating statutory authority for the IRF to enter into insurance contracts. As the Court noted in *Kinsey*, “[t]o hold otherwise would be to endorse an obvious contradiction, for it cannot be true that the State is empowered to contract with individuals and yet retains the power to avoid its obligations.” *Kinsey*, 272 S.C. at 172, 249 S.E.2d at 903.

2. The IRF’s Reliance on *Unisys* is Misguided.

The IRF cites *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 551 S.E.2d 263 (2001), to support its contention that ReWa does not have a right to a jury trial on its claims against the IRF. However, the IRF’s reliance on *Unisys* is misguided, as the IRF attempts to widen the concise and limited holding of the case.

Unisys dealt with a breach of contract action under the Procurement Code, S.C. Code Ann. § 11-35-10, *et seq.* *Id.* at 163–64, 551 S.E.2d at 266–67. The Procurement Code provides that controversies based upon breach of certain contracts have to be brought to the chief procurement officer through administrative proceedings. *Id.* at 168, 551 S.E.2d at 269 (citing S.C. Code Ann. § 11-35-4230). Thus, the Court held that the Procurement Code provides the exclusive remedy

for breaches of contracts, and parties to procurement contracts do not have the right to bring a breach of contract action in state court. *Id.* at 170, 551 S.E.2d at 270. Because a statute waiving the State’s immunity must be strictly construed, the Court found that the State can be sued only in the manner prescribed in the Procurement Code. *Id.*

The plaintiff in *Unisys* contended that requiring it to proceed under the Procurement Code violated its constitutional right to a jury trial. *Id.* at 172–73, 551 S.E.2d at 271. However, the Court found that the plaintiff did not have a guaranteed right to a jury trial on its procurement contract with the State. *Id.* The Court reasoned that “[a]t the time our constitution was adopted in 1868, the State was immune from suit on contract. ... Accordingly, art. I, § 14, does not guarantee the right to a jury trial on a contract with the state.” *Id.*

The IRF attempts to broaden the distinct holding in *Unisys* to support its general assertion that “there is no constitutional right to a jury trial in an action against the sovereign not recognized at the time the constitution was adopted,” and thus that ReWa does not have the right to a jury trial on its causes of action because they “were not recognized and/or could not be pursued against the State at the time of the adoption of the constitution in 1868.” However, the holding in *Unisys* is limited to the circumstances surrounding that case, namely the applicability of the Procurement Code. The Court in *Unisys* did not make a blanket determination that there is no right to a jury trial on a contract with the State. Instead, the Court found that in the procurement context, the plaintiff did not have such a right because the legislature had prescribed the exclusive means for alleging the breach of a procurement contract.

In other words, the legislature has the ability to take away a party’s right to a jury trial in all contract actions against the State, but the legislature has not chosen to do so. The legislature has acted in distinct circumstances, such as under the Procurement Code. Thus, while there might

not be an absolute right to a jury trial under art. I, § 14 of the South Carolina Constitution, the legislature has not acted to remove the right to a jury trial in the type of circumstances involved in ReWa's breach of contract actions against the IRF.

If the IRF's interpretation of *Unisys* stands, it would ultimately eliminate the right to a jury trial against the State for any cause of action whatsoever. At the time of the adoption of the Constitution, the State enjoyed complete sovereign immunity. However, South Carolina Courts later abrogated the State's sovereign immunity. Certainly, the IRF's broad interpretation of *Unisys* is misguided. Therefore, for the reasons stated above, ReWa is entitled to a jury trial on its breach of contract causes of action.

D. ReWa's Declaratory Judgment Causes of Action Should Also Be Heard Before a Jury.

ReWa's declaratory judgment causes of action should also be heard before a jury. An issue that is essentially one at law will not be transformed into one in equity simply because declaratory relief is sought. If this Court determines that ReWa has the right to a jury trial on its breach of contract causes of action based on latent ambiguities in the Policies, then the declaratory judgment actions should be submitted to the jury for determination as well.

The leading case on the right to a jury trial in a declaratory judgment action is *Legette v. Smith*, 226 S.C. 403, 85 S.E.2d 576 (1955). In *Legette*, the plaintiff son brought a declaratory judgment action seeking a declaration that he was entitled to inherit the entire estate of his deceased mother, and that the defendant husband was not entitled to inherit from the deceased because he unlawfully killed her. *Id.* at 406–407, 85 S.E.2d at 577. The Court held that the plaintiff could not, by invoking the declaratory procedure, deprive the defendant of his constitutional right to a jury trial. *Id.* at 415–17, 85 S.E.2d at 581–83. The factual issues in the case were legal in character, and therefore should be tried by a jury. *Id.* Had the defendant commenced an action against the

plaintiff for possession of his portion of the estate, he would no doubt be entitled to a jury trial as a matter of right. *Id.* Therefore, the son’s anticipated claim and action for declaratory judgment could not deprive the defendant of this right. *Id.*

A case from New Jersey is also instructive on this matter. In *Ward v. Merrimack Mutual Fire Insurance Company*, the insured brought a declaratory judgment and breach of contract action, seeking a determination that there was coverage under his insurance policy. *Ward v. Merrimack Mut. Fire Ins. Co.*, 711 A.2d 394, 395 (N.J. Super. Ct. App. Div. 1998). The Superior Court of New Jersey found that the relief sought was not primarily equitable in nature. *Id.* at 397. Instead, the case “simply [took] the form of a regular contract action.” *Id.* The plaintiff did not make a claim “for any future or ongoing harm.” *Id.* Instead, he sought “a one-time monetary payment for fire damage to his property.” *Id.* Thus, the remedy sought was one at law, which entitled the plaintiff to invoke his right to a jury trial. *Id.* The Court found that “[t]here are many cases supporting the principle that a declaratory judgment predominantly seeking general contract damages, and not specific performance for future harm ... is an action at law which invokes the right to trial by jury.” *Id.*

Therefore, ReWa is entitled to a jury trial on its declaratory judgment causes of action because the remedy that ReWa seeks, money damages for the costs that it incurred in responding to the PCB contamination, are legal as opposed to equitable in nature.

CONCLUSION

For the foregoing reasons, this Court should deny the IRF’s Motion to Transfer the Case to the Non-Jury Docket. As such, this case should rightfully proceed to a jury trial.

Respectfully submitted,

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April 27, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, PETER KELLY, and	)	Civil Action No. 2020-CP-40-02330
TERRY KELLY, individually and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiffs,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S REPLY IN SUPPORT</u>
vs.	)	<u>OF ITS MOTIONS TO DISMISS</u>
	)	<u>FIRST AMENDED COMPLAINT</u>
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

Defendant hereby submits this brief in further support of its Motion to Dismiss and Supplemental Motion to Dismiss Plaintiffs' First Amended Class Action Complaint and in reply to Plaintiffs' Response in Opposition.

INTRODUCTION

Plaintiffs' Response does not dispute that Defendant had the right to transition to remote instruction during the COVID-19 pandemic. Resp. at 1 ("The bottom line is that, of course, the University did not have to provide in-person classes when the pandemic hit."). Instead, Plaintiffs contend—despite no allegation in their Amended Complaint—that Defendant should "reimburse students for the tuition and fee difference between in-person and online learning." *Id.* at 2. Plaintiffs cite no law or contract language supporting their alleged rights to (1) in-person instruction and on-campus services under any circumstance and (2) a prorated refund once Defendant transitioned to virtual learning.

Even if Plaintiffs could point to a law or specific contractual provision obligating Defendant deliver its curriculum and services in a particular fashion (and to provide prorated refunds if it failed this obligation), Plaintiffs fail to show they suffered any actual damages as a

result of the transition. The case law governing educational malpractice claims and protecting academic freedom preclude the judiciary from making judgments about the relative academic merits of educational programs, leaving that to the sound discretion of academic instructors and administrators. Absent that limitation, the judiciary would be thrust into adjudicating countless matters about the quality of an educational program, including the value of different instructional methods. Yet plaintiffs could not show damages here without adjudication of whether remote learning is academically inferior to in-person learning—the very sort of judgment that is forbidden. That is because it is undisputed that Plaintiffs received the same courses for the same credits taught by the same faculty for which they allegedly contracted and challenge only the relative quality of receiving that education remotely instead of in-person. Defendant certainly did not stop providing the services and instruction it promised to provide and accepted money to provide, as Plaintiffs suggest. *See Resp.* at 2.

Plaintiffs' Response simply does not overcome Defendant's arguments that controlling law bars their claims, that standing requirements preclude Peter and Terry Kelly's claims, that South Carolina's grant of statutory immunity bars all claims, and that Plaintiffs fail to plead the required elements of breach of contract, unjust enrichment, and conversion.

I. Plaintiffs Fail to Rebut the Educational Malpractice Bar to Their Claims.

Plaintiffs do not dispute that educational malpractice claims are not recognized under South Carolina law. *See id.* at 11-17. To get around that clear bar, Plaintiffs argue that their "claims are not tied to the subjective quality of the education they received." *Id.* at 12. That argument, however, ignores Plaintiff's allegations repeatedly criticizing online education. *See, e.g.,* Am. Comp. ¶¶ 28, 44, 67 (making allegations about the character of online learning compared to on-campus instruction); *see also Resp.* at 2 ("At this point in the pandemic, there should be no person left in America who does not understand that in person college classes are entirely different products

from online college classes.”).

Moreover, Plaintiffs allege that, by transitioning to a virtual format, Defendant has delivered services that are ineffective, less valuable, and cheaper. This is evident by Plaintiffs’ allegation that Defendant should reimburse its students “the difference between what it charged for the products and services it promised and the price of the entirely different products and services it delivered.” Resp. at 1. Thus, by their very nature, Plaintiffs’ claims would require the Court to inject itself into university decision-making and to make a qualitative evaluation of Defendant’s educational program to determine whether, *e.g.*, each remote class offered the same “value” as its in-person counterpart. Such an evaluation would necessarily require the Court to make judgments about the quality of the academic curriculum, including faculty members, student engagement and learning, and other qualitative factors. Without question, that is a claim challenging Defendant’s instruction methods, and such claims necessarily implicate the educational malpractice doctrine and are barred.

Plaintiffs’ citation to *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992), is entirely misplaced. In that case, the Seventh Circuit stated, “[I]f the defendant took tuition money and then provided no education, or alternately, promised a set number of hours of instruction and then failed to deliver, a breach of contract action may be available.” *Id.* at 417. That is the antithesis of this case. Plaintiffs do not contend that the University provided no education; they challenge the type and quality of the instructional methods employed by the University. Where the “essence of the complaint is that the school breached its agreement by failing to provide an effective education,” it is barred by the educational-malpractice doctrine. *Id.*

To allow claims like Plaintiffs’ to proceed would open the floodgates of litigation. That is why South Carolina does not recognize such claims (regardless of whether they are based in

contract, quasi-contract, or tort). *Hendricks v. Clemson Univ.*, 353 S.C. 449, 460, 578 S.E.2d 711, 716 (2003) (stating that the policy concerns precluding claims alleging an inadequate education apply with equal force whether the claim is brought in tort or contract). There is no basis for the Court to deviate from this well-established precedent. Plaintiff's claims, all of which are premised on educational malpractice, should be dismissed with prejudice.

II. Plaintiffs Fail to Overcome the Legal Deficiencies in Their Breach of Contract Claims.

Plaintiffs' entire theory is that they paid tuition and fees in exchange for in-person classes and on-campus services. However, Plaintiffs have not identified any specific contractual promise obligating Defendant to provide a particular mode of delivery for its curriculum and services. This is not a situation where Defendant provided no instruction or services in exchange for the monies collected at the outset of the semester. To the extent Plaintiffs' Response attempts to imbue any document or promotional statement with an obligation by Defendant to provide in-person instruction, the attempt is not supported by the text relied upon. For example, Plaintiffs quote Defendant's website for the claim that Defendant "represented that its in-person classes form the basis of [its] educational requirements." *See* Resp. at 18 (citing Am. Comp. ¶ 25). The correct language, however, is: "Leadership is at our very core, woven into the classes that form the basis of our educational requirements." There is no reason to read into this language (or any other language referring generally to "classes") a contractual promise for in-person, on-campus instruction. Even Defendant's description of certain fees highlights only that the fees will be used for "instruction," not for a particular instructional method. *Id.* at 18 (citing Am. Comp. ¶ 36). This is not a case where the revenue from the mandatory fees covers only on-campus services and infrastructure—Plaintiffs received the benefit of the services provided by these fees before and after the transition to virtual learning.

In short, Plaintiffs’ argument that Defendant “explicitly represented that the services for which Plaintiffs were paying tuition and associated fees would be in-person and on-campus” (Resp. at 20) is not contained within any document, website statement, or promotional material, let alone one that is a contractual agreement between Defendant and its students.

In addition, to succeed on their contract claims, Plaintiffs must show they were injured as a result of the transition to remote learning. Plaintiffs’ Response repeatedly argues that Defendant charges “significantly more for an in-person, face-to-face education” (*id.* at 2) and “significantly less for the exact same online education.” *Id.* at 7. Plaintiffs thus allege in their Response—not in their Amended Complaint—that they are entitled to the “differential between the on-campus, in-person classes they paid for based on the objective value the University sets for its online undergraduate program offered through its Palmetto branch.” *Id.* at 20. What Plaintiffs fail to admit is that Plaintiff Davia Bunch was enrolled in both in-person and remote classes for the Spring 2020 semester—none of which were offered through the Palmetto College. *See id.* at 7 n.3 (discussing Davia Bunch’s class schedule). Moreover, neither Plaintiffs’ Amended Complaint nor their Response allege Davia Bunch paid different tuition rates for the online classes she enrolled in compared to her in-person classes. Plaintiffs simply cannot allege concrete contract damages.

For all these reasons, Plaintiffs’ claims for breach of contract should be dismissed.

III. Plaintiffs Fail to Overcome the Legal Deficiencies in Their Claims for Unjust Enrichment.

Plaintiffs argue they should be able to plead their claims for unjust enrichment in the alternative to their breach of contract claim because they “may maintain both their breach of contract and unjust enrichment claims at this stage.” Resp. at 21. Plaintiffs misapprehend the law in this regard. Where, as here, the terms of a contract embody the parties’ relationship, equitable

claims like unjust enrichment are generally impermissible.¹ *Besley v. FCA US, LLC*, 2016 WL 109887, at *3 (D.S.C. Jan. 8, 2016) (“In South Carolina, a party is generally precluded from pursuing a claim for either unjust enrichment or promissory estoppel where a valid contract governs the subject matter in dispute.”) (citation omitted). Plaintiffs thus undermine their own equitable claims by conceding that the parties’ relationship is based on contractual terms. Resp. at. 17 (“[I]t is indisputable that Plaintiffs have alleged the existence of a contract between them and the University—*i.e.*, the University’s mission statement, academic enrollment materials, public statements, course catalogs, and marketing materials touting the benefits of its in-person educational experience.”) (citing Am. Comp. ¶¶ 25-27, 36)).

Not only have Plaintiffs conceded this issue through their Response, Plaintiffs’ complaint incorporates within their counts for unjust enrichment allegations regarding their contractual relationship with the Defendant. *See, e.g.*, Am. Comp. ¶¶ 74, 97 (referencing the “benefit of the bargain”). Thus, the unjust enrichment claims are not “alternative” claims, but rather, are premised on the parties’ contract. This pleading defect necessitates dismissal.²

Plaintiffs reliance on *Melton v. Carolina Power & Light*, 2012 WL 2401635 (D.S.C. June 25, 2012), *King v. Carolina First Bank*, 26 F.Supp.3d 510 (D.S.C. 2014), *Besley*, 2016 WL 109887 is misplaced. None of these cases address a plaintiff pleading both breach of contract and unjust

¹ Plaintiffs err in arguing that Defendant denies the existence of a contract. *See, e.g., id.* at. 17, 21. Instead, Defendant merely contends that the terms of the contract alleged by Plaintiffs do not support their claim. Brief in Supp. at. 14 (“Plaintiffs’ failure to allege that a term of the contract was breached does not mean a contractual relationship did not exist between Defendant and its students, and in fact, it is undisputed here that a contractual relationship did exist.”).

² To provide another example, Plaintiff includes the following language within its Response when arguing the sufficiency of its unjust enrichment claims: “These tuition and fee payments were intended to cover in-person educational services from January 2020 to May 2020, as represented by the University in its course listings, mission statement, and enrollment materials.” Resp. at 22-23 (citing Am. Comp. ¶¶ 26, 30, 36 and Exhs. A & B). Elsewhere in the Response, Plaintiffs admit the cited exhibits “are documents which form the basis of a contract.” *Id.* at 7 n.3.

enrichment claims. Instead, the plaintiffs have either challenged the validity of the contract at issue or argued that no contract exists between the parties. *Melton*, 2012 WL 2401635, at *3 (allowing plaintiff's unjust enrichment claim to survive a motion for partial summary judgment where "Plaintiff brought no claim for breach of the written easement"); *King*, 26 F.Supp.3d 510, 519 (declining to dismiss plaintiffs' equitable claims where plaintiffs challenged the validity of the contract at issue); *Besley*, 2016 WL 109887, at *3 (finding it premature to dismiss plaintiff's equitable cases of actions where "Plaintiff strongly disputes the breadth and scope of enforceability of any contractual provisions with Defendant") (internal quotations and citation omitted). Here, however, Plaintiffs only plead that their relationship with Defendant is one of contract. *See, e.g.*, Am. Comp. ¶¶ 61-62, 88. Notably, the court in *Besley* emphasized that the plaintiff "did not incorporate allegations into his equitable claim that he and Defendant had a contractual agreement." *Besley*, 2016 WL 109887, at *3.

Plaintiffs reliance on *Enhance—It, L.L.C. v. Am. Access Tech., Inc.*, 413 F.Supp.2d 626 (D.S.C. 2006) is also inappropriate. There, the plaintiff requested leave to amend its complaint after its fraud claims were dismissed for failure to satisfy the pleading requirements. The district court held that the plaintiff could elect to sue in contract or tort but was not required to make an election of remedies at the pleading stage. *Id.* at 632. In so holding, the court recognized that South Carolina law instructs that a negligence claim cannot be premised upon the breach of a contractual duty. *Id.* at 631 ("Under South Carolina law, if the cause of action is predicated on the alleged breach, or even negligent breach, of a contract between the parties, an action in tort will not lie."). Because here all parties agree the relationship between Defendant and Plaintiffs was governed by contract, Plaintiffs may only proceed under the contract, and no election of a tort or equitable remedy is available.

In sum, it would not be unjust, as a matter of law, for Defendant to retain amounts paid to support the educational programs it unquestionably provided. Given the undisputed existence of a contract between the parties, Plaintiffs have not stated and cannot state a claim for unjust enrichment. The Court should dismiss these claims with prejudice.

IV. Plaintiffs Fail to Overcome the Legal Deficiencies in Their Claims for Conversion.

In its Motion, Defendant asserted numerous grounds for dismissal of Plaintiffs' conversion claims, including: (1) they are duplicative of their contract claims; (2) conversion claims are generally unavailable when money is at issue; and (3) Plaintiffs cannot identify the basis or source of ownership rights required to sufficiently allege a claim for conversion. Notably, Plaintiffs do not address the first argument in their Response. *See* Resp. at 23-24. They do not contend they have identified a wrongful act by Defendant independent of a contractual obligation. Instead, Plaintiffs simply allege they have "identifiable legal rights to an in-person, on-campus experience when they paid tuition and fees in exchange for that particular purpose—*i.e.*, funds to which they had a right to possess." Resp. at 23 (citing Am. Comp ¶¶ 25-7, 29-30, 36). This alleged right, however, has to do with receiving educational instruction and having access to university facilities. It does not involve "goods or personal chattels," so there is nothing for Defendant to convert. *See, e.g., Salerno v. Fla. S. Coll.*, 2020 WL 5583522, at *5 (M.D. Fl. Sept. 16, 2020) ("The type of property at issue here, in-person learning, is intangible and not the proper subject of a conversion claim...").

Importantly, Plaintiffs' Amended Complaint does not allege an ownership right in anything but "the portion of the tuition funds" and "fees for the Spring 2020 semester." Am. Comp. ¶¶ 83, 105. An obligation to pay money, however, is also insufficiently tangible to qualify as property under these facts. *Salerno*, 2020 WL 5583522, at *5; *see also Saroya v. Univ. of the Pacific*, 2020 WL 7013598, at *7 (N.D. Cal. Nov. 27, 2020) (dismissing COVID-19-related conversion claim

with no leave to amend where plaintiff sought to recover “only an unspecified prorated portion of tuition and fees for educational services not provided”) (internal quotations and citation omitted)). “There can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff.” *Richardson’s Rest., Inc., v. Nat’l Bank of S.C.*, 403 S.E.2d 669, 672 (Ct. App. 1991) (citation omitted). Plaintiffs assertion that Defendant is required to track the amount of tuition paid so that it may refund federal student aid money, fails to support their conversion claim. *See* Resp. at 24 n.9. Although Defendant knows the amount of tuition students pay and federal aid students receive as a simple matter of accounting, Plaintiffs fail to allege facts showing how Defendant converted the tuition to their own use. Instead, the tuition payments were voluntarily paid to Defendant, Plaintiffs transferred any interest in those specific funds to Defendant, Defendant rightfully accepted payment before the semester began, and Defendant had no obligation to segregate and return specific money to Plaintiffs.

Plaintiffs’ Response further alleges that their conversion claim is premised on Defendant’s “decision to retain the tuition differential and other fees paid in connection with on-campus activity.” Resp. at 11. This allegation, however, is not included in Plaintiffs’ Amended Complaint. Instead, the complaint alleges that Defendant wrongfully detained Plaintiffs’ funds when it closed the campus, moved all classes to an online format, and allegedly discontinued the services for which the tuition and fees were intended to pay. Am. Comp. ¶¶ 84, 107. Regardless, “in order to prevail in a conversion action, the plaintiff must prove either title or right to possession of the property at the time of the conversion.” *Oxford Fin. Cos. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing *Causey v. Blanton*, 281 S.C. 163, 314 S.E.2d 346 (1984)). Plaintiffs have not alleged a right to possession of the tuition and fees at the times Defendant made the informed decisions to transition to virtual instruction or to process refunds. At the very least, Plaintiffs’ ownership right

in the tuition and fees paid for the Spring 2020 semester ended well before March 2020 since the university's refund deadline passed. Plaintiffs do not allege otherwise. Accordingly, Plaintiffs conversion claims must be dismissed with prejudice.

V. Plaintiffs Cannot Circumvent South Carolina's Sovereign Immunity Doctrine.

Plaintiffs agree Defendant is a governmental entity entitled to sovereign immunity. Am. Comp. ¶ 12. Plaintiffs only dispute is whether this immunity was waived.

First, the doctrine of sovereign immunity completely bars Plaintiffs' unjust enrichment claims. The General Assembly has not waived sovereign immunity for equitable causes of action seeking monetary relief against governmental entities. The SCTCA does not include a waiver of sovereign immunity for a non-tort cause of action for unjust enrichment, nor has the General Assembly enacted any other legislation that expressly or implicitly waives sovereign immunity for such equitable causes of action. It is also impossible for Defendant to waive sovereign immunity because the remedy of unjust enrichment is based on a quasi-contract, and a quasi-contract can never support the inference of an express waiver. Plaintiffs' only argument in favor of waiver is that "the State of South Carolina implicitly consented to be sued by entering contracts with the University's students." Resp. at 10. However, "[i]mplied in law or quasi-contracts are not considered contracts at all, but are akin to restitution..." *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C.633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011) (internal quotations and citation omitted). Thus, the State can never waive sovereign immunity to equitable actions—by entering into a contract or otherwise—and Plaintiffs' second and fifth claims for unjust enrichment must be dismissed. *See also* Brief in Supp. at 19-21.

Next, the doctrine of sovereign immunity also bars Plaintiffs' breach of contract claims because the State and its subdivisions are immune from suit subject only to the limited waivers

provided by statute. *See* Brief in Supp. at 19-21. Plaintiffs fail to identify a statute waiving Defendant's sovereign immunity to their breach of contract claims, and, despite Plaintiffs' allegations, Defendant cannot expressly contract away its immunity. Plaintiffs' reference to a brief filed by Nelson Mullins years ago reiterates Defendant's position. There, the plaintiff cited to *Kinsey Constr. Co. v. S.C. Dep't of Mental Health* to argue, "[I]t is still good law that 'wherever the State of South Carolina **pursuant to statutory authority** enters into a valid contract, the State implicitly consents to be sued and waives its sovereign immunity to the extent of its contractual obligations.'" Resp., Ex. C at 13 (citing 272 S.C. 168, 172, 249 S.E.2d 900, 903 (1978)) (emphasis added). Unlike Plaintiffs' contention that *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 118 n.6, 659 S.E.2d 158, 164 n.6 (2008) restored *Kinsey*, Nelson Mullins never took this position. *See* Resp. at Ex. C 12-16. Instead, it argued:

[Defendant] received statutory authority to provide tort liability insurance to governmental entities in S.C. Code Ann. § 1-11-140 and to insure public buildings and contents in S.C. Code Ann. § 10-7-10, *et seq.* These statutes do not establish that the [Defendant] is immune from breach of contract lawsuits. Therefore, the State has implicitly consented to be sued by creating statutory authority for the [Defendant] to enter into insurance contracts.

Id. at 13. As such, it is solely for the General Assembly to determine when and under what circumstances the State may be sued, and Plaintiffs do not and cannot identify a waiver of Defendant's sovereign immunity pursuant to statutory authority as to the type of breach of contract claims asserted here.

Last, Defendant is liable in tort only to the extent its immunity has been waived by the SCTCA, and only to the extent permitted by that Act. *See* S.C. Code Ann. §15-78-40. As Plaintiffs admit, an affirmative defense such as sovereign immunity can be raised in a Rule 12(b)(6) motion "when there is no disputed issue of fact raised by the affirmative defense...and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense." *Spence*

v. *Spence*, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (internal quotation and citation omitted).

No disputed issue of fact exists here where Plaintiffs' conversion claim is premised on the allegation that Defendant "wrongfully detained" Plaintiffs' tuition and fees ***when it closed the campus*** and moved all classes to an online format. Am. Comp. ¶¶ 84, 107. Defendant was required to close its campus in compliance with the South Carolina Governor's executive orders requiring the closure of all state-supported universities. *See* Brief in Supp. at 21. Plaintiffs cannot now argue in their Response that their conversion claim is premised on some subsequent decision. Because the Court may take judicial notice of the Governor's executive orders (*see id.* at 4-5 n.2) and because Plaintiffs' Amended Complaint does not dispute that the conversion claims are based on anything other than Defendant's action to close its campus, no disputed issue of fact is raised by this affirmative defense. Plaintiffs even admit Defendant "may have been required to stop in-person instruction to comply with the Governor's executive orders." Resp. at 11. Accordingly, Defendant is entitled to sovereign immunity as a matter of law against Plaintiffs' conversion claims.

VI. Plaintiffs Peter and Terry Kelly Fail to Meet Their Burden to Establish Standing.

Plaintiffs argue that Peter and Terry Kelly have standing because they paid tuition and fees for their daughter. Resp. at 24. But the alleged injury here is failing to provide "in-person and on-campus education." *Id.* (citing Am. Comp. ¶¶ 21, 26, 30, 34-35). Parents logically cannot enroll in classes or access campus benefits, under a contract or otherwise. The Kelly's claims are thus premised on their daughter's possible injury, not their own. It is not enough that they provided financial support to their daughter. Such agreement is between the her and her parents, not Defendant.

Plaintiffs' Response illustrates that courts allow parents to sue on behalf of *minor* children. *See id.* at 25 (citing *Christensen v. S. Normal Sch.*, 790 So.2d 252 (Ala. 2001) (action filed by parents and guardians of minor students against an Alabama boarding school)). Indeed, under SCRCP Rule 17, "[e]very action shall be prosecuted in the name of the real party in interest" except a "representative may sue or defend on behalf of [a] minor or incompetent person." Rule 17(a)-(c), SCRCP. *Berlanga v. Univ. of San. Francisco* is the only case Plaintiffs cite that addresses standing, and in that case, there was a factual dispute over whether the student was a minor. No. CGC-20-584829, at 3-4 (Cal. Super. Ct. Nov. 12, 2020).³ Plaintiffs, however, do not allege that the Kelly's daughter is a minor. Plaintiffs likewise cite no authority holding that the parent of an *adult* child has standing to assert claims against a university arising out of their *adult* child's relationship with the university. *See Resp.* at 24-26.

Additionally, Plaintiffs' citations to *Uddin v. New York Univ.*, 6 N.Y.S.3d 900 (N.Y. App. Term 2014) and *Zumbrun v. Univ. of S. Cali.*, 25 Cal. App. 3d 1 (Cal. Ct. App. 1972) for the argument that "courts have regularly allowed tuition-paying parents to sue educational institutions for reimbursement" is improper. *Resp.* at 25. Both cases are irrelevant. In *Uddin*, the court reversed an order granting a motion to dismiss a parent's lawsuit on behalf of his child. 6 N.Y.S.3d at 900-01. Neither the dismissal nor the reversal, however, addressed the issue of parental standing, much less rendered a holding that it existed. *Id.* In the COVID-19 context, a recent court decision rejected a parent plaintiff's reliance on *Uddin*. *See Bergeron v. Rochester Institute of Tech.*, 2020 WL 7486682, at *3 (W.D.N.Y. Dec. 19, 2020). In doing so, the court dismissed the parent plaintiff for lack of standing, citing to the holdings of *Salerno v. Fla. S. Coll.*, 2020 WL 5583522 (M.D. Fla. Sept. 16, 2020) and *Lindner v. Occidental Coll.*, 2020 WL 7350212 (C.D. Cal. Dec. 11, 2020). *Id.*

³ The case is docketed as *Berlanga*, not *Verlanga*.

at *3-4, n.4. In *Zumbrun*, a 63-year-old student sued her university (her parent was not even a party), and the statement Plaintiffs quote was a passing reference that had no bearing on the decision. 101 Cal. Rptr. At 501. This California dicta certainly does not undermine well-established law that “payment of tuition does not create a contractual relationship between parents and a college when the parents’ child is over the age of majority.” *Doe v. Univ. of the S.*, 687 F. Supp. 2d 744, 761 (E.D. Tenn. Oct. 13, 2009) (internal quotations and citation omitted).

Plaintiffs also improperly rely on bankruptcy law’s recognition that a parent’s tuition payments are not exempt from fraudulent transfer claims. Resp. at 26. This bankruptcy principle, recognizing that “parents who pay their child’s college tuition do not receive any legally cognizable value, much less reasonably equivalent value, in exchange for such payments,” has no bearing on a parent’s standing to assert state law claims on behalf of the child. *In re Knight*, 2017 WL 4410455, at *4 (Bankr. D. Conn. Sept. 29, 2017). Plaintiffs reliance on *McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012), similarly lacks merit as the issue in that case was whether the family court erred in not requiring a non-custodial parent to pay college expenses, as an incident of child support.

The relevant facts with respect to standing presented in *Salerno v. Fla. S. Coll.* are directly on point. There, the court found that “the lack of injury to Salerno [was] clear regardless of whether Salerno provided financial support to her daughter.” 2020 WL 5583522, at *4. “That arrangement was between mother and daughter. It does not establish a relationship between the College and [the parent].” *Id.* For the same reasons, Peter and Terry Kelly’s lack of injury is clear. As Plaintiffs concede in their Response, the relationship that exists under South Carolina law is between a university and its students—not their parents. *See, e.g.*, Resp. 17 (“As a threshold matter, ‘[i]t is commonly held that a contract exists between a university and its students.’”) (citing *Carter v.*

Univ. of S.C., 360 S.C. 428, 432 n.4, 602 S.E.2d 59, 61 n.4 (Ct. App. 2004)). Plaintiffs simply do not allege that the Kellys entered into a contract with Defendant, or that they are an intended third-party beneficiary. *See, e.g., Doe v. Univ. of the S.*, 687 F. Supp. 2d at 761 (finding that, for the parents to establish standing to sue, “they must first be able to prove the existence of a contract or for the Court to find that the parties must have entered into an agreement which is sufficiently definite and certain so that the terms are either determined or may be implied”); *see also McCormick v. Dresdale*, 2010 WL 1740853, at *2 (D.R.I. Apr. 28, 2010) (denying plaintiffs’ proposed amended complaint because “the parents were not third party beneficiaries to any contract between [their adult son], who turned eighteen..., and Brown [University].” At no time have the Kellys been entitled to any performance by or benefit from Defendant.

In short, Plaintiffs fail to rebut Defendant’s argument that, as parents of an adult college student, Peter and Terry Kelly lack standing to sue Defendant. Plaintiffs allege only that the Kellys paid the tuition and fees so their daughter could enroll at the university. Plaintiffs’ complaint does not and cannot allege that they suffered an injury-in-fact that could be redressed by a favorable decision—a basic requirement of proving standing. *See S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.*, 421 S.C. 110, 117-18, 804 S.E.2d 854, 858 (2017). Moreover, this is not a case where a factual dispute is present. Plaintiffs mistakenly cite to a Florida district court case in support of their argument that “Plaintiffs’ factual allegations raise a dispute that is inappropriate for resolution on a motion to dismiss.” Resp. at 26 (citing *Flexiteek Americas, Inc. v. PlasTEAK, Inc.*, 2009 WL 890613, at *1 (S.D. Fla. Apr. 1, 2009). Unlike Peter and Terry Kelly, the plaintiffs in *Flexiteek* “set forth a substantial number of documents tending to show that they possess a proprietary interest” in the matter at issue. *Id.* Because Plaintiffs offer not one document establishing a relationship between the Kellys and Defendant, the Court must dismiss their claims for lack of

standing.

VII. Plaintiffs' Request for Leave to Amend Should be Denied.

Plaintiffs end their Response by requesting another opportunity to amend. Resp. at 27. Plaintiffs, however, have not filed a motion for leave to amend pursuant to SCRCP 15. Rule 15(a), SCRCP ("A party may amend his pleadings once as a matter of course at any time before or within 30 days after a responsive pleading is served...Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party."). Nor did Plaintiffs attach a proposed amended complaint to their Response or even attempt to identify what additional allegations they would include if given the opportunity. Plaintiffs' request thus should be denied because it fails to comport with applicable rules or properly raise the issue.

CONCLUSION

For all the reasons set forth in Defendant's Motions and above, Plaintiffs' Amended Class Action Complaint should be dismissed with prejudice and Plaintiffs Peter and Terry Kelly should be dismissed for lack of standing.

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Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for the University of South Carolina.

Charleston, South Carolina
January 20, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH, PETER KELLY, and	)	Civil Action No. 2020-CP-40-02330
TERRY KELLY, individually and	)	
on behalf of others similarly situated,	)	
	)	
Plaintiffs,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S ANSWER TO</u>
vs.	)	<u>PLAINTIFFS' FIRST AMENDED</u>
	)	<u>CLASS ACTION COMPLAINT</u>
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

The University of South Carolina ("Defendant"), through its undersigned counsel, answers Plaintiffs' First Amended Class Action Complaint ("Complaint") as follows, with every allegation in the Complaint being denied unless specifically admitted, qualified, or explained herein:

FOR A FIRST DEFENSE

PRELIMINARY STATEMENT

1. Answering paragraph 2, Defendant admits, upon information and belief, that Plaintiff Davia Bunch was an in-state student at the University of South Carolina during the Spring 2020 Semester. Further answering paragraph 2, Defendant, at this time, lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly are the parents of an out-of-state student at the University of South Carolina; the alleged out-of-state student has not been named or specifically identified in the Complaint. Defendant denies all other allegations in paragraph 2.

2. Answering paragraph 3, Defendant admits it limited some access to campus areas and transitioned all classes to virtual instruction in response to the COVID-19 pandemic and the Governor's Executive Orders. Defendant denies all other allegations in paragraph 3.

3. Defendant denies the allegations in paragraph 4.

4. Defendant denies the allegations in paragraph 5.

5. Answering paragraph 6, Defendant admits closing the campus and transitioning to virtual instruction was prudent. Defendant denies all other allegations in paragraph 6.

6. Defendant denies the allegations in paragraph 7.

7. Defendant denies the allegations in paragraph 8.

8. Answering paragraph 9, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that many students and their parents are suffering financially and, therefore, that allegation is denied. Defendant denies all other allegations in paragraph 9.

9. Answering paragraph 10, Defendant admits that its students, pre- and ante-pandemic, have received and will continue to receive top-notch educational opportunities and Defendant envisions that its students' receipt of Defendant's education will allow them to become future leaders of the State of South Carolina and the United States of America. Defendant denies all other allegations in paragraph 10.

10. Defendant denies the allegations in paragraph 11.

PARTIES

11. Defendant admits the allegations in paragraph 12.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and, therefore, those allegations are denied.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and, therefore, those allegations are denied.

JURISDICTION AND VENUE

14. The allegations in paragraph 15 state a legal conclusion which do not require a response. To the extent a response is required, Defendant admits that one or more of the events alleged in the Complaint occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 15.

15. Answering paragraph 16, Defendant admits that one or more of the purported injuries allegedly occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 16.

16. The allegations in paragraph 17 state a legal conclusion which do not require a response. To the extent a response is required, Defendant admits only that one or more of the events alleged in the Complaint occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 17 but does not contest venue in this matter.

FACTUAL ALLEGATIONS

17. Upon information and belief, Defendant admits the allegations in paragraph 18.

18. Answering paragraph 19, Defendant, at this time, lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly are parents whose daughter was enrolled as a full-time student during the Spring 2020 semester; the alleged full-time student has not been named or specifically identified in the Complaint. Defendant, therefore, denies the allegations in paragraph 19.

19. Answering paragraph 20, Defendant admits Plaintiff Davia Bunch paid tuition and fees for the Spring 2020 semester. Further answering paragraph 20, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly paid tuition for their daughter, who is not named or specifically identified in the

Complaint, and, therefore, that allegation is denied. Defendant denies all other allegations in paragraph 20.

20. Answering paragraph 21, Defendant admits Plaintiff Davia Bunch paid \$6,144 in tuition for the Spring 2020 semester, mainly through University scholarship and grant funding. Further answering paragraph 21, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly paid tuition for their daughter, who is not named or specifically identified in the Complaint, much less the amount of said tuition and, therefore, that allegation is denied. Defendant denies all other allegations in paragraph 21.

21. Answering paragraph 22, Defendant admits Plaintiff Davia Bunch paid \$200 in fees for the Spring 2020 semester. Further answering paragraph 22, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly paid fees of \$2,155 and, therefore, that allegation is denied. Defendant denies all other allegations in paragraph 22.

22. As to paragraph 23, Defendant admits only that it has offered remote online programming for certain undergraduate degrees through the Palmetto College. Defendant further admits it maintains the webpage https://sc.edu/about/system_and_campuses/palmetto_college/campuses/index.php, which speaks for itself.

23. As to paragraph 24, Defendant admits only that it has offered in-person, on-campus, hands-on curriculum, instruction, and educational experience. Defendant denies all other allegations in paragraph 24.

24. Answering paragraph 25, Defendant admits it maintains the webpage https://www.sc.edu/study/academic_overview/undergraduate_education/index.php, which speaks for itself. Defendant denies all other allegations in paragraph 25.

25. Defendant denies the allegation in paragraph 26 that Plaintiff Davia Bunch did not choose to attend an institution of higher learning which offered online classes. Defendant admits only that Ms. Bunch enrolled in classes at the University of South Carolina, including online classes, and paid tuition and fees for the Spring 2020 semester. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 26 and, therefore, those allegations are denied.

26. Answering paragraph 27, Defendant admits it maintains the webpage https://sc.edu/about/south_carolina_at_a_glance/our_mission.php, which speaks for itself. Defendant denies all other allegations in paragraph 27.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, therefore, those allegations are denied.

28. As to paragraph 29, Defendant admits that a collegiate experience encompasses more than credit hours and degrees. Defendant denies all other allegations in paragraph 29.

29. Defendant denies the allegations in paragraph 30.

30. Defendant denies the allegations in paragraph 31.

31. Defendant denies the allegations in paragraph 32.

32. Defendant denies the allegations in paragraph 33.

33. Defendant denies the allegations in paragraph 34.

34. Defendant denies the allegations in paragraph 35.

35. Answering paragraph 36, Defendant admits students enrolled in the Spring 2020 semester were charged certain fees. Defendant also admits it provides explanations related to the fees it charges and maintains the webpage https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/uofsc_columbia_fees_academic/departments_fees/index.php, which speaks for itself. Defendant denies all other allegations in paragraph 36, including in subparagraphs a. through c.

36. Defendant denies the allegations in paragraph 37.

37. Defendant denies the allegations in paragraph 38.

38. Answering paragraph 39, Defendant admits it maintains the webpage https://sc.edu/about/offices_and_divisions/bursar/frequently_asked_questions/covid19_faqs.php, which speaks for itself. Defendant denies all other allegations in paragraph 39.

39. As to paragraph 40, Defendant admits it transitioned all classes to virtual instruction and suspended some on-campus events as a result of the COVID-19 pandemic and the Governor's Executive Orders. Defendant denies all other allegations in paragraph 40.

40. Answering paragraph 41, Defendant admits, upon information and belief, the University of South Carolina has an estimated endowment of approximately \$782 million, of which \$128 million is owned and controlled by Defendant. Defendant denies all other allegations in paragraph 41.

41. Answering paragraph 42, Defendant admits the University of South Carolina – Columbia received CARES Act funding in the amount of \$21,415,130. Defendant further admits that no less than half of the funds received provided students, including Plaintiff Davia Bunch, with reimbursements for tuition, housing, room and board, and other fees. Defendant denies all other allegations in paragraph 42.

42. Defendant denies the allegations in paragraph 43.

43. Defendant denies the allegations in paragraph 44.

44. Defendant denies the allegations in paragraph 45.

45. Defendant denies the allegations in paragraph 46.

46. Answering paragraph 47, Defendant denies its students have received an inferior educational experience and further denies that its students have not received any refund for tuition or service fees. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 47 and, therefore, those allegations are denied.

47. Answering paragraph 48, Defendant admits it limited some access to campus areas, suspended faculty travel and in-person events, and transitioned all classes to virtual instruction. Defendant denies all other allegations in paragraph 48.

48. Defendant denies the allegations in paragraph 49.

CLASS ACTION ALLEGATIONS

49. As to paragraph 50, Defendant acknowledges that Plaintiffs bring this action on behalf of themselves and a purported class but denies that the action is appropriate for class certification under Rule 23 of the South Carolina Rules of Civil Procedure or that Plaintiffs are appropriate representatives of the purported class. Defendant further denies that Plaintiffs have properly defined an ascertainable class.

50. The allegations in paragraph 51 contain exclusions from Plaintiffs' proposed class definitions and do not require a response from Defendant. In further responding to paragraph 51, Defendant incorporates its answer in paragraph 49, above, and further admits Plaintiffs purport to reserve the right to modify or amend the definitions of their purported class. Defendant denies any other allegations in paragraph 51.

51. Defendant denies the allegations in paragraph 52 and further denies that the requirements for class certification can be satisfied.

52. Answering paragraph 53, Defendant acknowledges that Plaintiffs bring this action under Rule 23 of the South Carolina Rules of Civil Procedure but denies that this action is properly maintainable as a class action.

Numerosity: SCRP Rule 23(a)(1)

53. Defendant denies the allegations in paragraph 54 and further denies that the requirements for class certification can be satisfied.

Commonality: SCRP Rule 23(a)(2)

54. Defendant denies the allegations in paragraph 55, including subparagraphs a. through h., and further denies that the requirements for class certification can be satisfied.

Typicality: SCRP Rule 23(a)(3)

55. Defendant denies the allegations in paragraph 56 and further denies that the requirements for class certification can be satisfied.

Adequacy: SCRP Rule 23(a)(4)

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 that allege Plaintiffs have retained counsel competent and experienced in complex and class action litigation and, therefore, denies those allegations. Defendant denies the remaining allegations in paragraph 57 and further denies that the requirements for class certification can be satisfied.

Amount in Controversy: SCRP 23(a)(5)

57. As to paragraph 58, Defendant admits Plaintiff Davia Bunch paid over \$6,000 in tuition for the Spring 2020 semester and at least \$200 in fees. Further answering paragraph 58, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs Peter and Terry Kelly, who are not students enrolled with Defendant and whose daughter is not named or specifically identified in the Complaint, paid “tuition fees” or “fees,” much less the amount of said “tuition fees” and “fees” and, therefore, denies this allegation. Defendant denies all other allegations in paragraph 58 and further denies that the requirements for class certification can be satisfied.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiffs and Other Members of the Tuition Subclass)**

58. Answering paragraph 59, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

59. Answering paragraph 60, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged subclass but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated.

60. As to paragraph 61, Defendant admits that it entered into a contract with Plaintiff Davia Bunch. Further answering paragraph 61, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that it entered into contracts with everyone in the purported “Tuition Subclass” and, therefore, denies that allegation. Defendant denies all other allegations in paragraph 61.

61. Defendant denies the allegations in paragraph 62.

62. Answering paragraph 63, Defendant admits students are required to acknowledge the Student Statement of Financial Responsibility, available at https://sc.edu/about/offices_and_divisions/bursar/my_bill/student_statement_of_financial_responsibility/, which speaks for itself. Defendant denies all other allegations in paragraph 63.

63. Answering paragraph 64, Defendant admits some of its course descriptions include an instructional method of “Face-to-Face Instruction.” Defendant denies all other allegations in paragraph 64.

64. Defendant denies the allegations in paragraph 65.

65. Defendant denies the allegations in paragraph 66.

66. Defendant denies the allegations in paragraph 67.

67. Defendant denies the allegations in paragraph 68.

68. Defendant denies the allegations in paragraph 69.

69. Defendant denies the allegations in paragraph 70.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiffs and Other Members of the Tuition Subclass)**

70. Answering paragraph 71, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

71. Answering paragraph 72, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged subclass but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated.

72. Defendant acknowledges that in paragraph 73 Plaintiffs purport to plead Count II in the alternative to Count I but denies that pleading Count II in the alternative is proper. Defendant further denies all other allegations in paragraph 73.

73. Defendant denies the allegations in paragraph 74.

74. Defendant denies the allegations in paragraph 75.

75. Defendant denies the allegations in paragraph 76.

76. Defendant denies the allegations in paragraph 77.

77. Defendant denies the allegations in paragraph 78.

78. Defendant denies the allegations in paragraph 79.

79. Defendant denies the allegations in paragraph 80.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiffs and Other Members of the Tuition Subclass)**

80. Answering paragraph 81, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

81. Defendant admits the allegations in paragraph 82.

82. Defendant denies the allegations in paragraph 83.

83. Defendant denies the allegations in paragraph 84.

84. Defendant acknowledges that in paragraph 85 Plaintiffs demand a prorated refund but denies that any refund is owed. In further answering paragraph 85, Defendant admits its website states, “Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.” Defendant denies all other allegations in paragraph 85.

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiffs and Other Members of the Fees Subclass)**

85. Answering paragraph 86, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

86. Answering paragraph 87, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged subclass but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated.

87. As to paragraph 88, Defendant admits it entered into a contract with Plaintiff Davia Bunch that provided she would pay certain fees, including, but not limited to, a technology fee. Further answering paragraph 88, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that it entered into contracts with everyone in the purported “Fees Subclass” and, therefore, denies that allegation. Defendant denies all other allegations in paragraph 88.

88. Defendant denies the allegations in paragraph 89.

89. Defendant denies the allegations in paragraph 90.

90. Defendant denies the allegations in paragraph 91.

91. Defendant denies the allegations in paragraph 92.

92. Defendant denies the allegations in paragraph 93.

93. Defendant denies the allegations in paragraph 94.

**FOR A FIFTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiffs and Other Members of the Fees Subclass)**

94. Answering paragraph 95, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

95. Defendant acknowledges that in paragraph 96 Plaintiffs purport to plead Count V in the alternative to Count IV but denies that pleading Count V in the alternative is proper. Defendant further denies all other allegations in paragraph 96.

96. Defendant denies the allegations in paragraph 97

97. Defendant denies the allegations in paragraph 98.

98. Defendant denies the allegations in paragraph 99.

99. Defendant denies the allegations in paragraph 100.

100. Defendant denies the allegations in paragraph 101.

101. Defendant denies the allegations in paragraph 102.

102. Defendant denies the allegations in paragraph 103.

103. Defendant denies the allegations in paragraph 104.

**FOR A SIXTH COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiffs and Other Members of the Fees Subclass)**

104. Answering paragraph 105, Defendant incorporates by reference its forgoing responses as if repeated verbatim.

105. Defendant denies the allegations in paragraph 106.

106. Defendant denies the allegations in paragraph 107.

107. Defendant acknowledges that in paragraph 108 Plaintiffs demand a return of fees but denies that any refund is owed. In further answering paragraph 108, Defendant admits its website states, “Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.” Defendant denies all other allegations in paragraph 108.

108. Responding to Plaintiffs’ Prayer for Relief, Defendant denies Plaintiffs are entitled to a judgment in their favor or any of the other relief requested in paragraphs a. through j. of the Prayer.

FOR A SECOND DEFENSE

109. Plaintiffs Peter and Terry Kelly are not a real party in interest and lack standing to assert the claims contained in the Complaint.

FOR A THIRD DEFENSE

110. Plaintiffs’ Complaint fails to state facts sufficient to constitute a cause of action, and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

111. Plaintiffs’ Complaint raises claims that are tantamount to a claim for educational malpractice, which is non-cognizable in South Carolina.

FOR A FIFTH DEFENSE

112. Plaintiffs’ claims are barred by the doctrine of sovereign immunity because Defendant is an arm of the state of South Carolina and can be sued only in the manner and upon the terms and conditions prescribed by statute.

FOR A SIXTH DEFENSE

113. Plaintiffs' claims are barred by the doctrine of impossibility because it was impossible for Defendant to offer on-campus services and in-classroom instruction during the relevant time period due to orders from the State of South Carolina restricting operations.

FOR A SEVENTH DEFENSE

114. Plaintiffs' claims are barred by the doctrine of frustration of purpose because the COVID-19 pandemic was a supervening event that substantially frustrated the purpose of any contract at issue.

FOR AN EIGHTH DEFENSE

115. Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine and/or because the relationship of the parties is governed by contract.

FOR A NINTH DEFENSE

116. Plaintiffs' claims may be barred, in whole or in part, by the equitable doctrine of waiver.

FOR A TENTH DEFENSE

117. Plaintiffs' Complaint fails to state a valid claim for punitive damages. Moreover, Plaintiffs' claim for punitive damages is barred or limited under South Carolina law, including the limitations, burdens of proof, requirements, and caps set forth in sections 15-32-510 through 15-32-540, and by the procedural and substantive due process guarantees, the guarantees against the taking of property in an arbitrary or irrational manner or without adequate compensation, the guarantees of equal protection of the laws, and the guarantees against undue burden upon commerce set forth in the United States Constitution.

FOR AN ELEVENTH DEFENSE

118. Defendant reserves the right to amend and supplement its affirmative defenses to include any applicable defense, both legal and factual.

WHEREFORE, having fully answered Plaintiffs' First Amended Class Action Complaint, Defendant prays that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

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Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ ROBERT H. BRUNSON

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Attorneys for the University of South Carolina.

Charleston, South Carolina
February 19, 2021

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

DAVIA BUNCH and CASEY KELLY,	)	
individually and on behalf of	)	CIVIL ACTION NO. 2020-CP-40-02330
others similarly situated,	)	
	)	COMPLEX CASE DESIGNATION
Plaintiffs,	)	
	)	HON. JOCELYN NEWMAN
vs.	)	
	)	
THE UNIVERSITY OF SOUTH	)	<u>SECOND AMENDED SUMMONS</u>
CAROLINA,	)	
	)	
Defendant.	)	
	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 25 Society Street, Charleston, SC 29401, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully submitted,

BY: /s/ Daniel R. Dalton, esq.

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Charleston, South Carolina

Dated: August 2, 2022

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

DAVIA BUNCH and CASEY KELLY,	)	
individually and on behalf of	)	
others similarly situated,	)	CIVIL ACTION NO. 2020-CP-40-02330
	)	
Plaintiffs,	)	COMPLEX CASE DESIGNATION
	)	
vs.	)	CLASS ACTION COMPLAINT
	)	(Jury Trial Demanded)
	)	
THE UNIVERSITY OF SOUTH	)	JUDGE JOCELYN NEWMAN
CAROLINA,	)	
	)	
	)	
Defendant.	)	

SECOND AMENDED CLASS ACTION COMPLAINT

1. Davia Bunch and Casey Kelly (“Plaintiffs”), by and through undersigned counsel, bring this action against the University of South Carolina (“Defendant”) on behalf of themselves and all others similarly situated, and make the following allegations based upon information, attorney investigation and belief, discovery, and upon Plaintiffs’ own knowledge:

PRELIMINARY STATEMENT

2. Plaintiffs bring this case as a result of Defendant’s decision to close campus and transition all classes, facilities, and attendant activities to an emergency online/remote format as a result of the Novel Coronavirus Disease (“COVID-19”) while refusing to refund a prorated portion of tuition and fees Plaintiffs and other members of the class paid for “face-to-face” instruction and access to on-campus educational equipment and services that they never received.

3. Although closing the campus and transitioning to emergency remote instruction may have been prudent, this unilateral decision deprived Plaintiffs and other members of the

classes from recognizing the benefits of in-person instruction, access to campus facilities, student activities, and other benefits and services for which they had already paid required fees and tuition.

4. Defendant has refused to provide reimbursement for tuition, certain fees and other costs that Defendant did not provide.

5. Defendant's decision unfairly places the financial burden of COVID-19 on students, many of whom are already suffering financially.

6. This action seeks refunds of the amount Plaintiffs and other members of the classes are owed on a pro-rata basis, together with other damages as pleaded herein.

PARTIES

7. Defendant is an agency of the state of South Carolina with its primary campus located in Richland County, Southern Carolina.

8. Plaintiff Davia Bunch is an individual and a resident and citizen of the state of South Carolina.

9. Plaintiff Casey Kelly is an individual and resident and citizen of the state of California.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action because at least some of the events giving rise to these causes of action occurred in Richland County, South Carolina.

11. Some or all of the injuries suffered by Plaintiffs and the proposed members of the classes occurred in Richland County, South Carolina.

12. Venue is proper because Plaintiffs were harmed in Richland County, South Carolina, and the events giving rise to said harm occurred in Richland County, South Carolina.

FACTUAL ALLEGATIONS

13. Plaintiffs Davia Bunch and Casey Kelly were graduating seniors enrolled as full-time students during the Spring 2020 semester at Defendant's Columbia campus.

14. Plaintiffs paid substantial tuition and fees for the Spring 2020 semester.

15. Plaintiff Davia Bunch paid \$6,144 in resident tuition and Plaintiff Casey Kelly paid \$16,744 in non-resident tuition for the Spring 2020 semester.

16. There are hundreds, if not thousands, of institutions of higher learning in this country.

17. Some institutions of higher learning provide curriculum and instruction that is offered on a remote basis through online programming which does not provide for physical attendance by the students.

18. For example, Defendant offers this type of remote online programming for certain associate's and bachelor's degrees through its Palmetto College branch.¹

19. Defendant also offers an on-campus, face-to-face curriculum at several locations throughout South Carolina.

20. Plaintiffs and members of the Tuition and Fee Classes did not choose to attend another institution of higher learning, or to seek an online degree through Defendant's Palmetto College branch or otherwise, but instead chose to attend (and enrolled in) Defendant on an in-person basis, seeking to receive an in-person, on-campus educational experience.

21. Specifically, the University offered certain Spring 2020 courses would be in-person through its course listings and registration materials. In fact, Defendant identified and distinguished between classes that would be offered face-to-face, in specific classrooms on campus

¹ University of South Carolina-Palmetto College: About Us, https://sc.edu/about/system_and_campuses/palmetto_college/about/index.php (last visited May 16, 2022).

and those that students could select to take online. Upon information and belief, Plaintiffs and members of the Tuition and Fee Classes were required to register for Spring 2020 semester courses through the following online process or a similar one:

- Login to Self Service Carolina (a “web-based program that students use to register for classes, pay fees, check grades, change personal information, see who their adviser is, [and] apply for financial aid” among other educational services).²
- Navigate to the Student section, then click on the Advisement Planning tab.
- Choose the Schedule Planner option and build the optimal schedule.
- Send the proposed schedule to the Shopping Cart and leave it there until the students’ predetermined time to enroll in Spring 2020 semester courses.
- At that time, revisit the Schedule Planner, confirm the course selections remain available, and resend those final selections to the Shopping Cart.
- Choose the Shopping Cart tab on the Register for Classes screen, click the Add button beside the classes the student wishes to add, then click the Submit button at the bottom of the screen. The screen will then display the courses and sections for which the student successfully registered.
- If the student needs to select additional classes, he or she revisits the Schedule Planner and selects the needed classes. Students repeat this process until their schedule is finalized.³

22. During the above process, Plaintiffs and members of the Tuition and Fee Classes

² See <https://www.uscupstate.edu/campus-services/information-technology/service-directory/SSC-for-students/> (last visited May 16, 2022); <https://my.sc.edu/> (last visited May 16, 2022) (listing services and features available for students’ use).

³ See https://sc.edu/about/offices_and_divisions/registrar/registration/index.php (last visited May 16, 2022) (detailing course registration process).

reviewed course descriptions, listings, and registration materials which represented that certain classes had a “face-to-face” instructional method and were held in assigned buildings and classrooms on Defendant’s campuses.

23. For example, Plaintiff Davia Bunch was financially responsible for Spring 2020 tuition and fees to enroll in and attend certain courses, including Mass Communications Research, International Public Relations, and Politics and Mass Media, each of which Defendant expressly represented would have a “face-to-face” instructional method in specific buildings and classrooms on Defendant’s campus where the courses would be held. *See* Ex. A (Davia Bunch Spring 2020 Classes) & Ex. B (course registration listings).

24. Similarly, Plaintiff Casey Kelly was financially responsible for Spring 2020 tuition and fees to enroll in and attend certain courses, including Global Media Industries, Hong Kong Action Cinema, Moving Image Advanced: Documentary, and Basic Proficiency Spanish, each of which Defendant expressly represented would have a “face-to-face” instructional method in specific buildings and classrooms on Defendant’s campus where those courses would be held. *See* Exs. C (Casey Kelly Spring 2020 Classes) & Ex. D (course registration listings). Plaintiff Kelly also registered and enrolled in an Internship in Media Arts class, which promised a “supervised experience in media productions and media production facilities.” Ex. E (Internship in Media Arts course description).

25. After completing the online course registration and electing to enroll in these courses, Plaintiffs received a Statement of Financial Responsibility from Defendant acknowledging they were “entering into a financial arrangement with the University of South Carolina and accept[ing] the responsibility for all charges billed to [their] account.” *See* Ex. F (Davia Bunch Spring 2020 Statement of Financial Responsibility) & Ex. G (Casey Kelly Spring

2020 Statement of Financial Responsibility). After which, Plaintiffs were responsible for paying the tuition and fees assessed by Defendant for the Spring 2020 semester.

26. Alternatively, Defendant markets the in-person instruction and educational services available through its promotional materials, circulars, mailers, and website. For example, Defendant touts that its in-person instruction “form[s] the basis of our educational requirements. As you experience new things and share your experience with others, you will form powerful connections both in the classroom and beyond.”⁴ Similarly, Defendant markets the on-campus experience as a benefit of enrollment, offering that it “leads the way in providing all students with the highest-quality education, including . . . through engagement in nationally and internationally ranked research, scholarship, community outreach, and artistic creation.”⁵

27. Further, a true collegiate experience encompasses much more than just the credit hours and degrees. As recognized by Defendant, the collegiate experience consists of, among other things:

- a. Face-to-face interaction with professors, mentors, and peers;
- b. Access to learning facilities such as computer labs, study rooms, laboratories, and libraries;
- c. Student governance and student unions;
- d. Extra-curricular activities, groups, intramurals, *etc.*;
- e. Student art, cultures, and other activities;
- f. Social development and lessons in independence;
- g. Hands on learning and experimentation; and

⁴ University of South Carolina–Academic Overview: Undergraduate Education, https://www.sc.edu/study/academic_overview/undergraduate_education/index.php (last visited June 1, 2020).

⁵ University of South Carolina–Our Mission, https://sc.edu/about/south_carolina_at_a_glance/our_mission.php (last visited June 1, 2020).

h. Networking and mentorship opportunities.

28. Nonetheless, Plaintiffs' claims are not based on the (doubtlessly inferior) quality of the emergency remote instruction they received through their online classes. Rather, Plaintiffs paid tuition for in-person classes, Defendant, through its course registration and description materials, obligated itself to provide these classes, and then did not do so. And Defendant itself recognizes the value differential between in-person and online classes because it charges less for online classes offered through Palmetto College.

29. As noted, even before the COVID-19 pandemic, Defendant offered online courses through its Palmetto College branch, alongside its standard on-campus degree program.

30. These same classes are intended to provide the same level of instruction on the same subject matter but at a reduced price. Defendant itself touts that Palmetto College programs "are developed and taught by the same professors who teach statewide in the nationally renowned USC system. As a Palmetto College student, you'll have access to the university's academic resources. And best of all, when you're finished with the program, you'll graduate with a degree from a top-notch, nationally recognized university."⁶

31. Yet, Defendant charged different amounts for tuition and fees for online instruction. For example, in the 2019-2020 school year, Defendant charged \$5,199 in tuition for full-time South Carolina resident students and \$10,428 in tuition for full-time non-resident students attending Defendant's Palmetto College online undergraduate program.

32. In apparent recognition of the difference between "face-to-face" instruction and online education, Defendant charged \$945 less in resident tuition (\$6,144 for on-campus resident tuition v. \$5,199 for online resident tuition) and \$6,336 less in non-resident tuition (\$16,764 for

⁶ https://sc.edu/about/system_and_campuses/palmetto_college/online_programs/index.php (last visited May 16, 2022).

on-campus non-resident tuition v. \$10,428 for online non-resident tuition) to attend Defendant's online Palmetto College undergraduate program.⁷

33. In addition to tuition, Plaintiffs were required to pay certain mandatory fees, including but not limited to technology fees.

34. At Defendant's request and direction, its campus was closed on March 11, 2020, and Plaintiffs had no access to any on-campus facilities or services after that date.

35. As a result of the campus being closed and classes moving to emergency remote instruction, Plaintiffs no longer had the benefit of the on-campus facilities and services for which they paid fees.

36. By way of example but not limitation, Defendant states that Technology Fee revenue is used, among other things, to support upgrades and maintenance to computer laboratories and to provide Wi-Fi access on campus. But no portion of these fees were refunded despite the fact that these paid-for services could no longer be utilized once Defendant closed its on-campus facilities because of COVID-19.

37. By way of another example but not limitation, Plaintiffs were required to pay laboratory fees for certain courses, including but not limited to Language Laboratory and Art Education Laboratory fees.

38. Defendant states that these laboratory fees' "sole purpose . . . is to provide an enhanced educational experience for our students. The fees provide for laboratory equipment, supplies, instruction, and upkeep."⁸ Despite paying these lab fees, Plaintiffs were not provided the

⁷ Compare https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php (last visited May 13, 2020) with https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php (last visited May 13, 2020).

⁸ University of South Carolina-Bursar's Office: Department Fees, https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/uofsc_columbia_fees_academic_department_fees/index.php (last visited May 16, 2022).

promised educational experience and opportunity to utilize the equipment the fees were designed to cover. For example, Plaintiff Casey Kelly did not participate in any language labs (remote or otherwise) following the transition to emergency remote instruction. But no portion of these lab fees were refunded even though on-campus labs could not be conducted once Defendant closed laboratory facilities because of COVID-19.

39. On information and belief, Defendant has saved certain monies as a result of its shutdown of certain services facilities, including monies related to language, art, and maintenance of computing laboratories.

40. On the section of its web site addressing “FAQs Relating to COVID-19 Crisis,” Defendant asserts its position regarding a refund of tuition or fees because of the campus closure: “Q: Will students receive a refund for tuition and other academic fees? A: Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.”⁹

41. As a result of the COVID-19 pandemic, Defendant transitioned all classes to emergency remote instruction and closed all campus events as of March 11, 2020.

42. Defendant has an estimated endowment of approximately \$1 billion dollars.¹⁰

43. Moreover, upon information and belief, Defendant received federal stimulus under the CARES Act in the amount of \$21,415,130.¹¹ The Act directs that approximately \$14 billion be distributed to colleges and universities based upon enrollment and requires that institutions must use at least half of the funds they receive to provide emergency financial aid grants to students for

⁹ University of South Carolina–Bursar’s Office: Frequently Asked Questions https://sc.edu/about/offices_and_divisions/bursar/frequently_asked_questions/covid19_faqs.php (last visited May 16, 2022).

¹⁰ See https://www.sc.edu/uofsc/posts/2021/10/2020_2021_endowment_growth.php#.YoLDNqjMK70 (last visited May 16, 2022).

¹¹ See <https://www.greenvilleonline.com/story/news/local/2020/04/10/coronavirus-sc-universities-receive-millions-dollars-cares-act/5126092002/> (last accessed May 16, 2022).

expenses related to the disruption of campus operations due COVID-19.

44. However, Defendant has refused and continues to refuse to offer any pro-rated tuition discounts or fee refunds due to moving classes online.

45. Although Defendant offered academic instruction via emergency remote instruction, Plaintiffs and members of the Proposed Tuition Class registered, enrolled, and paid for tuition for in-person courses featuring “face-to-face” instruction in specific buildings and classrooms on Defendant’s campuses, with all the appurtenant benefits offered through that type of instruction. Instead, Plaintiffs and members of the Proposed Tuition Class received an emergency remote teaching instruction and were deprived of access to Defendant’s on-campus facilities and educational services for which they paid.

46. Defendant’s refusal to provide a prorated refund of tuition and other fees has prompted complaints from students and families who made these payments yet received a different educational experience.

- We didn’t get the entirety of what we paid for with the tuition either. The online was horrible . . . [i]t is not right to charge the entire regular amount. USC is wrong to do so, despite what the Commission on Higher Education advised, we did not receive the education that we originally agreed on paying for. Something should be refunded.
- We pay activities fees, fraternity fees, and countless other fees aside of regular tuition and are receiving zero benefit because the campus is closed. Further, all the buildings and facilities that the students use are closed as well. Just because classes are being taught online, this isn’t the same . . . [t]herefore, I believe some compensation is due back to use for this semester.
- I am not looking for free tuition. I am not looking for University of Phoenix tuition . . . I am just looking for some fairness with tuition costs during these difficult times. From what I understand there is not any concrete plan on reduction of tuition at this time. I am pleading with the powers that be to rethink that.
- All of my courses including labs are 100% web! There should be a reduction in tuition and/or lab fees for students that have classes solely online. We are

not receiving the same face-to-face instruction . . . [p]lease consider decreasing these fees for students not experiencing the same instruction.

- I noticed I am being charged a technology fee . . . [t]his fee is applied as a[n] institutional fee, normally, for students who are attending the university and using the computer labs provided by the school. Students are obviously not attending in lecture classes . . . so this also needs to change.

47. All university in-person events, meetings and travel were canceled and all face-to-face instruction in lectures, discussion sections, labs, seminars and other similar classroom settings were suspended. Similarly, the Russell House University Union and the campus recreation facilities were closed.

48. Plaintiffs and members of the proposed classes were deprived of utilizing these services for which they have already paid.

CLASS ACTION ALLEGATIONS

49. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rule 23 of the South Carolina Rules of Civil Procedure on behalf of the following classes:

The Tuition Class:

All individuals who were financially responsible for tuition (regardless of whether they paid tuition themselves), registered, and enrolled in at least one credit hour of coursework featuring in-person or “face-to-face” instruction at the University of South Carolina for the spring 2020 semester, the tuition for which was paid for by any source, and who were denied in-person or “face-to-face” instruction and required to use emergency remote instruction learning from the date that the Defendant imposed emergency remote instruction.

The Fees Class:

All individuals who were financially responsible for paying fees (regardless of whether they paid those fees themselves), and who enrolled in classes at the Defendant for the Spring 2020 semester who were unable to utilize the equipment and receive the services for which corresponding fees were paid due to the Defendant’s campus closure and transition to emergency remote instruction.

50. Excluded from the classes are The Board of Trustees of the Defendant and any of

their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and the judicial officers, and their immediate family members and Court staff assigned to this case. Also excluded from the classes are any individuals who did not take courses selected as “face-to-face” instruction during the Spring 2020 semester, did not execute a Statement of Financial Responsibility for the Spring 2020 semester, or, with respect to the Fees Class only, did not pay any fees for the Spring 2020 semester. Plaintiffs reserve the right to modify or amend the Class definitions, as appropriate, during this litigation.

51. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

52. This action has been brought and may be properly maintained on behalf of the two classes proposed herein under Rule 23 of the South Carolina Rules of Civil Procedure.

Numerosity: SCRP Rule 23(a)(1)

53. The members of the two classes are so numerous and geographically dispersed the individual joinder of all class members is impracticable. Plaintiffs are informed and believe that there are thousands of members of each class, the precise number being unknown to Plaintiffs, but such number being ascertainable from Defendant’s records. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

Commonality: SCRP Rule 23(a)(2)

54. This action involves common questions of law and fact, which predominate over any questions affecting individual class members, including, without limitation:

- a. Whether Defendant engaged in the conduct alleged herein;

- b. Whether Defendant breached its contracts with Plaintiffs and other members of the Tuition Class by retaining the portion of their tuition representing the difference between the value of emergency remote instruction and live “face-to-face” instruction;
- c. Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiff and the Tuition Class representing the difference between the value of emergency remote instruction and live “face-to-face” instruction;
- d. Whether Defendant was estopped from retaining tuition payments of Plaintiff and the Tuition Class representing the difference between the value of emergency remote instruction and live “face-to-face” instruction.
- e. Whether Defendant breached its contracts with Plaintiffs and the other members of the Fees Class by retaining fees without providing the in-person and on-campus equipment and services the fees were intended to cover;
- f. Whether Defendant was unjustly enriched by retaining fees payments of Plaintiffs and the Fees Class without providing the in-person and on-campus equipment and services the fees were intended to cover;
- g. Whether Defendant was estopped from retaining fees payments of Plaintiffs and the Fees Class without providing the in-person and on-campus services the fees were intended to cover;
- h. Whether Defendant committed conversion as detailed above against Plaintiffs and the other members of the Tuition and Fees Classes.
- i. Whether Plaintiffs and other members of the Tuition and Fees Classes were damaged by Defendant’s conduct alleged herein;

- j. Whether certification of any or either of the classes proposed herein is appropriate under Rule 23 of the South Carolina Rules of Civil Procedure;
- k. Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
- l. The amount and nature of relief to be awarded to Plaintiffs and the other Class members.

Typicality: SCRP Rule 23(a)(3)

55. Plaintiffs' claims are typical of the other class members claims because, among other things, all class members were similarly situated and were comparably injured through Defendant's wrongful conduct as set forth herein.

Adequacy: SCRP 23(a)(4)

56. Plaintiffs are adequate class representatives because their interests do not conflict with the interests of other members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in complex and class action litigation; and Plaintiffs intend to prosecute the action vigorously. The two classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

Amount in Controversy: SCRP 23(a)(5)

57. Plaintiffs are informed and believe that the amount in controversy for each class member exceeds one hundred dollars. Plaintiff Davia Bunch paid over \$6,000.00 in tuition for the Spring 2020 semester and at least hundreds of dollars in fees. Plaintiff Casey Kelly paid over \$16,000 in tuition for the Spring 2020 semester and at least hundreds of dollars in fees.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Tuition Class)**

58. Plaintiffs incorporate by reference all preceding allegations as though fully set forth

herein.

59. Plaintiffs bring this count on behalf of themselves and other members of the Tuition Class.

60. Plaintiffs and the Tuition Class entered into contracts with Defendant which provided that Plaintiffs and other members of the Tuition Class would pay tuition, and, in exchange, Defendant would provide live “face-to-face” instruction in a physical building and classroom.

61. These contracts were formed when students formally registered for courses offered by Defendant, based on the course registration materials and assessed tuition pertaining to such registration, and Defendant thereafter accepted those registrations by sending bills for tuition to Plaintiffs and other members of the Tuition Class or otherwise holding Plaintiffs and other members of the Tuition Class financially responsible for tuition payments. In the alternative, Defendant committed to providing in-person instruction through its advertising and other marketing materials touting the same.

62. To that end, Defendant required all students to “acknowledge the financial arrangement between the student and the University. By submitting course registration, [Plaintiffs and the Tuition Class] enter[ed] into a financial arrangement with the University of South Carolina and accept[ed] the responsibility for all charges billed to [their] account.”¹² *See also* Exs. F & G.

63. Plaintiffs and other members of the Tuition Class fulfilled their end of the bargain when they paid tuition for the Spring 2020 Semester out-of-pocket, through student loan financing, or through other means.

¹² University of South Carolina–Student Statement of Financial Responsibility, https://www.sc.edu/about/offices_and_divisions/bursar/my_bill/student_statement_of_financial_responsibility/index.php (last visited May 16, 2022)

64. Defendant breached the contract with Plaintiffs and the Tuition Class by moving all classes for the Spring 2020 semester to emergency remote instruction, without providing a prorated refund for the difference between the live, in-person, and on-campus educational experience Plaintiffs and the Tuition Class paid for and the emergency remote online learning experience they ultimately received.

65. Defendant retained tuition monies paid by Plaintiffs and other members of the Tuition Class, without providing them the full benefit of their bargain.

66. Plaintiffs and other members of the Tuition Class have suffered damage as a direct and proximate result of the Defendant's breach, including but not limited to being deprived of the value of the services the tuition was intended to cover, namely live in-person "face-to-face" instruction in a physical building and classroom.

67. As a direct and proximate result of Defendant's breach, Plaintiffs and the Tuition Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of the difference between the value of the online learning which is being provided versus the value of the live in-person instruction in a physical classroom on Defendant's campus that was contracted for.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Tuition Class)**

68. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

69. Plaintiffs bring this count, in the alternative to their breach of contract claim, on behalf of themselves and other members of the Tuition Class.

70. In the alternative to their claim for breach of contract, Plaintiffs and the members of the Tuition Class assert that Defendant has received a benefit at the expense of Plaintiffs and

other members of the Tuition Class to which it is not entitled.

71. In particular, Plaintiffs and other members of the Tuition Class paid substantial tuition for live in-person “face-to-face” instruction in physical buildings and classrooms and did not receive the full benefit of the bargain.

72. Plaintiffs and other members of the Tuition Class conferred this benefit on Defendant when they paid the tuition for in-person “face-to-face” instruction and on-campus educational experience.

73. Plaintiffs and other members of the Tuition Class did not confer this benefit gratuitously.

74. Defendant has realized this benefit by accepting such payment.

75. Defendant has retained this benefit even though Defendant has failed to provide the instruction, access, and services for which the tuition was collected, making Defendant’s retention unjust under the circumstances.

76. Equity and good conscience require that Defendant return a prorated portion of the monies that Plaintiff and members of the Tuition Class paid in tuition for in-person “face-to-face” courses that they did not receive for the duration of the campus closure.

77. Defendant should be required to disgorge this unjust enrichment.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Tuition Class)**

78. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

79. “Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights.” *Regions Bank v. Schmauch*, 354 S.C. 648, 667 (Ct. App. 2003).

“Conversion may arise by some illegal use or misuse, or by illegal detention of another’s personal property.” *Id.*

80. Plaintiffs and members of the Tuition Class have an ownership right to the portion of the tuition funds for live, in-person, “face-to-face” instruction for courses they registered and enrolled in that Defendant did not provide after March 11, 2020.

81. Defendant wrongfully detained these tuition funds when it moved all classes to an emergency remote format and discontinued in-person “face-to-face” instruction for which tuition was intended.

82. Plaintiffs and members of the Tuition Class demand the return of the pro-rated portion of any Spring Semester 2020 tuition for in-person “face-to-face” instruction not provided after Defendant’s closure on March 11, 2020. Defendant has stated on its web site that tuition and certain funds will not be returned “[d]ue to the continuity of classes being offered and with the advisement on Higher Education.”

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
PROMISSORY ESTOPPEL
(Plaintiff and Other Members of the Tuition Class)**

83. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

84. Plaintiffs bring this count on behalf of themselves and other members of the Tuition Class in the alternative to their breach of contract claim referenced above.

85. At all times relevant, Defendant made a clear and unambiguous promise to provide students, including Plaintiffs and members of the Tuition Class, “face-to-face” instruction for certain classes and courses for the Spring 2020 semester.

86. Specifically, the promises made by Defendant are incorporated into the course

registration materials and descriptions provided to Plaintiffs and members of the Tuition Class prior to the enrollment and in the Statement(s) of Financial Responsibility executed after enrollment.

87. It was reasonable and foreseeable that Plaintiffs and members of the Tuition Class would rely on Defendant's promise to provide in-person "face-to-face" instruction for those courses.

88. Plaintiffs and members of the Tuition Class reasonably relied on Defendant's promise to their detriment, in among other things, being deprived of in-person or "face-to-face" instruction for which they paid tuition.

89. Accordingly, Defendant should be equitably estopped from retaining the full amount of the tuition paid to Defendant by Plaintiffs and the Tuition Class for the Spring 2020 semester.

90. Thus, Plaintiffs and members of the Tuition Class are legally and equitably entitled to damages to be decided by the trier of fact.

**FOR A FIFTH COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Fees Class)**

91. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

92. Plaintiffs bring this count on behalf of themselves and other members of the Fees Class.

93. Plaintiffs and members of the Fees Class entered into contracts with the Defendant which provided that Plaintiffs and other members of the Fees Class would pay certain fees, including, but not limited to, technology fees, laboratory fees, and other fees, and, in exchange, Defendant would provide access to on-campus equipment and services related to those fees. In

the alternative, Defendant committed to providing on-campus educational services by touting the same in its marketing materials, promotional materials, and through its website.

94. Plaintiffs and other members of the Fees Class fulfilled their end of the bargain when they paid fees for the Spring 2020 Semester out-of-pocket, through student loan financing, or through other means.

95. Defendant breached the contract with Plaintiffs and the Fees Class by moving all classes for the Spring 2020 semester to emergency remote instruction and closing campus buildings and facilities.

96. Defendant retained fees paid by Plaintiffs and other members of the Fees Class, without providing them the full benefit of their bargain.

97. Plaintiffs and other members of the Fees Class have suffered damage as a direct and proximate result of the Defendant's breach, including but not limited to being deprived of the value of the benefits and services the fees were intended to cover.

98. As a direct and proximate result of Defendant's breach, Plaintiffs and the Fees Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to disgorgement of the pro-rata amount of fees that were collected but for which access and services were not provided.

**FOR A SIXTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Fees Class)**

99. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

100. In the alternative to its claim for breach of contract, Plaintiffs and the members of the Fees Class assert that Defendant has received a benefit at the expense of Plaintiffs and other members of the Fees Class to which it is not entitled.

101. In particular, Plaintiffs and other members of the Fees Class paid substantial student fees for on-campus benefits and services and did not receive the full benefit of the bargain.

102. Plaintiffs and other members of the Fees class conferred this benefit on Defendant when they paid the fees.

103. Plaintiffs and other members of the Fees Class did not confer this benefit gratuitously.

104. Defendant has realized this benefit by accepting such payment.

105. Defendant has retained this benefit even though Defendant has failed to provide the on-campus access and services for which the fees were collected, making Defendant's retention unjust under the circumstances.

106. Equity and good conscience require that Defendant return a pro-rata portion of the monies paid in fees to Plaintiffs and other members of the Fees Class.

107. Defendant should be required to disgorge this unjust enrichment.

**FOR A SEVENTH COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Fees Class)**

108. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

109. Plaintiffs and members of the Fees Class have an ownership right in the fees for the Spring 2020 semester that Plaintiffs and other members of the Fees class paid for in exchange for access and services related to those fees.

110. Defendant wrongfully detained these fees when it closed the campus and discontinued the services for which the fees were intended to pay.

111. Plaintiffs and members of the Fees Class demand the return of fees for the Spring Semester 2020. Defendant has stated on its web site that tuition and certain funds will not be

returned “[d]ue to the continuity of classes being offered and with the advisement on Higher Education.”

**FOR AN EIGHTH COLLECTIVE CAUSE OF ACTION
PROMISSORY ESTOPPEL
(Plaintiff and Other Members of the Fees Class)**

112. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

113. Plaintiffs bring this count on behalf of themselves and other members of the Fees Class in the alternative to their breach of contract claim.

114. At all times relevant, Defendant made a clear and unambiguous promise to provide Plaintiffs and members of the Fees Class with access to on-campus equipment and services in exchange for payment of certain fees, including, but not limited to, technology fees, laboratory fees, and other fees.

115. The promises made by Defendant were incorporated into Defendant’s website, course registration materials, course descriptions, and Statement of Financial Responsibility.

116. It was reasonable and foreseeable that students would rely on Defendant’s promise to provide access to on-campus facilities and services in exchange for the payment of attendant fees.

117. Plaintiffs and members of the Fees Class reasonably relied on Defendant’s promise to their detriment, in among other things, being deprived of access to on-campus facilities and services due to Defendant’s closure of campus during the COVID-19 pandemic.

118. Accordingly, Defendant should be equitably estopped from retaining the full amount of the fees paid to Defendant by Plaintiffs and members of the Fees Class.

119. Therefore, Plaintiffs and the members of the Fees Class are legally and equitably

entitled to damages, to be decided by the trier of fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Classes, pray for judgment in their favor and against Defendant as follows:

- a. Certifying the Classes as proposed herein, designating Plaintiffs as Class representatives, and appointing undersigned counsel as Class Counsel;
- b. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this action;
- c. Declaring that Defendant has wrongfully kept monies paid for tuition and fees;
- d. Requiring that Defendant disgorge amounts wrongfully detained for tuition and fees to Plaintiffs and the class members;
- e. Awarding Plaintiffs and class members actual damages as permitted by contract;
- f. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies paid for tuition, and fees;
- g. Scheduling a trial by jury in this action;
- h. Awarding Plaintiffs' reasonable attorneys' fees, costs and expenses, as permitted by contract and law.
- i. Awarding pre and post judgment interest on any amounts awarded, as permitted by law; and
- j. Awarding such other and further relief as may be just and proper.

This 2nd day of August, 2022.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

BY: /s/ Daniel R. Dalton

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Mount Pleasant, South Carolina

Dated: August 2, 2022

*Attorneys for Plaintiff, individually and on
behalf of all others similarly situated*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH and CASEY KELLY,	)	Civil Action No. 2020-CP-40-02330
individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S ANSWER TO</u>
vs.	)	<u>PLAINTIFFS' SECOND AMENDED</u>
	)	<u>CLASS ACTION COMPLAINT</u>
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

The University of South Carolina ("Defendant"), through its undersigned counsel, answers Plaintiffs' Second Amended Class Action Complaint ("Complaint") as follows, with every allegation in the Complaint being denied unless specifically admitted, qualified, or explained herein:

FOR A FIRST DEFENSE

1. Answering paragraph 1, Defendant admits Plaintiffs bring this action against it. Defendant denies all other allegations in paragraph 1.

PRELIMINARY STATEMENT

2. Answering paragraph 2, Defendant admits Plaintiffs bring this action as a result of Defendant's transition to an emergency online/remote format in response to the COVID-19 pandemic and the Governor's Executive Orders. Defendant denies all other allegations in paragraph 2.

3. Answering paragraph 3, Defendant admits the decision to limit some access to campus areas and transition all classes to emergency remote instruction was prudent. Defendant denies all other allegations in paragraph 3.

4. Defendant denies the allegations in paragraph 4.
5. Defendant denies the allegations in paragraph 5.
6. Answering paragraph 6, Defendant acknowledges that Plaintiffs seek pro-rata refunds but denies that any refund is owed. Defendant further denies all other allegations in paragraph 6.

PARTIES

7. Defendant admits the allegations in paragraph 7.
8. Upon information and belief, Defendant admits the allegations in paragraph 8.
9. Upon information and belief, Defendant admits the allegations in paragraph 9.

JURISDICTION AND VENUE

10. The allegations in paragraph 10 state a legal conclusion which does not require a response. To the extent a response is required, Defendant admits that one or more of the events alleged in the Complaint occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 10.

11. Answering paragraph 11, Defendant admits that one or more of the purported injuries allegedly occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 11.

12. The allegations in paragraph 12 state a legal conclusion which does not require a response. To the extent a response is required, Defendant admits only that one or more of the events alleged in the Complaint occurred in Richland County, South Carolina. Defendant denies all other allegations in paragraph 12 but does not contest venue in this matter.

FACTUAL ALLEGATIONS

13. Defendant admits the allegations in paragraph 13.

14. Answering paragraph 14, Defendant admits Plaintiffs paid tuition and fees for the Spring 2020 semester and that Plaintiff Davia Bunch received scholarship, financial aid, and grant funding. Defendant denies all other allegations in paragraph 14.

15. Answering paragraph 15, Defendant admits Plaintiff Davia Bunch paid \$6,144 in resident tuition for the Spring 2020 semester, mainly through scholarship, financial aid, and grant funding. In further answering paragraph 15, Defendant denies that Plaintiff Casey Kelly paid \$16,744 in non-resident tuition for the Spring 2020 semester. Defendant instead admits that Ms. Kelly paid \$16,764 in non-resident tuition for the Spring 2020 semester.

16. Upon information and belief, Defendant admits the allegations in paragraph 16.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, those allegations are denied.

18. Answering paragraph 18, Defendant craves reference to the cited webpage https://sc.edu/about/system_and_campuses/palmetto_college/about/index.php, which speaks for itself and is the best evidence of its contents, and denies any allegations inconsistent therewith. In further answering paragraph 18, Defendant admits that it offers online learning programs at the University of South Carolina Palmetto College, allowing students to complete certain degrees online. Defendant denies all other allegations in paragraph 18.

19. Answering paragraph 19, Defendant admits that the University of South Carolina system encompasses eight campuses, all of which offer certain degree programs and course formats. Defendant further admits that some course formats include an instructional method of “Face-to-Face Instruction.” Defendant denies all other allegations in paragraph 19.

20. Answering paragraph 20, Defendant admits that Plaintiffs did not choose to attend another institution of higher learning, but instead enrolled in classes at the University of South Carolina, including online classes. Defendant further admits that Plaintiffs did not seek a degree through the Palmetto College. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 and, therefore, those allegations are denied.

21. Answering paragraph 21, Defendant admits some of its course listings and registration materials for the Spring 2020 semester include an instructional method of “Face-to-Face Instruction” and may provide information regarding classroom location, which is subject to change. In further answering paragraph 21, Defendant craves reference to the cited webpages <https://my.sc.edu/>, https://sc.edu/about/offices_and_divisions/registrar/registration/index.php, and <https://www.uscupstate.edu/campus-services/information-technology/service-directory/SSC-for-students/>, which speak for themselves and are the best evidence of their contents, and denies any allegations inconsistent therewith. Defendant denies the remaining allegations in paragraph 21, including all subparts, to the extent they are inconsistent herewith.

22. Answering paragraph 22, Defendant admits only that some of its course descriptions, listings, and registration materials for the Spring 2020 semester include an instructional method of “Face-to-Face Instruction” and may provide information regarding classroom location, which is subject to change. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22 and, therefore, those allegations are denied.

23. Answering paragraph 23, Defendant admits that Plaintiff Davia Bunch was financially responsible for tuition and fees for the Spring 2020 semester. Defendant further admits that Ms. Bunch enrolled in classes with Defendant for the Spring 2020 semester, including Mass Communications Research, Special Topics: International Public Relations, and Politics and the Mass Media, which included an instructional method of “Face-to-Face Instruction” and provided information regarding classroom location, which was subject to change. In further answering paragraph 23, Defendant states that Ms. Bunch also enrolled in classes with Defendant for the Spring 2020 semester with an instructional method of “100% Web Asynchronous,” including Dance Appreciation and State Government. Lastly, Defendant craves reference to cited Exhibits A and B to the Second Amended Complaint, which speak for themselves and are the best evidence of their contents, and denies any allegations inconsistent therewith. Defendant denies all other allegations contained in paragraph 23.

24. Answering paragraph 24, Defendant admits that Plaintiff Casey Kelly was financially responsible for tuition and fees for the Spring 2020 semester. Defendant further admits that Ms. Kelly enrolled in classes with Defendant for the Spring 2020 semester, including Global Media Industries, Hong Kong Action Cinema, Moving Image Advanced: Documentary, Basic Proficiency in Spanish, and Internship in Media Arts, which included an instructional method of “Face-to-Face Instruction” and provided information regarding classroom location, which was subject to change. In further answering paragraph 24, Defendant craves reference to cited Exhibits C, D, and E to the Second Amended Complaint, which speak for themselves and are the best evidence of their contents, and denies any allegations inconsistent therewith. Defendant denies all other allegations in paragraph 24.

25. Answering paragraph 25, Defendant craves reference to the Plaintiffs' Student Statements of Financial Responsibility attached as Exhibits F and G to the Second Amended Complaint, which speak for themselves and are the best evidence of their contents, and denies any allegations inconsistent therewith. In further answering paragraph 25, Defendant admits that once Plaintiffs accepted the Statements of Financial Responsibility and submitted course registration, they were responsible for paying all charges billed to their accounts, including tuition and fees for the Spring 2020 semester. Defendant denies all other allegations in paragraph 25.

26. Answering paragraph 26, Defendant craves reference to the cited webpages https://www.sc.edu/study/academic_overview/undergraduate_education/index.php and https://sc.edu/about/south_carolina_at_a_glance/our_mission.php, which speak for themselves and are the best evidence of their contents. Defendant denies any allegations inconsistent therewith and denies all other allegations in paragraph 26.

27. Answering paragraph 27, Defendant admits that a college experience is multifaceted and individualized. Defendant denies all other allegations in paragraph 27, including all subparts.

28. Defendant denies the allegations in paragraph 28.

29. Answering paragraph 29, Defendant admits it offered online courses through the Palmetto College before the COVID-19 pandemic. Defendant further admits it offered certain degree programs and course formats, including online courses, at its eight campuses before the COVID-19 pandemic. Defendant denies all other allegations in paragraph 29.

30. Answering paragraph 30, Defendant craves reference to the cited webpage https://sc.edu/about/system_and_campuses/palmetto_college/online_programs/index.php, which speaks for itself and is the best evidence of its contents, and denies any allegations inconsistent

therewith. Defendant denies all other allegations in paragraph 30.

31. Answering paragraph 31, Defendant admits it charged \$5,199 in tuition for full-time South Carolina resident students and \$10,428 in tuition for full-time non-resident students enrolled in the Palmetto College's online undergraduate degree completion program during the Spring 2020 semester. In further answering paragraph 31, Defendant states that it offers specially priced tuition rates to select groups. Defendant denies all other allegations in paragraph 31.

32. Answering paragraph 32, Defendant incorporates herein its answer to paragraph 31, above, and further admits it charged \$6,144 in tuition for full-time undergraduate South Carolina resident students and \$16,764 in tuition for full-time undergraduate non-resident students enrolled at Defendant's Columbia campus during the Spring 2020 semester, regardless of instructional method. Defendant further states that it offers specially priced tuition rates to select groups. In further answering paragraph 32, Defendant craves reference to the cited webpage https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php, which speaks for itself and is the best evidence of its contents, and denies any allegations inconsistent therewith. Defendant denies all other allegations in paragraph 32.

33. Answering paragraph 33, Defendant admits Plaintiffs were charged certain fees. Defendant further admits Plaintiffs were charged a technology fee. Defendant denies all other allegations in paragraph 33.

34. Defendant denies the allegations in paragraph 34.

35. Defendant denies the allegations in paragraph 35.

36. Answering paragraph 36, Defendant admits that its technology fee revenue may be used, among other things, to support upgrades and maintenance to computer laboratories and to provide Wi-Fi access on campus. Defendant further admits the technology fee assessed during the

Spring 2020 semester was not refunded because it relates to services students received before, during, and after the transition to virtual instruction. In further answering paragraph 36, Defendant admits it limited some access to campus areas and transitioned all classes to virtual instruction in response to the COVID-19 pandemic and the Governor's Executive Orders. Defendant denies all other allegations in paragraph 36.

37. Answering paragraph 37, Defendant admits only that Plaintiff Casey Kelly was charged a language lab fee and an art lab fee for the Spring 2020 semester. Defendant denies all other allegations in paragraph 37.

38. Answering paragraph 38, Defendant admits it provides explanations related to the fees it charges and craves reference to the cited webpage https://www.sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/uofsc_columbia_fees_academic/departments_fees/index.php, which speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent therewith and denies all other allegations in paragraph 38.

39. Defendant denies the allegations in paragraph 39.

40. Answering paragraph 40, Defendant craves reference to the cited webpage https://sc.edu/about/offices_and_divisions/bursar/frequently_asked_questions/covid19_faqs.php, which speaks for itself and is the best evidence of its contents. Defendant denies any allegations inconsistent therewith and denies all other allegations in paragraph 40.

41. Answering paragraph 41, Defendant admits it transitioned all classes to emergency remote instruction and suspended some on-campus events as a result of the COVID-19 pandemic and the Governor's Executive Orders. Defendant denies all other allegations in paragraph 41.

42. Answering paragraph 42, Defendant craves reference to the cited webpage https://www.sc.edu/uofsc/posts/2021/10/2020_2021_endowment_growth.php#.YvUVPKLMKU, which speaks for itself and is the best evidence of its contents, and denies any allegations inconsistent therewith. In further answering paragraph 42, Defendant admits, upon information and belief, the University of South Carolina system had an estimated endowment of approximately \$782 million in fiscal year 2020, of which \$128 million was owned and controlled by Defendant. Defendant further admits, upon information and belief, the University of South Carolina system had an estimated endowment of \$989 million in fiscal year 2021, of which \$128.4 million was owned and controlled by Defendant. Defendant states that all endowments held by Defendant are restricted by each endowment's corresponding gift agreement and, therefore, are not available for any other purpose outside the language of the agreements. Defendant denies all other allegations in paragraph 42.

43. Answering paragraph 43, Defendant admits the University of South Carolina Columbia received CARES Act funding in the amount of \$21,415,130. Defendant further admits that no less than half of these funds were provided to students, including Plaintiff Davia Bunch. In further answering paragraph 43, Defendant craves references to the CARES Act and the cited webpage <https://www.greenvilleonline.com/story/news/local/2020/04/10/coronavirus-sc-universities-receive-millions-dollars-cares-act/5126092002/>, which speak for themselves and contain the best evidence of their contents. Defendant denies any allegation inconsistent therewith and denies all other allegations in paragraph 43.

44. Answering paragraph 44, Defendant admits it has not offered any prorated tuition discount as a result of its transition to virtual instruction during the Spring 2020 semester due to the continuity of classes and services being offered online. In further answering paragraph 44,

Defendant admits it has not offered any prorated refund for fees assessed during the Spring 2020 semester related to services students continued to receive before, during, and after the transition to virtual instruction, but Defendant denies that it has refused to offer *any* prorated fee refund. Instead, Defendant states it provided prorated refunds for fees related to housing, meal plans, and parking, which are services that could not be provided to students after the transition to virtual instruction during the Spring 2020 semester.

45. Answering paragraph 45, Defendant admits Plaintiffs and other purported members of the alleged “Tuition Class” registered, enrolled, and paid tuition, including through financial aid, scholarship, and grant funding, to attend courses at Defendant, and that some course formats included an instructional method of “Face-to-Face Instruction.” Defendant further admits it transitioned Plaintiffs and other purported members of the alleged “Tuition Class” to virtual instruction as a result of the COVID-19 pandemic and the Governor’s Executive Orders. Defendant denies all other allegations in paragraph 45.

46. Answering paragraph 46, Defendant admits only that it received feedback from students and families in response to its transition to virtual instruction, including complaints and praise that speak for themselves. Defendant denies that its students have not received any refund. Defendant denies all other allegations in paragraph 46.

47. Answering paragraph 47, Defendant admits it limited some access to campus areas, suspended faculty travel and some in-person events, and transitioned all classes to virtual instruction as a result of the COVID-19 pandemic and the Governor’s Executive Orders. Defendant denies all other allegations in paragraph 47.

48. Defendant denies the allegations in paragraph 48.

CLASS ACTION ALLEGATIONS

49. As to paragraph 49, Defendant acknowledges that Plaintiffs bring this action on behalf of themselves and two purported classes but denies that the action is appropriate for class certification under Rule 23 of the South Carolina Rules of Civil Procedure or that Plaintiffs are appropriate representatives of the purported classes. Defendant further denies that Plaintiffs have properly defined an ascertainable class. Defendant denies any other allegations in paragraph 49.

50. The allegations in paragraph 50 contain exclusions from Plaintiffs' proposed class definitions and do not require a response from Defendant. In further responding to paragraph 50, Defendant incorporates its answer to paragraph 49, above, and further admits Plaintiffs purport to reserve the right to modify or amend the definitions of their purported classes. Defendant denies any other allegations in paragraph 50.

51. Defendant denies the allegations in paragraph 51 and further denies that the requirements for class certification can be satisfied.

52. Answering paragraph 52, Defendant acknowledges that Plaintiffs bring this action under Rule 23 of the South Carolina Rules of Civil Procedure but denies that this action is properly maintainable as a class action.

Numerosity: SCRP Rule 23(a)(1)

53. Defendant denies the allegations in paragraph 53 and further denies that the requirements for class certification can be satisfied.

Commonality: SCRP Rule 23(a)(2)

54. Defendant denies the allegations in paragraph 54, including all subparts, and further denies that the requirements for class certification can be satisfied.

Typicality: SCRCP Rule 23(a)(3)

55. Defendant denies the allegations in paragraph 55 and further denies that the requirements for class certification can be satisfied.

Adequacy: SCRCP Rule 23(a)(4)

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 that allege Plaintiffs have retained counsel competent and experienced in complex and class action litigation and, therefore, denies those allegations. Defendant denies the remaining allegations in paragraph 56 and further denies that the requirements for class certification can be satisfied or that Plaintiffs are appropriate representatives of the purported classes.

Amount in Controversy: SCRCP 23(a)(5)

57. As to paragraph 57, Defendant admits Plaintiff Davia Bunch paid over \$6,000 in tuition and at least \$200 in fees for the Spring 2020 semester, mainly through scholarship, financial aid, and grant funding. Defendant further admits Plaintiff Casey Kelly paid over \$16,000 in tuition and at least \$200 in fees for the Spring 2020 semester. Defendant denies all other allegations in paragraph 57 and further denies that the requirements for class certification can be satisfied.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Tuition Class)**

58. Answering paragraph 58, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

59. Answering paragraph 59, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged class but denies that the

requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated.

60. Answering paragraph 60, Defendant admits that it entered into a contract with Plaintiff Davia Bunch and a contract with Plaintiff Casey Kelly. Further answering paragraph 60, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that it entered into contracts with everyone in the purported “Tuition Class” and, therefore, denies that allegation. Defendant denies all other allegations in paragraph 60.

61. Defendant denies the allegations in paragraph 61.

62. Answering paragraph 62, Defendant craves reference to the Plaintiffs’ Student Statements of Financial Responsibility attached as Exhibits F and G to the Second Amended Complaint and the cited webpage https://sc.edu/about/offices_and_divisions/bursar/my_bill/student_statement_of_financial_responsibility/, which speak for themselves and are the best evidence of their contents. Defendant denies any allegations inconsistent therewith and denies all other allegations in paragraph 62.

63. Defendant denies the allegations in paragraph 63.

64. Defendant denies the allegations in paragraph 64.

65. Defendant denies the allegations in paragraph 65.

66. Defendant denies the allegations in paragraph 66.

67. Defendant denies the allegations in paragraph 67.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Tuition Class)**

68. Answering paragraph 68, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

69. Answering paragraph 69, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged class but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated. In further answering paragraph 69, Defendant acknowledges that Plaintiffs purport to plead Count II in the alternative to Count I but denies that pleading Count II in the alternative is proper.

70. Answering paragraph 70, Defendant acknowledges that Plaintiffs purport to plead Count II in the alternative to Count I but denies that pleading Count II in the alternative is proper. Defendant denies all other allegations in paragraph 70.

71. Defendant denies the allegations in paragraph 71.

72. Defendant denies the allegations in paragraph 72.

73. Defendant denies the allegations in paragraph 73.

74. Defendant denies the allegations in paragraph 74.

75. Defendant denies the allegations in paragraph 75.

76. Defendant denies the allegations in paragraph 76.

77. Defendant denies the allegations in paragraph 77.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Tuition Class)**

78. Answering paragraph 78, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

79. Answering paragraph 79, Defendant admits that the quotes Plaintiffs reference are contained within *Regions Bank v. Schmauch*, 354 S.C. 648 (Ct. App. 2003).

80. Defendant denies the allegations in paragraph 80.

81. Defendant denies the allegations in paragraph 81.

82. Answering paragraph 82, Defendant acknowledges that Plaintiffs demand a prorated refund but denies that any refund is owed. In further answering paragraph 82, Defendant admits its website states, “Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.” Defendant denies all other allegations in paragraph 82.

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
PROMISSORY ESTOPPEL
(Plaintiff and Other Members of the Tuition Class)**

83. Answering paragraph 83, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

84. Answering paragraph 84, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged class but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated. In further answering paragraph 84, Defendant acknowledges that Plaintiffs purport to plead Count IV in the alternative to Count I but denies that pleading Count IV in the alternative is proper.

85. Defendant denies the allegations in paragraph 85.

86. Defendant denies the allegations in paragraph 86.

87. Defendant denies the allegations in paragraph 87.

88. Defendant denies the allegations in paragraph 88.

89. Defendant denies the allegations in paragraph 89.

90. Defendant denies the allegations in paragraph 90.

**FOR A FIFTH COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Fees Class)**

91. Answering paragraph 91, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

92. Answering paragraph 92, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged class but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated.

93. Answering paragraph 93, Defendant admits it entered into a contract with Plaintiff Davia Bunch and a contract with Plaintiff Casey Kelly. Further answering paragraph 93, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that it entered into contracts with everyone in the purported “Fees Class” and, therefore, denies that allegation. Defendant denies all other allegations in paragraph 93.

94. Defendant denies the allegations in paragraph 94.

95. Defendant denies the allegations in paragraph 95.

96. Defendant denies the allegations in paragraph 96.

97. Defendant denies the allegations in paragraph 97.

98. Defendant denies the allegations in paragraph 98.

**FOR A SIXTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Fees Class)**

99. Answering paragraph 99, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

100. Answering paragraph 100, Defendant acknowledges that Plaintiffs purport to plead Count VI in the alternative to Count V but denies that pleading Count VI in the alternative is proper. Defendant denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated. Defendant further denies all other allegations in paragraph 100.

101. Defendant denies the allegations in paragraph 101.

102. Defendant denies the allegations in paragraph 102.

103. Defendant denies the allegations in paragraph 103.

104. Defendant denies the allegations in paragraph 104.

105. Defendant denies the allegations in paragraph 105.

106. Defendant denies the allegations in paragraph 106.

107. Defendant denies the allegations in paragraph 107.

**FOR A SEVENTH COLLECTIVE CAUSE OF ACTION
CONVERSION
(Plaintiff and Other Members of the Fees Class)**

108. Answering paragraph 108, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

109. Defendant denies the allegations in paragraph 109.

110. Defendant denies the allegations in paragraph 110.

111. Answering paragraph 111, Defendant acknowledges that Plaintiffs demand a return of fees but denies that any refund is owed. In further answering paragraph 111, Defendant admits its website states, “Due to the continuity of classes being offered online and with the advisement of the Commission on Higher Education, tuition and fees will not be refunded.” Defendant denies all other allegations in paragraph 111.

**FOR AN EIGHTH COLLECTIVE CAUSE OF ACTION
PROMISSORY ESTOPPEL
(Plaintiff and Other Members of the Fees Class)**

112. Answering paragraph 112, Defendant incorporates by reference its forgoing responses as if repeated verbatim herein.

113. Answering paragraph 113, Defendant admits Plaintiffs bring this cause of action on behalf of themselves and other purported members of the alleged class but denies that the requirements for class certification can be satisfied and denies that a legally cognizable claim has been stated. In further answering paragraph 113, Defendant acknowledges that Plaintiffs purport to plead Count VIII in the alternative to Count V but denies that pleading Count VIII in the alternative is proper.

114. Defendant denies the allegations in paragraph 114.

115. Defendant denies the allegations in paragraph 115.

116. Defendant denies the allegations in paragraph 116.

117. Defendant denies the allegations in paragraph 117.

118. Defendant denies the allegations in paragraph 118.

119. Defendant denies the allegations in paragraph 119.

120. Responding to Plaintiffs' Prayer for Relief, Defendant denies Plaintiffs are entitled to a judgment in their favor or any of the other relief requested in paragraphs a. through j. of the Prayer.

FOR A SECOND DEFENSE

121. The Plaintiffs, as well as many members of the purported classes, lack standing to bring this action.

FOR A THIRD DEFENSE

122. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action, and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

123. Plaintiffs' Complaint raises claims that are tantamount to a claim for educational malpractice, which is non-cognizable in South Carolina.

FOR A FIFTH DEFENSE

124. Plaintiffs' claims are barred by the doctrine of sovereign immunity because Defendant is an arm of the state of South Carolina and can be sued only in the manner and upon the terms and conditions prescribed by statute.

FOR A SIXTH DEFENSE

125. Plaintiffs' claims are barred by the doctrine of impossibility because it was impossible for Defendant to offer on-campus services and in-classroom instruction during the relevant time period due to orders from the State of South Carolina restricting operations.

FOR A SEVENTH DEFENSE

126. Plaintiffs' claims are barred by the doctrine of frustration of purpose because the COVID-19 pandemic was a supervening event that substantially frustrated the purpose of any contract at issue.

FOR AN EIGHTH DEFENSE

127. Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine and/or because the relationship of the parties is governed by contract.

FOR A NINTH DEFENSE

128. Plaintiffs' claims may be barred, in whole or in part, by the equitable doctrine of waiver.

FOR A TENTH DEFENSE

129. Plaintiffs' Complaint fails to state a valid claim for punitive damages. Moreover, Plaintiffs' claim for punitive damages is barred or limited under South Carolina law, including the limitations, burdens of proof, requirements, and caps set forth in sections 15-32-510 through 15-32-540, and by the procedural and substantive due process guarantees, the guarantees against the taking of property in an arbitrary or irrational manner or without adequate compensation, the guarantees of equal protection of the laws, and the guarantees against undue burden upon commerce set forth in the United States Constitution.

FOR AN ELEVENTH DEFENSE

130. Pursuant to S.C. Code Ann. § 15-32-520, Defendant hereby requests trial bifurcation on the issues of actual damages and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Defendant pleads and incorporates all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein verbatim.

FOR A TWELFTH DEFENSE

131. Defendant reserves the right to amend and supplement its affirmative defenses to include any applicable defense, both legal and factual.

WHEREFORE, having fully answered Plaintiffs' Second Amended Class Action Complaint, Defendant prays that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Charleston, South Carolina
September 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH and CASEY KELLY,	)	Civil Action No. 2020-CP-40-02330
individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S MOTION FOR</u>
vs.	)	<u>SUMMARY JUDGMENT</u>
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

The University of South Carolina (“USC”), by and through the undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (“SCRCP”), hereby moves this Court for an order granting summary judgment in its favor as to all counts asserted against it by Plaintiffs Davia Bunch and Casey Kelly (“Plaintiffs”) in the above-captioned matter. USC’s motion is based on the following grounds:

1. Plaintiffs bring this purported class action and assert claims against USC for breach of contract, unjust enrichment, conversion, and promissory estoppel based on USC’s transition to virtual instruction in response to the threat posed by the 2019 Novel Coronavirus (“COVID-19”) pandemic and in compliance with an order of the Governor of South Carolina.

2. It is well-settled that summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. Rule 56(c) further mandates the entry of summary judgment against a party who fails to make a sufficient showing of the existence of an element essential to a claim on which that party bears the burden of proof. *See Hansson v. Scalise*

Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citations and internal quotation marks omitted). USC is entitled to judgment in its favor on all claims as a matter of law because Plaintiffs have failed to meet this burden.

3. USC is entitled to summary judgment under the doctrine of sovereign immunity. USC is an arm of the state of South Carolina. *See* S.C. Code Ann § 59-107-10 (including USC in the definition of “state institution”). “[T]he State can be sued only in the manner and upon the terms and conditions prescribed by [statute].” *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001). Here, no statute allows the state of South Carolina – and likewise USC as an arm of the state – to be sued for the claims alleged, and, therefore, the Court should grant summary judgment in USC’s favor on all of Plaintiffs’ claims.

4. Plaintiffs either have no cognizable damages (and hence Plaintiffs lack standing to sue), or Plaintiffs’ purported injuries amount to damages for educational malpractice, which is not a cognizable claim in South Carolina. *See Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003). Plaintiffs did not sustain any damages because both class representatives continued their Spring 2020 coursework at USC after the transition to virtual instruction without seeking a refund or withdrawal, earned the same credits they would have received had the instruction continued in-person, increased their cumulative GPAs, graduated with honors, and accepted employment upon graduation. (Exhibit A, Cavanagh Rpt. at 3 and 8; Exhibit B, Wilner Rpt. at 7.) Accordingly, the Court should find that Plaintiffs have suffered no injury and grant summary judgment in USC’s favor. To the extent Plaintiffs do claim they were harmed, their alleged damages arise solely from educational malpractice because the only conceivable damages for USC’s failure to provide face-to-face instruction during the pandemic would necessarily be based upon an allegedly diminished quality of instruction. Indeed, the report of Plaintiffs’ own expert

Ted Tatos is replete with references to literature claiming that there is a quality difference between “Emergency Remote Teaching”¹ and the level of instruction provided during face-to-face instruction and courses specifically designed to be online. (Exhibit D to Plaintiffs’ Motion for Class Certification, Tatos Rpt. at 30-34.) Plaintiffs have put forth no other theory as to what harm they experienced from having to take some of their classes online for the remainder of the Spring 2020 semester. Accordingly, Plaintiffs either have no damages or they only have damages for educational malpractice, which is not a cognizable claim. In either case, summary judgment is required as to all causes of action.

5. Plaintiff Bunch lacks standing because she did not pay USC any out-of-pocket tuition or fees. She was educated at no cost to her because she received extensive grants, financial aid, and scholarships which actually exceeded the cost of her tuition and fees. (Exhibit B, Wilner Rpt. at 65-67, including Figure 12.) USC received no money from Plaintiff Bunch’s own pocket, so it could have no obligation to disgorge or reimburse her for any tuition or fees. Therefore, Plaintiff Bunch has no standing, and the Court lacks subject matter jurisdiction over her alleged claims. *See Patel v. Univ. of Vermont & State Agric. Coll.*, No. 5:20-CV-61, 2021 WL 4523683, at *6 (D. Vt. Oct. 1, 2021) (“The requirement of factual injury ensures that the courts do not become drawn into theoretical controversies such as the present dispute over whether a student who was not required to pay tuition may be entitled to its refund.”).

6. Plaintiffs’ causes of action for breach of contract fail as a matter of law and summary judgment on Plaintiffs’ first and fifth causes of action in favor of USC is appropriate for the following reasons:

¹ Mr. Tatos refers to the online instruction provided by USC during the roughly 49 days of the Spring 2020 semester after the pandemic and governmental orders forced USC to close its campuses as “Emergency Remote Teaching.” (*Id.* at 10-11.)

- a. Plaintiffs are unable to point to any contractual language promising face-to-face instruction at all times (e.g., during a pandemic) and, thus, Plaintiffs cannot establish any alleged breach of a material contract term.
- b. Plaintiffs argue that when students allegedly selected “Face-to-Face Instruction” during the registration process for Spring 2020, USC undertook a contractual duty to provide face-to-face instruction for those classes so designated, but this breach-of-contract theory fails as to both Plaintiffs because USC’s registration web site does not state that face-to-face instruction will be provided even if it is precluded by public health concerns, as in a pandemic. Further, USC expressly reserved the right to alter or amend its policies and procedures, including to “make changes in curricula, degree requirements, course offerings, or other academic regulations at any time, when, in the judgment of the faculty, the president, or the Board of Trustees, such changes are in the best interest of the students and the University.” (Exhibit C, 2019-2020 Undergraduate Studies Bulletin, at USC_00001467.)
- c. Moreover, “it was possible that a student could register for classes for the Spring 2020 semester without ever seeing the ‘Instructional Method’ and, thus, without ever seeing the term ‘Face-to-Face Instruction’.” (Exhibit D, Marterer Aff., ¶ 30.) Plaintiff Kelly’s own undisputed deposition testimony demonstrates that she did not filter for a particular “Instructional Method” when she registered for Spring 2020 classes, and at no point would the “Instructional Method” populate unless Plaintiff Kelly clicked the hyperlinked course title. (Exhibit E, C. Kelly Dep. at 126:1-9; Exhibit D, Marterer Aff., ¶ 16.) Further,

while Plaintiff Kelly's FAMS 308 class was listed as having "Face-to-Face Instruction" during registration, the syllabus that Plaintiff Kelly received on her first day of class – long after the online registration process was completed, but in time to drop the class at no cost – indicated this was a hybrid class with a significant online component. (See Exhibit D, Cavanagh Rpt. at 4; Exhibit F, FAMS 308 Syllabus, at USC_00047903.) Likewise, Plaintiff Kelly's SPAN 122 class was listed as having "Face-to-Face Instruction" during registration, but the syllabus showed it had a considerable web-based component. (Exhibit G, SPAN 122 Syllabus, at USC_00047918-9; see also Exhibit E, C. Kelly Dep. at 296:17-297:3.) In addition, although registration for Plaintiff Kelly's FAMS 363 class reflected the face-to-face "Instructional Method," Plaintiff Kelly testified this class was actually delivered as a hybrid course, as well. (Exhibit E, C. Kelly Dep. at 325:12-18.)

- d. Last, Plaintiff Kelly has no claim for breach or damages as to her Internship in Media Arts class (MART 499) because she was able to complete this internship by obtaining enough hours of work, notwithstanding the closure of the USC campus caused by the pandemic. (See *id.* at 114:2-19 ("Q: So it would be fair to say the change to online did not affect . . . this course at all" A: Correct.").)

7. Under South Carolina law, "[t]he doctrine of impossibility excuses performance when the thing to be done cannot by any means be accomplished...." *Morin v. Innegrity, LLC*, 424 S.C. 559, 567, 819 S.E.2d 131, 136 (Ct. App. 2018) (citation and internal quotation marks omitted). Continuing to provide face-to-face instruction in all classes so designated in the online registration system during the pandemic was not possible and would have violated state law. (Exhibit H,

Executive Order No. 2020-09 at p. 2 § 2.) Accordingly, USC's performance was excused as a matter of law, and it is entitled to summary judgment on Plaintiffs' first and fifth causes of action.

8. Plaintiffs acquiesced in USC's transition to virtual instruction, accepted the benefits of the same, and, thus, waived the right to bring the claims they assert in this action. Both Plaintiffs voluntarily continued their Spring 2020 semester coursework online, never claimed a breach at the time, and did not explore any alternatives (such as sitting out the semester, or pursuing a refund under the applicable policies and pursuing an appeal of any denials). Instead, Plaintiffs proceeded to accept all the benefits that USC expended extraordinary efforts to continue providing to its students in the midst of the worldwide pandemic, earned and accepted all the same credits they would have received had instruction been face-to-face, and graduated with honors and obtained employment with no delays or disruption (Exhibit A, Cavanagh Rpt. at 3 and 8; Exhibit B, Wilner Rpt. at 7). *See Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987) ("If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence and it estops him from later seeking relief."); *see also Facelli v. Se. Mktg. Co.*, 284 S.C. 449, 451-52, 327 S.E.2d 338, 339 (1985) (holding that employee who was notified orally and in writing that his commission rate was being changed impliedly consented to changed rate by continuing to work for employer and thus was estopped from seeking damages in breach of contract suit for employer's refusal to compensate him under former rate after notification of change). As a result, USC is entitled to summary judgment on all of Plaintiffs' causes of action.

9. The Court should grant summary judgment in USC's favor on Plaintiffs' two causes of action for unjust enrichment. First, unjust enrichment is not an available remedy when a relationship is governed by contract, and here, all parties agree that the relationship between USC

and Plaintiffs was solely contractual. *See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001). In addition, Plaintiffs are unable to establish a genuine issue of material fact regarding the conferral of a benefit on USC that would be inequitable for USC to retain. Plaintiffs have not established that it is inequitable for USC to retain payment of full tuition and certain fees for the Spring 2020 semester. Plaintiffs paid tuition and fees for the privilege of taking classes at USC, and tuition at USC is based on credit hours and not the mode of instruction (and in fact, tuition and fees remained the same whether a student signed up for all in-person courses, all online courses, or a mix of in-person and online courses). (Exhibit B, Wilner Rpt. at 7-8.) USC provided Plaintiffs exactly what they paid for – the right and ability to complete their courses at USC and earn the necessary college credits toward graduation – and Plaintiffs received all the same credits they would have received in a face-to-face environment. Further, as set forth above, to the extent Plaintiffs argue that the quality of their education in Spring 2020 was less valuable than they paid for, then Plaintiffs unjust enrichment claim is barred by the doctrine of educational malpractice. *See In re Univ. of Miami COVID-19 Tuition & Fee Refund Litig.*, No. 20-22207-CIV, 2022 WL 18034457, at *7 (S.D. Fla. Dec. 30, 2022) (appeal filed) (holding university is entitled to summary judgment on plaintiffs’ unjust enrichment claim for these same reasons). Accordingly, USC is entitled to summary judgment on Plaintiffs’ second and sixth causes of action.

10. The Court should also grant summary judgment in USC’s favor on Plaintiffs’ causes of action for promissory estoppel. First, like unjust enrichment, promissory estoppel is not an available remedy when a relationship is governed by contract, as it is here. *See Laidlaw Transit*, 348 S.C. at 425, 559 S.E.2d at 364. Second, as demonstrated above in relation to the breach-of-contract claims, Plaintiffs are unable to establish a genuine issue of material fact and cannot show

that USC made an unambiguous promise to provide face-to-face instruction even during a pandemic and in violation of state law. Last, Plaintiff Kelly can show no promise (nor reliance to her detriment) that her FAMS 308 and SPAN 122 classes would be face-to-face because the syllabi for these courses showed plainly that these would be hybrid classes. (Exhibit F, FAMS 308 Syllabus, at USC_00047903; Exhibit G SPAN 122 Syllabus, at USC_00047918-9.) Likewise, Plaintiff Kelly can show no liability as to her Internship in Media Arts (MART 499) because she completed the internship and agrees the move to online instruction did not affect this course at all. (Exhibit E, C. Kelly Dep. at 114:2-19.) Accordingly, USC is entitled to summary judgment on Plaintiffs' fourth and eighth causes of action.

11. Plaintiffs' causes of action for conversion also fail as a matter of law. Plaintiffs have yet to show any right to possession of the funds paid to USC or an unauthorized assumption by USC of said funds. Conversion is also generally unavailable when money is at issue, "unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991). Here, Plaintiffs have not established any such obligation of USC. Thus, Plaintiffs' third and seventh causes of action fail, and USC is entitled to summary judgment.

For the foregoing reasons, USC respectfully requests that this Court grant its Motion for Summary Judgment, enter judgment against Plaintiffs on all claims, and dismiss Plaintiffs' claims with prejudice. This motion is supported by the pleadings, applicable law, discovery between the parties, any forthcoming memoranda USC submits prior to the hearing, and all other materials permitted by the SCRCP and/or the Court at the hearing on this motion.

Respectfully submitted,

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Charleston, South Carolina
June 14, 2023

EXHIBIT A

DAVIA BUNCH and CASEY KELLY,
individually and on behalf of others similarly situated

vs.

THE UNIVERSITY OF SOUTH CAROLINA

Expert Witness Report

Thomas B. Cavanagh, Ph.D.

March 6, 2023

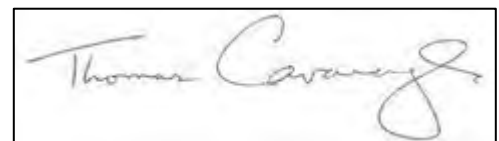
A handwritten signature in black ink, reading "Thomas Cavanagh", enclosed within a black rectangular border.

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INTRODUCTION

This report is intended to summarize my analysis pertaining to several specific aspects of the case *Davia Bunch and Casey Kelly, individually and on behalf of others similarly situated v. The University of South Carolina*, Civil Action No.: 2020-CP-40-02330. I was tasked with determining, to the best of my ability, several factors relevant to this case:

- 1) to what extent, if any, were the experiences of the students at the University of South Carolina during the remote portion of the spring 2020 semester unique and individual as opposed to common and shared;
- 2) to what extent, if any, were the intended educational objectives of each of the plaintiffs' spring 2020 courses compromised by the transition to remote instruction;
- 3) whether the plaintiffs accomplished the educational objectives for each of their spring 2020 courses;
- 4) what efforts did faculty make to accommodate remote instruction and did those efforts enable the accomplishment of the course objectives;
- 5) the time and effort undertaken by the plaintiffs' spring 2020 faculty members to transition to remote instruction following the cancellation of one week's classes and
- 6) any other factors that I encountered that I felt would be relevant to the case.

To conduct my analysis, I reviewed a set of documentation that included, among other items, deposition transcripts, emails, syllabi, online course assignments, and printed web pages. I also interviewed seven faculty members who were responsible for eight of the ten courses in which the named plaintiffs were enrolled during the spring 2020 semester.

I focused my discussions with the faculty on several broad themes:

- The overall course experience during spring 2020, including strategies employed to adjust to the requirement to transition to remote instruction due to the COVID-19 pandemic.
- The change, if any, in the faculty member's time spent in course preparation/teaching, research, and service as a result of the change in course modality.
- The specific experience and performance of the two plaintiffs in their respective courses.

EXECUTIVE SUMMARY

Based on my analysis, it is my professional opinion that, in response to each of the factors listed above:

- 1) While some similarities existed by virtue of being students, the two students in question had substantially unique and individual experiences as did, by extension, the rest of the student body at the University of South Carolina.
- 2) The educational objectives of each course were able to be accomplished as intended in the syllabi provided at the beginning of the spring 2020 semester, despite the transition to remote instruction.
- 3) Each of the two plaintiffs individually accomplished all of the originally intended objectives in each of their courses despite the transition to remote instruction.
- 4) Faculty members used a variety of strategies to transition their courses for remote delivery and ensure that all learning objectives were still accomplished.
- 5) Each of the plaintiffs' faculty members—except those already teaching fully online courses—dedicated a significant amount of time (comparable to what would have been devoted towards course development during a more extended normal semester) towards preparing their courses for remote delivery in response to the requirement to transition online.
- 6) Class cancellations, schedule changes, and other in-course adjustments are a common occurrence in an academic semester due to significant weather events, faculty illness, and other unforeseen circumstances.

INDIVIDUAL EXPERIENCES

A key observation in my analysis is the idiosyncratic experiences of each student during the course of the spring 2020 semester. Each plaintiff encountered a unique set of circumstances related to both courses and personal contexts. This resulted in each student experiencing a wholly unique semester, exacerbated by the pandemic response in which each faculty member had his/her own different strategy for transitioning to remote instruction.

Course Experiences

Prior to the transition to remote instruction, each of the two plaintiffs had course schedules that included both face-to-face and online modalities. In Casey Kelly's case, FAMS 308 was officially listed in the course schedule as a face-to-face section; however, when the class began it was revealed that it would be delivered in a hybrid format (partially online) [CaseyKellyVolumeII_78]. In Davia Bunch's case, DANC 101 and POLI 365 were both 100% online as originally designed. Neither of the two fully online courses

were materially impacted by either the institutional transition to remote instruction or the one-week campus closure after spring break.

It is notable that while each faculty member for face-to-face and hybrid modality courses chose their own, different strategy for accommodating remote instruction, one theme that ran through all of the interviews I conducted was a genuine concern for students and a willingness to extend maximum grace and understanding to their classes. Each faculty member, to a person, recalled the challenging dynamic at the time with students having widely varied access to technology and privacy during the social isolation of the lockdown. The faculty recognized that there was no typical student profile and tried to offer as much flexibility as possible, without compromising academic rigor, to ensure that each student was able to accomplish the course learning objectives in light of their own particular, unique circumstances.

Typically, students do not receive the syllabus for a class until the first day of the term. It is not unusual for a syllabus to disclose detailed course requirements that were not included in the catalog/bulletin or the data fields of the course schedule. This further complicates students' individual experiences. For example, during the spring 2020 semester, FAMS 308 was listed in the course schedule as having a face-to-face instructional method. Yet, when the course began, the faculty member disclosed that it would actually be taught as a hybrid course with up to 49% of the instruction occurring online:

“This class has a hybrid online and in-class schedule. On dates on the schedule identified as ‘In Class,’ you are expected to be in attendance from 3:55PM-5:10PM in Gambrell 124. On dates on the schedule identified as ‘At Home,’ you are expected to utilize online material as listed and not come to the classroom. Please check the schedule.” [CaseyKellyVolumeII_78]

Every faculty member interviewed stated that he/she made extensive use of the university learning management system (LMS), even in in their face-to face courses (which eased the transition to remote instruction when that became necessary). The level and extent of online expectations would typically not be known to students until the first day of class. Other expectations are also unveiled on the syllabus at the start of the term. For example, DANC 101 had a requirement on the syllabus that students attend live dance performances during the term: “**PLEASE NOTE:** You will be expected to attend a minimum of three live performances on the USC Columbia campus.” [USC_00049449, USC_00000049021, USC_00048990].

Other course level factors that can vary greatly between individual students are labs and the associated lab fees. In some cases, labs are required, typically in natural science courses such as Biology and Chemistry, where concepts discussed in class can be applied on the bench. In other cases, labs are available as a supplement to instruction but are not required. This was the case with SPAN 122, taken by Casey Kelly

during the spring 2020 term. As stated by the professor during his interview and disclosed on the course syllabus [CaseyKellyVolumeII_83], the Foreign Language Learning Center (FLLC) in the Humanities Classroom Building was made available to all students in his Spanish course as an instructional aid, whether they chose to avail themselves of it or not. Likewise, during the previous Fall 2019 semester, Davia Bunch was enrolled in one course related to her Russian minor, RUSS 319. Although Ms. Bunch's bill showed a lab fee, this course, as a literature course in English translation, had no lab attendance requirements [Exhibit 99 -02. USC_00000016, RUSS 319 syllabus Fall 2019.pdf]. She was not required to attend any language labs that term. Similarly, Casey Kelly was assessed an art lab fee for her course MART 571B [CaseyKelly_Exhibit 03]. Since, per the faculty member, there was no formal lab section associated with this course, this fee was assessed to cover costs associated with loaning and maintaining equipment for production. Some fees are charged every term to every student enrolled in a specific program as part of the costs associated with delivering that major/minor. Some fees are charged on a section-by-section basis. Some courses have materials fees or license costs. The way labs and fees are scheduled, required (or not), charged, and managed can vary greatly from department to department, program to program, and from course to course.

Personal Experiences

In any semester, each individual student has a unique set of personal circumstances to navigate, both positive and challenging. These circumstances can vary from semester to semester and, taken holistically, make up the overall college or university experience. Although the plaintiffs were similar in some aspects in that they both were female, senior undergraduates, they also had a number of notable differences that made each of their university experiences unique.

For example, among the personal impacts that Casey Kelly had to manage during the spring 2020 semester that Davia Bunch did not were senior membership in a sorority with all its associated responsibilities [USC_00048357, USC_00048593, USC_00048540, USC_00048497], an internship at a local off campus company [USC_00048280, USC_00048282, USC_00048284, USC_00048346, USC_00048686, USC_00048743], chronic migraines that required medical accommodations in class [USC_00048797, USC_00048757, USC_00048754, USC_00048751, USC_00048748], and the untimely death of a childhood friend [USC_00048331, USC_00048318, USC_00048231].

Each of the plaintiffs had a unique combination of different course circumstances and different personal circumstances that resulted in a college experience that was uniquely theirs both during the spring 2020 semester and across their entire undergraduate education. Expanded more broadly, it can be inferred that if the experiences of two senior undergraduate students could be so individualized, the unique experiences

of each of the students at the wider university would be even more idiosyncratic based upon such factors as different disciplines of study (e.g., humanities, social science, natural science, engineering, business, etc.), lower undergraduate standing vs. upper undergraduate standing, being a graduate student, being in a graduate professional school such as Law or Medicine, full-time vs. part-time status, whether the student worked and how many hours per week, which system campus (R1 flagship, regional comprehensive, 2-year associates, Palmetto College online), whether remote courses were synchronous or asynchronous or some combination of both, and the modality mixture of each student's overall course load (face-to-face, online, hybrid, or some combination), to name a few relevant variables.

EDUCATIONAL OUTCOMES

Another key finding from my analysis is the fact that, with one exception (described below), all of the faculty attested to the fact that, despite the transition to remote instruction, none of the course requirements were compromised. The faculty were confident that all students were able to accomplish the objectives of each course as they were described on the syllabus that was provided to their classes at the start of the spring 2020 term—before the pandemic response. Based on this, it is my opinion that the plaintiffs and, by inference, the rest of the student body, received the education they expected and paid for at the beginning of the semester, albeit with some adjustments to delivery methods for face-to-face courses. For example:

In SPAN 122 (Basic Proficiency in Spanish: Casey Kelly), the faculty member stated that students in spring 2020 performed the same as previous semesters in proficiency levels [USC_00048633]. For the students who progressed into the intermediate level course, he could detect no difference between the performance of students who had completed the prerequisite course in a remote format for half the term and those who had completed it in a typical face-to-face classroom context for a full term.

In JOUR 499 (International PR: Davia Bunch), the faculty member stated that remote instruction actually provided some benefits unavailable via more traditional face-to-face instruction. For example, she described how being online allowed students more time to review asynchronous content and participate. As a result, all students were able to complete assignments, despite some having technical challenges. She also felt that the online modality better enabled her to review each student's working drafts and provide more detailed feedback regarding slides and presentations.

In all cases, the faculty I interviewed were adamant that despite the transition to remote learning, no course objectives were compromised. Academic rigor remained the same as was expected at the start of the semester and provided to students on course syllabi. In a few instances, faculty adjusted course work

to accommodate the university's closure for one week immediately following spring break, similar to how they would handle a weather closure.

In only one case did a faculty member express a belief that a course goal was impacted due to the pandemic response. In JOUR 332 (Mass Communications Research: Davia Bunch), the faculty member stated that the class was unable to effectively work with fellow group members as part of the data collection process. Although working in groups was not listed as a primary course objective in the syllabus [USC_00049488], group work was an intended pedagogical strategy for gathering the data. The pandemic affected the course prior to the data collection process occurring and, as a result, students were not given the opportunity to work in groups to gather such data. This impact seems more a consequence of the lockdown requirement that mandated social distancing and, in some case, prohibited anyone from gathering in groups due to the highly contagious nature of COVID-19.

Despite the limitation on group work, the faculty member did express both in the interview process and during the spring 2020 semester that all course objectives had been accomplished:

“All of the expectations have been met. The work you have done on your projects, which included conceptualizing your study topic, reading and synthesizing academic literature, drafting sections of your paper, creating the research protocol, making and doing two formal in-person presentations (pitching your initial ideas for the study and presenting the final project proposal based on feedback) are more than sufficient for accomplishing the goals of this course.”
[USC_00048853]

Interestingly, during the spring 2020 semester, this faculty member was also teaching the higher-level graduate version of mass communications research. Given the accelerated schedule in that course, the graduate students had already completed their data collection prior to spring break and, as a result, were able to not only satisfy the group work objectives but also analyze their own data. He stated that there was no impact to the graduate version of the course due to the transition to remote learning. This illustrates the idiosyncratic nature of the experiences in different classes, even those taught by the same faculty member, during the course of the spring 2020 semester.

Given the fact that academic rigor and course objectives remained unchanged in the courses, it is also relevant to examine how the plaintiffs performed in these courses. Did each of the plaintiffs in particular receive the education she expected per the syllabi provided at the start of the semester? After interviewing faculty, understanding how each course was transitioned to remote instruction (excepting those courses that were already online), and reviewing provided documentation, my opinion is that both plaintiffs did receive the originally planned educational outcomes of each course as provided on the syllabi at the

beginning of the semester. Based upon my research into these students, faculty and classes, as well as my own experiences as a university faculty member and administrator, it is a near certainty that all students and faculty experienced unique adjustments to the pandemic with some being more positive or negative than others, and, if these faculty members are representative, it also appears that the University of South Carolina was able to provide the expected educational outcomes notwithstanding the circumstances arising from the pandemic.

In the case of each of the plaintiffs, all the faculty interviewed commented on the fact that they were both excellent students. In all cases, the faculty, to a person, attested to the fact that there was no difference in academic performance for either student after the transition to remote learning based on the standard they had been meeting in the first half of the semester. The students performed well in both modalities with the mid-semester change having no noticeable impact. In fact, in both cases, each student's semester GPA exceeded her overall GPA.

Casey Kelly	Davia Bunch
GPA: 3.8 (spring 2020) 3.421 (overall)	GPA: 3.9 (spring 2020) 3.728 (overall)
Spring 2020 Final Grades: SPAN 122 A MART 571B B FAMS 363 A FAMS 308 A MART 499 A	Spring 2020 Final Grades: DANC 101 A JOUR 332 A JOUR 499 A POLI 362 A POLI 365 B+

FACULTY EXPERIENCE

Relevant to the conclusion that students suffered no degradation of their course learning objectives is the substantial adjustment that faculty made to how they spent their time as a result of the pandemic. When the university transitioned to remote learning, preparing for and facilitating that modality of instruction became each faculty member's sole priority. Where, under normal circumstances, a typical tenure-track faculty member's time would be divided between preparation/teaching, research/scholarship, and service, due to the pandemic, faculty prioritized preparation/teaching to the exclusion of all other activities after the pivot. Under normal, non-emergency circumstances, the university might suggest that preparing for a typical asynchronous online course may take a faculty member a number of weeks to complete (perhaps

up to 12 weeks). However, that time estimate assumes that the faculty member is working on course development on a part-time basis for perhaps a couple of hours a week alongside all of their other teaching, research, and service responsibilities. It also assumes that the preparation of an entire course (meaning a full semester) will be completed prior to the start of the term in which it will be taught.

By contrast, when the university had to transition to remote instruction after spring break in response to the global pandemic and in compliance with an order of the Governor of South Carolina, faculty had the balance of that week and all of the following week to dedicate 100% of their time and effort towards the development of remote delivery strategies for instruction and assessment for the remainder of the spring 2020 semester, which equated to less than half a semester. All research and service requirements were suspended. The faculty I interviewed also stated that they dedicated far more than 40 hours per week in both the preparation of courses and the subsequent teaching. In essence, the amount of time and effort that would have typically been spent on a part-time basis over number of weeks developing an online course under normal circumstances was compressed into a much shorter period of time due to the exigency of the pandemic response requirements. In addition, it is also reasonable to assume that many faculty did not have every lesson of their courses prepared for 100% remote delivery by the time the university reopened after the week of closure post-spring break. In those situations, the faculty would be developing materials for remote delivery prior to the students encountering it (“laying track in front of the train”). This is another way that faculty addressed the time and effort needed to develop digital materials in a manner different from that recommended under normal circumstances.

The university recommendations of tasks that must be completed as part of the online course development process are based on an idealized schedule with adequate human and other resources always available to complete every step in sequence. It is a recommendation of guidelines, not hard and fast edicts. It also does not account for individual faculty experience and aptitude. For example, Lauren Steimer (FAMS 363 and FAMS 308) had extensive experience recording lectures and developing closed captioning for educational video assets which would have allowed her to accelerate through the typical faculty/course development process more rapidly than someone with no experience. Even under normal (non-pandemic) circumstances, it would not be unusual for faculty and the Center for Teaching Excellence to be unable to complete all elements of the recommended sequence of activities due to any number of complications (faculty schedule availability being a primary obstacle). Even in my own experience at one of the [most awarded](#) and [highly-recognized](#) online programs in the nation, we often have to adjust our ideal course development process to accommodate the realities of academic life at a major university. It would be unrealistic to unfavorably compare the herculean efforts made by faculty to transition their courses to

remote learning in the middle of the pandemic to an idealized course development process that assumes perfect conditions and homogenous faculty background, aptitude, and experience.

Furthermore, many faculty members had already been through university training to teach online prior to spring 2020 and had extensive experience in digital instruction, including the plaintiffs' spring 2020 professors. For example (and noted above), as a documentary filmmaker, Lauren Steimer (FAMS 363 and FAMS 308) had extensive experience recording lectures and captioning. She had completed the Center for Teaching Excellence's professional development to teach online, addressing both pedagogy and technology topics. She was familiar with the Quality Matters course design rubric and peer review process. She sat on the Distributed Learning Committee for the College of Arts & Sciences. Diane McGhee and Andrea McAtee both taught 100% online as adjuncts. Jungmi Jun had previously received a grant from CTE to place her course online and had extensive experience teaching online corporate training courses. Robert McKeever had taught an online version of an introductory course in a previous semester. Many faculty all across the university already had extensive preparation and experience teaching online prior to spring 2020.

The following are estimates from selected faculty of how they broadly spent their professional time both before and after the transition to remote instruction.

Tim McAteer (SPAN 122; student: Casey Kelly)

"For each class in the beginning of the semester, I estimate that I worked about 8 hours per week on lesson plans and teaching. Since I also handle foreign language placement exams for undergraduates at the University, I generally worked about 20 hours each week on those duties. After the University decided to pivot to remote instruction, my workload for teaching essentially doubled. I worked approximately 15 hours per week for each class since I could no longer use lesson plans and material that I had used in previous semesters. The switch (to) remote learning also required that I work more with placement... However, most of the work for placement increased in late April after the semester ended so that I could prepare for summer orientation for incoming students."

Lauren Steimer (FAMS 363 and FAMS 308; student: Casey Kelly)

"On average, I spent 10-15 hours prepping and teaching classes and 20 hours on research, and 5-10 hours on university and professional service a week before the pivot. After the pivot, I spent 20-25 hours on prepping and teaching classes, 10 hours on research, and 5-10 hours on university and professional service a week after the pivot to remote instruction."

Diane McGhee (DANC 101; student: Davia Bunch)

She serves as an adjunct instructor and thus has no research or service requirements. Her employment by the university is solely for course preparation and teaching. In addition, this course was 100% online by original design and thus required no change to its delivery strategy.

Andrea McAtee (POLI 365; student: Davia Bunch)

Like Diane McGhee, she also serves as an adjunct instructor and was only contracted for course preparation and teaching. In addition, the course that she taught was also 100% online by original design and thus did not require any adjustment to how she spent her time.

Jungmi Jun (JOUR 499; student: Davia Bunch)

Prior to the pandemic she estimated that she spent approximately 60 hours per week working, half of which was spent on preparation/teaching and half spent on research. When the decision to transition to remote instruction was made, she dedicated 100% of her time to course preparation and teaching. After a few weeks, that reduced to 80%-90% of preparation/teaching and 10%-20% on research.

Robert McKeever (JOUR 332; student: Davia Bunch)

Prior to the pandemic, he estimated that he spent approximately 40% of his time on preparation/teaching, 40% on research, and 20% on service. After the transition to remote instruction and for the duration of the spring 2020 semester he stated that he spent 100% of his time in preparation/teaching.

It is my professional opinion, after interviewing the faculty and better understanding the strategies they employed to transition to remote instruction, that the time they spent adjusting their courses for remote delivery was comparable to that which would have been spent moving them online with CTE during a more leisurely extended period in a more typical semester. In some cases, due to the dedication of the faculty to prioritize student instruction over other duties such as scholarship and service, they even dedicated a more than recommended amount of time in course preparation.

UNIVERSITY CLOSURES AND CLASS CANCELLATION

The COVID-19 pandemic was a challenging time not just in higher education but across all sectors of society. K-12 education, business, healthcare, and travel were all significantly impacted. Yet, higher education institutions do have a history of successfully adjusting to unexpected impacts to campus and courses as they tend to occur on a regular basis. For example, schools along the Gulf Coast and Southern

Atlantic face hurricane closures every fall. Schools in the West face wildfire threats. Institutions in the paths of blizzards may face snow-related closures. The University of South Carolina has cancelled classes and closed many times due to weather-related events alone. A few recent examples include:

- September 2022 (Hurricane Ian)
- February 2020 (flash flood warnings)
- October 2018 (Hurricane Michael)
- September 2018 (Hurricane Florence)
- October 2016 (Hurricane Matthew)
- October 2015 (the “thousand-year flood” of 2015)

Like the COVID-19 pandemic response, these closures were all prompted due to concerns for health and safety. The university successfully adjusted to these required cancellations and closures without adversely impacting students’ learning outcomes or their progress toward their degrees.

Likewise, individual faculty may cancel classes periodically throughout a semester due to illness or other reasons. In the case of the two plaintiffs, the following class cancellations occurred in the spring 2020 semester alone that were unrelated to the pandemic:

- 1/28/20: Dr. Jun cancelled class in JOUR 499 due to a car accident and modified an assignment due date (student: Davia Bunch) [USC_00048973, USC_00048965]
- 1/30/20: Dr. McKeever cancelled class in JOUR 332 due to illness (student: Davia Bunch) [USC_00048983]
- 2/6/20: The university cancelled all classes due to flash flood warnings [USC_00048996]
- 2/26/20: Dr. Bird cancelled class in POLI 362 due to illness (student: Davia Bunch) [USC_00049072]

Notably, all of these cancellations occurred prior to the transition to remote instruction. After that transition, cancellations were typically not required as frequently, if at all, because of the flexibility afforded by the remote modality. No faculty-initiated cancellations for either plaintiff were noted in the documentation for either student after the transition to remote instruction.

Similarly, students will also occasionally be required to miss classes and are still expected to meet all learning requirements and expectations. For example, with regard to the two plaintiffs, Casey Kelly suffered from severe chronic migraines during the spring 2020 semester, necessitating her registration with the university’s student disability office [USC_00048797, USC_00048757, USC_00048754,

USC_00048751, USC_00048748] to receive accommodations. Even with these accommodations, she was still forced to miss classes [USC_00048797, USC_00048784, USC_00048745].

CASEY KELLY SPRING 2020 COURSES

SPAN 122 – Basic Proficiency in Spanish (Tim McAteer)

To migrate this face-to-face course of 20 students to remote instruction, the faculty member used pre-recorded lectures, posted PowerPoints, online homework, online quizzes and exams through the LMS, and Flipgrid (now called Flip) for oral exams. In order to accommodate varied student access to technology and in recognition of the unique challenges each student faced, the faculty member followed the asynchronous delivery model implemented by the Spanish Department. This strategy was not necessarily used in other language departments, in the broader College of Arts & Sciences, or at the institutional level. Because the course moved to asynchronous delivery, participation became more difficult to measure after the transition to remote learning. Thus, the faculty member decided to award 100% participation for all students for the second half of the term (the standard practice for the entire Spanish Department).

No changes were made to the syllabus and students were still able to accomplish all original course objectives. The faculty member observed that proficiency levels for spring 2020 students were the same as previous semesters and those who continued on to the subsequent intermediate course were as prepared as students who completed the course 100% face-to-face. He did state that there was an optional in-person language lab that he did not believe that any students took advantage of prior to the transition to remote instruction and did not need after the transition.

MART 571B – Moving Image Advanced: Documentary (Laura Kissel)

This face-to-face course of approximately 20 students transitioned to a mixed delivery strategy that combined asynchronous and synchronous delivery methods. The discussion-based critiques were conducted synchronously in a virtual format. Per the professor,

“(D)uring the spring of 2020, I tried to stay as close to the class syllabus as possible and I met synchronously, which did not require me to record anything. I mostly gave the same lectures that I would have if we had been in person together in the classroom, and I also met my class synchronously to give those lectures and lead discussion and conversation about the ideas we were learning about. I may have added a new item here or there, but I tried to keep my syllabus as close to our original plan as possible...”

The assigned written reflections remained unchanged. Film screenings were moved online via asynchronous streaming platforms such as Kanopy, Swank, and Alexander Street. The group production project was revised to become an individual project. Some students had challenges checking out or otherwise accessing equipment for video production. In these cases, the faculty member allowed students to use other, more accessible equipment such as cell phone cameras. She did not enforce any point deductions for pandemic-caused reductions in production quality such as audio recorded on cell phone microphones.

No changes were made to the syllabus and students were still able to accomplish all original course objectives. The faculty member did slightly adjust the course schedule to accommodate the one-week university closure. There were no labs associated with this course.

FAMS 363 – Hong Kong Action Cinema (Lauren Steimer) and FAMS 308 – Global Media Industries (Lauren Steimer)

Similar asynchronous strategies were used to transition both of these classes to 100% remote instruction. It is also notable that, as previously stated, although it was listed in the course schedule as a face-to-face section, in practice FAMS 308 was delivered as a hybrid course. Due to the hybrid (partially online) nature of FAMS 308 and since that course already made extensive use of asynchronous online strategies as part of the original course design, the level of effort required to transition that course to a fully remote format was less than that required to transition FAMS 363. Half of the instruction and assessments were already online. Strategies employed to address the course learning objectives in a distributed format included recorded lectures, online film screenings, lecture guides, discussion questions posted on Blackboard, Flipgrid for video-based student answers/responses, and written answers to questions.

No changes were made to the syllabus and students were still able to accomplish all original course objectives. Although the faculty member did adjust some course work as a result of the one-week closure, she did not issue new syllabi or schedules. The adjustments were managed ad hoc through course announcements, emails, and other course communications.

MART 499 – Internship in the Media Arts (Jennifer Tarr)

This faculty member is no longer employed by the university and I was unable to interview her. However, Laura Kissel (MART 571B) serves as the Director of the School of Visual Art and Design and was familiar with this section of this course and faculty member. While the course was technically face-to-face, it primarily occurred at an internship employer's location. Students

were responsible for securing their own internships, which were subject to approval. As part of the assessment, students kept a journal and had weekly online prompts to which they needed to respond. Casey Kelly was enrolled in this course during spring 2020. She had satisfied all of her required on site hours at her internship location (Coal Powered Filmworks in Columbia, SC) prior to spring break. Thus, she was able to accomplish all of her academic objectives and receive a comprehensive evaluation by the time the term concluded. As a consequence, no changes were required to adjust to remote instruction.

DAVIA BUNCH SPRING 2020 COURSES

DANC 101 – Dance Appreciation (Diane McGee)

As a completely online course by design, no changes were required to the original instruction or assessment as a result of the pandemic. The course was conducted as intended for the entire semester.

JOUR 332 – Mass Communications Research (Robert McKeever)

This was a face-to-face course with (according to the professor) a higher-than-normal enrollment of approximately 45 students. He recognized the unique challenges faced by some students regarding technology and privacy for video conferencing and therefore chose to employ an asynchronous strategy to address the requirement to transition to emergency remote instruction. As he described it:

“I opted to use recorded asynchronous lectures instead of holding live synchronous online lectures with the students. After attending CTE training sessions specific to Blackboard Collaborate, I determined it was not a viable method for teaching this course. Instead, I made all formal aspects of the course asynchronous and posted course modules on a weekly basis, so the students were able to view/review those materials at a time that was convenient to them. I also provided copies of each of the PowerPoint presentations I used in my recorded lectures as .ppt files with the full transcription from my lectures so the students could access these materials in more than one format.”

The professor attested to the fact that all course objectives from the syllabus had been accomplished, despite the transition to remote instruction. As provided on the syllabus, those objectives were the following:

“In this course you will learn about:

- Communication research methods from a social scientific perspective
- Research designs and methods used by communication scholars
- Critiquing communication research presented in journals, scholarly texts, and textbooks
- Basic research designs, statistical concepts, and methods of data analysis”

[USC_00049488]

However, at the time of the transition, the class had not yet conducted their planned group field data collection. The prohibition on gathering in groups meant that the faculty member had to change the face-to-face group interviews into online quizzes that were more conceptual than applied. The original intent was that students would collect data in groups and then analyze their acquired data. Since they had no data to analyze, the students worked from more conceptual samples provided by the faculty member. While the knowledge-related objectives were still accomplished remotely, students were not able to collect data in a group due to the prohibition on gathering in groups. Nevertheless, as previously documented, the professor attested both during the interview process and during the spring 2020 semester that all learning objectives had been accomplished.

“All of the expectations have been met. The work you have done on your projects, which included conceptualizing your study topic, reading and synthesizing academic literature, drafting sections of your paper, creating the research protocol, making and doing two formal in-person presentations (pitching your initial ideas for the study and presenting the final project proposal based on feedback) are more than sufficient for accomplishing the goals of this course.” [USC_00048853]

JOUR 499 – International PR (Jungmi Jun)

Because her department encouraged faculty to be as flexible as possible, this faculty member elected to use asynchronous strategies to address the transition to remote instruction. She used Blackboard Collaborate to record video lectures and then posted them on an unlisted YouTube channel. She then used the YouTube comment feature as a de facto discussion and participation platform. No course objectives were compromised and all students had the opportunity to accomplish the goals stated on the syllabus. The only adjustment the faculty member made was to reschedule some activity to accommodate the post-spring break one week closure.

The faculty member observed that, in some cases, being online helped the course by providing students more time to review content and participate. She also felt that the online format facilitated an improved ability to review each student's working draft and provide more detailed feedback regarding slides and presentations.

POLI 362 – Politics and Mass Media (Robert Bird)

This faculty member is no longer employed by the University of South Carolina and I was unable to interview him as part of this analysis.

POLI 365 – State Government (Andrea McAtee)

As a completely online course by design, no changes were required to the original instruction or assessment as a result of the pandemic. The course was conducted as intended for the entire semester.

CONCLUSION

The COVID-19 pandemic that impacted the entire world during the spring of 2020 was a generational event. It challenged businesses, healthcare systems, and educational institutions to accomplish their missions via new, technologically enabled mechanisms. This pivot to remote delivery of services was not something that organizations had either anticipated or chosen. The University of South Carolina was no different. Complying with an order from the governor of the state, and consistent with the practices of all other higher education institutions across the country and the world, the university transitioned to 100% remote instruction after spring break, allowing for a one-week post break transitional period.

Based on my analysis, it is my professional opinion that:

- While some similarities existed by virtue of being students, University of South Carolina students had (and continue to have) substantially unique and individual campus experiences.
- The educational objectives of each course were able to be accomplished as intended in the syllabi provided at the beginning of the spring 2020 semester, despite the transition to remote instruction.
- Each of the two plaintiffs individually accomplished all of the originally intended objectives in each of their courses despite the transition to remote instruction.
- Faculty members used a variety of creative synchronous and asynchronous strategies to transition their courses for remote delivery and ensure that all learning objectives were still able to be accomplished.
- Each of the plaintiffs' faculty members—except those already teaching fully online courses—dedicated a significant amount of time at least comparable to what would have been spent during

non-emergency circumstances towards preparing their courses for remote delivery in response to the requirement to transition online.

- Class cancellations, schedule changes, and other in-course adjustments are a common occurrence in an academic semester due to significant weather events, faculty illness, and other unforeseen circumstances. In many ways, the pandemic response was merely an extended example of this type of adjustment.

Given the challenging circumstances, the faculty and administration of the University of South Carolina should be commended for ensuring that they continued to deliver on their educational promises. This was neither easy nor simple, but it is my professional opinion that they did indeed fulfill their academic obligations. I was particularly impressed with the level of commitment displayed by the faculty, as well as their empathy they displayed for each student's unique, individualized circumstances, to ensure that they helped each student meet their course's educational objectives.

THOMAS B. CAVANAGH, Ph.D. CREDENTIALS

Education

- Ph.D., Texts & Technology, University of Central Florida (2006)
- M.B.A., Technology Management, University of Phoenix (2000)
- B.S., Communications, University of Miami (*cum laude*) (1988)

Other

- Management Development Program, Harvard University (2008)
Institute for Higher Education, Harvard Graduate School of Education
- SACSCOC Academic Peer Evaluator training (2014)
- Diana G. Oblinger Innovation Forum: How to Develop Your Institution's Student Success Strategy, EDUCAUSE (2016)
- Various faculty development courses at University of Central Florida, Embry-Riddle Aeronautical University, and Valencia Community College

2009-Present**University of Central Florida****www.ucf.edu****2017-Present****Vice Provost for Digital Learning****2013-2017****Associate Vice President of Distributed Learning****2009-2012****Assistant Vice President of Distributed Learning**

Leadership of the Division of Digital Learning, a major college-level division of Academic Affairs, responsible for leveraging innovative online and digital strategies in support of UCF's mission, with an emphasis on exploring pioneering ways to positively impact revenue, access, enrollment, success, retention, time to graduation, the cost of providing an education, and the quality of the learning experience.

Operational Leadership

- Serve as chief online learning officer for one of the largest universities in the United States (72,000+ students).
- Full profit & loss accountability across multiple units in the division with approximately \$30 million annual budget authority.
- Financial oversight comprising multiple sources, including Education & General (E&G), auxiliary, foundation, and contracts & grants. Signature authority for contracts up to \$250,000.
- Direct oversight of a staff of 180, including in-unit unionized faculty, exempt and non-exempt professional staff, part-time/work study, and graduate assistants.
- Lead an extremely high-growth digital learning enterprise that has for eight years been the primary source of UCF's significant headcount and credit hour growth.
- Units within the division have included: UCF Online, the Center for Distributed Learning, Continuing Education, the Office of Instructional Resources, Mobile Strategy & Innovation, the Research Initiative for Teaching Excellence (RITE), and all sub-teams.
- Oversee Continuing Education unit, including for-credit market rate programs, non-credit custom workforce development, and bootcamps in partnership with entities such as 2U and ThriveDX.

Leadership of Innovative and Entrepreneurial Initiatives Highlights

- Coordinate 100+ fully online programs/certificates and support for more than 1,500 faculty and approximately 61,000 students taking online courses each year.
- Support up to 17,000 exclusively online students each semester.
- Responsible for regional accreditation (SACSCOC) compliance for area of responsibility, state authorization compliance, as well as Florida Board of Governors and statutory compliance.
- Led 100%+ growth in online/blended student credit hours between Fall 2009 & Fall 2019, now representing 55% of UCF's total credit hours. 83% of UCF's 70,000 students take one or more online/blended courses each year.

- Conceived, planned, and successfully led the launch of UCF Online, a comprehensive re-branding of the university's external-facing virtual campus that grew from 0 to 7,000+ students in the first 5 years.
- Lead UCF Online operations, including program development, market research, digital marketing, student coaching, department coordination, course production/delivery.
- Oversee the UCF Online Connect Center of more than three dozen student success coaches. Online students with coaches have a significantly higher retention rate.
- Created the Digital Learning Impact Evaluation function, which assesses efficacy of programs and initiatives.
- Led the university's successful course migration due to the 2020 COVID-19 pandemic to 100% remote instruction. In less than one week, facilitated the migration of 6,600+ blended/face-to-face sections to online delivery. UCF went from teaching 219,640 student credit hours completely online to 712,410.
- As part of our pandemic response, led the conception, development, and deployment of UCF's **BlendFlex** delivery model, which enabled the university to deliver classroom instruction to hybrid students who participated both in-person and online.
- Key member of UCF's Enrollment Planning Group, made up of senior leaders from across the institution, to develop enrollment target recommendations, determine strategies for meeting goals, and execute enrollment plans and student success/retention initiatives. Chaired the UCF Online committee of the 10-year Enrollment Strategy Task Force.
- Oversaw all audiovisual technology design, implementation, and support for hundreds of classrooms campuswide (2017-2020).
- Conceived, planned, and successfully led high-profile initiatives such as:
 - The state-funded annual **TOPkit program** for preparing Florida college and university faculty to teach online.
 - The state-funded **Innovation Summit**, an annual event which gathers and disseminates innovative practices and research from across Florida.
 - The Next Generation Learning Challenges/Bill and Melinda Gates Foundation-funded **Blended Learning Toolkit**, which worked with 20 partners from the American Association of State Colleges and Universities (and others) to train and support the adoption of blended learning nationwide, resulting in broad national expansion.
 - The **Blendkit** massively open online course (MOOC), which was originally delivered as part of the Blended Learning Toolkit program. Later negotiated and facilitated a partnership to offer with EDUCAUSE under a multi-year revenue-share agreement.
- Coordinated the acquisition and integration of the assets of the National Center for Academic Transformation (NCAT) into the custody of the Division of Digital Learning upon the retirement of NCAT founder Dr. Carol Twigg.
- Led the campuswide transition to a new enterprise learning management system. Was asked to document the process as a benchmark model in an EDUCAUSE ECAR case study.
- Led a Board of Trustees-sponsored campuswide \$4M digital learning course redesign initiative intended to improve student success, increase time to graduation, and reduce DFW rates, particularly in STEM disciplines.
- Led the UCF side of a partnership with the Walt Disney Corporation to participate in the Disney Aspire program, managed by Guild Education, where 53,000+ hourly Disney employees can receive a free education at UCF.
- Serve as the institutional coordinator for UCF's partnership with Guild Education, including support for numerous companies nationwide.
- Lead and support critical institutional innovations such as online learning, blended learning textbook affordability, adaptive learning, and badging, as well as key collaborations with other institutions and commercial partners. Key partner in UCF's transition to active learning.
- Lead key institution-wide initiatives with university stakeholders including president, provost, deans, chairs, and faculty to identify opportunities, strategize solutions, and implement plans.

Board and Government Relations

- Ongoing collaboration with UCF's Board of Trustees, providing information, presenting briefings, making proposals, and answering questions/offering insights.
- Support for key institutional performance metrics as measured by FL Board of Governors / legislature.
- Regular interaction with Board of Governors of the State University System of Florida.
- Personal service on Florida Virtual Campus Board of Directors and numerous national advisory boards.

Advancement and Fundraising Activity

- Regularly collaborate with the Advancement Office and the UCF Foundation to identify and cultivate key partnerships with major corporations such as the Walt Disney Company, Sony, Microsoft, and Lockheed Martin.
- Collaborate with Alumni Affairs for outreach to targeted students and alumni.
- Responsible for securing significant extramural funding through grants, contracts, and sponsorships.
- Extensive collaboration with foundations such as the Bill & Melinda Gates Foundation.

Academic Responsibility Highlights

- Serve as a key academic officer of the university overseeing a major college-level division of Academic Affairs.
- Approve/Deny faculty promotion portfolios/binders for final decision by Provost.
- Partner regularly with deans, chairs, and faculty on strategic initiatives, such as a campuswide course redesign initiative, migration of the enterprise learning management system, and the launching of new online programs.
- Secondary joint appointment in Department of Writing & Rhetoric and regularly teach courses for the English Department and Department of Writing & Rhetoric. Serve on thesis/dissertation committees.

Diversity, Equity, and Ethics

- Serve as a mentor in the Leadership Enhancement Program for women and underrepresented staff and faculty (2010/11, 2012/13, and 2016/17). Mentored three different participants across one academic year each. Also served on several senior leadership panels as part of the program.
- Served on a St. Petersburg College task force supported by the Helios Foundation to develop innovative programs and practices to build, enhance, and expand the pipeline of Black students from high schools and community colleges in the Tampa Bay area to SPC, UCF, USF, and FAMU.
- Support various Hispanic-Serving Institution (HSI) opportunities on campus.
- Lead key student accessibility partnerships across multiple departments on campus to ensure equal academic access for students with disabilities.
- Divisional partner in the Florida Prison Education Program (FPEP), winner of the 2018 UCF Collective Impact Community Challenge award.
- Annually support *Diversity Week*, *International Week*, and *Black Faculty and Staff* organizations.
- Key contributor to the university-wide Data Ethics Workgroup to ensure ethical usage of student information as part of institutional analytics initiatives.
- Personally instituted an annual divisional staff "Day of Service," most recently held at the Mustard Seed of Central Florida. Other divisional support for numerous charitable efforts such as Toys for Tots and the American Heart Association.

Strategic Planning

- Key member of UCF's institutional strategic planning committee, participating on the core "Value" commission that led to the current university Collective Impact Strategic Plan.
- Created and led a major new university division, reorganizing units from other areas and integrating them into a cohesive new entity.
- Member of the President's Advisory Staff Council, a strategic advisory group of senior leaders.

- Presidential appointee to the UCF 10-year Enrollment Strategy Task Force.
- Key member of three strategic planning committees related to the development of UCF's innovative new Downtown Campus, including serving as chair of the Teaching, Learning & Research subcommittee of the Technology Committee.
- Regularly reassess organizational structure and adjust positions and reporting lines as necessary to maintain operational excellence.
- Lead/contribute to multiple executive team leadership retreats, developing goals, strategies, and tactics.
- Conduct SWOT analyses of organization and initiatives.

**2006
(Spring)**

**Valencia Community College
Adjunct Instructor**

- Part-time faculty in the Digital Media Program (DIG 2430 – Digital Storytelling)

2006-2009

**Embry-Riddle Aeronautical University www.erau.edu
Director of Online Course Design & Development — Worldwide Campus**

- Oversee design/production of the University's 170 globally-delivered distance learning courses (representing almost 2,000 individual sections annually).
- Adult and military-focused student body.
- Responsible for production processes that resulted in national recognition and awards from organizations such as UPCEA and Blackboard.
- Supervise departmental staff of in-house and contractor professionals (both local and remote).
- Manage numerous grants and contracts, including budgets and schedules.
- Propose and lead special partnership projects (e.g., a joint degree with Nova Southeastern University and an innovative scholarship program with the Civil Air Patrol).
- Full-time faculty appointment in Arts & Sciences (English); Assistant Professor rank.
- Teach courses in English / Technical Communications.
 - Developed Master Course template for undergraduate Technical Report Writing course for all online instructors and served as Course Monitor to oversee its delivery worldwide.

2001-2006

**Florida Space Research Institute
Program Manager**

- Instructional/financial/operational oversight of the *Advanced Learning Environment (ALE)* program—an online training portal for aerospace and science education.
- Manage a \$3 million+ budget encompassing multiple sub-programs covering various curricula in aerospace, STEM, biotechnology, and teacher education.
- Establish and administer partnerships with community colleges, public universities (SUS), private universities (ICUF), vendors, state/federal government officials, and other parties.
- Responsible for acquiring all funding—100% self-supporting.
- Conduct high-level briefings with program sponsors, stakeholders, and elected officials.
- Regular interactions with various state government officials, including: Florida House of Representatives Committee on Community Colleges and Workforce Education, Florida Commissioner of Education, Chancellor of Community Colleges and Workforce Development, Florida Space Authority board, several state legislators, and the staffs of the Governor and Lt. Governor.

1994-2001	Interactive Media Corporation Managing Director (highest position) <i>Previously: Director of Operations, Design Services Manager, Senior Instructional Designer, Project Manager (company's former name: Analysis & Technology, Inc.)</i> - Profit & Loss accountability for \$6 million (2000 annual revenue) business unit within a \$31 million training and education consulting firm. - Managed operations of 39% business unit growth (2000 annual revenue). - Oversight of numerous custom educational programs, project teams, budgets, and schedules. - Direct supervision of a staff of 40 educational program developers (instructional designers, graphic artists, programmers, assessment specialists, project managers) in Orlando, Pittsburgh, Atlanta, and Kennedy Space Center. - Extensive marketing support responsibilities including capabilities presentations to Fortune 500 executives and senior-level client consultation. - Author and review project proposals / sign-off authority for proposal pricing. - Establish and promote exceptional customer service / client relations for Fortune 500 companies, federal agencies, and US Military.						
1990-1994	Freelance Consultant/Writer Work for numerous clients on a freelance basis. <table border="0"> <tr> <td><i>Education / Training</i></td><td> - Florida Center for Instructional Technology; MasterCard University; IBM; Siemens; Nickelodeon/MTV Networks (<i>Writer of a series that won the Christa MacAuliffe award for Space Education</i>); Sea World / Anheuser Busch Entertainment Group (<i>Writer of Emmy-nominated children's educational series</i>); Olive Garden Restaurants; Skydog Productions; Florida Association of Realtors </td></tr> <tr> <td><i>Entertainment</i></td><td> - Nickelodeon / MTV Networks (<i>Work on 3 Cable Ace Award nominees - 2 as Head Writer</i>); The Disney Channel; Walt Disney Television Animation; Longbow Productions; Reeves Entertainment Group; RAE Media Productions </td></tr> <tr> <td><i>Promotion/Marketing</i></td><td> - The Gartner Group; Nickelodeon / MTV Networks; Sea World / Anheuser Busch Entertainment Group; Walt Disney Resort Design; IBM; Florida PTA </td></tr> </table>	<i>Education / Training</i>	Florida Center for Instructional Technology; MasterCard University; IBM; Siemens; Nickelodeon/MTV Networks (<i>Writer of a series that won the Christa MacAuliffe award for Space Education</i>); Sea World / Anheuser Busch Entertainment Group (<i>Writer of Emmy-nominated children's educational series</i>); Olive Garden Restaurants; Skydog Productions; Florida Association of Realtors	<i>Entertainment</i>	Nickelodeon / MTV Networks (<i>Work on 3 Cable Ace Award nominees - 2 as Head Writer</i>); The Disney Channel; Walt Disney Television Animation; Longbow Productions; Reeves Entertainment Group; RAE Media Productions	<i>Promotion/Marketing</i>	The Gartner Group; Nickelodeon / MTV Networks; Sea World / Anheuser Busch Entertainment Group; Walt Disney Resort Design; IBM; Florida PTA
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<i>Promotion/Marketing</i>	The Gartner Group; Nickelodeon / MTV Networks; Sea World / Anheuser Busch Entertainment Group; Walt Disney Resort Design; IBM; Florida PTA						
1988 – 1990	Freelance Film & Television Production Support - Various Positions The Disney Channel; Touchstone Pictures; ABC; CBS; Walt Disney Imagineering; Filmworks						

Media and Foundation Relations

Featured or interviewed as a digital learning educational expert in many publications, including *The Chronicle of Higher Education*, *Inside Higher Ed*, *The Washington Post*, *The Atlantic*, *Politico*, *Campus Technology*, *Military Advanced Education*, *Federal Computer Week*, *University Business*, *Training magazine*, *Information Week*, *Space News*, *Professional Artist Magazine*, *Distance Education Report*, the *Orlando Sentinel*, *Brevard Technical Journal*, the *South Florida Business Journal*, *Orlando Business Journal*, the *e-Literate blog*, Parthenon Group reports, Gartner briefs, and an Ithaka S+R [case study](#).

Featured in a nationally-broadcast on-camera interview discussing higher education policy and online learning on the PBS television Tavis Smiley Show: <https://today.ucf.edu/pbs-show-feature-ucfs-online-success/>.

During the 2020 COVID-19 pandemic, served as a primary institutional representative for the media, with numerous interviews conducted with local television affiliates for ABC, CBS, NBC, Telemundo, and Spectrum. Was also interviewed by the local NPR station, the *Orlando Sentinel*, the *Orlando Business Journal*, the *Chronicle of Higher Education*, and *USA Today*.

Digital learning work has been recognized by the Bill and Melinda Gates Foundation. Co-hosted a campus visit by Bill and Melinda Gates and senior foundation leadership (<https://www.gatesnotes.com/Education/UCF-Digital-Learning>).

Professional Outreach:

TOPcast – The Teaching Online Podcast: A monthly higher education podcast, co-hosted with Kelvin Thompson. Approx. 2,800 monthly downloads; Recognized by EdSurge as “One of 16 Education Podcasts to Check Out in 2017.” Featured in *Inside Higher Ed.* (2015-Present). <http://topcast.online.ucf.edu>.

Public Speaking:

Over 200 presentations (majority peer-reviewed):

- Invited keynotes, lectures, plenary sessions, conference sessions, panel participant, panel moderator, webinars
- Numerous consulting visits for other higher education institutions
- Domestic and international

Instructional Experience

University of Central Florida

Secondary joint appointment in the Department of Writing and Rhetoric. Courses taught:

ENC 6217 Technical Editing

ENC 5237 Writing for the Business Professional

Doctoral Thesis Committees

Cherie Mazer: *An Evaluation of the Iowa State University Learning Ecosystem*, Ed.D. (2014)

Master’s Thesis committees

Mariana Chao: *On Copyright Law: What Technical Communicators Need to Know*, M.A. (2014)

James Fenn: *Narrative Learning in Technical Communication*, M.A. (2014)

Kristin Fecko: *The Relevance of Benjamin Franklin’s and Thomas Jefferson’s Technical Writing for Modern Communicators*, M.A. (2014)

Erika Wardell: *Gender Composition of Online Technical Communication Collaboration*, M.A. (2012)

Embry-Riddle Aeronautical University, Worldwide Campus: Arts & Sciences

Assistant Professor, English

ENGL 221 Technical Report Writing (master course template taught by all faculty)

- Blackboard Exemplary Course Award winner (2008)

FACD 703 Developing Online Course Materials (Non-credit faculty development course)

HUMN 400 Science and Aviation/Aerospace Technology in Society

- Proposed and developed first 400-level Humanities offering for Worldwide Campus

Valencia Community College, Orlando, FL: Digital Media Department

DIG 2430 Digital Storytelling, *Digital Media Technology Program*

Full Sail University, *School for the Media Arts*: Winter Park, FL: Film Program

CRW 101 Creative Writing / Screenwriting

Highlighted Honors/Awards

- **#7 U.S. News and World Report Online Bachelor's program (2022).** Individual programs (both undergraduate and graduate) also highly ranked. Top 20 rank nationally four years in a row, with numerous individual programs earning top rankings (many #1) from other lists.
- Digital Learning Innovation Award (institutional recognition): \$100,000 award from the Online Learning Consortium (2018)
- **WICHE Cooperative for Educational Technology (WCET) Richard Jonsen Award, 2018**
 - WCET's highest career recognition
- Division recognition by Bill Gates as a national leader in digital learning (<https://www.gatesnotes.com/Education/UCF-Digital-Learning>) (2018)
- **IMS Global Learning Consortium community leadership award** (2018)
- Best-in-Track Selection (panel participant), *Innovations, Tools, and Technology*: Online Learning Consortium Accelerate Conference (2017)
- **Outstanding Leadership Award, US Distance Learning Association (USDLA)** (2017)
- Team award: WCET Outstanding Work (WOW) Award (2013 and 2017)
- Unit award: Center of Excellence, New Media Consortium (2016)
- Unit award: 21st Century Best Practice Award for Distance Learning, USDLA (2015)
- **Fellow of the Online Learning Consortium** (2014)
- Unit award: Excellence in Institution-wide Online Education, Sloan-C (2012)
- **Best-in-Track Selection, Leadership and Administration: Sloan-C Blended Learning Conference (2012)**
- Sloan-C Effective Practice Award: UCF's Online Faculty Readiness Assessment (2011)
- Team/Unit awards: Prudential-Davis Productivity Awards (two in 2011, one in 2014, three in 2017)
- **Best-in-Track Selection, Faculty Development: 16th Annual Sloan-C Annual conference (2010)**
- Distinguished Graduate, University of Miami Department of English (<https://english.as.miami.edu/creative-writing/alumni/distinguished-graduates/index.html>)
- ENGL 221 Technical Report Writing (Embry-Riddle Aeronautical University)
 - Online course selected as a *Blackboard Exemplary Course Award* winner (2008)
 - Achieved a perfect 80 out of 80 score by a Quality Matters peer-review team (1st review)
- Doctoral dissertation (*The Kiosk Culture: Reconciling the Performance Support Paradox in the Postmodern Age of Machines*):
 - Winner of the Outstanding Dissertation Award: University of Central Florida College of Arts & Humanities (2006/07)
 - Nominated for a CCCC Outstanding Dissertation Award in Technical Communication (2007)
- Mystery novel *Head Games*:
 - **Florida Book Award: winner of the 2007 Gold Medal in Popular/Genre Fiction**
 - **Shamus Awards: Nominated as a 2008 Best Hardcover by the Private Eye Writers of America**
 - Selected as a 2007 "Killer Book" by the Independent Mystery Booksellers Association
- Project Award: Excellence in Training & Employee Development: E-Learning/Blended Learning (2003) University of North Florida Division of Continuing Education
- Project Awards: Multimedia & Internet Training Gold Medal and Silver Medal (1998) Brandon Hall Excellence in Learning Competition
- Head Writer of two television series nominated for 1992 Cable ACE Awards
- Writer of a television series that won the 1991 Christa McAuliffe Award for Space Education
- Contributing Writer for a television series nominated for 1991 Cable ACE Award
- Writer of an educational television program nominated for a regional Emmy Award

Board and Leadership Service:

- Board of Directors—IMS Global Learning Consortium (2021-present)
- University Professional and Continuing Education Association (UPCEA) Council of Chief Online Learning Officers (2020-present; Chair 2022-2023)
- Pressbooks National Advisory Board (2020-present)
- IMS Global Higher Education Institutional Executive Board and Steering Committee (2016-present)
- Advisory Board: Digital Courseware in Context (CWIC) Quality Framework initiative (2016-2017)
 - Administered by Tyton Partners and funded by the Bill and Melinda Gates Foundation
- Advisory Board: EDUCAUSE's Leading Academic Transformation (LAT) community (2016-2019)
- University of Florida Educational Technology program [Advisory Board](#) (2015) (ranked as #1 online Graduate Education program by U.S. News)
- WCET Steering Committee: elected by national membership (2013-2016)
- Florida Virtual Campus (FLVC) Board of Directors (2012-2014)
- EDUCAUSE Learning Initiative (ELI) Advisory Board (Term: 2011-2014, Chair: 2013-2014)
- Florida Distance Learning Association (FDLA) Board of Directors (2011-2013)

University Service:*University of Central Florida*

- Search committee: Vice President for Information Technologies & CIO – national search (2020)
- Institutional proposal reviewer for NSF project: Improving Undergraduate STEM Education (IUSE): Hispanic-Serving Institutions (NSF 19-540) (Track 1 - Building Capacity) (2019)
- President's Advisory Staff Council (2019-present)
- UCF 10-year Enrollment Strategy Task Force (2019): Chaired the UCF Online subcommittee
- Serve as a mentor in the Leadership Enhancement Program for women and underrepresented staff and faculty (2010/11, 2012/13, and 2016/17)
- University Enrollment Planning Group (ongoing)
- Data Ethics workgroup (2018-present)
- Represented UCF at partnership agreement signing ceremonies with Polk State College (August 18, 2017) and Florida Gateway College (September 13, 2016)
- Institutional strategic planning committee, participating on the core "Value" commission that led to the current university Collective Impact Strategic Plan. (2016-2017)
- Reimagining the First Year (RFY) of college initiative Advisory Council (2016-2018)
- Committee member for the faculty's Collaborative on Academic Careers in Higher Education (COACHE)
 - "Nature of work (teaching, research, and service)" subcommittee (2016)
- University Strategic Planning Committee: "Value" Commission (2015-2016)
- SACSCOC Quality Enhancement Plan (QEP) Advisory Board (2015-2016)
- Innovative Education Committee for Undergraduate Studies (2015-2016)
- UCF Downtown New Campus Strategic Planning Team (2015)
 - Academic Programs Committee
 - Teaching and Learning Innovation Subcommittee
 - Technology Committee (Chair: Teaching, Learning, and Research Subcommittee)
- President's Emerging Issues Committee (2014-present)
- Provost's Task Force on Academic Integrity (2011)
- Texts & Technology Ph.D. Program Advisory Board
- Search committee: Chief Audit Executive—national search
- Search committee: Vice Provost for Regional Campuses—national search
- Search committee (Chair): Director, Office of Instructional Resources—national search
- Search committee: Director, Faculty Center for Teaching and Learning (FCTL)—national search

- Search committee: Director, Continuing Education—national search
- Guest speaker in courses such as “Student Retention in Colleges and Universities,” “Teaching Online in Texts & Technology,” and “Careers in Professional Writing”
- Faculty Senate Information Technology Resource Advisory Committee (ex officio)
- Chair the Distance Learning Advisory Group

Embry-Riddle Aeronautical University

- Search committee: Associate Dean for Online Academics—national search
- Course Monitor for ENGL 221, Technical Report Writing: ERAU Worldwide Campus
 - Developed a template and example documentation for the Department of Arts & Sciences that can be used by all campuses to direct adjunct faculty on how to best facilitate targeted course designs.
- Proposed and coordinated the creation and delivery of a new Worldwide Campus graduate degree (M.S. in Space Education) in collaboration with Nova Southeastern University; co-directed the marketing plan.
- Proposed and coordinated a Worldwide Campus scholarship program for the Civil Air Patrol
- Contributed to academic departmental program assessment and institutional effectiveness activities.
- Guest speaker for “Marketing Communications” course

Professional Service/Other:

National

- Program Co-Chair—UPCEA annual conference (2021-2022)
- Digital Learning Council—Institute for Emerging Leaders in Online Learning (IELOL): the Online Learning Consortium (2019-2020)
- Higher Education Alliance for Transformation: HEAT (formerly the Northern Rockies Consortium for Higher Education (NORCHE)) (2017- present)
- Subject matter expert for ELI’s “7 Things You Should Know About Learning Analytics” (2017)
- IMS Global Adaptive Learning Community of Practice (2016-2019)
- Committee member for the design of the WCET Distance Education Price and Cost Report Survey (2016-2017)
- Subject matter expert for ELI’s “7 Things You Should Know About Personalized Learning” (2015)
- Asked by EDUCAUSE and the Next Generation Learning Challenges (NGLC) to reprise my role as a team coach for the 2015 Breakthrough Models Academy in Chicago and online, culminating in presentations at the 2016 ELI annual conference.
- 2015 EDUCAUSE Annual Meeting Program Planning Committee
 - Track Chair: Teaching and Learning (Advancing the Academic Mission)
- WCET Adaptive Learning Summit planning committee (2015)
- Served as one of three coaches for the inaugural (2013) Breakthrough Models Academy from EDUCAUSE and the Next Generation Learning Challenges (NGLC). Coached four teams of four partners each on-site in Cambridge, MA and Anaheim, CA and online as they developed new, innovative educational models.
- Instructure Canvas Net+ Product Advisory Board (2012-present)
- Appointed by the president of EDUCAUSE to represent the organization on a national inter-agency task force that prepared a white paper on e-learning (2012)
- Track Chair (Access): 2011 Sloan-C Blended Learning Conference
- Sloan-C Journal of Asynchronous Learning Networks (JALN) Learning Effectiveness Advisory Group (2010)
- Contributing DELPHI reviewer of the Sloan-C Quality Scorecard (2009-2010)
- Member of the Blackboard Mobile Learn Advisory Group (2009-2010)

- Peer Reviewer: Book: Higher Education, Emerging Technologies, and Community Partnerships: Concepts, Models and Applications (IGI Group)
- Peer Reviewer: 2009 Sloan-C ALN Conference (Evaluation and Assessment track)
- Peer Reviewer: 2013 Sloan-C Blended Learning Conference: Leadership Track
- Peer Reviewer: mLearn2009 Conference
- Peer Reviewer: International Journal of Human and Technology Interaction
- Peer Reviewer: Journal of Political Science Education (2014, 2015)
- Peer Reviewer: Online Learning Journal (2015)

Regional

- Served on a St. Petersburg College task force supported by the Helios Foundation to develop innovative programs and practices to build, enhance, and expand the pipeline of Black students from high schools and community colleges in the Tampa Bay area to SPC, UCF, USF, and FAMU. (2020)
- EDUCAUSE Southeast Regional Conference Planning Committee (2012)

State/Local

- Participation on the Programs committee of the Florida Online Learning Strategic Plan. (2016-present)
 - Chaired the Innovative and Experimental Pilot Projects Subcommittee.
 - Co-chaired the Competency-Based Education and Adaptive Learning Subcommittee
- Presidential Appointee as UCF Representative to the Florida Virtual Campus (FLVC) (2009-2020)
 - Chair of the Distance Learning & Student Services members council (2012-2014)
 - Search committee: FLVC Executive Director—national search
- Inaugural representative for the Independent Colleges and Universities of Florida (ICUF) on the legislatively-created Florida Distance Learning Consortium: 2003-2005
- State Workgroup on the Alignment and Enhancement of Online Postsecondary Academic and Student Support Web Services (Florida Distance Learning Consortium (FDLC) and Florida Center for Advising and Academic Support (FCAAS))
- Member of Brevard Community College Virtual Campus Advisory Board: 2003-2005
- Member of Advisory Board for TeachSpace Program (NASA grant at Embry-Riddle Aeronautical University): 2002-2006
- Member of Advisory Council for the Florida Aerospace Resource Center (joint venture between Florida Community College at Jacksonville and Brevard Community College): 2003-2005
- Member of the Florida Aviation/Aerospace Career Cluster Consortium (FLACCC) to review statewide aerospace education needs and curricula – 2004
- Judge: Technology Student Association (TSA) Annual Competition

Grants / Contracts Received and Managed

University of Central Florida

- Principal Investigator: *UDOIT For D2L* (2020-present)
 - Funding Sponsor: Frontier Set / Venture Well with source funding from the Bill & Melinda Gates Foundation
 - \$7,500 (partnered with the University System of Georgia, who also received \$7,500)
- Co-Principal Investigator: *Every Learner Everywhere Adaptive Learning Project* (2019-present)
 - Funding sponsor: Association of Public and Land-Grant Universities (APLU) with source funding from the Bill and Melinda Gates Foundation
 - \$50,000 plus travel
- Principal Investigator: *Florida Online Innovation Summit* annual conference (2019 -2023)
 - Funding sponsor: Complete Florida
 - \$70,379.46 total
- Co-Principal Investigator: *TOPkit Statewide Faculty Development Project* (2016-2021)

- o Funding sponsor: Florida Virtual Campus and State University System of Florida Council of Academic Vice Presidents
 - o \$397,531 (Year 1: \$189,395 / Years 2-5: \$52,034 annually)
- Complete Florida
 - o Sponsored by the Florida Legislature via the University of West Florida
 - o \$231,000 (\$100,000 initial funding with \$131,000 follow-on funding)
- Principal Investigator: *Expanding Blended Learning Through Tools and Campus Programs* (2011-2012)
 - o Funding sponsor: EDUCAUSE/Next Generation Learning Challenges (primary funder: Bill and Melinda Gates Foundation)
 - o \$250,000 (Partner: American Association of State Colleges and Universities and 20 member schools)

Embry-Riddle Aeronautical University

- *ScienceMaster*
 - o ERAU portion: \$305,000 = \$175,000 (fixed operational funding) + \$130,000 Scholarship funds for 16 master's degree and individual course scholarships (variable funding)
 - o Funding sponsor: Florida Department of Education
 - o Partners: Manatee County Schools (lead), Nova Southeastern University
- *Math Matters: A New Vision for Florida / Project IMPROVE (Increasing Mathematics Performance Results via Online Virtual Education)*
 - o ERAU portion: \$115,870
 - o Funding sponsor: Florida Department of Education
 - o Partners: Broward County Schools (lead), Nova Southeastern University, Florida Independent College Fund
- *Biotechnology Training and Education Council (BIOTEC)*
 - o ERAU portion: \$37,000 (Phase 1) / \$14,800 (Phase 2)
 - o Funding sponsor: Workforce Florida, Inc. (BANNER center)
 - o Partners: University of Florida (lead), Florida Community College Jacksonville, Indian River Community College, Santa Fe Community College, International Society of Pharmaceutical Engineers
- *No Teacher Left Behind* (\$13,000)
 - o Funding sponsor: Florida Space Grant Consortium

Florida Space Research Institute

- *Aerospace Technician Training Program* (\$1,400,000)
 - o Funding sponsor: Workforce Florida, Inc.
- *Cryogenics Engineering Web-Based Training* (\$500,000)
 - o Funding Sponsor: NASA
- *Yes Teach! Math & Science* (FSRI Portion: \$268,700)
 - o Funding sponsor: Florida Department of Education
 - o Partner: Florida Independent College Fund
- *Biotechnician Training Curriculum* (FSRI Portion: \$151,600: Also served as the Program Manager for the full \$1.2 million dollar project)
 - o Funding sponsor: Workforce Florida, Inc.
 - o Partners: Florida Community College Jacksonville, Santa Fe Community College, Hillsborough Community College, University of Florida, University of South Florida, Florida Atlantic University, BioFlorida
- *Yes Teach!* (FSRI Postion: \$180,000)
 - o Funding sponsor: Florida Department of Education
 - o Partner: Florida Independent College Fund
- *Hydrogen Familiarization Web-Based Training* (\$75,000)

- o Funding sponsor: Hydrogen Research and Application Center/UCF
- *Aerospace Digital Mentoring Program* (\$35,000)
 - o Funding sponsor: Florida Space Grant Consortium

Industry Contracts

- Numerous winning proposals over several years for government and commercial clients totaling several million dollars. Served as proposal pricing sign-off authority.

Books: Novels (Creative Works)

Prodigal Son (2008)

St. Martin's Press (Thomas Dunne Books / St. Martin's Minotaur / Macmillan)

Head Games (2007)

St. Martin's Press (Thomas Dunne Books / St. Martin's Minotaur / Macmillan)

- o Florida Book Award Gold Medal
- o Best Novel Nomination, Shamus Awards (Private Eye Writers of America)
- o Library Review Starred Review

Murderland (2005)

Hilliard & Harris Publishers (original) / Writer's House (current)

Articles and Book Chapters: Peer Reviewed

19. (*Accepted*) **Cavanagh, Thomas B.** and Kelvin Thompson. "Online Education in the U.S.A." in The SAGE Handbook of Higher Education. Eds. Safary Wa-Mbaleka, Leni Casamiro, Kelvin Thompson. Thousand Oaks, CA: SAGE Publishing.
18. (*Accepted*) Cavanagh, Thomas B. "Leadership Lessons from the Pandemic." in From Grassroots to the Highly Orchestrated: Online Leaders Share Their Stories of the Evolving Online Landscape in Higher Ed. Eds. Bettyjo Bouchee, Erin Gatz, & Shelley Kurland. Online Learning Consortium.
17. Cavanagh, Thomas B. "From Pivot to Pirouette: An Administrative Perspective on the 2020 Migration to Remote Instruction." The Journal of Faculty Development. (September 2020): 34(3), 39-42.
16. Ragan, Lawrence, **Thomas B. Cavanagh**, and Kelvin Thompson. "Supporting Faculty Success in Online Learning." in Leading the e-Learning Transformation of Higher Education, Second Edition. Ed. Gary E. Miller. Sterling, VA: Stylus Publishing (2020): 116-137.
15. **Cavanagh, Thomas B.**, Rachid Ait Maalem Lahcen, Baiyun Chen, and James Paradiso. "Constructing a Design Framework and Pedagogical Approach for Adaptive Learning in Higher Education: A Practitioner's Perspective." The International Review of Research in Open and Distributed Learning. (2020): 21(1), 172-196. <https://doi.org/10.19173/irrodl.v21i1.4557>
14. Thompson, Kelvin, Rohan Jowallah, **Thomas B. Cavanagh**. "Solve the Big Problems: Leading Through Strategic Innovation in Blended Teaching & Learning". Technology Leadership for Innovation in Higher Education. Eds. Yufeng Qian & Guiyou Huang. Hershey, PA: IGI Global Publishing (2019): 26-48.
13. **Cavanagh, Thomas B.** and Luke Dowden. "Effectively Leading Innovation." The Business of Innovating Online: Practical Tips and Advice from Industry Leaders. Ed. Kathryn E. Linder. Sterling, VA: Stylus Publishing. (2019): 69-78.

12. **Cavanagh, Thomas B.** and Kelvin Thompson. "Keeping FIRSST Things First: The Delicate Dance of Leading Online Innovation at Your Institution." What the e-Learning Leader Needs to Know: Leading and Managing e-Learning. Eds. Anthony Pina, Victoria Walker, Bruce Harris. New York, NY. Springer Publishing Company (2017).
11. **Cavanagh, Thomas B.**, Kelvin Thompson, Linda Futch. "Supporting Institutional Hybrid Implementations." New Directions for Teaching and Learning: Hybrid Teaching and Learning. Ed. Kathryn Linder. San Francisco, CA: Jossey-Bass/Wiley. Vol. 149 (2017): 111-119
10. Cavanagh, Thomas B. "The LMS Selection Process: Considerations and Practices." Research bulletin. Louisville, CO: ECAR, July 8, 2014. Available from <http://www.educause.edu/ecar>.
9. Cavanagh, Thomas B. "Knowing What to Do and Doing What You Know: Situated Technological Literacy in Hybrid Space" Journal of Information Fluency. 3.1 (2014): 22-36.
8. Moskal, Patsy and **Thomas B. Cavanagh**. "Scaling Blended Learning Beyond the University" Blended Learning: Research Perspectives, Volume 2. Eds. Charles Graham, Charles Dziuban, Anthony Picciano. New York, NY: Routledge (2013): 34-51.
7. Dziuban, Chuck, Patsy Moskal, **Thomas B. Cavanagh**, Andre Watts. "Analytics That Inform the University." Journal of Asynchronous Learning Networks, 16.3 (2012): 21-38.
6. Cavanagh, Thomas B. "**Leveraging Online University Education to Improve K-12 Science Education: The ScienceMaster Case Study**" Higher Education, Emerging Technologies, and Community Partnerships: Concepts, Models and Applications Eds. Melody Bowdon and Russell G. Carpenter. Hershey, PA: IGI Global Publishing (2011): 221-233. <<http://www.igi-global.com/bookstore/chapter.aspx?titleid=54312>>
5. Dziuban, Chuck, Joel Hartman, **Thomas B. Cavanagh**, Patsy Moskal. "Blended Courses as Drivers of Institutional Transformation." Ed. A. Kitchenham. Blended Learning Across Disciplines: Models for Implementation, Hershey, PA: IGI Global (2011): 17-37. <<http://www.igi-global.com/bookstore/chapter.aspx?titleid=52540>>
4. Cavanagh, Thomas B. "Prosthetic Gods: The Posthuman Threat of Self-Service Technology" *Misuse and Abuse of Interactive Technologies*, Special Issue of Interaction Studies: Social Behaviour and Communication in Biological and Artificial Systems 9.3 (2008): 458-480. <http://www.benjamins.com/cgi-bin/t_bookview.cgi?bookid=IS%209%3A3>
3. Cavanagh, Thomas B. "The Work of Art in the Age of Mechanical Production" International Journal of Technology and Human Interaction 4.3 (July-Sept. 2008): 27-42. <<http://www.igi-pub.com/articles/details.asp?ID=8210>>
2. Cavanagh, Thomas B. "Bridging the Academic Divide: A Collaborative Production Model for Learning Objects in Workforce Development" in Learning Objects for Instruction: Design and Evaluation. Ed. Pamela Northrup. Hershey, PA: Idea Group Publishing (2007): 213-230. <<http://www.igi-global.com/books/details.asp?id=6845>>
1. **Cavanagh, Thomas B.**, Sabrina Dickinson, and Suzanne Brandt "Cooperation, Performance, and Technology: A Case Study" Journal of Interactive Instruction Development 11.3 (Winter 1999): 19-28. <<http://www.salt.org/jiitdoc.asp>>

Conference Papers: Peer Reviewed

8. Moskal, Patsy, **Thomas Cavanagh**, Morgan Wang, and Jianbin Zhu. "Precision-based predictive analytics." Companion proceedings of 10th international conference on learning analytics & knowledge (LAK20), Frankfurt, GA (and hybrid virtual during COVID-19 pandemic) (2020).
7. Cavanagh, Thomas. "Developing a New Instrument to Determine Prior Online Teaching Competence." Proceedings of the 26th Annual Conference on Distance Teaching and Learning. Madison, WI (2010).
6. Barger, Marilyn, **Thomas Cavanagh**, Linda Austin, Richard Gilbert, Linda Nichols, and Ed Goolsby. "The Florida Biotechnology Curriculum Consortium." Proceedings of the American Society of Engineering Education Annual Conference & Exposition, Portland, OR (2005).
5. Cavanagh, Thomas B. "Eliminating Traditional Training: The New Era of Human Performance Technology." Proceedings of the Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (2004).
4. Tanner, Scott A., Ronald W. Tarr, and **Thomas Cavanagh** "SCOs Revisited: Proposing New Categories of Sharable Content Objects to Enhance the Reuse and Sharing of Content Among The Training Community" Proceedings of the Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL, (2003)
3. **Cavanagh, Thomas B.** and David Metcalf. "An Advanced Learning Environment for the Aerospace Industry." Proceedings of the Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (2002).
2. Cavanagh, Thomas B. "Propulsion Education Within the Florida Space Research Institute's Advanced Learning Environment." Proceedings of the American Institute of Aeronautics and Astronautics (AIAA) Joint Propulsion Conference, Indianapolis, IN (2002)
1. **Cavanagh, Thomas B.**, Sabrina Dickinson, and Suzanne Brandt "Cooperation, Performance, and Technology: A Case Study." Proceedings of the Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (1998)

Scholarly Articles and Book Chapters: Editorial Review

15. Cavanagh, Thomas B. "Blend, Don't Break: The UCF BlendFlex Model." UCF Faculty Focus. (Fall 2020).
14. Cavanagh, Thomas B. "From Conscript to Volunteer: Moving Faculty Online Beyond COVID-19." Times Higher Education. <https://www.timeshighereducation.com/features/practical-guide-digital-teaching-and-learning> (August 20, 2020).
13. Cavanagh, Thomas B. "The Importance of Intentional Online Program Design." The EvoLLLution. https://evollution.com/programming/program_planning/the-importance-of-intentional-online-program-design/ (July 27, 2020).
12. Cavanagh, Thomas B. "Online Learning: The New Strategic Imperative." The EvoLLLution. http://evollution.com/revenue-streams/distance_online_learning/online-learning-the-new-strategic-imperative/ (January 20, 2017).
11. Bastedo, Kathleen and **Thomas B. Cavanagh**. "Personalized Learning as a Team Sport: What IT Leaders Need to Know." EDUCAUSE Review. <http://er.educause.edu/articles/2016/4/personalized-learning-as-a-team-sport-what-it-professionals-need-to-know> (April 19, 2016).

10. Cavanagh, Thomas B. "How to Differentiate in the Competitive Online Learning Environment." The EvoLLLution (written interview). <<https://evollution.com/opinions/differentiate-competitive-online-learning-environment/>> (February 20, 2015).
9. Cavanagh, Thomas B. "The Postmodality Era: How 'Online Learning' is Becoming 'Learning'." in The Game Changers: Education and Information Technology. Ed. Diana Oblinger. EDUCAUSE (2012): 215-228.
 - Reprinted in the *ECEDHA Source* (Electrical and Computer Engineering Department Heads Association): Spring 2013
 - Reprinted in Science, technology, and society: a microcosm of technological trends. Custom Book for SUNY Stony Brook. Pearson Learning Solutions, Boston, MA (2013).
8. Cavanagh, Thomas B. "The Blended Learning Toolkit: Improving Student Performance and Retention." EDUCAUSE Quarterly, (December 2011) 34(4), <<http://www.educause.edu/EDUCAUSE+Quarterly/EDUCAUSEQuarterlyMagazineVolum/TheBlendedLearningToolkitImpro/242790>>.
7. Cavanagh, Thomas B. "Keep the Pages Turning." in Now Write! Mysteries: Suspense, Crime and Thriller Fiction Exercises From Today's Best Writers and Teachers. Eds. Sherry Ellis and Laurie Lamson. New York: Tarcher/Penguin. (December, 2011) <<http://nowwrite.net/mysteries/>>
6. Cavanagh, Thomas B. "Participant Portrait: The Realtime Forum Fan" in Writing and the Digital Generation: Essays on New Media Rhetoric. Ed. Heather Urbanski. Jefferson, NC: McFarland (2010): 86-89. <<http://www.mcfarlandpub.com/book-2.php?id=978-0-7864-3720-7>>.
5. Cavanagh, Thomas B. "Ode to Balloon Help" UPA Voice. (Usability Professionals Association) (August 2004) <http://www.upassoc.org/upa_publications/upa_voice/volumes/2004/August/balloon_help.html>.
4. Cavanagh, Thomas B. "The New Spectrum of Support: Reclassifying Human Performance Technology." Performance Improvement Journal. 43.4 (April 2004): 28-32. <<http://www3.interscience.wiley.com/journal/114114706/issue>>.
3. **Cavanagh, Thomas B.** and Tom Baird. "Online Professional Development for Educators" FETConnections. (Florida Educational Technology Corporation) (Winter 2004): 9-10.
2. **Cavanagh, Thomas B.** and David Metcalf. "Future ALE Programs" Learning Circuits. (American Society for Training and Development) (February 2004) <<http://www.learningcircuits.org/2004/feb2004/ALE2.htm>>.
1. **Cavanagh, Thomas B.** and David Metcalf. "Advanced Learning Environment for the Aerospace Industry" Learning Circuits. (American Society for Training and Development) (February 2004) <<http://www.learningcircuits.org/2004/feb2004/metcalf.htm>>.

Articles: Professional / Practitioner / Editor-Reviewed

- Cavanagh, Thomas B. "A Plurality for Productivity." WCET Guest Blog contribution as part of The Need for Greater Productivity through Online Learning, Further Thoughts. (January 28, 2014) <<http://wcetblog.wordpress.com/2014/01/28/the-need-for-greater-productivity-through-online-learning-further-thoughts/>>
- Cavanagh, Thomas B.** and Chuck Dziuban. "MOOC Fatigue or How We Learned to Stop Worrying and Embrace the MOOC" Guest Blog for the Sloan Consortium E-learning Landscape (September 4, 2013) <<http://blog.sloanconsortium.org/2013/09/04/mooc-fatigue-or-how-we-learned-to-stop-worrying-and-embrace-the-mooc/>>

Cavanagh, Thomas B. UCF Today Forum. Invited column contributor. Reprinted in the Huffington Post and numerous other outlets. (2013-2014).

- “Email is for Old People—LOL” (August 28, 2013)
- “Unfortunately, 'A Little Birdie Told Me...' Seems to be Trend of Online 'Journalists'” (October 30, 2013)
- “Even if not Flashy, Any Work That Benefits Humanity has Value” (January 1, 2014)
- “Is Today’s Young Music Too Obscene (Or has my Perspective Changed)?” (March 5, 2014)
- “Orlando, We’re No More Weird Than Anywhere Else” (May 7, 2014)
- “The Echo Chamber is Getting Louder” (July 9, 2014)

Cavanagh, Thomas B. “Rodents, Roller Coasters, and Revenge” Mystery Readers Journal. (Winter 2012-2013): 12-13.

Cavanagh, Thomas B. “Analytics that Inform the University.” EDUCAUSE Guest Blog post. (April 4, 2012)
<<http://www.educause.edu/blog/mdiaz/AnalyticsthatInformtheUniversi/249634>>

Cavanagh, Thomas B. “What is the future of online education in the aviation industry?” LIFT Embry-Riddle Aeronautical University Alumni Magazine topic Roundtable. (Fall 2007): 5

Cavanagh, Thomas B. “Murder at 30,000 Feet” Futures Mysterious Anthology Magazine. (Oct/Nov/Dec 2003) – Fiction short story.

Conference Presentations (*peer-review used for program selection):

(scheduled) Faculty as Change Agents in Meeting Student Needs. 2023 Spring Innovation Series. Invited Keynote for all of the Louisiana State University System. Baton Rouge, LA. (March 27, 2023)

Best of Both Worlds: Instructional Use of Video. 1EdTech Learning Impact Conference. Panel participant with Kelly Hoyland and Renee Pfeiffer-Luckett. Nashville, TN. (June 14, 2022).

Lessons Learned from an LMS Advising Dashboard Pilot. 1EdTech Learning Impact Conference. Co-authors: Patsy Moskal and Kerlene King. Nashville, TN. (June 14, 2022).

The Central Role of PCE in Driving Institutional Online Strategies. UPCEA Annual Meeting. Panel moderator. Orlando, FL. (April 13, 2022).

From Reactive to Strategic: Planning for a Blended Future. Online Webinar Panel from the Online Learning Consortium. Panel Participant with Tanya Joosten. Virtual (April 21, 2022).

**Closing the Opportunity Gap: Working Adult Learners*. SXSW EDU. Panel Participant with Geoff Watson, Geleana Alston, and Craig Wilson. Austin, TX (March 7, 2022).

**Repairing Our Reputation Post-Covid*. IMS Global Learning Impact conference. Panel moderator with Shawna Dark and Yakut Gazi. Virtual (Oct. 4, 2021).

**Repairing Our Reputation Post-Covid: A Conversation*. OLC Accelerate conference. Panel moderator with Jennifer Mathes, Ray Schroeder, Van Davis, and Bethany Simunich. Virtual (Sept. 21, 2021).

Digital Learning and the Transformation of the Academic Enterprise. Keynote presentation for the University of Louisiana Board of Regents eLearning Speaker Series. Virtual. (April 14, 2021).

When Strategy and Reality Collide. University and Professional Continuing Education Association (UPCEA) Annual Conference. Panel Participant with Susan Elkins and Beth Rubin. Moderated by Kim Siegenthaler. Virtual (April 7, 2021).

Education in the Digital Age. U.S. Department of State International Visitor Leadership Program in partnership with World Orlando. Featured presentation to two dozen international education leaders. Virtual (March 19, 2021).

Academics and Technology: Blurring the Lines. IMS Global Quarterly Meeting. Panel participant, along with Shawna Dark, George Railey, Jr., Vernon Smith. Virtual (February 4, 2021).

**Leadership Reflections on the Pandemic Pivot*. UPCEA SOLA+R conference. Panel moderator. Panelists: Mary Niemiec, Jill Buban, Tonya Amankwatia, Adam Fein. Virtual. (February 2, 2021).

**Leading the ELearning Transformation of Higher Education: Leadership Strategies for the Next Generation – A Roundtable Discussion with the Authors*. Online Learning Consortium Accelerate 2020. Panel participant. Virtual. (November 17, 2020).

**Leadership Lessons from the Pandemic*. Online Learning Consortium Leadership Event – Accelerate 2020. Plenary presentation. Virtual. (November 12, 2020).

**Digital Transformation Starts Here*. EDUCAUSE Annual Conference. Panel participant. Virtual. (October 29, 2020).

HyFlex and Remote Delivery Options for Fall. WCET national webcast. Panel participant. (September 1, 2020).

The BlendFlex Model: How Does That Work? REMOTE: the Connected Faculty Summit. Virtual event hosted by Arizona State University. Session had over 2,300 attendees. (July 13, 2020).

Presentations impacted/deferred by COVID-19 Pandemic:

- Accepted poster presentation for Learning Analytics LAK20 Conference: Frankfurt, Germany (March 2020)*
- Invited plenary panelist and presenter for annual Louisiana State University online learning summit: Baton Rouge, LA (April 2020)
- Invited keynote speaker for annual University of Louisiana system online learning summit: Baton Rouge, LA (April 2020)
- Invited “TED Talk” speaker at the IMS Global Learning Impact Leadership Institute: Denver, CO (May 2020)

Digital Learning, Faculty Development, and Academic Transformation. 4th Annual Topkit Annual Workshop. Keynote address. Orlando, FL. (March 4, 2020).

Online Leadership Roundtable Convening: Innovation in Higher Education. UPCEA SOLA+R Conference. Co-facilitator of half-day pre-conference workshop. New Orleans, LA. (February 4, 2020).

**The Good, the Bad, and the Ugly: Is an External Partnership Right for Your Institution?* Online Learning Consortium Accelerate Conference. Panel participant. Orlando, FL (November 21, 2019).

**Effectively Leading Innovation: Advice from Experienced Industry Leaders*. Online Learning Consortium Accelerate Conference. Panel participant. Orlando, FL (November 21, 2019).

- *Building Adaptive Coursework at Scale: Fostering Student Success through an Open Faculty Development Framework.* Online Learning Consortium Accelerate Conference. Panel participant. Orlando, FL (November 20, 2019).
- Measuring Impact in Online Learning.* Online Learning Consortium Accelerate Conference Leadership Summit. Co-presented with Patsy Moskal. Orlando, FL (November 20, 2019).
- Effectively Leading Innovation: Advice from Experienced Industry Leaders.* WCET Annual Meeting. Panel participant. Denver, CO (November 6, 2019).
- What are Faculty Needs During and After Major Campus Disruptions?* Panel moderator with faculty representatives from UF, FSU, and UCF. State University System of Florida Academic Continuity and Campus Resiliency Summit. Gainesville, FL. (July 12, 2019).
- Digital Learning and the Transformation of the Academic Enterprise: Breaking the Iron Triangle.* Invited opening keynote for the 17th Annual University of Colorado CU Online Symposium. Denver, CO. (May 16, 2019).
- Digital Learning as a Lever for Transformation.* RTM CIO Congress. San Diego, CA. (April 7, 2019).
- Florida Online Leadership Panel.* Florida Online Innovation Summit. Panel Moderator. Orlando, FL. (March 7, 2019).
- Digital Learning That Enables Academic Innovation.* The Teaching Online Preparation Toolkit (TOPkit) Annual Workshop. Plenary Keynote. Orlando, FL (March 5, 2017).
- *Pulling the Plug on Lecture Capture: Combining Blended, Adaptive, and Active Learning for Student Success.* Online Learning Consortium Accelerate Conference. Orlando, FL. (November 15, 2018).
- *TOPcast Live recording and discussion.* Online Learning Consortium Accelerate Conference. Co-presenter: Kelvin Thompson. Orlando, FL. (November 14, 2018).
- *Adapting to Scale: A Multifaceted Partnership Model.* Online Learning Consortium Accelerate Conference. Panel participant. Orlando, FL. (November 14, 2018).
- *Digital Learning Initiative: Partnering with Faculty to Redesign 100 Courses in 3 Years.* Online Learning Consortium Accelerate Conference. Orlando, FL. (November 14, 2018).
- *Blowing Up Lecture Capture: Combining Blended, Adaptive, and Active Learning.* Poster session. EDUCAUSE Annual Conference. Denver, CO. (October 31, 2018).
- Stump the Higher Ed Expert.* WCET Annual Meeting. Panel presentation. Invited plenary panel. Portland, OR. (October 25, 2018).
- Digital Learning That Enables Academic Innovation.* University Leadership Summit. Invited plenary presentation. Palm Beach, FL. (October 12, 2018).
- Moving Towards a Campus Climate of Universal Access for All.* WCET Leadership Summit: Ensuring Ethical and Equitable Access in Digital Learning. Panel moderator. Long Beach, CA (June 5, 2018).
- Is That a Check Engine Light? The UCF Student Performance Dashboard.* National Student Success Conference: Innovators and Innovations. Tampa, FL (February 22, 2018).

- Digital Standards as Agents for Academic Transformation.* EDUCAUSE Learning Initiative Leading Academic Transformation (LAT) Community Meeting. Co-presenter: Jenn Stringer. Online webinar. (January 23, 2018).
- **Launching a New Virtual Campus When One Already Exists: Strategy, Marketing, and Scale.* Online Learning Consortium Accelerate Conference 2017. Co-presenter: Courtney Borton. Orlando, FL (November 15, 2017).
- **Implementing Adaptive Learning: Multiple Perspectives from Practitioners, Leadership and Researchers.* Online Learning Consortium Accelerate Conference 2017. Panel participant. Orlando, FL (November 15, 2017). Best-in-strand selection.
- **Can IT Rise to the Challenge of Enabling a Higher Standard of Digital Learning?* EDUCAUSE Annual Conference. Panel participant. Philadelphia, PA (November 3, 2017).
- **Leading Transformation in the Academy: the FIRRST Framework in Practice.* EDUCAUSE Annual Conference. Co-presenter: Kelvin Thompson. Philadelphia, PA (November 2, 2017).
- **Not All Digital Curriculum is Created Equal: Can You Tell the Difference?* Campus Technology Annual Conference. Panel participant. Chicago, IL (July 18, 2017).
- **Not All Digital Curriculum is Created Equal: Can You Tell the Difference?* IMS Global Learning Impact Leadership Institute. Panel participant. Denver, CO (May 18, 2017).
- **Unbinding Prometheus: Easing Repetitive LTI App Vetting Through Collaboration.* IMS Global Learning Impact Leadership Institute. Panel participant. Denver, CO (May 18, 2017).
- **Keeping On Course: The UCF Online Student Performance Dashboard.* IMS Global Learning Impact Leadership Institute. Denver, CO (May 17, 2017).
- **Innovation and Integration: LTIs for Platform Customization.* Unizin Innovation Summit. Denver, CO (Apr 20, 2017).
- **Staying On Track: The UCF Online Student Performance Dashboard.* Online Learning Consortium Innovate Conference 2017. Research Highlights Mini Session. New Orleans, LA. (April 6, 2017).
- **The FIRRST Framework for Leading Innovations with Vision, Relevance, and Impact.* Online Learning Consortium Innovate Conference 2017. Co-presenter: Kelvin Thompson. New Orleans, LA. (April 5, 2017).
- **Communities of Practice at Work: Collaborating Across Institutions.* Educause Learning Initiative Annual Conference. Panel participant. Houston, TX (February 15, 2017).
- **Making Course Status Visible: The UCF Student Performance Dashboard.* Educause Learning Initiative Annual Conference. Presentation Pair on Analytics. Houston, TX (February 14, 2017).
- **Leading Academic Transformation Community Roundtable with Satya Nitta.* Educause Learning Initiative Annual Conference. Co-facilitator with Kyle Johnson of a conversation with keynote speaker. Houston, TX (February 13, 2017).
- **Podcasters Panel: "Long Tail" Professional Development for Online Education Professionals.* Online Learning Consortium Accelerate International Conference. Panel participant. Orlando, FL (November 18, 2016).
- **So...How am I Doing? The UCF Online Student Performance Dashboard.* Online Learning Consortium Accelerate International Conference. Co-presenter: Shea Silverman. Orlando, FL (November 18, 2016).

Analytics and Adaptive Learning. IMS Analytics Summit. Panel participant. Scottsdale, AZ. (November 8, 2016).

**Bringing Adaptive Technology in the Classroom to Larger Scale Through Academic Collaboration.* Panel participant. EDUCAUSE Annual Conference. Anaheim, CA (October 27, 2016).

**Leading in Online Learning: Insider Tips on Sustaining Success.* WCET Annual Meeting. Minneapolis, MN (October 13, 2016).

**Adaptive Learning in Higher Education: A Progress Report.* WCET Annual Meeting. Minneapolis, MN (October 13, 2016).

**Levers, Dials, and Switches: The UCF Online Student Performance Dashboard.* WCET Annual Meeting. Minneapolis, MN (October 12, 2016).

Institutional Panel on Adaptive Learning. NUTN Network 2016. Panel moderator with Connie Johnson, Patsy Moskal, Nick White. Clearwater, FL (September 29, 2016).

Adaptive Learning Research at UCF Powered by Realizeit: Tech Talk. NUTN Network 2016. Clearwater, FL (September 28, 2016).

New Models for Higher Education. Plenary presentation at the FNESP National Higher Education Forum sponsored by the Sindicato das Mantenedoras de Ensino Superior (SEMESP). Sao Paulo, Brazil (September 22, 2016).

Describing the Elephant: Personalizing the Student Experience. Pennsylvania State System of Higher Education Distance Education Conference. Virtual/Webinar (February 19, 2016).

**The Elephant and the Student: Personalizing Higher Education.* WCET Annual Conference. Denver, CO (November 12, 2015).

**Adaptive Learning: What is it? Who does it work for? How do I get started?* Panel moderator. WCET Annual Conference. Denver, CO (November 12, 2015).

**Hallmarks of Excellence in Online Education.* EDUCAUSE Annual Conference. Panelist with Ray Schroeder and Vickie Cook. Moderated by Malcolm Brown. Indianapolis, IN (October 27-30, 2015).

**The Challenges of Adaptive Content: The Perspective of Two Universities.* EDUCAUSE Annual Conference. Co-presenters: Frank Claffey, David Demers, Amanda Buckley. Indianapolis, IN (October 27-30, 2015).

**OLC Real World Implementations of Adaptive Learning.* 21st Annual Online Learning Consortium International Conference. Co-presenter: Nick White. Orlando, FL. (October 16, 2015).

**Shaping the Future of Online Learning: Issues and Emerging Technologies to Watch.* 21st Annual Online Learning Consortium International Conference. Orlando, FL. Plenary Panel with Marie Cini, Gerard Hanley, Tanya Joosten, and moderated by Patsy Moskal. Orlando, FL. (October 16, 2015).

**TOPcast Live! 21st Annual Online Learning Consortium International Conference.* Co-presenter: Kelvin Thompson. Orlando, FL. (October 15, 2015).

**Describing the Elephant: Personalizing the Student Experience.* 21st Annual Online Learning Consortium International Conference. Orlando, FL. (October 15, 2015).

- *Adaptive Learning: Leveraging New Technologies Strategically.* Pre-conference Workshop Co-presenters: Karen Vignare, Nick White. 21st Annual Online Learning Consortium International Conference. Orlando, FL. (October 14, 2015).
- Making Learning Personal: Technology at the Service of Today's Student.* Florida Association of Educational Data Systems (FAEDS) annual conference. Daytona Beach, FL. (September 21, 2015)
- Elephants, Technology, and You: Making Learning Personal.* EDUCAUSE Learning Initiative (ELI) national webinar. (July 6, 2015).
- Money Matters: Using Canvas for Federal Financial Aid.* InstructureCon 2015. Co-presenter: Brent Shaw. Park City, UT (June 17, 2015).
- Making Learning Personal: Elephants, Technology, and You.* EduTech 2015 Conference. Invited opening keynote. Pasco-Hernando State College. New Port Richey, FL (May 7, 2015)
- Personalizing the Student Experience Journey for the Next Generation of Online Learners.* New Directions in Online Learning. Invited plenary presentation. Philadelphia, PA. (April 14-15, 2015).
- Issues and Trends in Edtech 2015.* WCET national webinar. Invited panelist along with Mike Abbiatti, Tanya Joosten, and Jeff Borden. (January 8, 2015).
- *The BlendKit MOOC: A Partnership Case Study.* WCET Annual Meeting. Portland, OR (November 20, 2014).
- *Adaptive Learning: Learning Theory and Real Applications.* 20th Annual Online Learning Consortium International Conference. Panel participant. Orlando, FL (October 30, 2014).
- *Breaking the LMS Barrier: Using LTI to Extend Platform Capabilities.* 20th Annual Online Learning Consortium International Conference. Orlando, FL (October 30, 2014).
- *The Making of a MOOC: The 2014 BlendKit Case Study.* 20th Annual Online Learning Consortium International Conference. Panel Moderator. Orlando, FL (October 29, 2014).
- *Leveraging LTI Integrations for Fun and Learning.* EDUCAUSE Annual Meeting 2014. Co-presenter: Shea Silverman. Orlando, FL (September 30, 2014).
- Blended Learning Strikes Back: The Return of the BlendKit MOOC.* Fostering Student Success—American Association of State Colleges and Universities (AASCU) Academic Affairs Summer Meeting. Ft. Lauderdale, FL (Aug 1, 2014).
- My Canvas is Better Than Your Canvas: Leveraging LTI for Strategic Customization.* InstructureCon 2014. Co-presenter: Shea Silverman. Park City, UT (June 18, 2014).
- *How to Survive a Breakup With Your LMS* UB Tech Conference. Invited panelist for featured session. Co-presenter: Justin Kraky. Las Vegas, NV (June 16, 2014).
- Assessing an Instructor's Prior Online Experience.* ELI Spring Focus Session. Faculty Engagement and Development: Effective and Innovative Practice. National Online Webinar. (April 1, 2014).
- *Online Library Tools in the LMS: It's All About Context.* Information Fluency Conference. Co-presenters: Shea Silverman and Athena Hoepfner. Orlando, FL (February 26, 2014).
- *Pulling Off the Band-Aid Quickly: An LMS Case Study.* EDUCAUSE Learning Initiative Annual Conference. Virtual Conference Track. New Orleans, LA. (February 4, 2014).

- *There's No Place Like Home: Enhancing Educational Access by Discovering and Leveraging Existing Online Learning Data* Nineteenth Sloan-C International Conference on Online Learning "Online Learning: A Universe of Opportunities." Orlando, FL (November 21, 2013).
- *An Initial Foray Into the MOOC-isphere: The Good, Bad and Ugly* Nineteenth Sloan-C International Conference on Online Learning "Online Learning: A Universe of Opportunities." Panel moderator. Orlando, FL (Nov 20, 2013).
- Blended Programs: Choice and Access.* Innovator Spotlight Virtual Conference. League for Innovation in the Community College. (September 25, 2013).
- *Scaling Blended Learning Evaluation Beyond the University* 10th Annual Sloan-C Blended Learning Conference & Workshop. Presented on-site by co-author Patsy Moskal. (July 9, 2013).
- Knights Online: Navigating the New Digital Learning Environment.* UCF Faculty Center for Teaching and Learning Summer Conference. Co-presenters: Beth Nettles and Linda Futch. Orlando, FL (May 7, 2013).
- *Trends in Distance Education.* Invited keynote at ECEDHA Annual Conference Pre-Conference Workshop. Electrical and Computer Engineering Department Heads Association. Orlando, FL (March 22, 2013).
- *Enabling Technologies.* Invited panel participant. ECEDHA Annual Conference Pre-Conference Workshop. Electrical and Computer Engineering Department Heads Association. Orlando, FL (March 22, 2013).
- *Knights Online: Navigating the New Digital Learning Environment.* 2nd Annual Information Fluency Conference. Orlando, FL (March 13, 2013).
- A Practical Approach to Blended Learning: Definitions, Concepts, and Resources.* Magna Publishing, nationally broadcast webinar. (March 12, 2013).
- *Issues and Challenges in Online and Distance Learning.* Invited Plenary Talk at the 2013 American Association of Colleges of Nursing Master's of Education Conference. Orlando, FL (February 21, 2013)
- *The Postmodality Era: How "Online Learning" is Becoming "Learning".* EDUCAUSE Learning Initiative Annual Conference. Denver, CO (February 4, 2013).
- *The Postmodality World: Distance Learning Without the Distance.* SACSCOC Annual Conference. Dallas, TX (December 8-11, 2012).
- *Supporting Course Transformation at Scale.* EDUCAUSE Annual Conference. Panel participant. Denver, CO (November 7, 2012).
- UCF Stands for Opportunity.* China Annual Conference and Expo for International Education. Beijing, China (October 21, 2012).
- Blended Learning: The Best of Both Worlds.* Invited presentation at the Symposium on International Student Mobility. Sponsored by the China Educational Association for International Exchange. Beijing, China (October 20, 2012).
- *And the Winner Is... A Behind-the-Scenes View of the Making of a New Online Teaching Award.* Eighteenth Sloan-C International Conference on Online Learning "At A Crossroads: Online Education in a Complex World." Co-presenters: Alisha Janowsky and Amanda Groff. Orlando, FL (October 11, 2012).
- *"Localness" in a Postmodality Landscape: Understanding Today's Educational Access.* Poster Session at the Eighteenth Sloan-C International Conference on Online Learning "At A Crossroads: Online Education in a Complex World" Orlando, FL (October 11, 2012).

**How to choose an LMS in 90 Days.* Eighteenth Sloan-C International Conference on Online Learning “At A Crossroads: Online Education in a Complex World.” Panel participant. Moderator: Wendy Howard. Orlando, FL (October 10, 2012).

Scaling Blended Learning. Innovator Spotlight Virtual Conference. League for Innovation in the Community College. (September 19, 2012).

The Perfect Blend: Scaling Blended Learning to Impact Low Income Learners Nationwide. Blackboard World 2012. New Orleans, LA (July 12, 2012).

**Tipping the Scales: Extending Blended Learning Across 20 Institutions.* Sloan-C Blended Learning Conference: Perfecting the Blend. Milwaukee, WI. (April 24, 2012). *Best in track award*

**Private Investment, Technology, and American Education.* Invited panelist for opening conference plenary session at the Sloan-C Blended Learning Conference: Perfecting the Blend. Milwaukee, WI. (April 24, 2012).

The UCF/AASCU NGLC Project: Blended Learning at Scale. iNACOL (International Association for K-12 Online Learning) Leadership Webinar Series (April 11, 2012) .

Analytics That Inform the University. ELI Spring Focus Session Webinar. Co-presenter: Chuck Dziuban. (April 11, 2012).

Reinventing Award-Winning Faculty Development for Next Generation Blended Learning, Pennsylvania State System of Higher Education Distance Education Conference. Co-presenter: Linda Futch. Virtual/Webinar (February 24, 2012).

**Evaluating Next Generation Learning Challenges: Blended Learning in a Scaled-Up Environment,* EDUCAUSE Learning Initiative (ELI) Conference. Co-presenters: Patsy Moskal and Chuck Dziuban. Austin, TX (February 14, 2012).

Another Cup of the House Blend: Hybrid Learning Strategies and Methods. Invited presentation at the American Association of State Colleges and Universities (AASCU) Academic Affairs Meeting: Tools and Strategies for Institutional Transformation. San Antonio, TX (February 11, 2012).

**How to Proceed With Confidence: An Online Early Warning System for Distance Learning Compliance,* SACSCOC Annual Conference, co-presenter: Andre Watts. Orlando, FL (December 5, 2011).

**Sloan-C Effective Practice Award Winners,* Invited panelist for a featured session at the Seventeenth Sloan-C International Conference on Online Learning, “Online Learning, Teaching, and Research in the New Media Ecology,” Panelist. Orlando, FL (November 11, 2011).

**The Next Generation Learning Challenge and Online Learning: A Report on Selected Projects,* Invited panelist for a featured session at the Seventeenth Sloan-C International Conference on Online Learning, “Online Learning, Teaching, and Research in the New Media Ecology,” Panelist. Orlando, FL (November 9, 2011).

**Tales from the Winner’s Circle: Award-winning Online Faculty Discuss the Secrets of Their Success,* Seventeenth Sloan-C International Conference on Online Learning, “Online Learning, Teaching, and Research in the New Media Ecology,” Panel moderator. Orlando, FL (November 9, 2011).

Adjusting Your Alignment: Connecting the Distance Learning Initiative to the Institutional Mission, Invited keynote for the 2011 Distance Learning Conference at Columbus State University (GA) (September 30, 2011). <http://online.columbusstate.edu/dlconference/keynote.php>

- *Social Media in Education*, invited panelist during luncheon program at the 2011 Florida Distance Learning Association Conference. Orlando, FL (September 24, 2011).
- *Mix, Whip, and Puree: Blended Learning Definitions, Trends, and Implications*, Spotlight session at the 2011 Florida Distance Learning Association Conference. Orlando, FL (September 23, 2011).
- Assessing Prior Online Teaching Experience & Competency*, Magna Publishing nationally broadcast webinar. Madison, WI (September 14, 2011).
- The House Blend: Hybrid Learning Strategies and Methods*. Invited presentation at the American Association of State Colleges and Universities (AASCU) Academic Affairs Meeting: Course Re-Design: The Key to Institutional Transformation. Portland, OR (July 28-30, 2011).
- Blended Learning at the University of Central Florida*, international webinar as part of the Next Generation Learning Challenges (NGLC) Summer Learning Series (July 12, 2011).
- Next Generation Learning Challenges: Expanding Blended Learning Through Tools and Campus Programs*, The Leadership Summit 2011: Designing Learning Environments for the 21st Century. AASCU/EDUCAUSE/UCF, Orlando, FL (June 23, 2011).
- *Seeking Evidence of Impact*, EDUCAUSE Southeast Regional Conference 2011. Charlotte, NC (June 2, 2011).
- *Reinventing Award-Winning Faculty Development for Next Generation Blended Learning*, 8th Annual Sloan Consortium Blended Learning Conference and Workshop. Co-presenter: Linda Futch. Oak Brook, IL (March 28, 2011).
- *Into the Light: Using Data Mining to Reveal Online Programs*, EDUCAUSE Learning Initiative (ELI) Conference. Washington, D.C. (February 14/15, 2011).
- *Are You Experienced? Determining Existing Online Teaching Competence in Newly Hired Faculty*, 16th Sloan-C International Conference on Online Learning, “The Power of Online Learning: Stimulating New Opportunities,” Co-presenters: Linda Futch and Nancy Swenson. Orlando, FL (November 4, 2010). *Best in track award*
- Blended Learning: Models and Implementation*, Invited keynote at the Cerbibo User’s Conference: Change, Quality, Equality, Hangzhou, China (October 27, 2010).
- *Developing a new instrument to determine prior online teaching competence*, 26th Annual Conference on Distance Teaching & Learning. Madison, WI (August 4-6, 2010).
- *The Question of Authorship in a Digital World*, Computers and Writing 2010: “Virtual Worlds” @ Purdue. Online Conference presentation (May 11, 2010).
- *Distant Localness: Aligning Blended Learning With Institutional Strategy*, 7th Annual Sloan Consortium Blended Learning Conference & Workshop. Oakbrook, IL (April 19-20, 2010).
- *Scaling Quality for Online Education*, Fifteenth Sloan-C International Conference on Online Learning, “The Power of Online Learning: Opportunities for Tomorrow,” Orlando, FL (October 29, 2009).
- Putting the Mystery in Your Mystery*, Florida Heritage Book Festival, Flagler College, St. Augustine, FL (September 11, 2009).
- Head Games: Finding Your Niche in the Publishing World*, Florida Heritage Book Festival, Flagler College, St. Augustine, FL (September 12, 2009).

**An Industry/Academia Collaboration Model for Online Courses*, New Learning Technologies Conference, Society for Applied Learning Technologies (SALT), Orlando, FL (February 18, 2009).

ENGL 221 Technical Report Writing: Exemplary Course Award Poster Session Blackboard World 2008, Las Vegas, NV (July 15, 2008).

**Closing the gap: a collaborative production model for e-learning in workforce development* Thirteenth Sloan-C International Conference on Online Learning, “The Power of Online Learning: Making a Difference,” Orlando, FL (November 8, 2007).

**Readin’, Writin’, and Rockets: Free Online Professional Development in Aerospace Education for Teachers* National Conference on Aviation and Space Education (NCASE), Arlington, VA / Washington, DC. (October 20, 2006).

Online Education and the “Pepperoni Pizza Model” Multiple Pathways to Learning—Adrian Dominican School of Education 9th Annual Education Conference, Barry University, Miami Shores, FL (February 24 & 25, 2006).

Professional Development in Your Pajamas: The Future of Teacher Training Curriculum, Instruction & Assessment (CIA) Leadership Conference, Daytona Beach, FL (Sponsors: Florida Department of Education, Florida Association of Instructional Supervisors & Administrators, Florida Association of School Administrators). (January 16, 2006).

**Joint Project for Space Science Education* Co-presenter: Dennis Stetter. Kappa Delta Pi 45th Biennial Convocation: “Infinite Possibilities in Education,” Orlando, FL (November 3, 2005).

Find Your Space Online Co-Presenter: Judy Lee. Florida Association for Media in Education (FAME) Conference, Orlando, FL (October 21, 2005).

Get Connected! Online Professional Development for Florida’s Teachers Florida Education Standards Commission Meeting, St. Pete College. St. Petersburg, FL (September 29-30, 2005).

Yes Teach! Science and Math - Your Connection for Online Professional Development Orange County Public Schools 6th Annual Science Preplanning Conference, Orlando, FL (August 3, 2005).

FSEHS (Fischler School of Education and Human Services) - FSRI (Florida Space Research Institute) Collaboration Model Co-presenter: Dennis Stetter. Nova Southeastern University’s 2005 Conference on Global Leadership, Learning, and Research, Orlando, FL (July 14 & 15, 2005).

Yes Teach! Math & Science Education Summit: Tools and Resources for Teacher Preparation and Development Eckerd College, St. Petersburg, FL (July 12, 2005).

**What Business Are You In? Facing the Post-Training Era* American Society for Training & Development (ASTD) International Conference & Exposition, Orlando, FL (June 6, 2005).

**Chromosomal Curriculum: Developing Florida’s Web-based Biotechnology Curriculum* Co-presenters: Linda Austin and Linda Nichols. 16th International Conference on College Teaching and Learning, Jacksonville, FL (April 2, 2005).

Kiosk Culture: Reconciling the Performance Support Paradox in the New Era of Machines University of Central Florida Graduate Research Forum, Orlando, FL (March 22, 2005).

**Biotech Training: Online Learning and Laboratory Performance* Florida Educational Technology Conference (FETC), Orlando, FL (January 28, 2005).

Biotraining: Improving Today's Workforce for Tomorrow's Industry BioFlorida Meeting: "Building Bridges in BioScience Innovations" (BioFlorida & the South Florida Bioscience Consortium), Nova Southeastern University, Ft. Lauderdale, FL (January 25, 2005).

**Eliminating Traditional Training: The New Era of Human Performance Technology* Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (December 9, 2004).

**The Death of Training? Addressing the Performance Support Paradox* TechLearn 2004, New York, NY (November 15, 2004).

**The New Spectrum of Support: Reclassifying Human Performance Technology* International Society for Performance Improvement (ISPI) Instructional Systems Design Conference, Chicago, IL (September 29, 2004).

**Online Aerospace Education: See the Future Today* 37th Annual National Congress on Aviation and Space Education Conference (NCASE), Atlanta, GA (March 26, 2004).

**Yes Teach! Initiative* Florida Educational Technology Conference (FETC), Orlando, FL (January 24, 2004).

**SCOs Revisited: Proposing New Categories of Sharable Content Objects to Enhance the Reuse and Sharing of Content Among The Training Community* Co-presenters: Scott A. Tanner and Ronald W. Tarr. Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (December 4, 2003).

**eLearning for Education: The Florida Teacher Drought* TechLearn 2003, Orlando, FL (November 5, 2003).

**Revitalizing an Industry: The Advanced Learning Environment* Online Learning 2003, Los Angeles, CA (September 24, 2003).

**The Advanced Learning Environment: Online Technology Education* FACTE—Florida Association for Career & Technical Education Conference, Kissimmee, FL (July 9, 2003).

**FSRI's Advanced Learning Environment (ALE): A Success Story for Public-Private Partnerships* Co-presenters: David Metcalf and Diane Alcorn. Learning & Training Week 2003, Washington, DC (April 30, 2003).

**Propulsion Education Within the Florida Space Research Institute's Advanced Learning Environment* American Institute of Aeronautics and Astronautics Joint Propulsion Conference, Indianapolis, IN (July 10, 2002).

**Emerging Delivery Platforms: Wireless E-Learning for Aerospace* Co-presenter: David S. Metcalf. E-Learning for Aerospace 2002, New Orleans, LA (January 18, 2002).

**CPT (Cooperation, Technology, Performance) Case Study: Veteran's Benefit Administration Insurance Division* Co-presenters: Sabrina Dickenson and Suzanne Brandt. Interservice/Industry, Training, Simulation and Education Conference (I/ITSEC), Orlando, FL (December 1, 1998).

Other Invited Keynotes, Presentations, or Panel Discussion Participation:

- Presentation to State University System of Florida Board of Governors. University of North Florida, Jacksonville, FL (March 29, 2022)
- Invited panelist in highly selective [Future of Education in Higher Education Collaborative](#), highlighted by a livestream panel moderated by Anya Kamenetz. Sponsored by Instructure and Amazon Web Services. Park City, UT (August 12, 2021).
- Panel convener/moderator: *Open Educational Resources (OER) and its Impact on the Higher Education Landscape*. UPCEA SOLA+R Conference. New Orleans, LA. (February 5, 2020).

- *Bending the Iron Triangle*. Keynote address to participants in the Institute for Emerging Leaders in Online Learning (IELOL), a premier national professional development program from the Online Learning Consortium. Orlando, FL (August 5, 2019).
- Opening keynote for multi-day HBCU convening on digital learning as part of the Frontier Set, funded by the Bill and Melinda Gates Foundation. *Digital Learning and the Transformation of the Academic Enterprise*. Orlando, FL. (April 11, 2019).
- Served as a digital learning strategy consultant for University of Maryland Baltimore County (UMBC), Catonsville, MD. (August 1-2, 2018).
- Keynote talk for the 2nd annual TOPkit workshop (Teaching Online Preparation Toolkit). *Faculty Development: The Secret Ingredient for Success*. Orlando, FL (March 14, 2018).
- Plenary presentation and panel during the Digital Learning Symposium, discussing results of digital learning case studies on six institutions (including UCF) conducted by the Boston Consulting Group and funded by the Arizona State University Foundation with a grant by the Bill and Melinda Gates Foundation. Scottsdale, AZ (April 3-4, 2017).
- Facilitator and participant for Personalized Learning Summit at the University of Florida, Gainesville, FL (February 16-17, 2017)
- Presidential Blue Ribbon Panel on Online Learning for the University of North Texas (UNT), Denton, TX (February 6-7, 2017)
- Serve as a panel participant as part of the Leadership Empowerment Program (LEP) at UCF for women and underrepresented groups (2015, 2017)
- *Analytics, Big Data, and Student Success*. AASCU Innovation Summit: The Challenge of Change. Co-presenter: Joel Hartman. Orlando, FL (June 24, 2016).
- *Describing the Elephant: Personalizing the Student Experience*. Plenary presentation, part of a regional Gartner Group convening of CIOs and other educational technology professionals. Orlando, FL (March 30, 2016)
- Invited panel participant for *Defying Gravity With Data: Using Canvas Data With Partner Analytics Providers*. Information session with Instructure and Civitas during 2015 Instructurecon (June 18, 2015).
- *Blended Learning Research, Strategy and Practice*. Invited presentation to faculty, staff and administration of Brigham Young University, Provo, UT. (June 14, 2015).
- Co-presented with Brent Shaw a session on UCF's use of the learning management system (LMS) to record academic engagement for financial air reporting. 2015 CanvasCon, Gainesville, FL (April 7, 2015).
- Sponsored attendee to the inaugural *Leading Academic Change* summit hosted by the University System of Maryland Center for Academic Innovation and the Bill and Melinda Gates Foundation. Adelphi, MD (December 2-3, 2014)
- Multiple presentations to Florida State University System Board of Governors Innovation and Online Committee, including one on UCF's selection as the lead institution for online faculty development for the state (September 18, 2014)
- Invited opening keynote and follow-up sessions for faculty conference at St. Mary's University, San Antonio, TX. Topics included: Emerging Trends in Online and Blended Learning, Blended Learning: Definitions and Practices, Faculty Development for Online Success. (May 12-May 13, 2014).
- Invited opening keynote at St. Pete College forum to address distance learning reengineering committees as part of a college-wide initiative. St. Petersburg, FL. (January 31, 2014)
- Invited to serve as one of several group facilitators as part of an online learning leader discussion to explore requirements for Next Generation Digital Learning Environments (NGDLE) at the EDUCAUSE Annual Conference (September 29, 2014)
- Invited moderator for *A Review of the Data on Online Education Students* panel at the 2013 WCET Annual Conference. (November 14, 2013)

- Invited panelist for opening plenary. *Challenges and Opportunities in the Field of K-20 Distance Learning*. Florida Distance Learning Association Annual Conference, In the Cloud and Beyond: Building Community and Expanding Distance Education. (September 11, 2013)
- EDUCAUSE podcast interview (recorded Nov. 2012; posted July 5, 2013)
- Presentation to Florida State University System Board of Governors. *Online Learning: What Do We Really Need to Know?* Co-presenter: Joel Hartman. Gainesville, FL. (January 16, 2013)
- *Preparing University Faculty to Teach Online: Success Strategies from UCF*. Presentation at the International Online Learning Colloquium (co-presenters: Beth Nettles, Linda Futch, Wendy Howard). University of Central Florida, Orlando, FL. (January 9, 2013)
- Invited presentation to senior administrators at Sam Houston State University on Blended Learning strategies and policies. Huntsville, TX (September 26, 2012).
- Invited presentation on course redesign as part of an American Association of State Colleges and Universities national roundtable conducted via Cisco telepresence technology (April 3, 2012)
- Next Generation Learning Challenge “watercooler” national webinar—virtual panel with other NGLC project PIs (March 23, 2012)
- Invited presentation on academic analytics as part of an American Association of State Colleges and Universities national roundtable conducted via Cisco telepresence technology—co-presenters: Chuck Dziuban and Andre Watts (March 20, 2012)
- Invited presentation to senior administrators at the University of West Florida on Blended Learning strategies and policies. Pensacola, FL (February 3, 2012).
- *Web, Blended, and Video Instruction: UCF’s Model for Online Faculty Development*. Invited opening keynote for University of South Florida-St. Petersburg general faculty assembly. St. Petersburg, FL (January 20, 2012).
- Webinar presentation on distance learning data collection for University of Nebraska system officials. (December 19, 2011).
- Moderator of various panels during UCF’s new faculty orientation conferences (multiple years):
 - *Teaching Online @ UCF: Effective Practices from Experienced Faculty*
 - *The Reality of Virtual Students: A Face-to-Face Conversation with Online Students*
- Invited Panelist “So You Majored in Creative Writing: Now What?” The Goran Reading Series at the University of Miami (April 21, 2011).
- Invited speaker to other events at the University of Miami: undergraduate screenwriting class and a reception honoring the 50th teaching anniversary of Professor Lester Goran.
- Plenary Introductory “Theme Interpretation.” 2011 Information Fluency Conference: The Information R/evolution, Orlando, FL (March 10, 2011)
- Moderator: UCF Book Festival at the Morgridge International Reading Center: *Even Saints Have Dark Nights: The Mysteries of the Anti-Hero*, Orlando, FL (April 17, 2010)
- Keynote talk for the launch of *Mangrove*, a new undergraduate literary journal at the University of Miami, Coral Gables, FL (March 31, 2009)
- Florida Writers’ Book Fair—a program during “Origins ’09: A Celebration of the Birth & Life of Beginnings,” Florida State University, Tallahassee, FL (March 21, 2009)
- Miami Book Fair International—*Florida Book Award Winners* Panel (November 12-16, 2008)
- Bouchercon Mystery Writing Conference: *It’s Only Make Believe* (Moderator) and *Whistle While You Work* (Participant): Baltimore, MD (October 9 & 10, 2008)
- Biotechnology Trends & Partnerships Symposium – Workforce Development Panel (November 2004)
- Florida Economic Development Workshop Biotech Panel (June 2004)
- FAA Center of Excellence Conference – Intellectual Property/Export Control Panel, Daytona Beach, FL (November 2003)
- American Society for Training Development (ASTD) regional meeting, Northeast Florida/Jacksonville – E-Learning Panel (September 2002)

- Numerous presentations for various libraries, bookstores, writing groups, alumni chapters, etc. to discuss novels and fiction writing (e.g., St. Cloud Library, Ponte Vedra Beach Library, Florida Writers Assoc.)

Numerous other formal and informal presentations, including:

- Presentation to Orange County, FL Mathematics Department Chairs (November 17, 2005)
- Briefing for Florida House of Representatives Community College & Workforce Education Committee (November 8, 2005)
- Briefings for Florida Department of Education's Chancellor of Community Colleges and Workforce Education (June 2003 & October 2005)
- Florida Gulf Coast University – Project Launch Teacher Training (July 2004 & August 2005)
- Briefing for Florida House Representative, District 26 (June 17, 2005)
- Independent Colleges & Universities of Florida (ICUF) President's Meeting (June 2005)
- Workforce Florida Board of Directors Meetings (February 2003 & November 2004)
- Embry-Riddle Aeronautical University – Project Launch Teacher Training (July 2004)
- Briefing for Florida House Representative, District 49 (November 24, 2004)
- Florida Independent College Fund (FICF) Board Meeting (July 2003)
- Florida Association of Science Supervisors Conferences (October 2002 & May 2003)
- Florida Association of Community Colleges, Technology Commission Conference (April 2003)
- Florida Aviation Aerospace Alliance Annual Conference (September 2002)
- Various briefings for staff of state representatives and Lt. Governor

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DAVIA BUNCH and CASEY KELLY,	)	
individually and on behalf of others	)	
similarly situated,	)	Civil Case No. 2020CP4002330
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	
_____	)	

EXPERT REPORT OF
BENJAMIN S. WILNER, Ph.D.

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I. Introduction

In this matter, Ms. Davia Bunch and Ms. Casey Kelly (“Named Plaintiffs”) allege that all students who were financially responsible for paying the University of South Carolina (“USC” or “Defendant”) tuition and/or fees for the Spring 2020 Semester, regardless of whether they paid tuition and/or fees themselves, and who registered for at least one credit hour of coursework featuring a “face-to-face” instructional method for that semester were economically damaged by the school’s transition to remote instruction. The Named Plaintiffs take this position even though the transition to remote instruction was necessitated by a threat to the health and well-being of all students arising because of the COVID-19 pandemic.

Mr. Ted Tatos submitted an Expert Report on January 4, 2023 on behalf of the Named Plaintiffs that claims to have calculated at least some of the putative class members’ alleged damages.

Alvarez & Marsal Disputes and Investigations, LLC (“A&M”) has been retained by counsel for USC to comment on alleged damages in the aforementioned matter. In particular, I, Benjamin S. Wilner Ph.D., have been asked to respond to the opinions of Mr. Tatos.

I generated the conclusions in this report by reviewing the documents listed in **Exhibit 1**. I reserve the right to modify and/or expand my opinions as I obtain and analyze additional information.

A&M is compensated for its services on an hourly basis and is being reimbursed for out-of-pocket expenses. A&M is being compensated at a rate of \$775 per hour for my time. Other individuals from A&M also provided assistance in this matter under my supervision; their hourly rates range from \$325 to 725.¹

II. Summary of Opinions

I conclude to a reasonable degree of economic certainty that Mr. Tatos’s model is flawed, unreliable, and does not and cannot be used to reliably calculate any individual student’s alleged damages. Nor does his model reliably and formulaically calculate damages on a classwide basis across the putative classes. I summarize some, but not all, of the flaws discussed in this Expert Report regarding Mr. Tatos’s analysis:

- While I do not offer any legal conclusions in this Expert Report, I note that other courts in other tuition class action matters have rejected economic models that are similar to the one Mr. Tatos proposed in this case.
- Mr. Tatos notes that most USC students received education in a different modality during the second portion of the Spring 2020 Semester. However, students were not damaged by USC’s educational transition because the educational content provided in the transitioned modality and the resulting outcomes experienced by students were not different than the

¹ No one who has contributed to this engagement has any known financial interest in any party to the matter. A&M’s compensation is neither based nor contingent on the results of this analysis. My report is provided solely for use in the matter described in the caption at the top of this Expert Report and is not to be used with, circulated, quoted or otherwise referred to in whole or in part for any other purpose, or in any other document without the express written consent of A&M.

content and outcomes from other modalities. While repeatedly claiming in his deposition that he does not opine that the quality of education delivered to the class was deficient, Mr. Tatos nonetheless provides cites to sources that imply that USC students received a lower quality education after USC's Spring 2020 Semester transition. Notwithstanding Mr. Tatos's confusing and contradictory statements, actual data demonstrate that USC students did not receive a lower quality education. In any event, any purported diminishment would be highly individualized.

- Mr. Tatos's ERT damages theory incorrectly assumes that an idealized recommendation from USC's Center for Teaching Excellence is a binding requirement.
- Mr. Tatos's ERT damages theory requires evaluation of the effectiveness of every Spring 2020 Semester course. Further, Mr. Tatos speculatively assumed without any analysis that the alleged decline in effectiveness was uniformly and linearly tied to teacher preparation time. Contrary to Mr. Tatos's speculation, course effectiveness is highly individualized and USC data demonstrate that it did not uniformly decline during the Spring 2020 Semester.
- Even though the supposed basis for his damages theory states that time should be measured in hours, Mr. Tatos uses weeks as the time period in his calculations. Using hours as a unit of measurement, rather than weeks, demonstrates that USC professors had ample time to complete a transition to a high quality online instruction, which runs counter to Mr. Tatos's claim that forms the basis of his damages calculations.
- As he testified that he does not know how academics spend their time, Mr. Tatos incorrectly speculates by improperly constraining USC professors' preparation time.
- Mr. Tatos erroneously assumes that all benefits USC students received were from in-classroom experiences.
- Mr. Tatos did not demonstrate why his proration methodology is valid. In fact, his own sources demonstrate that it is invalid.
- Mr. Tatos did not properly account for the individualized financial aid USC students received from the school, third-parties, the CARES Act and other COVID-relief funds. Because of this aid, it is impossible to ascertain putative class members that were actually injured and their alleged damages without an individualized analysis.
- Mr. Tatos ignored the multiple times that USC cancelled classes unrelated to COVID-19 when students did not believe they should be owed refunds.
- Mr. Tatos incorrectly defines the "Actual" and "But For Worlds" needed to calculate alleged damages. In particular, he incorrectly assumed that in the Actual World after the transition USC students received zero value from their tuition & fees. Additionally, his Actual World erroneously assumes that all Lab classes were cancelled and that USC's classes did not improve with the transition. Additionally, his But For World was fundamentally flawed in multiple respects including that: 1) it misapplied the basic economics of supply and demand, 2) it did not consider the fact that COVID-19 would have existed, 3) it incorrectly assumed that all USC professors would have spent 12 weeks

preparing for their classes and 4) it ignored the fact that less than half of the Spring 2020 Semester was taught in an Emergency Remote Teaching (“ERT”) format.

- Mr. Tatos’s damages theories do not demonstrate that USC was unjustly enriched.

III. Qualifications

I am a Managing Director at A&M. I have served as an expert witness and business consultant performing economic and statistical analyses in a great variety of engagements, including financial analysis, contract losses, and a wide range of class action, intellectual property, insurance claim, lost profits and lost income matters. I received a special commendation from the Commissioner of U.S. Customs and Border Protection for revising a \$2.5 billion annual tariff by analyzing product bundles, rather than individual imports. I also advise educational institutions on tuition-setting issues. I am the co-chair of an undergraduate admissions subcommittee for part of the Chicago-area for the University of Pennsylvania.

I hold a Bachelor of Arts degree, magna cum laude with Distinction in Major in Mathematics and Economics from the University of Pennsylvania as well as a General Course degree in Mathematics & Statistics from the London School of Economics. I was awarded a Ph.D. in Managerial Economics and Decision Science (“MEDS”) from the Kellogg Graduate School of Management at Northwestern University. MEDS studies how consumers, governments and businesses make decisions in a wide variety of economic and other environments.

I served as a professor of economics, finance, decision science and statistics at the University of Michigan, the University of Iowa, Northwestern University and the Helsinki School of Economics.

My research has been published in peer reviewed academic journals including the *Journal of Finance*, the leading academic journal in finance. I was awarded research grants from multiple universities and the National Science Foundation (“NSF”). My research has been cited by over 900 other papers.² I also served as a referee for multiple academic journals and textbooks.

I spent three years building regression models as a research assistant to the Lawrence R. Klein, who was awarded the 1980 Nobel Prize in Economics for economic and statistical forecasting. I also studied under Roger Myerson, who won the 2007 Nobel Prize in Economics for decision theory, in particular, for analyzing environments that cause respondents to truthfully and accurately reveal their full preferences, as well as Dale Mortensen, who applied decision theory in his study of labor markets, which led to his winning the 2010 Nobel Prize in Economics.

One of my areas of research within decision theory was experimental economics, which is the application of experimental methods to study economic questions. For my NSF grant, my coauthors and I statistically analyzed data from a consumer buying behavior survey we conducted that determined the prices respondents would pay for products that could be sold in bundles. My undergraduate advisor, Colin Camerer, a MacArthur Genius Award Winner, uses experimental economics to study the psychological forces and their deeper neuroscientific foundations that influence economic decisions involving individuals and markets. The former President of the University of Chicago relied on my undergraduate thesis on utilizing experimental economics

² https://scholar.google.com/scholar?hl=en&as_sdt=0%2C14&q=benjamin+wilner&btnG= viewed on October 19, 2021.

surveys to generate economic conclusions as the theoretical basis for one of his published research papers.

My credentials, testimony, publications and awards are further discussed in my curriculum vitae (*Exhibit 2*).

IV. Case Background

COVID-19 caused business and school disruptions throughout the country, especially during Spring 2020. USC was no exception.

USC is comprised of eight different campuses: 1) Columbia, 2) Aiken, 3) Beaufort, 4) Lancaster, 5) Salkehatchie, 6) Sumter, 7) Union, and 8) Upstate. Columbia is the flagship campus and a top-tier research university offering undergraduate, graduate, law and medical degrees. Aiken, Beaufort and Upstate are comprehensive campuses that offer both undergraduate and graduate degrees. Lancaster, Salkehatchie, Sumter and Union are regional campuses under the Palmetto College umbrella that offer associate's degrees and are feeder programs into USC's other campuses. Palmetto College also offers an online bachelor's degree completion program, allowing students who have completed 45 credit hours from an accredited college to finish their bachelor's degree online. The campuses offer a varying number of degrees and also serve different types of students. For example, the number of degree programs range from only 19 at USC Lancaster to over 300 at USC Columbia.³ USC Columbia also primarily serves full-time students; whereas USC Lancaster serves a majority of part-time students.⁴

USC's Spring 2020 Semester began with classes starting on January 13, 2020 though the starting date of each course varied from class-to-class.⁵ During Spring Break on March 11, 2020, USC's then President Bob Caslen announced the institution's response to the COVID-19 pandemic stating:

- Classes and campus events would be cancelled for the week after Spring Break (March 16 – 22) in order to allow faculty and staff to prepare for the transition to remote instruction.
- The university would transition to remote instruction and services on March 23rd through April 3rd.
- The university would remain open, including residence halls, food services and limited transit.

³ <https://sc.edu/study/undergraduate-education/index.php#:~:text=Choose%20from%20more%20than%20300,collective%20strengths%20and%20individual%20purpose>,

https://sc.edu/about/system_and_campuses/lancaster/study/degree_programs_areas_of_study/index.php, and https://sc.edu/about/system_and_campuses/sumter/study/degree_programs/index.php, all viewed on March 2, 2023.

⁴ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2019>, both viewed on February 27, 2023 and

<https://nces.ed.gov/ipeds/datacenter/facsimileView.aspx?unitid=218663&goToReportId=6&surveyNumber=15&year=2019> viewed on March 8, 2023.

⁵ https://sc.edu/about/offices_and_divisions/registrar/academic_calendars/2019-20_calendar.php viewed on February 27, 2023.

- The university encouraged students to not return to campus during the period of March 16 through April 3, although students would not be forbidden from doing so.⁶

On March 13, 2020, the Governor of the State of South Carolina declared a State of Emergency imposing work and travel restrictions.⁷ On the same day, then President Caslen communicated that USC's plan was made in consultation with the South Carolina Department of Health and Environmental Control, the Centers for Disease Control and public health experts. These experts found that if all students returned to campus immediately following Spring Break, there would be a 100% chance that some students would catch COVID-19.⁸

On March 15, 2020, Governor McMaster's executive order directed the closure of all state-supported universities and authorized universities to establish a means to deliver remote instruction.⁹

On March 19, 2020, USC announced it would physically close to everyone except those with extenuating circumstances and extend virtual instruction and services through the remainder of the semester.¹⁰

The last day of classes for USC's Spring 2020 Semester was April 27th for all campuses, although the exact end dates varied from class-to-class. Finals week also varied between the campuses.¹¹ For example, Columbia, Beaufort, Lancaster, Salkehatchie and Union had finals week from April 29 to May 6, 2020, but Aiken and Upstate had them from April 29 to May 5, 2020 and April 28 to May 4, 2020, respectively.¹²

As a result of these closures and adapting to the COVID-19 pandemic, USC incurred approximately \$32.2 million in unexpected refunds and expenditures during the Spring 2020

⁶ March 11: UofSC COVID-19 Updates to Students and March 11: UofSC COVID-19 Updates to Faculty and Staff Instructors, archived at <https://web.archive.org/web/20200630064015/https://sc.edu/safety/coronavirus/> viewed on February 28, 2023.

⁷ Executive Order No. 2020-08 dated March 13, 2020

([https://governor.sc.gov/sites/governor/files/Documents/Executive-Orders/2020-03-13%20FILED%20Executive%20Order%20No.%202020-08%20-%20State%20of%20Emergency%20Due%20to%20Coronavirus%20\(COVID-19\).pdf](https://governor.sc.gov/sites/governor/files/Documents/Executive-Orders/2020-03-13%20FILED%20Executive%20Order%20No.%202020-08%20-%20State%20of%20Emergency%20Due%20to%20Coronavirus%20(COVID-19).pdf) viewed on March 8, 2023).

⁸ <https://web.archive.org/web/20200630064015/https://sc.edu/safety/coronavirus/> viewed on February 28, 2023.

⁹ Executive Order No. 2020-09 dated Mar. 15, 2020 (<https://governor.sc.gov/sites/governor/files/Documents/Executive-Orders/2020-03-15%20FILED%20Executive%20Order%20No.%202020-09%20-%20Closing%20Schools%20Cancelling%20Elections%20Other%20Provisions%20Due%20to%20COVID-19.pdf> viewed on March 8, 2023).

¹⁰ March 19: COVID-19 Updates from President Caslen and Interim Provost Harding, archived at <https://web.archive.org/web/20200630064015/https://sc.edu/safety/coronavirus/> viewed on February 28, 2023.

¹¹ https://sc.edu/about/offices_and_divisions/registrar/academic_calendars/2019-20_calendar.php, <https://www.usca.edu/registrar/calendars/academic-calendars/archived-academic-calendars/1216-2019-2020-academic-calendar/file>, https://sc.edu/about/system_and_campuses/lancaster/internal/current_students/admissions_records/academic_calendars/academic_calendar_19_20/, and <https://web.archive.org/web/20191202055543/https://www.uscupstate.edu/current-students/registration-records/academic-calendar/spring-academic-calendar/>, all viewed on February 27, 2023, and <https://web.archive.org/web/20200302035122/https://www.uscb.edu/registrar/calendar/REGISTRATION%20CALENDAR%202019-2020.pdf> viewed on March 8, 2023.

¹² *Ibid.*

Semester.¹³ Specifically, USC provided its students with \$20.7 million in refunds for housing, dining and parking. In addition, USC incurred over \$11.5 million in mitigation costs related to personal protective equipment ("PPE"), cleaning and sanitation and virus testing and tracing.¹⁴

USC also provided relief funds to students to assist with financial needs arising because of COVID-19. In particular, USC provided \$17.6 million of CARES Act funds to aid eligible students who accepted the award.¹⁵ In addition, USC provided over \$350,000 from its own donor-supported COVID-19 Emergency Relief Fund to students who qualified for it.¹⁶ Each student would not have necessarily received the same amount from these funds had USC not transitioned its classes because each student's individualized needs would have been different in different scenarios.

The Named Plaintiffs are seeking damages on behalf of the following putative classes:

The Tuition Class:

All individuals who were financially responsible for tuition (regardless of whether they paid tuition themselves), registered, and enrolled in at least one credit hour of coursework featuring in-person or "face-to-face" instruction at the University of South Carolina for the spring 2020 semester, the tuition for which was paid for by any source, and who were denied in-person or "face-to-face" instruction and required to use emergency remote instruction learning from the date that the Defendant imposed emergency remote instruction.

The Fees Class:

All individuals who were financially responsible for paying fees (regardless of whether they paid those fees themselves), and who enrolled in classes at the Defendant for the Spring 2020 semester who were unable to utilize the equipment

¹³ University of South Carolina Comprehensive Annual Financial Report for the Year Ended June 30, 2020 (USC_00050094), p. 23.

¹⁴ *Ibid.*

¹⁵ *Id.*, p. 79,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.aiken.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.beaufort.3-31-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.columbia.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.lancaster.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.salkehatchie.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.sumter.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.union.6-30-2021_final.pdf, and

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.upstate.6-30-2021_final.pdf, all viewed on February 28, 2023.

¹⁶ <https://crowdfunding.sc.edu/project/20456> viewed on March 6, 2023.

and receive the services for which corresponding fees were paid due to the Defendant's campus closure and transition to emergency remote instruction.¹⁷

A. Named Plaintiffs

The Named Plaintiffs in this matter are Davia Bunch and Casey Kelly – both of whom were USC students on the Columbia campus during the Spring 2020 Semester.

In that semester, Ms. Bunch was an undergraduate senior pursuing her Bachelor's Degree in Political Science.¹⁸ Ms. Bunch voluntarily had taken one online course prior to the Spring 2020 Semester from USC.¹⁹ At the start of the Spring 2020 Semester, Ms. Bunch chose to enroll in two online courses, in addition to three face-to-face courses.²⁰ She was charged the same tuition and fees for these online courses as she was for her other courses. Ms. Bunch learned a sufficient amount in the classes she took so that she graduated from USC after the Spring 2020 Semester. Her education also allowed her to work as a finance manager at Speak Strategic for approximately one year,²¹ and then at The Design Group as a Marketing Manager.²²

Ms. Kelly was an undergraduate senior during the Spring 2020 Semester pursuing a Bachelor's Degree in Media Arts within the School of Visual Arts & Design.²³ Prior to the Spring 2020 Semester, Ms. Kelly took a few online classes. All of the classes in which she was enrolled during the Spring 2020 Semester were listed as having a face-to-face instructional method in USC's course registry, but both her Film and Media Studies 308 and Spanish 122 classes had some online elements.²⁴ Ms. Kelly learned a sufficient amount in the classes she took so that she graduated from USC after the Spring 2020 Semester. Her education allowed her to obtain a job working on partnership sponsorships in Qualcomm's marketing department.²⁵

B. Tuition & Fees

Mr. Tatos's damages theory posits that USC should have charged its students reduced tuition and fees for the Spring 2020 Semester. Before I discuss Mr. Tatos's claims, I note that USC charged its undergraduate and graduate students different tuition and fees by varying program prices and financial aid.

¹⁷ Second Amended Complaint, paragraph 49.

¹⁸ Deposition of Davia Bunch & Exhibits, dated February 17, 2023 ("Bunch Deposition"), p. 106.

¹⁹ *Id.*, pp. 153-154.

²⁰ *Id.*, p. 18.

²¹ *Id.*, p. 160.

²² *Id.*, p. 161.

²³ Depositions of Casey Kelly & Exhibits, dated May 6, 2022 and November 2, 2022 ("Kelly Deposition"), pp. 20 & 136, and

https://sc.edu/study/colleges_schools/artsandsciences/visual_art_and_design/study/undergraduate/media_arts/index.php viewed on February 27, 2023.

²⁴ Kelly Deposition, pp. 100 & 296-298. According to Kelly Deposition Exhibit 78 (USC_00047918), the syllabus for Spanish 122 states "This class consists of face-to-face instruction blended with on-line web-based instruction." According to Kelly Deposition Exhibit 78 (USC_00047903) the syllabus for Media Studies 308 states "This class has a hybrid online and in-class schedule."

²⁵ *Id.*, p. 20.

There are three relevant prices associated with tuition and each fee: 1) the List Price, 2) the Net Price USC Receives and 3) the Net Price Students Pay. These three prices could be different for one given student depending upon the financial aid they received.

- List Prices for tuition and fees are the amounts that the university lists on its website, catalogues and brochures. Because of the sizable financial aid USC provides, most students in its traditional programs do not pay these List Prices.²⁶
- The Net Price USC Receives equals the List Price minus USC-provided financial aid.
- The Net Price Students Pay equals the List Price minus both the financial aid USC provides as well as the financial aid provided by external sources, such as Federal, State, Local and foreign governments, charities, organizations, corporations and other private entities.

As students receive different financial aid amounts from USC and from external sources, the Net Price USC Receives and the Net Price Students Pay are individualized. For example, if USC's List Price for tuition was \$20,000, USC provided a given student with \$6,000 in financial aid and that student's local Chamber of Commerce gave the student a \$3,000 scholarship, the Net Price USC Receives from this student is \$14,000 and the Net Price the Student Paid would be \$11,000. However, if this student received pageant scholarships that paid the remainder on behalf of the student, then the Net Price the Student Paid would be \$0.

Changes in the Net Prices Students Pay are the relevant prices needed to determine how much putative class members were damaged.²⁷ Analyses based upon List Prices or the Net Prices USC received cannot accurately assess damages. If USC charged lower List Prices, but the Net Price Students Paid remained the same, putative class members would not be damaged as their out-of-pocket costs would be identical.

As discussed below, Mr. Tatos only studied List Prices and the Net Prices USC Received, not the Net Prices Students Paid.

While Section XV below discusses the Net Prices USC Receives and the Net Prices Students Pay, the subsections below identify the distinct components of the tuition and fees allegedly at issue in this matter and their List Prices for the Spring 2020 Semester. A variety of factors such as enrollment status and program affect USC's List Prices for tuition and fees. However, **it is important to note that modality of education does not affect List Prices for most USC programs. In other words, USC generally charged the same per-credit hour List Prices irrespective of whether students were enrolled in in-person or online classes, all else equal.**

²⁶ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218663&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218645&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218654&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218706&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218681&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218672&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218742&year=2020>, all viewed on February 28, 2023 and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218690&year=2020> viewed on March 7, 2023.

²⁷ See *Reference Manual on Scientific Evidence* Third Edition, Federal Judicial Center, 2011 ("Reference Manual"), p. 434. Damages are based on "out-of-pocket" costs.

1. Tuition

The List Prices for tuition USC posted for the Spring 2020 Semester differed across multiple dimensions including 1) enrollment status, 2) residence, 3) campus and 4) program.

First, not only were full-time and part-time students charged different List Prices, but they were differently structured. **Exhibit 3** shows the different Spring 2020 Semester tuition List Prices for full-time (12-18 credits) and part-time (under 12 credits) students. While full-time students were charged a flat tuition List Price irrespective of the number of credits they took, part-time students are charged on a per credit hour basis.²⁸ For example, for the Spring 2020 Semester, full-time undergraduate residents of South Carolina enrolled in classes at the Columbia campus were charged a flat \$6,144 per semester; however, such residents who took a part-time course load were charged \$512 per credit hour. Thus, a full-time undergraduate resident of South Carolina at the Columbia campus would have a different per-credit hour charge depending on their credit hours. For example, students who had 12 and 17 credit hours would have a per-credit charge of \$512 and \$361, respectively.

Second, different tuition List Prices were charged depending upon whether the students were residents of South Carolina. For example, a full-time undergraduate resident and non-resident of South Carolina at the Columbia campus were charged \$6,144 and \$16,764, respectively.

Third, USC tuition List Prices varied by campus. As mentioned above, USC has eight different campuses that charge different tuition rates. The flagship and comprehensive campuses (Columbia, Aiken, Beaufort and Upstate) charge different List Prices for the same student type. On the other hand, the regional Palmetto Colleges charge the same List Prices for the same student type, which were different than those of the flagship and comprehensive campuses. Additionally, different List Prices are charged for Palmetto College's online degree completion program and the regional Palmetto College campuses.

Fourth, USC's tuition List Prices also varied by program. USC has a multitude of different programs that charge different tuition rates. For example, the Columbia campus' programs include a variety of schools (e.g., general undergraduate, graduate, Moore School of Business, Law School, Medical School, etc.) and programs (Moore School of Business – Master of Accountancy, Master of Human Resources, etc.).

As a result, Exhibit 3 demonstrates that USC charged full-time students a variety of different List Prices that ranged from \$3,000 to \$71,580. USC charged part-time students numerous different List Prices per credit hour that ranged from \$75 to \$3,631.

With regards to the Named Plaintiffs, while Ms. Bunch faced a \$6,144 resident undergraduate tuition List Price for the Spring 2020 Semester,²⁹ Ms. Kelly's tuition List Price was \$16,764 as a non-resident undergraduate.³⁰ As discussed in Section XV.B, because of the various sources of financial aid available to the majority of USC students during the Spring 2020 Semester, most

²⁸ Students are considered full-time if they are enrolled in 12 or more credits per semester and part-time if enrolled in less than 12 credits. All students paying full-time List Prices are permitted to take up to 18 credits. See <https://academicbulletins.sc.edu/undergraduate/policies-regulations/undergraduate-academic-regulations/> viewed on March 6, 2023.

²⁹ Bunch Deposition, Exhibit 99 (USC_00000027).

³⁰ Kelly Deposition, Exhibit 3 (USC_00044051).

USC students did not pay these List Prices in any event. Of the two Named Plaintiffs, Ms. Bunch received institutional and third-party financial aid, while Ms. Kelly did not. Ms. Bunch also received approximately \$50,000 in outside scholarships from Miss South Carolina and Miss America pageants in 2018 that covered all of her remaining tuition and fees.³¹

USC is able to charge these different prices because each student type has different buying behavior and reacts differently to various economic stimuli.

2. Board Mandated Fees

Mr. Tatos claims that putative class members should be refunded portions of certain Board Mandated Fees USC charged.³² These alleged Board Mandated Fees include: Institutional Bonds, Computer, Athletic, Athletic Bonds, Renovation Reserve, Infirmary, Law Review, Student Activity, Wellness Center, Parking, New Student Union, and Student Recreation.³³ However, Mr. Tatos failed to recognize in his January 4, 2023 report that these Board Mandated Fees were included in the List Price for USC tuition, causing him to double count alleged damages.³⁴ For example, the Spring 2020 List Price tuition for undergraduate residents was \$6,144; however, it was comprised of \$5,262.50 for Educational & General Tuition and \$881.50 for Board Mandated Fees.

Exhibit 4 displays USC's List Prices for the Board Mandated Fees. As shown on Exhibit 4, the List Price of tuition contains different Board Mandated Fees for different USC students; some students are only charged a limited number of these Board Mandated Fees. Even though these Board Mandated Fees may be nominally tied to various services, the Fees did not guarantee access to particular on-campus services.³⁵ For example, USC's website and other information available to students did not specifically state how the Board Mandated Fees would be used to support particular services.³⁶

³¹ Bunch Deposition, pp. 53-62.

³² Mr. Tatos only provides a methodology for calculating alleged damages relating to the Board Mandated Fees. (See Expert Report of Ted Tatos, dated January 4, 2023 ("Tatos Report"), Table 18). I reserve the right to update my opinions if he attempts to present a methodology to analyze other fees.

³³ Tatos Report, Table 18. USC's Budget Document refers to the Infirmary Fee, Athletic Fee, Student Activity Fee, Parking Fee and New Student Union Fee as the Student Health Fee, Athletic Activity Fee, Campus Activity Fee, Transportation Fee and Student Union Fee, respectively (see also Exhibit 4).

³⁴ Mr. Tatos acknowledged this double count in his deposition. Deposition of Ted Tatos & Exhibits, dated February 15, 2023 ("Tatos Deposition"), p. 14.

³⁵ It is my understanding USC distributes Board Mandated Fees to support certain board-designated purposes. USC does not guarantee the on-campus services nominally associated with these fees; rather, they support the USC's auxiliary services and operations. Economists have found that universities frequently use fees for different purposes than stated. Arnott, Elaine K. "A Descriptive Analysis of Fees at Four-Year Public Universities: Differentiating Between Tuition and Fees" Doctoral Dissertation, University of Missouri, 2012 ("Arnott"), p. 15 and Sterritt, Adam Burke "State Governance, Politics, and Mandatory Student Fees: Navigating a New Reality in the University System of Georgia." Doctoral Dissertation, University of Georgia, 2011 ("Sterritt"), p. 34.

³⁶ https://sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php viewed on February 28, 2023.

V. Mr. Tatos's Theories

Mr. Tatos alleges that USC announced in March 2020 that it would cancel all live, face-to-face instruction and would transition to alternative instruction in the form of emergency remote teaching (“ERT”) for the remainder of the semester, depriving them of the product for which he claims they paid.³⁷ He claimed that this action precluded putative class members from receiving the services and benefits for which they paid.

As a result of USC’s actions allegedly causing liability, Mr. Tatos claims that students should be owed pro-rata refunds.³⁸ As discussed below, he presented different methodologies to calculate these allegedly necessary refunds for both the putative Tuition and Fee Classes.

A. *The Putative Tuition Class*

Mr. Tatos calculated alleged tuition damages under two different scenarios: Scenario T1 and Scenario T2.

To calculate damages under these scenarios, Mr. Tatos segregated the classes USC students took into Lab Classes, Online Classes and Regular Classes. Lab Classes were courses taught during USC’s Spring 2020 Semester that he believes had a laboratory component. Mr. Tatos claims to have identified such courses from course registration data. He also identified courses taught during USC’s Spring 2020 Semester that he believes were not originally scheduled to be taught in an exclusively face-to-face modality. Mr. Tatos claims to have identified such courses from course registration data.

Mr. Tatos also segregated USC’s Semester into three time periods: Pre-Remote Classes, Cancelled Classes and ERT Classes. The Pre-Remote Classes were the classes USC students attended from the beginning of the Spring 2020 Semester until March 11, 2020 when the then President announced the school’s remote transition during Spring Break. The Cancelled Classes were the ones that were to occur after Spring Break from March 16th to 22nd that were cancelled as USC transitioned to remote learning. The ERT Classes were the assumed classes that occurred after USC’s transition that began on March 11th (even though Spring Break was March 7th to 15th). Mr. Tatos then claims to have calculated the number of days in each time period and the percentage each time period was of the entire Spring 2020 Semester.

Mr. Tatos claims he received information on the List Prices USC students were charged for tuition for their Spring 2020 courses, as well as the Net Prices USC Received for tuition relating to these courses.³⁹ As discussed above, the Board Mandated Fees are included in these List Prices and Net Prices USC Received. He did not analyze data on the Net Prices Students Paid.

³⁷ According to Mr. Tatos, see <https://onlineteaching.umich.edu/keep-teaching/> (“These strategies should not replace the careful design process that you may go through to develop an online course. Instead, these strategies can be used to bridge the gap and support teaching continuity even in times of disruption.”).

³⁸ Tatos Report, paragraph 2.

³⁹ *Id.*, paragraph 140 and USC_00041697. List Prices are called Gross Tuition. The institutional financial aid students received are called Exemptions. The Net Price USC Received is called Net Tuition.

Utilizing the aforementioned segregations and Prices, Mr. Tatos made pro-rata assumptions. Under these assumptions, he speculatively asserted that each day of the Spring 2020 Semester at USC had equal value. Under this equal value assumption, he believed that he could unbundle USC's semester-long List Prices and Net Prices USC Received into daily List Prices and Net Prices USC Received. In particular, he divided USC's semester-long List Prices and Net Prices USC Received by the 114 calendar days he believes existed during USC's Spring 2020 Semester on all USC campuses to calculate daily Prices.⁴⁰ By multiplying these daily Prices by percentage of the Spring 2020 Semester he believes had Pre-Remote Classes, Cancelled Classes and ERT Classes, he claims to have calculated the List Prices and Net Prices USC Received for each of the time periods he defined.

He further assumed that each credit hour had equal value and unbundled the daily List Prices and Net Prices USC Received he calculated into per credit hour prices. Implicit in this assumption is the belief that USC students only receive value from their classroom education, and that they receive no benefits from things such as outside of classroom learning, networking and extracurricular activities. Mr. Tatos alleges that he could calculate per credit hour prices by identifying the number of credit hours each student took during the Spring 2020 Semester from course registration data.⁴¹

1. Scenario T1

Under his Scenario T1, Mr. Tatos calculated a full pro-rata refund of the List Prices and the Net Prices USC Received from tuition for Cancelled Classes and the ERT Classes. He performed the same calculation irrespective of whether they were the Lab Classes, Online Classes or Regular Classes.

This Scenario speculatively and incorrectly assumes that USC students received zero value from all of their classes after the transition.

As Mr. Tatos believes that USC cancelled 7 calendar days' worth of classes, he multiplied the daily per credit hour List Prices and Net Prices USC Received he calculated for Lab Classes and Regular Classes (excluding Online Classes) by 7 to arrive at his alleged Scenario T1 per credit hour damages relating to Cancelled Classes.⁴²

As Mr. Tatos believes that USC conducted ERT teaching for 49 calendar days, he multiplied the daily per credit hour List Prices and Net Prices USC Received he calculated for Lab Classes and Regular Classes (excluding Online Classes) by 49 to arrive at his alleged Scenario T1 per credit hour damages relating to ERT Classes.⁴³

⁴⁰ 114 calendar days represents the period from January 13 to May 6, 2020. Tatos Report, paragraph 146.

⁴¹ Tatos Report, paragraphs 136-140 and USC_00041697.

⁴² Mr. Tatos's all other USC campuses include: Aiken, Beaufort, Lancaster, Salkehatchie, Sumter, Union, Upstate, and Palmetto. Tatos Report, paragraph 153.

⁴³ Mr. Tatos's all other USC campuses include: Aiken, Beaufort, Lancaster, Salkehatchie, Sumter, Union, Upstate, and Palmetto. Tatos Report, paragraph 153.

He then summed the alleged damages relating to Cancelled Classes and ERT Classes and multiplied by the number of allegedly relevant credit hours to obtain his alleged Scenario T1 damages.

2. Scenario T2

Under his Scenario T2, Mr. Tatos speculatively assumed that USC students received zero value from their Cancelled Classes and Lab Classes after the transition. He further assumed that USC students received partial value for their ERT Classes.

As Mr. Tatos believes that USC cancelled 7 calendar days' worth of classes, he multiplied the daily per credit hour List Prices and Net Prices USC Received he calculated for Lab Classes and Regular Classes (excluding Online Classes) by 7 to arrive at his alleged Scenario T2 per credit hour damages relating to Cancelled Classes.⁴⁴

As Mr. Tatos believes that USC cancelled 49 calendar days' worth of Lab Classes, he multiplied the daily per credit hour List Prices and Net Prices USC Received he calculated for Lab Classes by 49 to arrive at his alleged Scenario T2 per credit hour damages relating to Lab Classes.⁴⁵

Mr. Tatos incorrectly assumed that all classes taught during his calculated ERT Class period were taught in an ERT format. Mr. Tatos assumed that before each and every "normal" semester, all USC professors spent exactly 12 weeks preparing for their online classes. He further assumed that all USC professors only had exactly 2 weeks to prepare for all classes taught during the ERT Class period and the professors used those two weeks for classroom preparation in exactly the same manner as they did when they "normally" prepared for classes. Dividing these two weekly preparation figures, Mr. Tatos assumed that USC professors only had 16.3% ($=2/12$ weeks) of the time needed to prepare for their ERT Classes.

Mr. Tatos further speculatively assumed, without any analysis, that the only factor that determines USC's tuition prices is the number of weeks professors spend preparing for their classes. In other words, Mr. Tatos believes that per credit hour List Prices and the per credit hour Net Prices USC Receives would double if a USC professor spent 24 weeks preparing for a class as compared to what he considers to be the "normal" 12 weeks of preparation.

Based on this ERT class preparation weeks assumption, Mr. Tatos believes that Supply and Demand factors would cause his assumed daily per credit hour List Prices and the per credit hour Net Prices USC Receives to fall by 83.7% ($=1 - 16.3\%$) during the ERT Class period.

As Mr. Tatos believes that USC taught 49 calendar days' worth of ERT Classes, he multiplied the daily per credit hour List Prices and Net Prices USC Received he calculated for Regular Classes

⁴⁴ Mr. Tatos's all other USC campuses include: Aiken, Beaufort, Lancaster, Salkehatchie, Sumter, Union, Upstate, and Palmetto. Tatos Report, paragraph 153.

⁴⁵ The 7 days of alleged cancelled classes represents the period from March 15 to March 22, 2020. The 49 days of alleged ERT classes represents the period from March 11 to March 14 and March 19 to May 6, 2020. Therefore, he included the days on Spring Break (March 11 to March 14) as additional ERT days. Tatos Report, paragraph 146.

(excluding Online Classes and Lab Classes) by his ERT Reduction percentage of 16.3% by 49 to arrive at his alleged Scenario T2 per credit hour damages relating to ERT Classes.⁴⁶

Mr. Tatos then summed the alleged damages relating to Cancelled Classes, Lab Classes and ERT Classes and multiplied by the number of allegedly relevant credit hours to obtain his alleged Scenario T2 damages.

B. The Putative Fees Class

Mr. Tatos also calculated alleged fee damages under two different scenarios: Scenario F1 and Scenario F2.

Mr. Tatos's Scenario F1 speculatively assumes that USC students received zero value from all of the services associated with the Board Mandated Fees he identified after the transition. Despite the fact that these Board Mandated Fees are included in the tuition prices he used in the prior subsection, Mr. Tatos used three steps to calculate his alleged Scenario 1 Fee damages. Like with tuition, he began his alleged damages calculations by determining the Gross Fees he claims students paid during the Spring 2020 Semester. He did not calculate the Net Fees (after accounting for institutional financial aid) like he did for tuition. He then determined his assumed daily Gross Fee charges by dividing his Gross Fees by the 114 calendar days he believes existed during the Spring 2020 Semester.⁴⁷ As he believes that USC students did not receive any value from all of the services associated with the Board Mandated Fees he identified during the 56 days (i.e., 7 cancelled class days and 49 ERT class days)⁴⁸ after the transition, he multiplied his daily Gross Fee charges by 56 to determine his alleged Scenario F1 damages.

In Scenario F2, Mr. Tatos recognized that USC students did receive some of the services associated with the Board Mandated Fees during the Spring 2020 Semester and the cost of these services exist irrespective of whether students are on campus. In particular, Mr. Tatos recognized that USC's Institutional Bonds Fee and Athletic Bonds Fee support debt maintenance related to these bonds issued by USC. USC has to make payments associated with these bonds irrespective of whether students are on campus. Additionally, these Fees are not specifically tied to services that occurred during the Spring 2020 Semester; instead, they relate to longer-term services that span multiple semesters. Given students' long-term relationship with USC (both while attending the school and subsequently), they are willing to pay fees to enhance USC's brand even if they do not directly benefit during the semester in which they paid those fees.⁴⁹

With such recognition, Mr. Tatos's calculation of Scenario F2 alleged damages was identical to his Scenario F1 damages except that he excluded USC's Institutional Bonds Fee and Athletic Bonds Fee from his calculations.

⁴⁶ The 7 days of alleged cancelled classes represents the period from March 15 to March 22, 2020. The 49 days of alleged ERT classes represents the period from March 11 to March 14 and March 19 to May 6, 2020. Therefore, he included the days on Spring Break (March 11 to March 14) as additional ERT days. Tatos Report, paragraphs 146-151.

⁴⁷ Tatos Report, Table 18.

⁴⁸ *Ibid.*

⁴⁹ Sterritt, pp. 81-82 and Weisbrod, Burton A., Jeffrey P. Ballou, and Evelyn D. Asch *Mission and Money: Understanding the University* Cambridge University Press, 2008 ("Weisbrod"), pp. 184-187.

VI. Courts Have Not Certified Putative Classes Based Upon ERT Damages Theories

While Mr. Tatos suggests that a damages theory based upon ERT is valid, courts in various jurisdictions have disagreed.⁵⁰ In his Expert Report in this matter, Mr. Tatos stated that he filed reports / declarations covering similar issues and employing similar methodologies in other tuition class action matters.⁵¹ In three of these matters (*Dalke v. Central Michigan University*, *Zwiker v. Lake Superior State University* and *Horrigan v. Eastern Michigan University*), the State of Michigan Court of Appeals ruled that:

Tatos concluded that emergency remote teaching was not the equivalent of online instruction and opined that students did not receive the same educational benefit from emergency remote teaching as they would have from in-person instruction or regular online education...**we find Tatos's findings unpersuasive in the context of these cases.**⁵²

Based on its conclusion that Mr. Tatos's ERT model was incorrect, along with other factors, the Michigan Court of Appeals concluded the trial courts in these three cases did not err in granting summary disposition in favor of the defendant universities.

VII. Mr. Tatos's Irrelevant Citations Incorrectly Imply that USC Students Received Lower Quality Education After USC's Spring 2020 Semester Transition

Even though he claims otherwise, Mr. Tatos's theories are necessarily based on the assumptions that students received a lower quality education based upon a quality differential approach after USC's transition because USC professors were allegedly time-constrained in preparing for their post-transition classes **and that** that lower quality is directly tied to professor preparation time **and that** Supply and Demand cause prices to move proportionately to some supposed quality measure.⁵³ These are not supportable assumptions.

In fact, actual, undisputed, contemporaneous, real-world data demonstrate that USC students did not believe their education was diminished during the Spring 2020 Semester and if such diminishment occurred, it was individualized. Unquestionably, actual, contemporaneous, real-

⁵⁰ I provide this opinion because as an economist, I incorporate the conclusions of learned individuals into my economic models. In no way shape or form, am I attempting to generate any legal conclusions in this Expert Report.

⁵¹ Tatos Report, paragraph 20. Tatos Deposition, pp. 15-16.

⁵² State of Michigan Court of Appeals Opinion dated February 10, 2022, p. 8. (emphasis added) *Dalke v. Central Michigan University* (No. 357275), *Zwiker v. Lake Superior State University* (No. 355128) and *Horrigan v. Eastern Michigan University* (No. 355377) cases were consolidated on the Court's own motion to "advance the efficient administration of the appellate process." *Dalke v Central Michigan Univ*, unpublished order of the Court of Appeals, entered December 14, 2021.

⁵³ Tatos Report, paragraph 97. If the teaching USC provided during the Spring 2020 Semester was as effective as normal teaching, USC students would have received the same value for their classes.

world data are superior to economic models like Mr. Tatos's that are based upon speculative assumptions.

Subsection A below shows that there was not an ERT quality differential and that most USC students did not believe they received a lower quality education during the Spring 2020 Semester.

While some students might believe there was an ERT quality differential and they received a lower quality education after the Spring 2020 Semester transition, Subsection B shows that individualized analyses would be required to identify such students as well as what that differential would be. The Subsection also shows that the supposed ERT quality differential and lower quality education these students believe they received would not cause USC's tuition and fees to be lowered for all putative class members.

While Mr. Tatos's Expert Report presents several quotes from people outside of USC who qualitatively believed that the transitions at their schools might have been chaotic and professors at their schools might not have taught as well after the transition, he did not provide any quantitative data showing that students' education diminished other than a study from Kennedy & Company survey that USC commissioned. Subsection C below also demonstrates the flaws in this survey's results.

As this Section demonstrates, actual, undisputed, contemporaneous, real-world data show that the education USC students received during the Spring 2020 Semester was not different from what putative class members anticipated and paid for, contrary to the claims in Paragraph 4 of Mr. Tatos's Expert Report.

A. Actual Data Contradicts Mr. Tatos's Damages Theory

Mr. Tatos's damages theory ignores contrary, actual, undisputed, contemporaneous real-world data showing that USC students did not believe they received a lower quality education during the Spring 2020 Semester.

1. Putative Class Members Received Similar Value During The Spring 2020 Semester

Mr. Tatos's damages theory is based on the assumption that an ERT quality differential existed and USC students received lower quality education during the remote portion of the Spring 2020 Semester. However, several contemporaneous metrics, as opposed to the hypothetical hindsight, assumption-laden analysis of Mr. Tatos, show that, on average, there was no ERT quality differential and students received similar, if not greater, value from their classes during the Spring 2020 Semester as compared to other USC classes.

a. Course Evaluations

Each semester USC has its students evaluate and rate their courses. One would expect that students would have given their Spring 2020 Semester courses lower ratings if they believed there was an ERT quality differential and they received a lower quality education as Mr. Tatos assumed. However, this was not the case.

As each program at USC conducts different evaluations and some do not have their students conduct any evaluations, I do not possess information for all USC schools. However, **Figure 1** below shows that students in Ms. Bunch's and Ms. Kelly's programs believed that their teachers did a better job teaching during the semester in which Mr. Tatos incorrectly speculates possessed lower quality education as compared to prior semesters.⁵⁴ Not only did the Named Plaintiffs' programs course evaluations increase, but so did classes in the Business School, Law School and Language, Literature & Culture programs. These data are inconsistent with Mr. Tatos's speculation that cancelled classes and allegedly unprepared professors significantly diminished students' education.

Figure 1 Course Evaluations ⁵⁵				
Description	Fall 2018	Spring 2019	Fall 2019	Spring 2020
Named Plaintiff Programs				
Political Science ⁵⁶	4.15	4.33	4.27	4.36
Visual Design & Art ⁵⁷	4.45	4.48	4.47	4.53
Additional Programs				
Business School ⁵⁸	4.24	4.30	4.31	4.36
Law School ⁵⁹	4.67	4.47	4.78	4.84
Language, Literature & Culture ⁶⁰	4.54	4.56	4.55	4.56

As discussed above, Mr. Tatos's damages theory is based on his speculative assumption that professors allegedly had inadequate time to prepare for their classes. Some evaluations asked students the direct question of whether *The instructor was well prepared for class and presented the material in an organized manner*. If students believed their instructors were not well prepared as Mr. Tatos speculates, such beliefs should be revealed in the evaluations. However, **Figure 2** below shows that USC students **did not** find their instructors unprepared during the Spring 2020 Semester, let alone be less than 20% prepared as Mr. Tatos incorrectly assumed.

⁵⁴ Tatos Report, paragraph 76.

⁵⁵ Ratings range from 1 to 5, with 5 being the highest.

⁵⁶ USC_00049890-USC_00049929 and USC_00049834-USC_00049889.

⁵⁷ USC_00050031-USC_00050058 and USC_00050059-USC_00050086.

⁵⁸ USC_00049930-USC_00050030.

⁵⁹ USC_00049705-USC_00049743.

⁶⁰ USC_00049657-USC_00049704.

Figure 2 Course Evaluations - The instructor was well prepared for class and presented the material in an organized manner				
Description	Fall 2018	Spring 2019	Fall 2019	Spring 2020
Named Plaintiff Programs				
Political Science ⁶¹	4.32	4.48	4.48	4.45
Visual Design & Art ⁶²	4.56	4.55	4.53	4.58
Additional Programs				
Business School ⁶³	4.47	4.52	4.53	4.57
Law School ⁶⁴	4.75	4.52	4.89	4.90
Language, Literature & Culture ⁶⁵	4.52	4.56	4.55	4.56

Not only did USC students generally view their instruction in the Spring 2020 Semester generally positively, but so did Ms. Kelly. For example, Ms. Kelly believed that most of her professors did a great job adjusting to remote education. She testified that one of her professors “made herself very accessible... she was filming all of her sessions in advance for the classes and uploading them onto Blackboard... she was uploading her classes so we could watch them on our own time, which, you know, a lot of us found very helpful.”⁶⁶ Thus, Ms. Kelly found that her professor made use of technology associated with remote education. Ms. Kelly’s positive beliefs about her Spring 2020 Semester education were further reiterated in her Facebook post that said:

Even though senior year didn’t go as planned, I wouldn’t change a single thing about my time here at USC. Carolina, thank you for giving me the best friends and the best home away from home.⁶⁷

Consequently, actual economic revealed preference analysis based on the course evaluations and Ms. Kelly’s personal experience demonstrate that Mr. Tatos’s damages model is fatally flawed.

b. Other Metrics

Other metrics reinforce the conclusion that the quality of education did not decline during the Spring 2020 Semester at USC.

First, students grades did not suffer.⁶⁸ Students who learn more generally receive higher grades. **Figure 3** below shows that more students received A’s and fewer students received C and below

⁶¹ USC_00049890-USC_00049929 and USC_00049834-USC_00049889.

⁶² USC_00050031-USC_00050058 and USC_00050059-USC_00050086. This program did not ask if “The instructor was well prepared for class and presented the material in an organized manner.” However, Figure 2 includes a similar question: “presented material in a well-organized fashion.”

⁶³ USC_00049930-USC_00050030.

⁶⁴ USC_00049705-USC_00049743. Law School Ratings shown are the averages of the ratings for writing and research instructors.

⁶⁵ USC_00049657-USC_00049704. This program did not ask if “The instructor was well prepared for class and presented the material in an organized manner.” However, Figure 2 includes a similar question: “Instructor’s organization and presentation of course materials.”

⁶⁶ Kelly Deposition, p. 105.

⁶⁷ *Id.*, Exhibit 18.

⁶⁸ Kofoed, Michael S., et al., “Zooming to Class?: Experimental Evidence on College Students’ Online Learning during COVID-19,” IZA Discussion Paper Series, No. 14356, May 2021, p. 1.

in Spring 2020 compared to prior semesters.⁶⁹ In addition, “Other” grades increased in Spring 2020 due to USC allowing more grading options that do not impact student GPAs.

Figure 3				
Grade Distribution by Semester				
Grade	Fall 2018	Spring 2019	Fall 2019	Spring 2020
A	45.35%	46.47%	46.16%	52.30%
B	27.60%	27.28%	27.04%	22.64%
C	12.46%	12.41%	12.32%	6.24%
D	3.47%	3.41%	3.35%	1.18%
F	4.14%	4.26%	3.61%	2.08%
Other	6.98%	6.16%	7.52%	15.57%

It is noteworthy that both of the Named Plaintiffs’ GPAs increased after the Spring 2020 Semester. In particular, Ms. Bunch and Ms. Kelly attained 3.90 and 3.60 GPAs during the Spring 2020 Semester, while their cumulative GPAs were 3.73 and 3.42, respectively.⁷⁰ Such data are consistent with the quality of USC students’ education not diminishing and there not being an ERT quality differential during the Spring 2020 Semester.

Second, another core USC mission is to graduate its students. **Figure 4** below shows USC’s graduation rates increased from 2019 to 2020 and was maximal in 2020 as compared to 2018 to 2019.

⁶⁹ https://www.sc.edu/about/offices_and_divisions/registrar/toolbox/grade_processing/grade_spreads/index.php viewed on March 6, 2023, (201808_grade_spread_report.xlsx; 201901_grade_spread_report.xlsx; 201908_grade_spread_report.xlsx; 202001_grade_spread_report.xlsx). “Other” includes Satisfactory, Unsatisfactory, Withdrawn Without Penalty, No Grade, Incomplete, No Report, Thesis Dissertation Research/Unsatisfactory, and Audit.

⁷⁰ USC_00000032, Kelly Deposition, Exhibit 09.

Figure 4 150% of Normal Time to Completion Graduation Rates			
Description	2018	2019	2020
Columbia ⁷¹	77%	77%	78%
Aiken ⁷²	40%	39%	41%
Beaufort ⁷³	32%	31%	34%
Union ⁷⁴	20%	26%	28%
Sumter ⁷⁵	29%	31%	30%
Salkehatchie ⁷⁶	27%	25%	27%
Lancaster ⁷⁷	22%	20%	22%
Upstate ⁷⁸	46%	48%	47%

Third, another way in which to measure the quality of education is through USC students' pass rates on professional exams such as the Bar Exam for law students and PRAXIS exams for education students.⁷⁹ **Figure 5** shows that more USC students passed most professional exams after the Spring 2020 Semester, further demonstrating that they did not receive a lower quality

⁷¹ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218663&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218663&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218663&year=2020>, all viewed on February 27, 2023.

⁷² <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218645&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218645&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218645&year=2020>, all viewed on February 27, 2023.

⁷³ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218654&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218654&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218654&year=2020>, all viewed on February 27, 2023.

⁷⁴ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218706&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218706&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218706&year=2020>, all viewed on February 27, 2023.

⁷⁵ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218690&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218690&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218690&year=2020>, all viewed on February 27, 2023.

⁷⁶ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218681&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218681&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218681&year=2020>, all viewed on February 27, 2023.

⁷⁷ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218672&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218672&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218672&year=2020>, all viewed on February 27, 2023.

⁷⁸ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218742&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218742&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218742&year=2020>, all viewed on February 27, 2023.

⁷⁹ The Praxis® tests measure the knowledge and skills you need to prepare for the classroom (<https://www.ets.org/praxis/site.html> viewed on February 27, 2023).

education during that semester as Mr. Tatos alleges. Yet again, independent third-party data show the incorrect bases underlying Mr. Tatos's damages model.

Figure 5 Institutional Effectiveness Report of Professional Examinations			
Description	April 2018 to March 2019 ⁸⁰	April 2019 to March 2020 ⁸¹	April 2020 to March 2021 ⁸²
Research Sector			
Multi-State Pharmacy Jurisprudence Examination	92%	91%	91%
National Council Licensure Exam. – Registered Nurse	n/a	99%	99%
National Physical Therapist Licensing Exam ⁸³	95%	100%	100%
North American Pharmacist Licensure Exam	93%	97%	88%
South Carolina Bd. of Law Examination ⁸⁴	80%	82%	84%
US Medical Licensing Exam – Step I ⁸⁵	96%	98%	98%
US Medical Licensing Exam. – Step II CK ⁸⁶	99%	99%	99%
Teaching & Research Sector (PRAXIS Series II Exams)			
Principles of Learning & Teaching (K-6)	95%	100%	96%
Principles of Learning & Teaching (5-9)	91%	96%	100%
Principles of Learning & Teaching (7-12)	95%	94%	95%
Specialty Area Tests	86%	87%	83%

Fourth, many students attend institutions of higher learning in order to enhance their earnings. **Figure 6** below shows that median starting salaries of USC Columbia campus graduates and job placement rates increased after the 2019-20 academic year.⁸⁷ This increase occurred in spite of the 2020 COVID-19 recession, which significantly impacted the job market.⁸⁸

Figure 6 Job Statistics of Last Year's Graduates for USC Columbia			
Description	2017-18	2018-19	2019-20
Job Placement Rate for Last Year's Graduates ⁸⁹	46%	55%	58%
Median Base Salary of Last Year's Graduates ⁹⁰	41,264	48,000	\$55,000

⁸⁰ USC_00049514-USC_00049517.

⁸¹ USC_00049555-USC_00049559.

⁸² USC_00049596-USC_00049600.

⁸³ Unlike the other exam periods of April through March, this exam period is April – January.

⁸⁴ Unlike the other exam periods of April through March, this exam period is July – February.

⁸⁵ Columbia & Greenville pass rates were averaged.

⁸⁶ Columbia & Greenville pass rates were averaged.

⁸⁷ USC_00049508-USC_00049510, USC_00049511-USC_00049513, and USC_00049518-USC_00049554.

⁸⁸ Economy-wide, there was a decrease in employment and labor force participation rates of recent college graduates in 2020, which exceeded the decline recent college graduates experienced during the Great Recession of 2008. <https://www.pewresearch.org/fact-tank/2021/05/14/college-graduates-in-the-year-of-covid-19-experienced-a-drop-in-employment-labor-force-participation/> viewed on September 22, 2021.

⁸⁹ Percentage of students graduating last year that had offers for full-time jobs within 6 months of graduation.

⁹⁰ Median base salary (not including bonuses) of last year's graduates who accepted employment after graduation.

Fifth, Mr. Tatos's theory that students receive diminished value from remote classes is inconsistent with Nobel Prize-winning research. In 1973, Michael Spence published a paper called "Job Market Signaling" in the *Quarterly Journal of Economics* for which he won the 2001 Nobel Prize in Economics.⁹¹ Dr. Spence, who was Dean of Stanford Business School, concluded that, regardless of a student's academic fulfillment, completing an education conveys information about a student's inherent abilities. He demonstrated that because more advanced individuals would have an easier time completing college than their less advanced counterparts, the latter would not attend universities. Thus, college completion signals a student's strength even if college did not make them intellectually stronger. This conclusion continues to hold as *New York Magazine* wrote in May 2020 that "no one has really come up with the ability to certify [potential hires] to the same extent that universities['] admissions departments] do."⁹²

Because Mr. Tatos has not disputed that a degree from USC still provides a strong signal about its graduates' ability to obtain employment, graduate school placement and other post-college opportunities,⁹³ he cannot claim that students received diminished value from USC's Spring 2020 Semester. Even if the value was diminished in some way, Mr. Tatos did not demonstrate that the value was diminished relative to students at all other universities in the U.S. who similarly transitioned to remote education during the Spring 2020 Semester.

Sixth, Thomas B. Cavanaugh, Ph.D., who USC retained as an expert in remote education, reviewed the particular courses that Ms. Bunch and Ms. Kelly took during the Spring 2020 Semester and did not identify any factors that would have caused them to have received a lower quality education from those courses. In particular, Dr. Cavanaugh opined, among other things, as follows:

- The educational objectives of each course were able to be accomplished as intended in the syllabi provided at the beginning of the spring 2020 semester, despite the transition to remote instruction.
- Each of the two [Named Plaintiffs] individually accomplished all of the originally intended objectives in each of their courses despite the transition to remote instruction.
- Faculty members used a variety of strategies to transition their courses for remote delivery and ensure that all learning objectives were still accomplished.⁹⁴

In summary, the overwhelming real world data show that the quality of education for students at USC in the Spring 2020 Semester did not suffer.

2. Putative Class Members Elected To Pay A Similar Price For Semesters Taught Under Conditions Similar To The Spring 2020 Semester

The American Institute of Certified Public Accountants identifies the benchmark method as a method to estimate the plaintiffs' But For World economic position. Under this method, damages

⁹¹ Spence, Michael "Job Market Signaling," *Quarterly Journal of Economics*. 87(3), 1992, pp. 355-374.

⁹² Walsh, James D. "The Coming Disruption," *New York Magazine*, May 11, 2020.

⁹³ Students who took paper courses where they did not have to work to complete class requirements violate the assumptions of the Spence model.

⁹⁴ Expert Witness Report of Thomas B. Cavanaugh, Ph.D., dated March 6, 2023 ("Cavanaugh Report"), p. 3.

are calculated by examining the economic position a plaintiff experienced in a similar situation that was unaffected by the defendant's alleged actions.⁹⁵

An appropriate benchmark in this case is the Fall 2020 Semester. While USC announced on May 17, 2020 that Fall 2020 Semester classes would be taught face-to-face,⁹⁶ students likely knew that the then unpredictable COVID-19 virus could cause a quick educational transition similar to what occurred during the Spring 2020 Semester. Mr. Tatos acknowledged that such quick educational transitions continued to be a possibility at USC when "a documented health issue or disability" arises.⁹⁷ It is my understanding USC students experienced such abrupt modality changes on a course-specific and personal basis because of faculty and student COVID-19 incidents during the Summer and Fall 2020 Semesters.

If Mr. Tatos's theory were valid, the common prior knowledge of the possibility of such a Fall 2020 Semester transition would force USC to charge lower prices and that all USC students would not enroll if such lower prices were not charged for that semester.⁹⁸

However, USC pricing and enrollment data demonstrate the opposite. Exhibit 3 shows that the common prior knowledge of the possibility of such a Fall 2020 Semester transition did not cause USC's List Prices for tuition (which includes the Board Mandated Fees) at issue in the Fall 2020 Semester to decline.⁹⁹ As a result, all non-graduating USC students encountered the following question prior to the start of the Fall 2020 Semester, which is identical to the question needed to properly analyze the But For World in this lawsuit:

Will you enroll in the Fall 2020 Semester knowing of the possibility that USC might have to quickly transition so that you will not have full in-person access to campus facilities and some or all classes may be taught remotely and that tuitions and fees will not be reduced?

USC enrollment data demonstrate that most students agreed to be charged full tuition prices in the Fall 2020 Semester in an environment similar to the one for which Mr. Tatos now claims they were overcharged. **Figure 7** shows that a large portion of USC's student population during the Spring 2020 Semester reenrolled for the Fall 2020 Semester despite the List Prices for tuition remaining the same.¹⁰⁰ The retention rates also increased from the prior year for almost all other USC campuses as well.

⁹⁵ Pollack, R., Bouchner, S., Enos, C., Johns, C. & Moyl, J. Calculating Lost Profits, *AICPA Business Valuation and Forensic & Litigation Services Section Practice Aid* 06-4 (2013), paragraphs 67-69.

⁹⁶ https://sc.edu/about/offices_and_divisions/provost/documents/05.17_fall_2020_schedule.pdf viewed on February 27, 2023 and <https://web.archive.org/web/20200630035220/https://sc.edu/safety/coronavirus/index.php#Messages> viewed on March 8, 2023.

⁹⁷ Tatos Report, paragraph 37 and <https://web.archive.org/web/20200630064015/https://sc.edu/safety/coronavirus/> viewed on February 28, 2023.

⁹⁸ Even if one only believed that there was a non-zero probability of a Fall 2020 Semester transition, Mr. Tatos's theory implies that USC students would force prices based on expected value to fall in that semester.

⁹⁹ The only exceptions were that the International and One-Year Program of Master of Business Administration programs reduced their List Price tuition.

¹⁰⁰ Exhibit 3 shows List Price tuition remained the same for all campuses and programs from Spring to Fall 2020, except for some MBA programs.

Figure 7 Retention Rate by USC Campus ¹⁰¹		
Campus	Fall 2018 to Fall 2019	Fall 2019 to Fall 2020
Columbia ¹⁰²	89%	90%
Aiken ¹⁰³	65%	66%
Beaufort ¹⁰⁴	57%	63%
Union ¹⁰⁵	48%	51%
Sumter ¹⁰⁶	46%	45%
Salkehatchie ¹⁰⁷	36%	53%
Lancaster ¹⁰⁸	49%	46%
Upstate ¹⁰⁹	67%	72%

This contradicts Mr. Tatos's claim that all putative class members were overcharged for the Spring 2020 Semester. USC students' actual decisions demonstrate that most did not believe they were overcharged for the education they received during the remote portion of the Spring 2020 Semester. Consequently, at a minimum, any student who reenrolled at USC for the Fall 2020 Semester was not damaged in the Spring 2020 Semester and should be excluded from the putative class.

The fact that non-enrollees exist demonstrates that students were not locked into reenrolling. Individualized analyses of the personal preferences and expectations of any USC students who did not reenroll for the Fall 2020 Semester would be necessary to determine if the students were damaged in the Spring 2020 Semester by the Defendant's alleged actions in transitioning to ERT. For example, students elect to not reenroll in universities for many reasons other than the

¹⁰¹ USC typically only tracks retention rates only for full-time, first-time Bachelor's students from Fall to Fall.

¹⁰² <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2020>, both viewed on February 27, 2023.

¹⁰³ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2020>, both viewed on February 27, 2023.

¹⁰⁴ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2020>, both viewed on February 27, 2023.

¹⁰⁵ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2020>, both viewed on February 27, 2023.

¹⁰⁶ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2020>, both viewed on February 27, 2023.

¹⁰⁷ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2020>, both viewed on February 27, 2023.

¹⁰⁸ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2019> and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2020>, both viewed on February 27, 2023.

¹⁰⁹ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2019>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2020>, both viewed on February 27, 2023.

circumstances at issue in this lawsuit.¹¹⁰ As a result, it is questionable and individualized analyses would be required to determine whether such non-reenrolling students were damaged by USC's alleged actions in transitioning to ERT.

It is also important to note that USC students overwhelmingly elected to take remote classes *even when given the option* to take in-person classes during the Fall 2020 Semester. USC's policy during the Fall 2020 Semester specifically contemplated that courses would be taught in a hybrid modality, such that students could elect to come to class or to join remotely. As shown in **Figure 8**, concrete, undisputed, contemporaneous real-world data from the Fall 2020 Semester demonstrate that majority of USC students elected to study remotely rather than in-person while paying "full" tuition and fees.

¹¹⁰ <https://collegestats.org/articles/beware-the-top-5-reasons-for-dropping-out-of-college/> viewed on August 9, 2021.

Figure 8				
Percentage of Students Enrolled in Any Distance Education Courses by Campus				
Campus	Fall 2018	Fall 2019	Fall 2020	Fall 2021
Columbia ¹¹¹	27.90%	31.99%	93.30%	56.45%
Aiken ¹¹²	36.60%	42.34%	93.61%	71.52%
Beaufort ¹¹³	48.77%	46.72%	94.92%	74.82%
Union ¹¹⁴	1.01%	34.35%	86.55%	60.21%
Sumter ¹¹⁵	19.73%	20.28%	92.86%	58.77%
Salkehatchie ¹¹⁶	31.28%	28.53%	71.30%	77.91%
Lancaster ¹¹⁷	41.30%	48.60%	97.73%	53.84%
Upstate ¹¹⁸	44.57%	48.75%	92.99%	84.66%

Figure 8 shows that USC students still elected to take more online classes after COVID-19 vaccines became available. This shows USC students' preference for online classes has still remained higher than historically offered and preferred.

¹¹¹ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2021>, all viewed on February 27, 2023.

¹¹² <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218645&year=2021>, all viewed on February 27, 2023.

¹¹³ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218654&year=2021>, all viewed on February 27, 2023.

¹¹⁴ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218706&year=2021>, all viewed on February 27, 2023.

¹¹⁵ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218690&year=2021>, all viewed on February 27, 2023.

¹¹⁶ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218681&year=2021>, all viewed on February 27, 2023.

¹¹⁷ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218672&year=2021>, all viewed on February 27, 2023.

Therefore, actual USC student behavior in the Fall 2020 Semester provides a great benchmark for what their behavior would have been in the But For World.¹¹⁹ That is, even if USC had allowed students to attend in-person classes during a time of tremendous fear and uncertainty due to a raging pandemic, the vast majority would have chosen to attend classes remotely. This behavior shows that putative class members were not injured by the transition to remote instruction, contrary to Mr. Tatos's assumptions. As discussed above, actual data are generally preferable to assumption-laden models like Mr. Tatos's Theory. Consequently, concrete, undisputed, contemporaneous data show that putative class members were not damaged in a formulaic manner by the conduct alleged in this lawsuit.

With this enrollment data, I am not contending that all USC students preferred online education; I am only stating that the preferences most USC students might have had about educational teaching modality were not sizable enough to affect their enrollment decisions. There are "pros" and "cons" in most economic decisions. Even if some viewed the modality of the Fall 2020 Semester as a "con" and lowered their Willingness to Pay for a USC's education, it was not a sizable enough "con" for most USC students so as to affect their behavior and cause them to not reenroll.

B. Individualized Factors Predominate And Mr. Tatos's Theory Fails To Account For Those Concerns

The impact of the Spring 2020 Semester educational changes differed from student to student.¹²⁰

¹¹⁸ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2018>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2019>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218742&year=2021>, all viewed on February 27, 2023.

¹¹⁹ Mr. Tatos might attempt to refute this analysis by noting that Princeton lowered its tuition for the 2020 – 2021 academic year. Tatos Report, paragraph 209. However, there are two things to note. First, Princeton did not retroactively lower its Spring 2020 Semester tuition, which would be more relevant to the matter at hand. Second, every university makes its own tuition decisions. It is economically improper to impose the actions of other institutions on USC. For example, in a tuition class action against Suffolk University in Boston, the Court ruled "[p]laintiffs will not be permitted to use market-value data of sister programs at other institutions to demonstrate this cost difference" because, ultimately, "there is only one Suffolk University in downtown Boston." *In re Suffolk Univ.*, 2022 WL 2713732, at *2. The Court in the tuition class action against Yale University agreed.

Just as there is only one Suffolk University in downtown Boston, there is only one Yale University in downtown New Haven. This court agrees that attempting to divine a difference in market value from competitors is unavailing where Yale's pricing model has previously rejected a value disparity for the in-person and remote educational opportunities it provides. [Footnote: Even if the actions of competitors were relevant, the court notes that Michel's citation to "comparable institutions" that supposedly provided tuition refunds is inaccurate. The schools cited lowered tuition amounts for future semesters, rather than providing remuneration for the spring 2020 semester. (*Michel v. Yale*, Ruling on Motion for Summary Judgment, January 30, 2023, pp. 13-15.)

Again, like above, I generate no legal conclusions from this citation.

¹²⁰ As discussed below in Section XV.B, university pricing is individualized. As a result, such factors are important because Mr. Tatos cannot demonstrate that all putative class members received a uniform, class-wide tuition reduction.

Mr. Tatos incorrectly claims that he does not have to address such individualized issues because he erroneously asserts that any individual difference can be resolved using his formulaic methodology.¹²¹

1. *The Benefits Students Received From Learning In The Spring 2020 Semester Differ From Student To Student*

Mr. Tatos alleges that there was an ERT quality differential and that putative class members received a lower quality education during the Spring 2020 Semester because students' learning environment changed. However, the magnitude of any educational change that might have occurred differed from student to student as his model implies.¹²² Because of USC's individualized pricing, Mr. Tatos cannot ignore these individualized valuation factors.

The benefits students receive from classes vary with the classroom interaction among teachers and students. Dr. Cavanagh agreed with this when he opined "the two [Named Plaintiffs] in question had substantially unique and individual experiences."¹²³ While students still interacted with teachers and with their peers during remote classes, any alleged diminishment in classroom interaction from such classes compared to campus-based classes would necessarily be highly individualized.

For example, about half of the total course hours universities across the country deliver are high volume courses like Sociology 101.¹²⁴ The classroom interaction in such classes likely could be less impacted by the Spring 2020 Semester transition to remote classes than specialized seminars.¹²⁵ While students who attended large lecture classes in-person might not have had much classroom interaction in the first place, some students in small seminars might (or might not) have more classroom interaction. Teacher-student interactions and any changes that might have occurred with those interactions during the Spring 2020 Semester transition can also differ by major as the number of professors supporting that major varies.¹²⁶ Additionally, the modality of classroom discussion can differently impact those taking dance classes or mathematics classes as well as vary based upon individualized preferences, class makeup and other factors.

Further, preexisting preferences for and experience with online education could cause students to react differently to the post-transition classes. For example, students who had taken online classes before the transition might have been able to better adapt to the changed educational environment than other students. Figure 8 above shows that approximately one-third of USC students had previously taken at least one online class, demonstrating a preference, or at least an acceptance, of that modality.

¹²¹ Tatos Report, paragraph 14.iii.

¹²² *Id.*, paragraph 138. "The tuition T_i can vary by program or in/out of state status, for example."

¹²³ Cavanagh Report, p. 3.

¹²⁴ Ruth, Stephen, Can MOOC's and Existing E-Learning Efficiency Paradigms Help Reduce College Costs? (June 18, 2012), p. 6.

¹²⁵ Faculty without Students: Resource Allocation in Higher Education. William R. Johnson and Sara Turner *Journal of Economic Perspectives*: 23(2), 2009, p. 177.

¹²⁶ While the number of full-time faculty members in majors like comparative literature and physics in general exceed the number of undergraduate degrees they annually award, other majors like psychology award 4 to 5 undergraduate degrees per faculty member. *Id.*, p. 172.

Additionally, Dr. Cavanaugh found that one USC “faculty member observed that, in some cases, being online helped the course by providing students more time to review content and participate. She also felt that the online format facilitated an improved ability to review each student’s working draft and provide more detailed feedback regarding slides and presentations.”¹²⁷

These individualized differences extended to the Named Plaintiffs’ courses. For example, students in Ms. Bunch’s Spring 2020 Semester International Public Relations course were required to make presentations. At the beginning of the semester, some students were assigned to present during what became the in-person portion of the semester and others were assigned to present during what became the remote portion of the semester. Students in the former group potentially received different benefits and teaching quality than those in the latter group. Ms. Bunch, who was in the latter group, testified that she felt that she obtained lesser benefits than her peers who were in the former group. In particular, she said students in the former group were provided “the opportunity to create presentations, the opportunity to discuss things that I’m passionate about, which is intersection PR and have those presentations skills put to use. Unfortunately by the time it came my turn I didn’t even get to do that because we were online.”¹²⁸

Consequently, Mr. Tatos did not and cannot propose any common, formulaic method to account for the individualized impacts that putative class members supposedly faced.

2. The Benefits Students Received From Campus Access In The Spring 2020 Semester Differ From Student To Student

Any alleged diminishment in campus use also would be highly individualized. Because students’ use the campus in different ways, any losses they might have suffered because of the State-ordered closure would also be different.

On one hand, there are many students who do not use campus amenities, such as the gym, library or student union at all. Studies have even shown that certain demographics generally tend to not use certain amenities. For example, commuter students are less likely to use on campus services, like a gym, library or student union.¹²⁹

Students who do not use, or plan to use, the campus amenities, such as the gym, library or student union, at all could not have been damaged by their closure.¹³⁰ Such students would have been in the same economic position regardless of whether the campus closed. The closure did not reduce these students’ access to the amenities, which they never planned on using. Even though not all students use campus amenities, one educator found that “the majority of students agree that they should fund programs they may never utilize with student fees.”¹³¹

¹²⁷ Cavanagh Report, p. 17.

¹²⁸ Bunch Deposition, p. 220.

¹²⁹ Newbold, John J., Sanjay S. Mehta and Patricia Forbus “Commuter Students: Involvement and Identification with an Institution of Higher Education”, *Academy of Educational Leadership Journal*, Vol 15, 2011, p. 142.

¹³⁰ While Mr. Tatos claims that students paid for the option of using these services, (Tatos Deposition, p. 93) he did not employ standard options theory to value students’ options. Furthermore, in this matter, the value of such an option does not linearly change with the number of days, further demonstrating the flaws in Mr. Tatos’s calculation of alleged damages.

¹³¹ Sterritt, p. 20.

On the other hand, some students did use campus amenities; however, they used them to varying degrees. Using the student union example, some students may eat at its restaurants daily. Some students may attend events there weekly; others might have different social outlets including going to their primary residence on weekends. Freshmen might use the student union in different ways than upperclassmen. Students who pay fees themselves might have a greater desire to utilize its services than students whose fees are at least partially paid by a third-party.¹³²

For example, Ms. Kelly admitted that each student's experience with campus services varied from student to student. While Ms. Kelly used USC's health center, Thomas Cooper Library, Russell House (dining center), Strom Thurmond Center (wellness and fitness center), art lab, career services center and mail room, she noted that each student took advantage of these activities to varying degrees as some students didn't use the Strom Thurmond Center, Russell House, or Thomas Cooper Library.¹³³ While USC provided virtual exercise and meditation classes as well as the academic advising and career center services after the Spring 2020 Semester transition, Ms. Kelly testified that she did not use them.¹³⁴ Ms. Kelly's testimony shows that her own and other students' experience with campus services were individualized both before and after the transition.

As a result, even if campus access were a proper means to assess damages, the different ways students use campus amenities would cause alleged damages to be highly individualized.

3. Mr. Tatos Incorrectly Claims that All USC Students Would Obtain The Same Allegedly Lower Prices

Mr. Tatos claims that he could ignore individualized issues because he erroneously purports that any individual difference can be resolved using his formulaic methodology.¹³⁵ This assumption incorrectly implies that Mr. Tatos believes that all USC students would be able to "free ride" off of the allegedly lower tuition and fees that some USC students might demand.

In other words, Mr. Tatos acknowledges that not all USC students would demand lower tuition and fees. Instead of determining each student's individualized preferences, Mr. Tatos assumes that there would be some USC students who would desire lower prices and that USC would have to accede to these students' desires and lower its tuition and fees. He then further assumes that all students pay USC uniform tuition and fees. As a result, all USC students would pay lower tuition and fees.

This tortured assumptional logic is flawed in many ways.

First, Mr. Tatos did not demonstrate that a sizable number of USC students would desire lower prices and credibly demonstrate those desires.

Second, even if there were a sizable number of USC students credibly demonstrating their preference for lower prices, Mr. Tatos did not demonstrate that USC would have to accede to these

¹³² For example, see a discussion of how payment methodology could affect consumption in Gourville, John T. and Dilip Soman "Pricing and the Psychology of Consumption" *Harvard Business Review*, September 2002. <https://hbr.org/2002/09/pricing-and-the-psychology-of-consumption> viewed on May 31, 2022.

¹³³ Kelly Deposition, pp. 198-199.

¹³⁴ *Id.*, pp. 199-200.

¹³⁵ Tatos Report, paragraph 14.iii.

students' desires and lower its tuition and fees. In fact, when faced with a similar situation (the Fall 2020 Semester), not only did USC not lower its List Prices, but most USC students did not act on any desires for lower prices they might have had and reenrolled at undiscounted prices.

Third, even if USC were forced to lower the List Price of its tuition to some students, not all students would be charged this lower tuition. Sections IV.B and XV show that students actually pay Net Prices, not the List Prices on USC's website. USC tailors Net Prices based upon socioeconomic and demographic characteristics such as income, race, first generation college and honors status. A National Bureau of Economic Research ("NBER") paper shows that students' perception of remote education is affected by such socioeconomic and demographic characteristics.¹³⁶ For example, it found that second generation and honors students value on campus social interaction more than first generation and non-honors students, respectively, and that in-person instruction was more valuable to second generation college students.¹³⁷ Consequently, if required, USC has the ability to limit "free riding" by tailoring any tuition reductions it may provide to students with characteristics that are more likely to demand such reductions.

Consequently, not only does USC have the ability to limit "free riding," but it did so. In particular, even though some students might have been unwilling to pay "full" tuition and fees at USC during the Fall 2020 Semester, as discussed above in Section VII.A.2, such attitudes did not force USC to lower its List Prices for all of its students. As a result, Mr. Tatos is economically incorrect when he stated that all students would experience his hypothetical lower tuition and fee pricing.

C. Mr. Tatos Cited to Incorrect Data That He Claims Shows that USC Students Would Demand Lower Tuition for Teaching Environments Similar to USC's Spring 2020 Semester

Mr. Tatos's reliance on a Kennedy & Company survey, which predicted that more than half of the USC students surveyed would not enroll for the Fall 2020 Semester if on-campus classes could not be guaranteed, is misplaced.¹³⁸ Furthermore, a negative survey is actually irrelevant to Mr. Tatos opinions because he claims that he is not addressing educational quality, but rather that students did not get what they paid for, and, as such, students' beliefs about the educational quality they received is irrelevant to whether they allegedly received what they paid for.

Regardless of the relevance of educational quality to Mr. Tatos's damages theory, it is well known that surveys like the one conducted by Kennedy & Company can suffer from hypothetical bias. Hypothetical biases arise because survey participants only make hypothetical, subjective choices and do not bear the consequences of their decisions. Analysts have found that this lack of consequences can influence decision making as:

Respondents spend no actual money and they don't have to live with their choices.... Hypothetical bias occurs when we ask respondents what they would choose or how much they'd be willing to pay when facing a hypothetical choice

¹³⁶ Aucejo, Esteban M., Jacob F. French and Basit Zafar, "Estimating Students' Valuation for College Experiences" NBER Working Paper 28511, February 2021 ("Aucejo"), pp. 4 & 11.

¹³⁷ *Id.*, pp. 16-17.

¹³⁸ Tatos Report, paragraphs 161-162.

and their answers differ from what they would do in the real market.... Their survey responses, though not accurate, may be perfectly rational.¹³⁹

This hypothetical bias, the possibility that respondents may behave differently for hypothetical questions they receive in surveys than they would making those changes in a real market, can affect [valuation] estimates.... It will exaggerate their apparent willingness to pay for product features.¹⁴⁰

Hypothetical biases are exacerbated with university selection as 1) universities affect the trajectory of people's lives whereas the purchase of other products and services usually have lesser impacts and 2) a university education is usually more expensive than other products and services.

Nobel Laureate Daniel McFadden stated that confirmatory analyses are vital to verifying the accuracy of a survey's predictions.¹⁴¹ Such confirmatory analyses demonstrate that the predictions of the Kennedy & Company survey are not accurate. Even though the survey predicted that more than half of USC students would not enroll for an online Fall 2020 Semester, actual data from USC show that 90% of first-time, full-time USC undergraduate students at the Columbia campus reenrolled even though on-campus classes were not guaranteed.¹⁴²

This hypothetical bias phenomenon afflicting surveys attempting to analyze students' education selection during COVID-19 is well known. For example, a recent NBER paper, which analyzed a survey very similar to Kennedy & Company's, demonstrates such hypothetical biases.¹⁴³ That paper surveyed 1,500 undergraduate students at Arizona State University ("ASU") in the Spring of 2020 and asked them to declare their intended probability of reenrolling at ASU for the Fall 2020 Semester under various COVID scenarios. The authors then compared their intended probability of reenrollment to the actual Fall 2020 enrollment data. They found that students' survey answers sizably understated their probability of reenrollment if the Fall 2020 Semester had some COVID-restrictions (e.g. remote classes and reduced interactions) similar to what actually occurred in both the Spring 2020 and Fall 2020 Semesters at USC. In particular, the authors found that

among the pool of students who reported a stated likelihood of [enrollment of] 90% or more in the fall, the actual enrollment was 96%. On the other hand, among student with a stated likelihood of less than 50% of enrolling, the actual enrollment rate was 92%.¹⁴⁴

As a result, the logic of Nobel Prize winner Dr. McFadden implies that the Kennedy & Company survey should not be relied upon as Mr. Tatos does.

¹³⁹ Orme, Bryan K. & Chrzan, Keith, *Becoming an Expert in Conjoint Analysis – Choice Modeling for Pros*, Second Edition, 2021 ("Orme & Chrzan"), p. 11.

¹⁴⁰ *Id.*, pp. 204-205.

¹⁴¹ Moshe Ben-Akiva, Daniel McFadden & Kenneth Train, *Foundations of Stated Preference Elicitation: Consumer Behavior and Choicebased Conjoint Analysis*. 10(1-2) FOUNDATIONS AND TRENDS IN ECONOMETRICS 1–144 (2019), p. 30.

¹⁴² <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=15&unitId=218663&year=2020> viewed on February 27, 2023.

¹⁴³ Aucejo.

¹⁴⁴ *Id.*, p. 12.

VIII. Mr. Tatos's Damages Theory Incorrectly Defines The Actual and But For Worlds

Damages are generally calculated by comparing each plaintiff's economic position in the Actual and But For Worlds. The Actual World is supposed to measure the economic position each plaintiff experienced. As discussed above, the But For World starts with the same Actual World economic position and then assumes that the defendant's actions allegedly giving rise to liability did not occur. Consequently, for causation to be established, the only difference between the Actual and But For Worlds should be the defendant's alleged actions.

As discussed below, Mr. Tatos incorrectly defines both the Actual and But For Worlds in his Expert Report.

A. *Mr. Tatos's Damages Formula Ignores Basic Economics*

Mr. Tatos alleges that USC students were charged certain prices for education and services that were associated with tuition (which include Board Mandated Fees) for the Spring 2020 Semester and that students should have been charged different prices because USC allegedly provided different services. He then assumes that alleged damages are the difference between these prices.

Consequently, his calculation of alleged damages is based on his claim of what prices should have been charged for the services USC did provide during the Spring 2020 Semester.

Despite the fact that the field of economics has published thousands of papers on the methodology to calculate prices for services, Mr. Tatos did not employ any of them. While the totality of factors necessary to properly determine prices is beyond the scope of this Expert Report, I briefly discuss two factors in this subsection: Demand and Supply. At its core, prices are economically determined by the interrelationship between Demand and Supply.

Demand investigates things such as consumers' expectations, preferences, utilities and outside options (i.e., competitive products) to determine the price(s) they are willing to pay for certain products and services.¹⁴⁵ Mr. Tatos did not perform any analysis of how USC students' expectations, preferences, utilities or outside options influenced the prices (tuition) they would be willing to pay.¹⁴⁶ Standard economic and marketing models can be used to analyze such items. Without performing such analyses, Mr. Tatos cannot draw any conclusions about consumer Demand or the prices that would result from USC providing the services they did during the Spring 2020 Semester. Without knowing prices, Mr. Tatos cannot claim that his calculations accurately determine alleged damages.

¹⁴⁵ Kreps, David M. *A Course in Microeconomic Theory*, 1990, Ch. 2-3.

¹⁴⁶ As explained in Section VII.C, Mr. Tatos's reliance on a Kennedy & Company survey, which predicted that more than half of the USC students surveyed would not enroll for the Fall 2020 Semester if on-campus classes could not be guaranteed, is misplaced. Furthermore, a negative survey is actually irrelevant to Mr. Tatos opinions because he claims that he is not addressing educational quality, but rather that students did not get what they paid for. Under his theory, whether students liked it or not is irrelevant to whether they received what they paid for.

On the other hand, I analyzed students' expectations, preferences, utilities and outside options by investigating students' behavior in Section VII above. That Section demonstrates that students' expectations were met by USC during the Spring 2020 Semester.

Mr. Tatos incorrectly imposes his own beliefs about students' preferences, utilities and outside options into his calculations. He bases all of his calculations on the erroneous assumption that student preferences change linearly in a pro-rata fashion. As he performed no analysis to verify such an assumption, it must be considered speculative. Furthermore, Section XII below demonstrates that student preferences do not change linearly based upon the number of days, contrary to Mr. Tatos's speculative assumption.

Even if Mr. Tatos properly determined student Demand for the services USC allegedly provided during the Spring 2020 Semester, which he did not, he performed no analysis of Supply costs. Without performing such analyses, he cannot draw any conclusions about Supply or the prices that would result from USC providing the services it did during the Spring 2020 Semester. Without knowing prices, Mr. Tatos cannot claim that his calculations accurately determine alleged damages. In fact, courts have excluded experts who have asserted that certain prices should have existed, but did not conduct any analysis of Supply costs.¹⁴⁷

Mr. Tatos's ability to calculate what USC's tuition and fees should have been is further compromised because he testified that he did not know how USC calculated its tuition.¹⁴⁸

B. Mr. Tatos Incorrectly Defines the Actual World

Mr. Tatos made several errors that caused him to misstate the relevant Actual World in this matter.

1. Mr. Tatos Incorrectly Assumed That All USC Lab Classes Were Cancelled After the Transition

Mr. Tatos's calculation of alleged damages are based upon the incorrect premise that in the Actual World, all lab classes at USC were cancelled after the transition.

However, USC regularly offers online laboratory classes, contrary to Mr. Tatos's incorrect assumption. For example, prior to 2014,

two biology professors at the University of South Carolina, Roger Sawyer and Robert Ogilvie, developed an online course on histology that was built around students being able to drill down into images of the cell at various levels through the use of a large repository of digitized slides of cells...

This was partly driven by space limitations in USC's physical labs, and partly by increasing demand for students with health sciences qualifications. This approach has enabled the course to jump from 70 enrollments a year to 350. At the same time, student performance for the online students is the same as for the on-campus

¹⁴⁷ For example, see *In re: General Motors LLC Ignition Switch Litigation*, 14-MD-2543 (SD NY, 2019); *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Prod. Liab. Litig.*, 500 F. Supp. 3d 940, 950 (N.D. Cal. 2020), pp. 11-12.

¹⁴⁸ Tatos Deposition, p. 173.

students, and over 90% of students rate the course highly on a number of variables.¹⁴⁹

USC offers several other online laboratory classes.¹⁵⁰

The fact that USC has historically offered online laboratory classes demonstrates the fatal flaws in Mr. Tatos's Lab Class damages theory.

2. Mr. Tatos Incorrectly Assumed That USC Students Received Zero Value After the Transition

Many of Mr. Tatos's aforementioned damages scenarios are based upon the premise that in the Actual World, USC students received zero value from their classes and USC provided zero services after the transition.

This assumption is incorrect. As demonstrated above, by many different measurements, the educational experience was not impaired at all and for many, it may have improved. Further, even Mr. Tatos admitted that USC students received an education during the Spring 2020 Semester.¹⁵¹ Sections IX and X below provide further support showing that Mr. Tatos's assumption that students were somehow harmed by the transition to online education is incorrect.

3. Mr. Tatos Did Not Investigate Whether USC Students Received a Better Education in the Actual World

Under Mr. Tatos's damages theory, all USC professors restructured their courses during the Spring 2020 Semester transition, and this somehow caused the courses to be inferior in some way.

He did not, however, consider the fact that courses could improve with such restructuring. Many professors (including myself when I was an academic) taught classes based on recycled lecture notes that were originally prepared years before. I, like other professors, did not always update my lecture notes to include the most current information and thoughts given universities' emphasis on professorial research and academic activities other than in-classroom teaching. As a result, students who attended ERT lectures could have attended "better" classes as professors updated

¹⁴⁹ <https://www.tonybates.ca/2014/02/05/a-new-approach-to-online-lab-classes-from-the-university-of-south-carolina/> viewed on February 27, 2023.

¹⁵⁰ For example, see

https://www.sc.edu/study/academic_overview/online_education/courses/course_search/coursedescription.php?crn=47050&term=202301,

https://www.sc.edu/study/academic_overview/online_education/courses/course_search/coursedescription.php?crn=11495&term=202208,

https://sc.edu/study/academic_overview/online_education/courses/course_search/coursedescription.php?crn=42356&term=202301,

https://sc.edu/study/academic_overview/online_education/courses/course_search/coursedescription.php?crn=53936&term=202301 and

https://sc.edu/study/colleges_schools/artsandsciences/physics_and_astronomy/my_physics/200_level_laboratories/lab_schedules-summer.php, all viewed on March 3, 2023 and

https://www.sc.edu/uofsc/posts/2020/04/covid_resilience_virtual_simulation_nursing.php#.ZAQX8XbMI2w viewed on March 7, 2023.

¹⁵¹ Tatos Deposition, pp. 191-192.

what they conveyed during the Spring 2020 Semester, which they would not have done without the transition.

Consequently, not only did Mr. Tatos not properly define the Actual World, but such definitions would be highly individualized as one would have to measure how stale each lecture was and how much it was improved by the additional preparation that professors invested during the ERT transition.

C. Mr. Tatos Incorrectly Defines the But For World

Mr. Tatos made several errors that caused him to misstate the relevant But For World in this matter.

1. Mr. Tatos Ignored The Fact That COVID-19 Would Have Existed In the But For World

As discussed above, a properly constructed But For World is identical to the Actual World except the defendant's alleged actions of transitioning to online instruction during a pandemic are assumed not to occur in the But For World. Mr. Tatos claims that USC's alleged actions causing liability were conducting ERT classes.¹⁵² As a result, a proper But For World relevant for this matter would be identical to the Actual World except that USC did not conduct ERT classes.

Consequently, COVID-19 would have existed in a properly constructed But For World in this case. Mr. Tatos must assume that USC would have just provided its "normal" face-to-face classes during the Spring 2020 Semester while the COVID-19 pandemic was raging in his hypothetical But For World. However, he did not demonstrate USC students would have preferred to attend such "normal" face-to-face classes during the second portion of the Spring 2020 Semester. Most people limited contact with others from March through May 2020. In fact, even a year later in the Spring 2021 Semester, USC determined that many students still preferred online labs to in-person labs because of the remaining COVID-19 transmission risk.¹⁵³

As a result, it seems very clear that many, and very likely most, putative class members would not have attended "normal" face-to-face classes during the Spring 2020 Semester even if USC provided them.

Therefore, Mr. Tatos's assumed But For World is improper. It is incorrect to assume a But For World where COVID-19 did not exist as Mr. Tatos did.

His damages model compares what he believes USC students expected when they enrolled for the Spring 2020 Semester and what he claims they actually received. Even if he properly measured those two items, which he did not, Mr. Tatos did not disaggregate the difference between these two numbers. It is very likely that the emergence of COVID-19, not any action that USC may have performed, caused a large portion of any difference between student expectations and what they actually received. In other words, even if putative class members' expectations were not met during the Spring 2020 Semester, he did not demonstrate whether such losses were due to the COVID-19 pandemic or any alleged action by USC. Without such disaggregation, Mr. Tatos's model does not isolate the monetary impact of any alleged USC action as required to properly

¹⁵² Tatos Report, paragraphs 12-13.

¹⁵³ Deposition of Sandra J. Kelly, Ph.D. dated July 27, 2022, pp. 66-67.

assess damages. In fact, courts have rejected expert analyses in COVID-19 tuition class actions that failed to consider the effects of the COVID-19 pandemic.¹⁵⁴

2. Mr. Tatos Incorrectly Assumed That All USC Professors Spent 12 Weeks Specifically Preparing For Their Spring 2020 Semester Classes

Mr. Tatos's damages theory is based upon the assumption that in the But For World all USC professors typically would have spent 12 weeks specifically preparing for the Spring 2020 Semester classes to be online, rather than face to face. Put differently, Mr. Tatos opines that USC is liable to its students if, prior to the Spring 2020 Semester, professors did not spend 12 weeks preparing to provide online classes – ignoring, as explained below that the courses were only virtual for the second half of the semester. Nonetheless, even if USC professors had well-constructed lecture notes from prior semesters and even if they had extensive experience in preparing and teaching their classes in an online format, Mr. Tatos assumes that every USC course would have had to be redeveloped prior to the Spring 2020 Semester.

Mr. Tatos, however, provides no factual basis for the assumption that every USC professor typically spent exactly 12 weeks preparing for their all of their Spring 2020 Semester classes.

Mr. Tatos speculatively assumed that a recommendation about teaching preparation from USC's Center for Teaching Excellence ("CTE") establishes essentially the required standard for preparation for an online class. Mr. Tatos posits that a deviation from this supposed required standard justifies imposition of damages. However, the CTE recommendations are ideals that frequently are not achieved.¹⁵⁵ This observation fatally flaws his ERT Reduction percentage and the resulting damages.

First, USC's former Director of the CTE, Dr. August Grant, testified that preparation of an asynchronous online class would require anywhere from six weeks to six months and that a synchronous online class requires very little preparation at all.¹⁵⁶

Second, USC's website, upon which Mr. Tatos relied for his 12-week preparation assumption,¹⁵⁷ states:

[Preparation] [t]imelines will vary based on the experience of faculty designing and teaching online courses, technology skills of faculty, technology used in the course, and course content.¹⁵⁸

¹⁵⁴ *Smith v. Ohio State Univ.*, 2022-Ohio-4101 Court of Appeals of Ohio Decision on November 17, 2022, paragraphs 44-46.

¹⁵⁵ Cavanagh Report, pp. 9-10.

¹⁵⁶ Deposition of August Grant & Exhibits, dated October 27, 2022 ("Grant Deposition"), pp. 35-36.

¹⁵⁷ Tatos Report, footnote 86 (The University of South Carolina Center for Teaching Excellence, Online Course Development, available at

https://sc.edu/about/offices_and_divisions/cte/teaching_resources/online_teaching_faculty_toolbox/online_course_development/index.php. Accessed 8/6/2022.).

¹⁵⁸ https://sc.edu/about/offices_and_divisions/cte/teaching_resources/online_teaching_faculty_toolbox/online_course_development/index.php viewed on February 28, 2023.

After Mr. Tatos was shown this website in his deposition, he admitted that preparation timelines would vary for USC professors based on these factors.¹⁵⁹ As a result, even he admits that his alleged uniform damages theory is speculative and unreliable and would depend on an assessment of each course and each teacher, which he did not do.

Third, Mr. Tatos's damages calculations are flawed even if professors did not need 12 weeks of preparation every semester; they just needed 12 weeks of preparation in some prior semester. Such a hypothetical would imply that one would have to look at the individualized teaching history of each USC class and each USC professor in order to calculate alleged damages. Not only does such individualized analyses prevent the calculation of alleged damages on a classwide, formulaic basis in this hypothetical, but Mr. Tatos did not perform such analyses in his Expert Report.

Fourth, it is unclear to me how Mr. Tatos can opine about how professors should normally prepare for teaching given that he does not know how academics spend their time or other obligations a university professor might have.¹⁶⁰

Section IX demonstrates multiple metrics that demonstrate that Mr. Tatos incorrectly assumed that USC students received zero value after USC's transition to virtual education from the tuition and fees they were charged.

3. Mr. Tatos Ignored The Fact That The ERT Portion Was Less Than Half of the Spring 2020 Semester

Mr. Tatos bases his damages theory on data relating to what he believes to be the required preparation time for the entire semester's worth of online course lecture notes. Such data are irrelevant as USC professors only had to prepare roughly a half a semester's worth of online course lecture notes as USC transitioned to remote education during the middle of the Spring 2020 Semester. By definition, it takes less time to prepare roughly a half a semester's worth of lecture notes than an entire semester's worth. Because Mr. Tatos's damages theory did not measure the former nor presented any methodology to do so, his theory overstates alleged damages and, thus, is unreliable & irrelevant.

IX. Most of Mr. Tatos's Damages Theories Incorrectly Assume that USC Students Received ZERO Value After the Transition to Remote Education

Because many students received value from the education and services associated with the tuition and fees at issue in this lawsuit after USC transitioned to remote education, Mr. Tatos mis-defines the actual world by ignoring such value. Incorrectly constructing the actual world causes him to misstate the alleged damages in this matter.

Most of Mr. Tatos's damages theories incorrectly assumed that USC students received ZERO value after the transition to remote education. For example, all of his Scenario 1 Tuition damages erroneously assume that USC students received no value from the classes that Mr. Tatos, Ms.

¹⁵⁹ Tatos Deposition, pp. 97-98.

¹⁶⁰ *Id.*, pp. 9-12.

Bunch and Ms. Kelly all admit that they and other USC students attended. Mr. Tatos also erroneously assumes that USC students received no value from the Lab Classes they took by relying on one quote from one professor at a different university stating his belief that one class at his university could not be taught online,¹⁶¹ despite the fact it is my understanding that many lab classes at USC were able to virtually transition.¹⁶² Mr. Tatos further erroneously assumes without any analysis that USC students received no value from the services associated with Board Mandated Fees even though Mr. Tatos and Ms. Bunch admit that USC students received services.¹⁶³

These assumptions are false and economically inaccurate. Contrary to Mr. Tatos's claim, USC students did not receive zero value from the education and services associated with the tuition and fees after the transition. First, as discussed in subsection A below, some students received equal or greater value during this time period. Individualized analyses would be required to determine whether any given student received reduced value after USC transitioned to remote education and, if so, what that supposed reduced value was. These individualized analyses would also need to account for other, unanticipated complementary education and services that putative class members received at no additional cost. For example, USC changed its policy and waived all copays that its students were required to pay for primary care telehealth visits after March 17, 2020.¹⁶⁴

After the transition to remote education, USC students arguably received similar, if not greater, value from the education and services associated with the fees. If a student experienced a value diminishment in any way, an individualized analysis on a student-by-student basis would be required to determine the value that that student received. Even if some services were reduced or changed, individualized analyses would be required to assess the added / different services students received, such as the virtual services and COVID-related medical assistance USC provided.

Because of these similar, augmented, individualized education and services USC students received, Mr. Tatos's damages theories do not provide a common formulaic methodology to assess the value of the education and services he acknowledges students received during the remote portion of the Spring 2020 Semester or the value of the additional, unanticipated services they received at no additional cost. In addition, because the value he ignores depends entirely on individual student experiences, Mr. Tatos is unable to provide an economically appropriate formulaic methodology that could be used to assess damages on a classwide basis. Many individualized factors regarding students' education and their use of these services exist. As a result, it is my economic opinion that the only way to assess alleged damages in this matter is through individualized inquiries.

¹⁶¹ Tatos Report, paragraph 125.

¹⁶² See Sections IX.B below.

¹⁶³ Bunch Deposition pp. 86-87 and Tatos Deposition pp. 122-123.

¹⁶⁴ USC_00050087.xlsx.

A. Contemporaneous Data Show That Putative Class Members Received Value from the Remote Education Provided During the Alleged ERT Class Days

USC students attended classes after the transition to remote education. As discussed in Section VII.A.1 and VII.A.2, various metrics show the value that was received by USC students:

- Course evaluation ratings increased for the Spring 2020 Semester.
- GPAs did not decrease during the Spring 2020 Semester.
- Graduation rates increased for majority of USC campuses after the Spring 2020 Semester.
- Professional exam pass rates remained consistent and increased for law students and certain education students after the Spring 2020 Semester.
- Job placement rates increased after the Spring 2020 Semester.
- Average starting salaries of USC graduates increased after the Spring 2020 Semester.
- Retention rates increased for majority of USC campuses after the Spring 2020 Semester.

Therefore, students undeniably received value for the remote education that they received in the Spring 2020 Semester, and it is improper to baselessly assume that students received no value using a full pro-rata tuition refund methodology.

As discussed in Section VII.B, if students did allegedly receive less value for the remote education that they received in the Spring 2020 Semester, any such lesser benefits would need to be evaluated via an individualized inquiry on a student-by-student basis.

B. Contemporaneous Data Show That Putative Class Members Received Value from the Lab Classes Provided During the Alleged ERT Class Days

Students received value for the remote education they received from their lab classes. For example, **Figure 9** shows course evaluation ratings for Chemistry Labs and Physics and Astronomy Labs.

Figure 9 Course Evaluations				
Description	Fall 2018	Spring 2019	Fall 2019	Spring 2020
Chemistry Lab ¹⁶⁵	4.06	4.39	n/a	4.24
Physics and Astronomy Lab ¹⁶⁶	4.05	4.06	4.06	3.95

These course ratings show that USC students thought that labs for these courses were generally consistent during the Spring 2020 Semester, even after the transition to remote classes, with prior semesters.

An analysis of the Named Plaintiffs' classes show that neither of them were damaged by the

¹⁶⁵ USC_00049601-USC_00049656. Chemistry Lab course evaluations were not available in Fall 2019.

¹⁶⁶ USC_00049744-USC_00049779 and USC_00049780-USC_00049833.

allegedly lost lab classes. While Ms. Bunch did not have any lab classes, Ms. Kelly had two classes with available labs. While her Spanish course had an optional language lab that was available throughout the Spring 2020 Semester (both before and after the transition), Ms. Kelly voluntarily elected never to use the lab at any time during the semester.¹⁶⁷ As previously shown in Figure 1, the course evaluation ratings for Language, Literature & Culture programs, which would include foreign language classes and their optional labs, did not diminish during the Spring 2020 Semester either. Ms. Kelly's Media Arts documentary course (MART 571B) also had an optional arts lab that was available throughout the Spring 2020 Semester (both before and after the transition), which allowed access to certain equipment that could be used in putting together a documentary.¹⁶⁸ While students did not have access to the physical lab after the transition, they were given access to online substitutes, including Adobe editing software at no charge, and they were also allowed to use other equipment such as their own cell phones to produce the film.¹⁶⁹

Therefore, students received value for the lab classes after the transition to remote education that they received in the Spring 2020 Semester, and it is improper to assume that students received no value using a full pro-rata tuition refund methodology.

If students did allegedly receive less value for the lab classes in remote education that they received in the Spring 2020 Semester, any such lesser benefits would need to be assessed via an individualized inquiry requiring a student-by-student analysis.

C. Contemporaneous Data Show That Putative Class Members Received Value from the Services Provided During the Portion of the Spring 2020 Semester After USC Transitioned to Virtual Education

Even though the Board Mandated Fees did not guarantee access to particular on-campus services,¹⁷⁰ USC students still received services associated with these fees after the transition to remote education. Subsection 1 discusses the benefits USC students received from the school's Institutional Bond Fee and Athletic Bonds Fee. Subsection 2 discusses the benefits USC students received from the other Board Mandated Fees.

1. Institutional and Athletic Bonds Fees

Both the Institutional and Athletic Bonds Fees nominally support debt maintenance related to bonds held by USC. As Mandy Kibler, Associate Vice President and University Controller, testified, these fees are for servicing USC's bonds, whose servicing costs did not change due to COVID-19.¹⁷¹

As a result, students received value for the services allegedly related to the Institutional and Athletic Bonds Fee after the Spring 2020 Semester transition. Consequently, it is improper for

¹⁶⁷ Kelly Deposition, pp. 107 & 299.

¹⁶⁸ Cavanagh Report, pp. 5, 13-14.

¹⁶⁹ Kelly Deposition, pp. 317-318.

¹⁷⁰ https://sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php viewed on February 28, 2023.

¹⁷¹ Depositions of Mandy Kibler & Exhibits, dated October 17, 2022 and June 16, 2022 ("Kibler Deposition"), p. 134.

Mr. Tatos to assume that all USC students received zero value from the services allegedly associated with USC's Institutional and Athletic Bond Fee after the Spring 2020 Semester transition and that they deserve a full pro-rata fee refund. Mr. Tatos provided no analyses of such services, nor did he demonstrate that they diminished in any manner. Even if USC students received diminished value from the services allegedly associated with USC's Institutional and Athletic Bond Fee, those alleged lesser benefits would require individualized student-by-student analyses that Mr. Tatos did not perform.

Mr. Tatos, in fact, recognized that students could have received full value from the services associated with the Institutional and Athletic Bond Fee as he excluded this Fee from one of his damages scenarios (Scenario F2).

Even if putative class members were "overcharged" for the Athletic Bond Fee during the Spring 2020 Semester, they were "undercharged" for the Athletic Bond Fee during the Fall 2020 Semester.¹⁷² Such undercharges must be deducted from any alleged damages, which Mr. Tatos did not do.

If it is determined that USC should receive lower Athletic Bond Fees for the Spring 2020 Semester, USC's subsidization policies could cause students to receive reduced athletic services in other semesters. Consequently, Gamecocks football could be harmed for multiple years by the refunds Mr. Tatos proposes.

2. Other Board Mandated Fees

Mr. Tatos provided no analyses of the services associated with other Board Mandated Fees that USC students received during the Spring 2020 Semester, nor did he demonstrate that they diminished in any manner. Despite that, he improperly assumed that all USC students received zero value from the services allegedly associated with USC's Computer Fee, Athletic Fee, Renovation Reserve Fee, Infirmary Fee, Law Review Fee, Student Activity Fee, Wellness Center Fee, Parking Fee, New Student Union Fee and Student Recreation Fee after the Spring 2020 Semester transition and that they deserve full pro-rata fee refunds.¹⁷³

A cursory analysis shows that USC students received benefits from these fees after the Spring 2020 Semester transition. For example,

- **Athletic Fee:** A large portion of USC's annual athletic budget relates to Gamecocks football games that do not occur during Spring Semesters. USC annualizes its Athletic Fees so that it is not more heavily weighted to Fall Semesters.¹⁷⁴ As a result, a large portion of the Spring 2020 Semester Athletic Fees were used to subsidize athletic activities that occurred during the Fall 2019 and Fall 2020 Semesters.
- **Renovation Reserve Fee:** This fee is by definition a fee that USC students willingly pay where they do not directly receive a benefit during the semester in which they paid those

¹⁷² Non-returning students still benefit as the Spring 2020 Semester fees enhance USC's brand. See Section X below.

¹⁷³ USC's Budget Document refers to the Infirmary Fee, Athletic Fee, Student Activity Fee, Parking Fee and New Student Union Fee as the Student Health Fee, Athletic Activity Fee, Campus Activity Fee, Transportation Fee and Student Union Fee, respectively.

¹⁷⁴ See Exhibit 4. The Board Mandated Fees are charged the same per semester.

fees. As this Fee creates a reserve fund, money from the Spring 2020 Semester Renovation Reserve Fee is used to create student benefits in later semesters. Students are willing to pay these fees to enhance USC's brand even if they do not directly benefit from them during the semester in which they paid those fees.

- Law Review Fee: The publication of the USC Law Review was uninterrupted by the school's Spring 2020 Semester transition. For example, the USC Law Review was published as scheduled in January, April, July and October 2020.¹⁷⁵ Moreover, despite the fact that all law students pay this fee, only a small fraction of second and third year law students are able to participate in the activities related to the publication of the Law Review, which would necessitate an individualized analysis even if there were some interruptions.
- Wellness Center Fee: USC's Wellness Center services were available after the transition, including, for example, through USC-provided virtual exercise classes and daily meditation classes.¹⁷⁶
- Infirmary Fee: USC's health clinic remained open for in-person and telehealth visits after the Spring 2020 Semester transition. As shown in **Figure 10** below, the USC students who remained on or near campus continued to receive in-person healthcare, and the USC students who departed the campus areas received telehealth services.¹⁷⁷ As essential workers, USC health staff worked every day of the pandemic tending to the needs of USC students. In addition to the "regular" services the health clinic provided, USC's health clinic had to unexpectedly address the COVID-19 needs of USC students including COVID-testing, contact tracing and isolation coordination as well as an increased number of mental health issues that arose during this time period.¹⁷⁸ USC students also received additional benefits related to alleged Infirmary Fee services as students no longer had to pay the required copays for primary care telehealth visits after March 17, 2020.¹⁷⁹

¹⁷⁵ https://scholarcommons.sc.edu/do/search/?q=law%20review&start=0&context=1297624&facet=publication_facet%3ASouth%20Carolina%20Law%20Review&facet=publication_year%3A2020# viewed on March 3, 2023.

¹⁷⁶ Kelly Deposition, Exhibit 92 (USC_00047973).

¹⁷⁷ USC_00050088.xlsx.

¹⁷⁸ Kelly Deposition, Exhibit 92 (USC_00047973).

¹⁷⁹ USC_00050087.xlsx.

Figure 10						
Health Visits in Spring 2020 by Month						
Department	Type	Jan	Feb	Mar	Apr	May
Counseling Services	In-Person	2,031	3,254	2,741	1,308	423
	Telehealth	64	37	23	238	223
Primary Care	In-Person	2,673	4,111	1,539	261	248
	Telehealth	2	5	40	63	37
Psychiatric Services	In-Person	533	746	604	409	57
	Telehealth	0	0	0	55	181
Sports Medicine	In-Person	389	600	347	28	16
	Telehealth	0	0	21	49	22
Women's Health	In-Person	1,512	1,609	647	228	230
	Telehealth	0	0	0	35	80
Total	In-Person	7,138	10,320	5,878	2,234	974
	Telehealth	66	42	84	440	543

Consequently, it is improper for Mr. Tatos to assume that all USC students received zero value from the services allegedly associated with these other Board Mandated Fees after the Spring 2020 Semester transition and that they deserve full pro-rata fee refunds. Even if USC students received diminished value from the services allegedly associated with these fees, those alleged lesser benefits would require individualized fee-by-fee and student-by-student analyses that Mr. Tatos did not perform.

Furthermore, the USC services allegedly associated with these fees relate to longer-term services that span multiple semesters. Students are willing to pay these fees to enhance USC's brand even if they do not directly benefit from them during the semester in which they paid those fees.¹⁸⁰ Therefore, even if it could be shown that putative class members were "overcharged" for these fees during the Spring 2020 Semester, they may have been "undercharged" for these fees during later semesters.¹⁸¹ Such undercharges must be deducted from any alleged damages, which Mr. Tatos did not do.

X. Mr. Tatos's ERT Damages Theory Incorrectly Assumes that USC Students Receive ZERO Value From Out-of-Classroom Experiences

Mr. Tatos's tuition damages theories are solely based on the premise that there was an ERT quality differential and that USC's Spring 2020 Semester classes were allegedly inferior because they were either cancelled or professors were ill prepared. Consequently, he incorrectly assumes that all value students receive from USC comes from in-classroom educational experiences. In fact, Mr. Tatos alleges that:

¹⁸⁰ Sterritt, pp. 81-82 and Weisbrod, pp. 184-187.

¹⁸¹ Non-returning students still benefit as the Spring 2020 Semester fees enhance USC's brand. See Section X below.

Plaintiffs proffer the theory of damages that, after the University implemented this policy and transitioned to alternative emergency instruction, students did not receive the educational product for which they paid.¹⁸²

This assumption is incorrect. USC students' tuition allows them access to out-of-classroom experiences that continued after the Spring 2020 transition. Mr. Tatos places no value on such experiences. One author stated that the non-monetary benefits ("NMBs") students receive:

may be defined as those educational outcomes whose full economic impacts escape pecuniary measurement. Obviously, NMBs are sometimes very difficult to identify and even more difficult to measure, but these effects **add to the monetary returns and must be considered in the rational analysis of educational investment and planning.**¹⁸³

Mr. Tatos did not add in the monetary returns from such NMBs in his calculation of alleged damages. I discuss some exemplar NMBs below and demonstrate that their value would vary from student to student.

First, USC students receive benefits from interacting with their peers and professors. While the modality of such interactions might have changed after the transition, they still occurred. Students FaceTimed each other, continued to play virtual video games and just chat with college friends after the transition. Students continued to meet with professors outside of the classroom.

Mr. Tatos provided no analysis of how or if these interactions were changed by USC's Spring 2020 Semester transition. For example, Mr. Tatos did not demonstrate how any professor's answer to office hour questions for which they were prepared or not prepared was affected by the modality of the interaction. Any such analysis of these interactions would by definition have to be individualized.

Second, even if the book education of USC students diminished in some manner, their "real-life" education increased because of USC's transition. Courses are generally highly structured where students learn something and then take a test. USC's transition taught students the soft skills of flexibility and dealing with ambiguity as well as the technology to interact with colleagues in a virtual setting. Companies often devote great efforts to teaching their new employees such soft skills and technology. For example, Ms. Kelly likely benefited from USC's remote transition as it prepared her for her first job that began in a remote environment.¹⁸⁴ Any such analysis of this "real-life" education would by definition have to be individualized. By solely focusing on students' book learning, Mr. Tatos incorrectly overstated any alleged educational diminishment that might have occurred during the Spring 2020 Semester.

Third, one important measure many students consider when they apply to colleges is safety. US News provides a variety of information to prospective students regarding colleges, and one measure they give is the safety features of a college. US News lists the school's health, safety and

¹⁸² Tatos Report, paragraph 11.

¹⁸³ Vila, Luis E. "The Non-Monetary Benefits of Education." *European Journal of Education*, vol. 35, no. 1, 2000, p. 22. (emphasis added)

¹⁸⁴ Kelly Deposition, p. 320.

counseling services.¹⁸⁵ USC's actions allegedly causing liability increased student safety as they mitigated students' risk of contracting and spreading a potentially lethal virus that has since claimed the lives of over one million Americans.¹⁸⁶ Mr. Tatos's damages theory overlooks and does not incorporate this student benefit.

Fourth, USC students receive beneficial signals about their abilities by completing a degree from a well-respected institution like USC. Section VII.A.1.b above discusses Nobel Prize-winning research that describes the benefits USC students continued to receive from such signals during and because of the Spring 2020 Semester.

Fifth, even if USC students were overcharged during the Spring 2020 Semester, Mr. Tatos noted that institutions like USC do not distribute profits like corporations.¹⁸⁷ Consequently, any excess funds USC might have received from the Spring 2020 Semester would have been reinvested in students for subsequent year learning and activities. These reinvested funds would have caused USC students to be "undercharged" in later semesters. Such undercharges would have to be deducted from any alleged damages, which Mr. Tatos did not do.

Students regularly pay tuition and fees that generate benefits in subsequent semesters. For example, Sections IV.B.2 and IX.C above discuss several USC fees that provide longer-term benefits. Such payments enhance the USC brand. Economists have noted that:

Brand names are assets to any firm or organization. Colleges and universities, whether public, private nonprofit, or for-profit, are no different. Those that have national name recognition can attract a broader and more talented pool of applicants, more tuition revenue, and more donations....

To find a trustworthy school, the student will often rely heavily on the school's reputation. Developing a reputation is, in effect, developing a well-regarded brand name that conveys important information....

Ultimately, a school would like to generate a sort of self-perpetuating momentum that, through students, employers, and the press, tells the school's story with enhanced credibility... As any student of marketing knows, brands have value just as buildings do. They are intangible assets, but assets nonetheless, and just as the value of a brand can be built over time as the brand becomes associated with a popular or high-quality product, so can the value of a brand be eroded as the product's popularity wanes or quality declines. A school that has invested much in branding itself is susceptible to an especially hard fall if things do not go according to plan.¹⁸⁸

As a result, Mr. Tatos's damages theories that solely focus on the Spring 2020 Semester are inappropriate. The aforementioned future benefits students receive from an enhanced USC brand, which are highly individualized, at a minimum, would have to be subtracted from any alleged damages calculation. As Spring 2020 Semester students have different graduation dates, return to

¹⁸⁵ <https://www.usnews.com/best-colleges/university-of-south-carolina-3448/campus-info> viewed on February 27, 2023.

¹⁸⁶ <https://coronavirus.jhu.edu/region/united-states> viewed on February 27, 2023.

¹⁸⁷ Tatos Report, paragraph 44.

¹⁸⁸ Weisbrod, pp. 175, 184 & 187.

campus with different frequency and different employment prospects and trajectories, these future benefits would necessarily be individualized.

XI. Mr. Tatos's ERT Quality Differential Approach Requires the Court to Evaluate Course Effectiveness

While he might claim otherwise, Mr. Tatos's quality differential approach requires the court to evaluate the effectiveness of every class taught at USC during the Spring 2020 Semester.¹⁸⁹ In fact, Mr. Tatos stated

In addition to the distinction between ERT and online courses..., the literature also supports the quality differential approach to distinguishing the educational benefits offered by these two forms of instruction.¹⁹⁰

An enumerable number of factors could affect course effectiveness. Some professors are better teachers than others. Some classes like Tailgating 101 (HRTM 168) tend to be more fun.¹⁹¹ Some "weed-out" classes like Introduction to Financial Accounting (ACCT 225) tend to be disliked.¹⁹² From my own personal experience, I can say that one of the least effective courses I took in college was one taught by a professor who was denied tenure during the middle of the semester. Additionally, my father was an Associate Dean at Northwestern University's Feinberg School of Medicine. Medical residents and interns used to have to work 24 or 36 hour shifts. Subsequently, concerns about decisions made by sleep-deprived residents and interns eliminated such shifts. However, my father and others believe that this change diminished educational effectiveness as residents and interns could not fully follow patients from their arrival in the ER to their stabilization, which often takes 24 hours.

While I do not offer any legal opinions, recognizing such factors impact on teaching, it is my understanding that most states including South Carolina have adopted the educational malpractice doctrine that "bars a claim in either tort or contract that 'raises questions about the reasonableness' of a school's conduct in 'providing educational services' or a claim that 'requires an analysis of the quality of education.'"¹⁹³

¹⁸⁹ If the teaching USC provided during the Spring 2020 Semester was as effective as normal teaching, USC students would have received the same value for their classes.

¹⁹⁰ Tatos Report, paragraph 97.

¹⁹¹ <https://academicbulletins.sc.edu/undergraduate/course-descriptions/hrtm/> viewed on February 27, 2023.

¹⁹² <https://academicbulletins.sc.edu/undergraduate/course-descriptions/acct/> viewed on February 27, 2023.

¹⁹³ <https://www.mayerbrown.com/en/perspectives-events/publications/2020/05/covid19-higher-ed-litigation-the-educational-malpractice-doctrine-bars-students-online-learning-claims> viewed on February 27, 2023.

XII. Mr. Tatos Did Not Demonstrate That His Alleged Course Effectiveness Declines Could Be Measured By and Are Uniformly Linearly Tied to Teacher Preparation Time; Course Effectiveness Is Highly Individualized

Even if it were the case that there was an ERT quality differential and that USC's classes were less effective during the remote portion of the Spring 2020 Semester, Mr. Tatos made the unsupported, speculative assumption that course effectiveness is directly and linearly tied to teacher preparation time. This assumption is wrong.

Mr. Tatos's logic confuses basic economic supply and demand principles. His damages model assumes that the demand for a given product or service would decrease if a supplier used fewer resources to produce that product or service. This would perversely imply that demand would fall as manufacturers generate economies of scale. If Mr. Tatos's logic were true, students who complete timed exams early would always do worse than students who turn in their exams at the deadline. Additionally, Mr. Tatos's logic implies that per credit hour List Prices and the per credit hour Net Prices USC Receives would double if a USC professor spent 24 weeks preparing for a class as compared to what he considers to be the "normal" 12 weeks of preparation.

Instead of utilizing a supply side production measure like Mr. Tatos does in his Expert Report, it is economically appropriate to investigate the demand side of whether consumers / students believed their courses were effective. As discussed above in Section VII, numerous metrics demonstrate that USC students did not view their Spring 2020 Semester courses as less effective.

While it is theoretically possible that suppliers would pass along cost savings to consumers, such a concept is inapplicable in this lawsuit. Mr. Tatos has not shown that USC saved any money from transitioning to remote classes during the Spring 2020 Semester. In fact, data show that USC's costs increased because of the transition. For example, as mentioned above, USC incurred approximately \$32.2 million in unexpected refunds and expenditures during the Spring 2020 Semester.¹⁹⁴ Specifically, USC gave \$20.7 million in refunds to students for housing, dining, and parking and transportation. In addition, USC incurred over \$11.5 million in mitigation costs related to personal protective equipment ("PPE"), cleaning and sanitation and virus testing & tracing.¹⁹⁵

Even if such cost savings existed, detailed economic analyses are required to determine whether cost savings are passed along to consumers. In fact, Mr. Tatos acknowledged that as a non-profit entity, USC does not distribute any excess profits; any excess would be reinvested in students. As Mr. Tatos did not perform such pass along analyses, it would be speculative to assume that the transition would cause tuition and fee prices to decline. Furthermore, standard economic models show that suppliers that sell differentiated products, as USC does,¹⁹⁶ do not pass along cost savings

¹⁹⁴ University of South Carolina Comprehensive Annual Financial Report for the Year Ended June 30, 2020 (USC_00050094), p. 23.

¹⁹⁵ *Ibid.*

¹⁹⁶ Weisbrod, p. 35.

dollar for dollar to consumers.¹⁹⁷ As a result, detailed economic models would be required to quantify any cost savings passed along, which Mr. Tatos did not do.

Even if there were some relation between course effectiveness and teacher preparation time, Mr. Tatos makes the unsupported, speculative assumption that there is “a linear relationship between” the two.¹⁹⁸ He provides no support for such an assumption.

In fact, standard economic analyses show that production can have decreasing returns to scale. This concept implies that suppliers obtain lesser benefits as more is produced.¹⁹⁹ In other words, professors get greater “bang for their buck” for the first hours they spend preparing for the classes. It is possible that professors are able to relatively quickly generate core course concepts & lecture notes and then spend a large amount of time “fine tuning” those concepts & notes.

Pundits have familiarized this concept with the Pareto Principle, otherwise known as the “80-20 Rule.” This Principle states that one obtains 80% of the benefits from 20% of one’s efforts.²⁰⁰ In other words, if professors only had 20% of the “necessary” preparation time during the Spring 2020 Semester, the Pareto Principle would imply that course effectiveness was 80% rather than the 20% that Mr. Tatos assumed. Under this hypothetical, Mr. Tatos overstated alleged damages four-fold.

Obviously, decreasing returns to scale do not always numerically cause this 80-20 ratio. Detailed economic analyses are required in order to determine the exact ratio. Mr. Tatos did not perform such analyses.

Furthermore, any relationship that might exist between course effectiveness and teacher preparation time would be highly individualized along multiple dimensions.

- One of the papers to which Mr. Tatos cites found that preparation time decreases as professors obtained more experience teaching online classes.²⁰¹ Prior to the Spring 2020 Semester, approximately 23% of USC teachers that taught face-to-face had previously taught a class online.²⁰² Mr. Tatos’s damages formula, if he considered this cited paper, should imply that the quality of such professors’ post-transition classes would not have decreased as much as other professors.
- Mr. Tatos admitted that USC professors had previously developed and taught online courses.²⁰³ When I was an academic, I regularly used lecture notes that other professors had developed. Because those online classes had already been prepared, Mr. Tatos’s theory should imply that students who were enrolled in such classes were less damaged than students who were enrolled in classes that did not have a previously prepared analog. For example, during the Spring 2020 Semester alone, there were 59 face-to-

¹⁹⁷ Varian, Hal R., *Microeconomic Analysis*, Second Edition, Chapters 2-3.

¹⁹⁸ Tatos Report, paragraph 130.

¹⁹⁹ <https://www.economicshelp.org/blog/glossary/decreasing-returns/> viewed on February 27, 2023.

²⁰⁰ <https://www.forbes.com/sites/kevinkruse/2016/03/07/80-20-rule/?sh=38b130413814> viewed on February 27, 2023.

²⁰¹ Freeman, Lee, *Instructor Time Requirements to Develop and Teach Online Courses*, *Online Journal of Distance Learning Administration*, Volume XVIII, Number I, Spring 2015 (“Freeman”), p. 3.

²⁰² USC_00050089.xlsx. 20% of instructors previously taught or were teaching 100% online prior to move to remote learning.

²⁰³ Tatos Report, paragraphs 31 & 88.

face courses that had concurrent online counterparts.²⁰⁴ According to Mr. Tatos's theory, there should be no diminishment in the quality of these 59 classes because the online versions of these classes had been previously prepared when professors had "sufficient" preparation time under "normal" pre-pandemic circumstances.

- USC offers many courses that have multiple sections taught by several professors. For example, Psychology 101 was taught by 9 different professors during the Spring 2020 Semester at USC – 6 taught only face-to-face, 2 taught 100% web asynchronously, and 1 taught in both modalities.²⁰⁵ Even assuming, contrary to the facts, that online versions of Psychology 101 had not already existed, these 9 professors could have allocated course preparation time amongst themselves. Even if Mr. Tatos were correct that it would take 12 professor weeks to prepare an online class, these 9 Psychology 101 professors would have had a combined 18 weeks to prepare for their ERT classes, more than enough time based on Mr. Tatos's own calculations. As a result, students in classes like Psychology 101 should not be damaged by the transition according to Mr. Tatos's theory. If these 9 professors took the entire combined 18 weeks to prepare their ERT classes, according to Mr. Tatos's theory, Psychology 101 students received a windfall from USC's Spring 2020 Semester transition. This windfall would need to be deducted from overall damages, which Mr. Tatos did not do.
- Some courses that emphasize informal group discussions likely could more easily transition to a remote format than more hands-on classes. Consequently, Mr. Tatos's theory should imply that students who were enrolled in informal group discussion classes were less damaged than students who were enrolled in other classes.
- Some professors are more technologically savvy. For example, Dr. Cavanagh learned from interviewing the Named Plaintiffs' teachers that Ms. Kelly's professor Lauren Steimer (FAMS 363 and FAMS 308), as a documentary filmmaker, "had extensive experience recording lectures and captioning. She had completed the Center for Teaching Excellence's professional development to teach online, addressing both pedagogy and technology topics."²⁰⁶ Consequently, even if it were valid to measure course effectiveness based upon teacher preparation efforts as Mr. Tatos speculates, students who were enrolled in classes taught by more technologically savvy professors were less damaged than students who were enrolled in other classes.
- While some professors chose to transition courses to an asynchronous format, others chose synchronous or a combination of both.²⁰⁷ Mr. Tatos did not demonstrate that professors who taught synchronously had to spend weeks re-preparing for their classes as he claims. In fact, many professors including those of the Named Plaintiffs were able to continue with their previously prepared lectures. For example, one of Ms. Kelly's professors, Laura Kissel, stated that the transition did not sizably affect her lectures.

²⁰⁴ Deposition of Kelly Morgan Epting & Exhibits, dated October 27, 2022, Exhibit 68.

²⁰⁵ *Ibid.*

²⁰⁶ Cavanagh Report, p. 9.

²⁰⁷ *Id.*, p. 6.

(D)uring the spring of 2020, I tried to stay as close to the class syllabus as possible and I met synchronously, which did not require me to record anything. I mostly gave the same lectures that I would have if we had been in person together in the classroom, and I also met my class synchronously to give those lectures and lead discussion and conversation about the ideas we were learning about. I may have added a new item here or there, but I tried to keep my syllabus as close to our original plan as possible.²⁰⁸

Mr. Tatos recognized such individualized issues in his citation of USC documents identifying specific professorial actions that affect online course effectiveness.²⁰⁹ For example, one of Mr. Tatos's sources found that only "50% of faculty, 51% of undergraduate students, and 27% of graduate students at U.S. institutions" were "most profoundly" impacted by the transition to remote education during the Spring 2020 Semester.²¹⁰ Additionally, Mr. Tatos cited to a nationwide study that found that a sizable number of Chief Online Officers did not believe that ERT classes were inferior to "regularly" prepared online classes.²¹¹

As a result, Mr. Tatos's damages theory is fatally flawed because it does not properly account for each individual professor's ability, situation and individual course specifics.

Even if one sets aside the individualized nature of the way in which professors prepare their lecture notes, course effectiveness should be measured in the eyes of the students as discussed above in Section VII.A. There are numerous ways in which students' consumption of a professor's lecture preparations is individualized. For example, it is not uncommon for students to miss classes. For example, Ms. Kelly regularly missed classes due to chronic migraines.²¹² If a student missed a professor's lecture during the remote portion of the Spring 2020 Semester that Mr. Tatos believes was "inferior," that student was not damaged by that allegedly "inferior" lecture. Under Mr. Tatos's theory, putative class members were at best only damaged from the classes they attended. It also does not account for students potentially attending more lectures if they were asynchronous after the transition because it was more convenient for the students that would have missed the in-person class but for the remote transition. This would imply that one must at least determine which lectures each putative class member attended during the remote portion of the Spring 2020 Semester in order to calculate alleged damages.

Mr. Tatos also claims that his damages model is based on the Carnegie Unit, which measures exposure to educational concepts, not learning.²¹³ However, students learn differently from the same exposure. Students could also differentially utilize office hours, which is not measured in the Carnegie Unit. As a result, students receive differential and individualized benefits from the same lecture.

Furthermore, studies have shown that some classes' attendance increased during the remote portion of the Spring 2020 Semester,²¹⁴ as students were able to attend classes asynchronously and

²⁰⁸ *Id.*, p. 13.

²⁰⁹ Tatos Report, paragraph 39.

²¹⁰ <https://www.qualitymatters.org/sites/default/files/research-docs-pdfs/QM-Eduventures-CHLOE-5-Report.pdf>, page 5 viewed on March 6, 2023. Cited in Tatos Report, paragraph 109.

²¹¹ Tatos Report, paragraph 109.

²¹² Cavanagh Report, pp. 5 & 12-13 (USC_00048797, USC_00048784, USC_00048745).

²¹³ Tatos Report, paragraph 133.

²¹⁴ <https://www.sciencedirect.com/science/article/pii/S2405844022025956> viewed on February 27, 2023.

in their bedrooms without having to commute, etc. Therefore, one would have to balance the added benefits students received from attending more lectures during the remote portion of the Spring 2020 Semester with the alleged “inferior” lectures that Mr. Tatos speculates that USC professors gave.

One professor at another school told me he believed that his classes improved during the remote portion of the Spring 2020 Semester because 1) he was able to obtain guest lecturers who would not have attended an in-person class and 2) classroom discussion improved as students were more willing to express their views via chat functions that were running simultaneously to the lecture. Similarly, a USC faculty member noted that the online format for her journalism class facilitated an improved ability to review each student’s working drafts and provide more detailed feedback regarding slides and presentations.²¹⁵

Because Mr. Tatos did not analyze such individualized offsets and added benefits during the remote portion of the Spring 2020 Semester, he further misstated alleged damages

XIII. Mr. Tatos Uses Incorrect Time Intervals to Calculate His Alleged Damages; Analysis of the Proper Time Intervals Demonstrates That The Putative Class Was Not Damaged Under Mr. Tatos’s Theory

Mr. Tatos bases his calculation of alleged damages on the assumption that professors did not have adequate time to prepare to teach their classes in a remote format. As discussed above, while he claims that USC professors had “approximately two weeks” to prepare to teach their classes remotely during the Spring 2020 Semester,²¹⁶ Mr. Tatos relied on an estimate of the number of weeks / months required to prepare an online class.²¹⁷ Because that estimate exceeded “approximately two weeks,” he claims that all USC students were damaged.

However, Mr. Tatos’s calculations are flawed because he uses incorrect assumptions and time periods. Subsection A shows that Mr. Tatos incorrectly assumed that USC’s suggested 12-week preparation time was a requirement when it was only a recommendation. Subsection B demonstrates that Mr. Tatos’s sources show that professor preparation times are more properly measured in hours rather than weeks / months. Subsection C demonstrates that putative class members were not damaged according to Mr. Tatos’s theory if the proper unit of time was employed. Subsection D identifies flaws in Mr. Tatos’s assumption that USC professors had only “approximately two weeks” of preparation time during the Spring 2020 Semester.

²¹⁵ Cavanagh Report, p. 17.

²¹⁶ Tatos Report, paragraph 96.

²¹⁷ *Id.*, paragraph 130.

A. Mr. Tatos Incorrectly Believes that a Timeline Published by USC Establishes A Requirement, When It Represents Only A Recommendation

Mr. Tatos's damages model is based upon his belief that he gleaned from USC's Center for Teaching Excellence that professors are **required** to spend 12 weeks preparing for their online courses.

However, the document on which Mr. Tatos relies for his ERT damages formula states only that the preparation time is recommended; it is not a requirement.²¹⁸ Dr. Cavanagh reached a similar conclusion when he stated that:

Under normal, non-emergency circumstances, the university might **suggest** that preparing for a typical asynchronous online course may take a faculty member a number of weeks to complete (perhaps up to 12 weeks).... The university recommendations of tasks that must be completed as part of the online course development process are based on an idealized schedule with adequate human and other resources always available to complete every step in sequence. It is a recommendation of guidelines, not hard and fast edicts.²¹⁹

Consequently, it is improper for Mr. Tatos to assume that all USC classes would have had 12 weeks of preparation time in his But For World. This erroneous assumption fatally flaws his damages calculations.

B. Mr. Tatos Incorrectly Based His Calculations on Weeks / Months, not Hours

While Mr. Tatos cites to multiple studies and testimony that provide disparate estimates of online classroom preparation time in weeks / months,²²⁰ he ignores any study or testimony that estimates preparation time in hours. He does so even though he states that the basis for his approach is measured in hours. In particular, he wrote:

The approach I propose is grounded in commonly-accepted and widely-employed time-based units in higher education. The Carnegie Unit has represented the temporal basis for the provision of instruction and student progress...

While the Carnegie Unit applies to secondary education, institutions of higher education used a metric derived from the Carnegie Unit, the "credit **hour**". USC also relies on the same credit **hour** metric. Thus, I apply the same standard, **a unit of time**, that the Carnegie Foundation has used for over a century to evaluate student preparation for college, to the preparation time for online instruction.²²¹

²¹⁸ Direct download available at

https://sc.edu/about/offices_and_divisions/cte/teaching_resources/online_teaching_faculty_toolbox/docs/online_course_development_timeline_12week_option.docx. viewed on March 6, 2023.

²¹⁹ Cavanagh Report, pp. 8-9. (**emphasis** added)

²²⁰ For example, Tatos Report, paragraphs 90-91 & 130.

²²¹ *Id.*, paragraphs 131-132. (**emphasis** added)

He does not explain why his damages model did not use the units of time he considers to be “commonly-accepted and widely-employed” and “used for over a century to evaluate student preparation for college.”

This “commonly-accepted and widely-employed” unit of time that has been “used for over a century to evaluate student preparation for college” is more appropriate to measuring teacher preparation time. Mr. Tatos ignores the fact that professors do not just prepare to teach classes during their workweeks. In addition to teaching-related activities, they conduct research, mentor students, provide university service and provide professional service.²²² One study found that professors devote less than one-third of their work week to teaching-related activities.²²³ Other studies found that only a portion of professors’ teaching-related time involved classroom preparation and developing curriculum.²²⁴ For example, Mr. Tatos testified that he did not spend the entirety of the weeks he prepared for his University of Utah class preparing to teach the class; he was also working full-time while preparing.²²⁵

Dr. Cavanaugh agreed that course development is only a small portion of what professors do. In particular, he wrote that course preparation “time estimate[s] assume[] that the faculty member is working on course development on a part-time basis for perhaps a couple of hours a week alongside all of their other teaching, research, and service responsibilities.”²²⁶

Consequently, while Mr. Tatos relies on data about the number of weeks / months supposedly required to prepare online classes during “normal” times, he does not consider that the professors spend only a small fraction of those weeks actually preparing and that the “approximately two weeks” he claims USC professors had to prepare to teach their classes remotely during the Spring 2020 Semester were not “normal” times.

Dr. Freeman, one of Mr. Tatos’s data sources, agrees that professors spend only a small fraction of the weeks preparing for classes actually preparing online classes. While Mr. Tatos’s Expert Report quoted one sentence from Dr. Freeman’s article that identified **the number of weeks** supposedly required to prepare on online class, Mr. Tatos ignored Dr. Freeman’s next sentence that identified **the number of hours** supposedly required to prepare an online class. In particular, Dr. Freeman found that the median hours needed to prepare an online course was 70 hours and this time period decreased as professors had greater experience preparing online classes.²²⁷

Mr. Tatos’s different sources claim a disparate number of weeks / months it takes a professor to prepare for an online class. Mr. Tatos cannot dismiss the possibility that all professors at different universities that stated different average preparation times as measured in weeks / months on average spend the same number of hours preparing an online class as implied by the Freeman

²²² Allen, T. D. (2020). Faculty Time Allocation Across Work and Family Roles (“Allen”), Table 1.

²²³ *Ibid.*

²²⁴ Hinrichsen, Bonnie B., Janet E. Jackson, Celia E. Johnson, Rosalyn Anstine Templeton, Peggy N. Flannigan, Betty Jane Lawrence, Doan T. Modianos, Jobie L. Skaggs "A Study of Faculty Workload as a Means of Improving the Student Learning Environment" Bradley University, April, 2002, p. 11, Jackson, R., Waugaman, C., O’Meara, K., Haider, G., & Kuvaeva, A. (2015). Faculty time study. College Park, MD: University of Maryland ADVANCE Program, p. 3, and <https://www.insidehighered.com/news/2014/04/09/research-shows-professors-work-long-hours-and-spend-much-day-meetings> viewed on March 6, 2023.

²²⁵ Tatos Deposition, pp. 10-11.

²²⁶ Cavanaugh Report, p. 9.

²²⁷ Freeman, p. 3.

paper, but those hours are spread over a different number of weeks / months depending upon a school's emphasis for its faculty. For example, one study found that research-heavy faculty spend half as much time in a given week on teaching-related activities as do classic or teaching-heavy faculty.²²⁸ This result would imply individualized analyses of professors as well as their approach to teaching, research and other professorial functions.

Mr. Tatos cannot state that measuring the amount of necessary classroom preparation time should not be measured in hours because he testified that he does not even know how academics spend their time or other obligations a university professor might have.²²⁹

C. Mr. Tatos's Own Citation Shows That Putative Class Members Were Not Damaged If The Proper Unit of Measurement Was Used

As discussed in the prior subsection, one of Mr. Tatos's own data sources shows that the median hours needed to prepare an online course was 70 hours. While studies have shown that many university professors work over 60 hours per week,²³⁰ for the purposes of this subsection, I conservatively assume they work a standard 40-hour workweek.

Those two data points imply that USC professors had approximately 80 hours during the "approximately two weeks" Mr. Tatos claims they had to prepare their remote classes (assuming they worked a 40 hour week). While professors "normally" spend a good portion of those 80 hours on non-teaching preparation activities, they likely reallocated more time to teaching preparation activities during the transition to remote education in the Spring 2020 Semester. In fact, one study found that COVID-19 caused most professors to spend more time on teaching activities and less on research one year after their schools' Spring 2020 Semester transition.²³¹ Additionally, because professors did not have to teach during this transition period, they could have devoted time "normally" spent teaching students to course preparation.²³²

Dr. Cavanaugh found that such time reallocation occurred at USC during the transition period.

When the university had to transition to remote instruction after spring break in response to the global pandemic and in compliance with an order of the Governor of South Carolina, faculty had the balance of that week and all of the following week to dedicate 100% of their time and effort towards the development of remote delivery strategies for instruction and assessment for the remainder of the spring 2020 semester, which equated to less than half a semester. All research and service requirements were suspended.²³³

²²⁸ BrckaLorenz, Allison, Tom Nelson Laird, Bridget Yuhas, Joe Strickland, and Kyle Fassettz, "Faculty types and effective teaching: A cautionary exploration of how faculty spend their time" 2018, Figure 1.

²²⁹ Tatos Deposition, pp. 9-12.

²³⁰ Allen, Table 1 and <https://www.insidehighered.com/news/2014/04/09/research-shows-professors-work-long-hours-and-spend-much-day-meetings> viewed on March 6, 2023.

²³¹ Walsh, Courtney and John Tyler, "Physics and Astronomy Faculty Members' Well-Being During the COVID-19 Pandemic" American Institute of Physics, February 2022 ("Walsh and Tyler"), Figure 6.

²³² Cavanaugh Report, pp. 8-9.

²³³ *Id.*, p. 9.

Consequently, contrary to his claim, Mr. Tatos's logic actually implies that USC professors had ample time to prepare their remote classes during the Spring 2020 Semester transition. They could have engaged in the 70 hours of preparation time Mr. Tatos's source stated was needed even assuming professors only worked 80 hours over the "approximately two weeks" they had before remote classes commenced. While the transition time might have been intense and stressful, Mr. Tatos's model, if it was based on hours, implies that USC professors' classroom preparation time was not unduly constrained by the transition to remote classes during the Spring 2020 Semester.

The above calculations are possibly conservative as the number of hours that USC professors required to prepare an online class during the transition in the Spring 2020 Semester was likely less than the figure Dr. Freeman calculated, **and** many professors work more than 40 hours in an average week, **and**, moreover, the number of hours USC professors worked during the transition period likely was more than "average."

Dr. Freeman's study likely overstates the number of relevant preparatory hours for multiple reasons. As Dr. Freeman's study was conducted prior to 2013, the number of professors who had prior online teaching experience and the quantity of online content prepared by publishers, instructional designers and support personnel almost certainly had increased since then. As both Dr. Freeman and Mr. Tatos found that these two activities decreased professor preparation time,²³⁴ Dr. Freeman's study overstates the class preparation hours that would be needed in 2020. Additionally, Dr. Freeman found that the lack of "technical support and pedagogical support" inhibited professor class preparation.²³⁵ As USC's technology budget increased and the university was focused on aiding professor class preparation during the Spring 2020 Semester transition, Dr. Freeman's study further overstates the class preparation hours needed in 2020.²³⁶

Additionally, it is very possible that professors worked more than the conservative 40-hour workweek during the transition to remote education during the Spring 2020 Semester in order to prepare their classes. For example, Dr. Cavanagh stated that:

The faculty I interviewed also stated that they dedicated far more than 40 hours per week in both the preparation of courses and the subsequent teaching.²³⁷

Therefore, because USC professors had adequate preparation time as measured by the "commonly-accepted and widely-employed" unit of time that has been "used for over a century to evaluate student preparation for college," Mr. Tatos's logic actually demonstrates that putative class members were not damaged.

²³⁴ *Ibid.* and Tatos Report, paragraph 94.

²³⁵ Freeman, p. 1.

²³⁶ Grant Deposition, pp. 26, 32-37 & Exhibit 74.

²³⁷ Cavanagh Report, p. 9.

D. Mr. Tatos Incorrectly Assumed that USC Professors Had Only “Approximately Two Weeks” To Prepare Their Classes During the Remote Portion of the Spring 2020 Semester

Mr. Tatos correctly stated that there were “approximately two weeks” between USC’s announcement of the transition and when USC’s classes began in the remote format.²³⁸ However, he incorrectly assumed that USC professors ceased classroom preparation when classes began.

There were approximately five weeks of classroom teaching remaining in USC’s Spring 2020 Semester after classes began in the remote format.²³⁹ Professors most likely continued classroom preparation during these five weeks. Therefore, even if USC professors only had “approximately two weeks” to prepare for their first remote class, they had “approximately seven weeks” to prepare for their last remote class during the Spring 2020 Semester. Dr. Cavanagh also opined that if faculty did not prepare the entire remainder of the semester for remote delivery by the end of the two weeks, it would be reasonable for faculty to be “developing materials for remote delivery prior to the students encountering it (‘laying track in front of the train’)” without impacting overall remote teaching or course effectiveness.²⁴⁰

Even if one incorrectly assumes that alleged damages could be calculated based upon the number of weeks of classroom preparation time, these additional weeks of preparation time would imply that the alleged preparation shortfall percentage that Mr. Tatos used in his Expert Report would at best only apply to the first remote class of the Spring 2020 Semester. Lesser preparation shortfall percentages would be applicable to later remote classes. As USC professors had seven weeks to prepare for the last remote class of the Spring 2020 Semester, Mr. Tatos’s logic would imply that putative class members were 3.5 times less damaged by insufficient preparation time for that last class.

Classroom preparation after the remote portion of USC’s Spring 2020 Semester began raises further individualized issues even if one does not compare the first and last remote classes. The remote portion of the Semester began on Monday, March 23, 2020.²⁴¹ Mr. Tatos’s formula, if he adjusted for the differential preparation time that professors had, would imply that a USC professor who taught a Monday morning seminar would be differently situated than one who taught a Friday afternoon seminar. The latter professor would have had roughly an additional week to prepare their online classes.

Mr. Tatos’s logic should further imply that a student who took a Friday afternoon seminar would have suffered less damages than a student who took a Monday morning seminar. As a result, even assuming Mr. Tatos’s theory had any validity, one would have to individually scrutinize each student’s and each professor’s schedule in order to calculate alleged damages.

²³⁸ Tatos Report, paragraph 96.

²³⁹ First day of remote classes was March 23, 2020, and last day of classes was April 27, 2020.

²⁴⁰ Cavanagh Report, p. 8.

²⁴¹ Tatos Report, paragraph 96.

Mr. Tatos attempted to avoid this issue by claiming that it is normal for professors to continue working on their lectures during the semester,²⁴² seeming to suggest that the classroom preparation work professors did after the transition would have occurred even if the transition had not occurred.

This statement is flawed for multiple reasons.

First, Mr. Tatos does not have a basis to make such a statement, and it appears to be purely speculating as he testified that he does not know how academics spend their time.²⁴³

Second, he cited to no research to support such a statement.

Third, I, on the other hand, who have been a tenure-track professor and studied how professors spend their time, can state that the implications of Mr. Tatos's statement are false. While some, but not all, professors consistently spend time during the semester conducting classroom preparation, studies have shown that most professors spent more time on teaching activities and less on research after their schools' Spring 2020 Semester transition.²⁴⁴ Consequently, even if it were "normal" for professors to continue working on their lectures during the semester as Mr. Tatos alleges, research shows that the intensity of that work increased and was not "normal" after the transition as Mr. Tatos speculatively implies.

Fourth, Dr. Cavanagh interviewed eight of the Named Plaintiffs' professors. Prior to COVID-19, all of the professors spent a varied amount of time preparing for lesson plans and teaching and working each week; however, all professors increased this preparation time post-COVID-19 for remote teaching.²⁴⁵ For example,

- Tim McAteer (SPAN 122) spent 8 hours per week pre-transition, but approximately doubled his preparation time post-transition (15 hours).
- Lauren Steimer (FAMS 308 and 363) spent 10-15 hours per week pre-transition, but approximately doubled her preparation time post-transition (20-25 hours).
- Jungmi Jun (JOUR 499) spent 30 hours per week pre-transition, but doubled this initially post-transition (60 hours) and then 48-54 hours after a few weeks.²⁴⁶

XIV. Mr. Tatos Incorrectly Prorated Tuition, Fees & Alleged Damages

All of Mr. Tatos's Theories incorrectly assume that one can prorate tuition and fees students paid in Spring 2020.

First, it is economically improper for Mr. Tatos to globally value portions of a semester as he attempts to do. Students purchased learning and services over an entire Semester that is comprised of multiple days. As a result, they purchased a bundle of days of learning and services. As

²⁴² Tatos Deposition, pp. 72-74.

²⁴³ *Id.*, pp. 10-12.

²⁴⁴ Walsh and Tyler, Figure 6.

²⁴⁵ Cavanagh Report, pp. 9-10.

²⁴⁶ *Id.*, p. 10.

discussed in subsection A below, it is improper to assume what the prices of components of that bundle are as Mr. Tatos attempts to do in his damages methodology.

Second, even if some prorated methodology were viable, it is economically incorrect to assume, as Mr. Tatos attempts to do, that the putative class members' alleged diminished value would be proportional to the number of days of the remote class portion of the Spring 2020 Semester. Mr. Tatos's assumption implies that each day in the Semester was equally valuable to all students. While such an assumption might be convenient, it is not economically accurate. Not only does each student's marginal utility differ between putative class members as discussed in subsection B, but the number of days students are on campus also varies on an individualized basis as discussed in subsection C.

A. It Is Economically Improper To Un-Bundle A Bundled Price

Institutions can apply different pricing methodologies when selling their products and services. For example, an institution can opt to sell a single product or a bundled set of products. Different pricing methodologies could be employed for each. For example, a grocery store could sell a six-pack of soda for \$3.00 and an individual can for \$1.00. A consumer cannot claim that the grocery store overcharged them for the individual can. Because different consumer types might desire an individual can over a six-pack, the grocery store uses different pricing methodologies that are fine-tuned to the characteristics of the consumers that tend to purchase the product in question. As a result, one cannot look at the price of the six-pack and assume that because six cans cost \$3.00, each can must cost \$0.50 ($= \$3.00 / 6$).

As discussed in my *Journal of Economic Behavior and Organization* paper, which was derived from my NSF funded research, whether the implied price of an individual product in a bundle is more or less than the price of the individual product if it was individually sold depends on the characteristics of the product and bundle. For example, convenience could cause consumers to purchase a bundle of a product and servicing of that product (e.g., extended warranty) even though it would be monetarily cheaper to purchase the product and servicing separately.

Current U.S. Treasury Secretary Janet Yellen co-authored with William James Adams one of the seminal economic articles on bundling in 1976.²⁴⁷ They concluded that one cannot draw conclusions about the prices of individual components of a bundle from the bundled price. The infinite set of possible individual component prices that could be derived from the bundled price "seriously complicates public appraisal of [and] affects certain conclusions that may be drawn."²⁴⁸ As another author wrote regarding the possible individual component prices that can be derived from a bundled price, "nearly anything can happen with bundling."²⁴⁹

Mr. Tatos's Theory violates these economic maxims. In particular, he incorrectly assumes that the List Price USC charged for an entire semester could be translated into a daily List Price. For the reasons discussed above, there is an infinite set of possible daily List Prices that could be derived from the List Prices that span an entire semester. Subsections B and C below provide

²⁴⁷ Adams, William James and Janet Yellen (1976) "Commodity Bundling and the Burden of Monopoly" *Quarterly Journal of Economics*, 90: ("Adams and Yellen"), pp. 475-498.

²⁴⁸ *Id.*, pp. 477 & 497.

²⁴⁹ Varian, Hal R. "Price Discrimination," Working Paper, July 1987, p. 628.

some possible reasons for different daily prices. Mr. Tatos did not consider these possible differences in his alleged damages theory.

As a result, it is economically improper for Mr. Tatos to translate USC's List Prices that span an entire semester into a daily List Price.

Furthermore, it is questionable whether it is proper to analyze per semester prices to assess alleged damages. While students pay on a semester basis, most are pursuing a degree that spans multiple semesters. Consequently, it is arguably proper to analyze the overall cost of a degree, not the cost of an individual semester. This view would then imply that it is improper to investigate the costs students incurred for a particular semester; rather, one would have to investigate the costs for all semesters needed to complete a degree. As Mr. Tatos did not analyze the cost of a USC degree, his methodology did not address the question of interest under this scenario.

B. Marginal Utility Is Different For Each Student

One standard economic maxim is that people generally obtain decreasing marginal utility for consuming products.²⁵⁰ In other words, the additional benefits one receives from consuming an additional unit of a product decreases as one consumes more. For example, a person generally gets greater benefits from consuming the first slice of pizza than the tenth slice.

Mr. Tatos's Theory does not consider whether students received greater benefits from in-person classes and services during the first half of the Spring 2020 Semester than they would have in the last half if USC had not moved to all remote classes, which is akin to USC's refund policy discussed in Section XIV.D. There is an innumerable number of individualized reasons why such an economic phenomenon could occur. For example, graduating seniors who had secured early employment or graduate school admission might view the last half of the Spring 2020 Semester differently than other students.

Consequently, the degree to which putative class members experienced decreasing marginal utility during the Spring 2020 Semester would necessarily require an individualized inquiry. Consequently, Mr. Tatos cannot properly value putative class members' alleged losses with his pro-rata assumption.

C. The Number of Relevant Calendar Days Is Individualized

Even if one were to assume that each day in the Spring 2020 Semester was equally valuable to all putative class members, the number of relevant calendar days is highly individualized for different students. Mr. Tatos suggests that his prorated percentage could be calculated by taking the number of calendar days that USC either cancelled classes and/or only offered remote classes divided by the total number of relevant calendar days in the Spring 2020 Semester. As mentioned above in Section V, he calculated separate prorations: 1) Cancelled Classes Pro-ration ($=7/114$), 2) ERT Days Pro-ration ($=49/114$), and 3) Fees Class Pro-ration ($=56/114$). However, individualized analyses would be required to determine both the numerator and denominator of these proportions.

²⁵⁰ <https://www.investopedia.com/terms/l/lawofdiminishingutility.asp> viewed on September 28, 2021.

First, the Spring 2020 Semester began with the first day of classes on January 13, 2020.²⁵¹ Students may have arrived prior to the first day of classes to move back in, or they may have arrived later if their class schedule did not begin on that Monday. Each student's individualized start date would impact their total calendar days on campus and Mr. Tatos's denominator.

Second, this semester was scheduled to end with commencement, which occurred after May 6, 2020.²⁵² Not only did classes end prior to USC's commencement, but classroom teaching ended even earlier as the Spring 2020 Semester had a finals week after classroom teaching ended.²⁵³ However, Mr. Tatos calculated his ERT Days Pro-ration through the end of finals even though students would not be receiving teaching during finals week. Therefore, under his alleged ERT theory, Mr. Tatos overstated his purported ERT damages by including extra calendar days that did not contain classroom teaching.

Students would also leave campus at varied times for the Spring 2020 Semester, which would cause USC students to have a different number of total calendar days on campus. Students whose finals ended early in finals week might have left campus early, decreasing the length of their semester relative to students whose finals ended later. Therefore, Mr. Tatos did not consider this individualized time on campus for his Fees Class Pro-ration, which he alleges is related to on-campus services.²⁵⁴

In fact, Upstate and Aiken had finals end on earlier dates (May 4th and May 5th) than the other USC campuses, but Mr. Tatos incorrectly assumed all campuses had the same academic calendar.²⁵⁵ Therefore, he overstated his alleged damages under his pro-rata methodology for Upstate and Aiken students because he assumed more ERT calendar days and time on campus than they allegedly would have had during the Spring 2020 Semester.

Third, Mr. Tatos also assumed that the total eligible alleged refund days began when the remote transition date was announced on March 11, 2020, which was during Spring Break.²⁵⁶ However, students were not scheduled to resume classes until March 16, 2020. Therefore, students would

²⁵¹ https://sc.edu/about/offices_and_divisions/registrar/academic_calendars/2019-20_calendar.php, <https://www.usca.edu/registrar/calendars/academic-calendars/archived-academic-calendars/1216-2019-2020-academic-calendar/file>, https://sc.edu/about/system_and_campuses/lancaster/internal/current_students/admissions_records/academic_calendars/academic_calendar_19_20/, and <https://web.archive.org/web/20191202055543/https://www.uscupstate.edu/current-students/registration-records/academic-calendar/spring-academic-calendar/>, all viewed on February 27, 2023, and <https://web.archive.org/web/20200302035122/https://www.uscb.edu/registrar/calendar/REGISTRATION%20CALENDAR%202019-2020.pdf> viewed on March 8, 2023.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Tatos Report, paragraph 146.

²⁵⁵ https://sc.edu/about/offices_and_divisions/registrar/academic_calendars/2019-20_calendar.php, <https://www.usca.edu/registrar/calendars/academic-calendars/archived-academic-calendars/1216-2019-2020-academic-calendar/file>, https://sc.edu/about/system_and_campuses/lancaster/internal/current_students/admissions_records/academic_calendars/academic_calendar_19_20/, and <https://web.archive.org/web/20191202055543/https://www.uscupstate.edu/current-students/registration-records/academic-calendar/spring-academic-calendar/>, all viewed on February 27, 2023, and <https://web.archive.org/web/20200302035122/https://www.uscb.edu/registrar/calendar/REGISTRATION%20CALENDAR%202019-2020.pdf> viewed on March 8, 2023.

²⁵⁶ Tatos Report, paragraph 146.

not have been on campus or had classes until March 16th. Student may not have even had classes resume until later in the week after Spring Break. As a result, Mr. Tatos overstated his numerator, or the ERT calendar days and time on campus, for his ERT Pro-ration and Fees Class Pro-ration. Since USC cancelled classes the week after Spring Break, students that extended their break or did not have classes until later in the week would also be less impacted in Mr. Tatos's alleged Cancelled Classes refund calculation.

Furthermore, Mr. Tatos also assumes that a count of total calendar days would be the relevant metric to calculate the alleged pro-rata damages for USC students. However, the number of relevant calendar days and the value of those calendar days would vary by numerous factors including, but not limited to:

- Days where students did not have any classes or activities;
- Students who had more classes or campus activities on a given day;
- Students who normally ditched class;
- Students who went home for some or all weekends;
- Students who only used the gym to prepare for Spring Break;
- Students who only used the health clinic in winter months when they were sick and not spring months; and
- Students who infrequently attended professor office hours.

There would also be calendar days with different relevance and values for classes and activities; however, Mr. Tatos assumes that they would be the same by just counting total calendar days. For example, students may think weekdays are more relevant for classes, and weekends would be more relevant for activities. Students may also have more activities in the beginning of the year because students tend to focus more on their classes and studying as finals gets closer. Students in their final year of medical school likely would view a day during the second portion of the Spring 2020 Semester differently than 1) an undergraduate in their sophomore year, 2) a graduating senior whose post-graduate plans had already been solidified, 3) a junior trying to maintain their GPA for graduate school admission, and 4) a 1L law student seeking an internship. This is different from eating and sleeping, which are roughly identical each day and which most students use on a daily basis.²⁵⁷

The aforementioned logistical issues make the claimed formulaic calculation of damages unfit to address the highly individualized aspects of this case. Consequently, contrary to Mr. Tatos's unsupported assumption, any decreased price USC might charge for tuition or fees would be highly individualized and not necessarily tied to the number of calendar days as alleged.

D. Mr. Tatos's Own Citations Demonstrate the Flaws in His Pro-Rata Analysis

In an attempt to justify his pro-rata analysis, Mr. Tatos incorrectly claims that his methodology follows USC's approach to calculating refunds.²⁵⁸ While Mr. Tatos inserted a quote from USC's refund policy stating that "[a]ll refunds will be based solely on the percentage of time (in days)

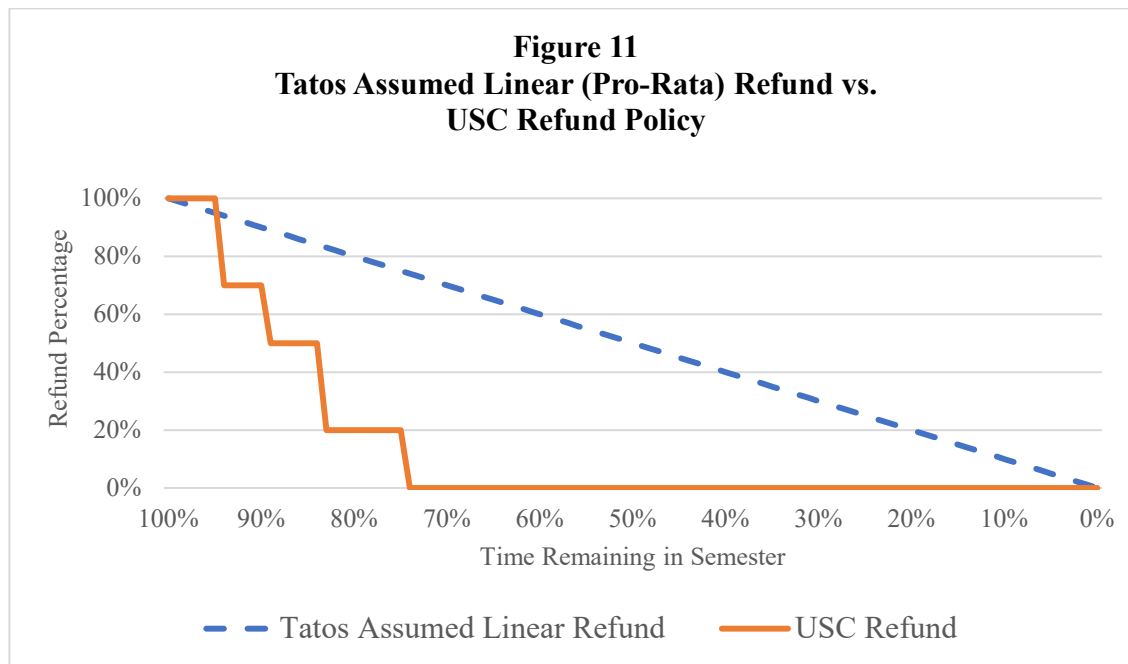
²⁵⁷ USC provided prorated refunds to students for fees related to housing, meal plans and parking.

²⁵⁸ Tatos Report, paragraph 157.

...,”²⁵⁹ he ignored the continuation of that paragraph stating that the refunds are not linear based upon that percentage. In particular, USC’s policy states that USC students would receive the following refunds if they dropped / withdrew from their classes:

- 100% refund if the drop / withdrawal occurred with less than 94% of the semester remaining;
- 70% refund if the drop / withdrawal occurred with between 90% and 94% of the semester remaining;
- 50% refund if the drop / withdrawal occurred with between 84% and 90% of the semester remaining;
- 20% refund if the drop / withdrawal occurred with between 75% and 84% of the semester remaining;
- 0% refund if the drop / withdrawal occurred with between 0% and 75% of the semester remaining.²⁶⁰

Figure 11 shows that this USC refund policy is not linear, contrary to what Mr. Tatos assumes.



Mr. Tatos also notes that Title IV financial aid is also distributed to students in a non-linear fashion.²⁶¹ Again, this is contrary to his assumed linear, pro-rata theory.

Consequently, Mr. Tatos’s pro-rata methodology is inconsistent with USC’s approach to calculating refunds. Not only is Mr. Tatos seeking refunds for a period of time when USC does not grant refunds, but USC does not assume that each day of the semester has equal value as Mr. Tatos incorrectly assumed.

²⁵⁹ *Ibid.* and USC Academic Bulletin, Fees and Refunds at 6, available at <https://academicbulletins.sc.edu/policies-regulations/fees-refunds/fees-refunds.pdf> viewed on February 27, 2023.

²⁶⁰ USC_00002318 (2019-20 USC Academic Bulletin).

²⁶¹ Tatos Report, paragraph 134.

XV. Mr. Tatos Does Not Properly Account for the Financial Aid USC Students Received

As noted above, changes in the Net Prices Students Pay are the relevant prices needed to determine how much putative class members were allegedly damaged.

Nonetheless, Mr. Tatos did not analyze such prices in his model. Instead, he analyzed List Prices and the Net Prices USC Received. The Net Prices Students Pay were not in his damages model.

Because he did not analyze the prices that are needed to assess alleged damages, Mr. Tatos's analysis did not accurately determine alleged damages in this matter.

A. There Are Differences Between List Prices, The Net Prices USC Receives And The Net Prices Students Pay

As discussed above, List Prices for tuition and fees are the amounts that the university states it charges on its website, catalogues and brochures. Financial aid causes most students in traditional programs at USC to not pay these List Prices.²⁶² The Net Price USC Receives equals the List Price minus USC-provided financial aid. The Net Price Students Pay equals the List Price minus both the financial aid USC provides and the financial aid provided by external sources, such as Federal, State, Local and foreign governments, charities, organizations, corporations and other private entities.

As mentioned in Section IV.B, because students receive different financial aid amounts from USC and from external sources, the Net Prices USC Receives and the Net Prices Students Pay are necessarily individualized. For example, if USC's List Price for tuition was \$20,000, USC provided a given student with \$6,000 in financial aid and that student's local Chamber of Commerce gave the student a \$3,000 scholarship, the Net Price USC Receives from this student is \$14,000 and the Net Price the Student Paid would be \$11,000.

These prices do not necessarily move in concert with one another. While economists have found that the List Prices of tuition and fees at private, nonprofit, 4-year institutions have sizably increased over the last decade, Net Prices are virtually unchanged.²⁶³ This is because, consistent with the Bennett Hypothesis by former Secretary of Education William Bennett, "[s]chools, public and private, have been raising both their listed tuitions *and* their discounting of tuition engaging in increased price discrimination to increase revenue."²⁶⁴ For example, the Net Prices Students

²⁶² <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218663&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218645&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218654&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218706&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=8&unitId=218690&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218681&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218672&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218742&year=2020>, all viewed on February 28, 2023.

²⁶³ Gansemer-Topf, Ann M., Peter F. Orazem and Darin R. Wohlgemuth "Do liberal arts colleges maximize profit?" *Southern Economic Journal*, 2021; 88, p. 275.

²⁶⁴ Weisbrod, p. 100.

Paid may remain unchanged, as need-based financial aid changes as the Cost of Attendance changes.

Consequently, it is economically improper for Mr. Tatos to assume as he did that if List Prices and/or the Net Prices USC Receives decreased, so would the damages-relevant Net Prices Students Pay.

B. Mr. Tatos Does Not Analyze the Fact that the Net Prices USC Receives and the Net Prices Students Pay Are Individualized

Universities generally, and USC in particular, do not use a one-size-fits-all pricing. Instead, USC segments its students, modifies the product each receives (education) and tailors prices (tuition). For example, USC identifies students in different schools and sets different prices for them. Mr. Tatos recognized this when he noted that USC set different List Prices for undergraduates, business school students, law students, and other graduate students.²⁶⁵ Further, when USC changes its tuition List Prices, the changes are not necessarily identical for each of these segments.²⁶⁶ Additionally, through the use of financial aid, USC individually evaluates each student's characteristics and makes adjustments from the List Prices, as discussed below, to set different net tuition amounts for each student.

USC also customizes the Net Price USC Receives (which likely adjusts the Net Price Students Pay) by tailoring the university-provided financial aid packages it provides. By providing grants, scholarships, loans and work-study jobs, I understand that USC individually sets its prices for each student based upon granular characteristics such as financial need, academic ability, intended major and price sensitivity. For example, during the Spring 2020 Semester, Ms. Bunch received a \$1,000 USC Achievement Scholarship from USC, while Ms. Kelly did not receive any university-provided financial assistance.²⁶⁷

In addition, the Net Prices Students Pay are also individualized as students receive different third-party aid. For example, Ms. Bunch used Pell Grants and Federal loans to fund her education while Ms. Kelly did not. While this does not show up on her student account statements, Ms. Bunch also received a \$50,000 scholarship from the Miss South Carolina and Miss America pageants in 2018 which covered more than the rest of her tuition and fees.²⁶⁸ In order to receive her pageant scholarships, Ms. Bunch submitted her student loan statements to the pageant scholarship providers, and they directly paid the loan provider as opposed to directly paying USC.²⁶⁹

The aforementioned factors have led economists to conclude that “the net price of college ... [has] become increasingly individualized.”²⁷⁰ For example, **Figure 12** shows the individualized List Prices, Net Prices USC Receives and the Net Prices Students Paid for the Named Plaintiffs during the Spring 2020 Semester.

²⁶⁵ Tatos Report, paragraph 138.

²⁶⁶ For example, full-time undergraduate tuition remained flat from 2019-2020 to 2020-2021, while certain MBA programs decreased their tuition for the same time period. See Exhibit 3.

²⁶⁷ Bunch Deposition, Exhibit 99 (USC_00000027) and Kelly Deposition, Exhibit 3 (USC_00044051).

²⁶⁸ Bunch Deposition, pp. 53-62.

²⁶⁹ *Id.*, p. 61.

²⁷⁰ “Information Constraints and Financial Aid Policy” Judith Scott-Clayton, NBER Working Paper 17811, February 2012 (“Scott-Clayton”), p. 2.

Figure 12		
Named Plaintiff Tuition, Financial Aid & Loans for Spring 2020		
Description	C. Kelly	D. Bunch
Tuition & Other Fees		
Educational & General	\$15,386.50	\$5,262.50
Board Mandated Fees	1,377.50	881.50
Total List Price Tuition	16,764.00	6,144.00
Other Fees (Technology Fee, Lab Fees, etc.)	2,155.00	200.00
Total Tuition & Fees	18,919.00	6,344.00
Financial Aid		
Institutional Aid	0.00	1,000.00
Net Price USC Receives	18,919.00	5,344.00
Federal Pell Grant	0.00	2,972.00
Total Financial Aid	0.00	3,972.00
Net Price Charged to Students before COVID-19	18,919.00	2,372.00
CARES Act Grants	0.00	800.00
COVID Parking Refund	200.00	22.00
Net Price Charged to Students after COVID-19	18,719.00	1,550.00
Loans		
Federal Direct Unsubsidized Loan	0.00	990.00
Federal Direct Subsidized Loans	0.00	2,721.00
Total Loans	0.00	3,711.00
Out of Pocket Cost / (Refund)	\$18,719.00	\$(2,161.00)
Payor	Parents²⁷¹	3rd Party²⁷²

Overall, approximately 83% of USC undergraduate students at the Columbia campus received some form of financial assistance.²⁷³ At all USC campuses, 65% of undergraduate students received some form of financial aid.²⁷⁴

Mr. Tatos incorrectly ignores the financial aid USC students received from third parties because he only analyzed USC's List Prices and the Net Prices USC Receives. Given the primacy of all third-party financial aid, scholarships, or other forms of tuition support, including subsidized loans

²⁷¹ Kelly Deposition, p. 54.

²⁷² Bunch Deposition, pp. 53-62. Miss America and Miss South Carolina pageant scholarship paid her tuition and fees.

²⁷³ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218663&year=2020>. IPEDS does not track graduate financial aid data viewed on February 28, 2023.

²⁷⁴ <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218663&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218645&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218654&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218706&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218690&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218681&year=2020>, <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218672&year=2020>, and <https://nces.ed.gov/ipeds/datacenter/FacsimileView.aspx?surveyNumber=7&unitId=218742&year=2020>, all viewed on February 28, 2023. IPEDS does not track graduate financial aid data.

in a student and their family's school selection,²⁷⁵ Mr. Tatos cannot properly determine student preferences for schools by ignoring such aid. If preferences are incorrectly determined, the prices Mr. Tatos asserted should have existed during USC's Spring 2020 Semester are incorrect, as are his alleged damages calculations.

If, as Mr. Tatos alleges, USC should have charged different tuition and fees during the Spring 2020 Semester, the aforementioned factors would have made such different tuition and fees individualized as well. As discussed below in Section XV.D.1, university-provided and third-party aid students received likely also would change along with any tuition and fee changes.

Consequently, even if Mr. Tatos analyzed relevant prices (the Net Prices Students Paid), he cannot conclude that putative class members were charged and would have been charged specific, classwide tuition amounts. As a result, individualized factors and preferences **would define** both the actual and "but for" tuition and fees as well as any price differential or discount percentage that might exist. Consequently, by definition, individualized factors and preferences would be a key determinant of each putative class member's damages.

C. Alleged Individualized Damages and the Identities of Putative Class Members That Were Actually Injured Are Not Ascertainable

Contrary to Mr. Tatos's claim,²⁷⁶ USC does not hold the necessary data to ascertain putative class members that were actually damaged or determine the relevant Net Prices Students Paid for the Spring 2020 Semester.

As discussed above, the putative class consists of individuals who were financially responsible for tuition and fees, regardless of whether they paid for them themselves.

This definition creates several issues. First, not all USC students accepted financial responsibility by signing USC's Statement of Financial Responsibility.²⁷⁷ Mr. Tatos did not demonstrate how his model could exclude such students.

Second, USC does not know the identities of the individuals who paid the school tuition and fees on students' behalf or how much they paid. USC financial records just show bank accounts or other similar information on from where payments came. Individualized analyses would be required to identify the owners of these accounts. For example, the payors of the Named Plaintiffs' tuition and fees were not revealed until they were individually deposed.²⁷⁸ Even if the account owners could be identified, further individualized analyses would be required in order to determine whether they originated the payments. For example, a student's local Chamber of Commerce could provide the student with a \$2,000 scholarship directly; the student then forwarded those scholarship funds to USC. In this example, the \$2,000 payment came from the student's bank account, but they were not the payor. This occurred with one of the Named Plaintiffs as a Miss

²⁷⁵ <https://studentaid.gov/articles/4-things-consider-choosing-college-career-school/> viewed on August 8, 2022.

²⁷⁶ Tatos Report, paragraph 14.iii.

²⁷⁷ Deposition of Nicole Pressley & Exhibits, dated September 7, 2022, Exhibit 71.

²⁷⁸ Kelly Deposition, p. 54 & Bunch Deposition, p. 41.

America and Miss South Carolina pageant scholarship indirectly paid Ms. Bunch's tuition and fees.

Third, Mr. Tatos incorrectly assumes that those that were financially responsible should receive a refund even if they did not pay tuition or fees. As discussed above, it is economically proper to calculate damages based upon each plaintiff's out-of-pocket expenditures.²⁷⁹ Even if Mr. Tatos's model could calculate alleged damages, which it cannot, Mr. Tatos's model is inconsistent with authoritative damages texts. For example, assume that two USC students were financially responsible for tuition and fees during the Spring 2020 Semester: one of whom paid the tuition and fees themselves and the other's tuition and fees were fully paid by the local Chamber of Commerce. Even if Mr. Tatos's model could calculate alleged damages, which it cannot, the former student would be damaged, while the latter student would be undamaged. Because the latter's tuition and fees were fully paid by the local Chamber of Commerce, their out-of-pocket expenditures would be unchanged by any alleged overcharge.

D. Even If Mr. Tatos Were Able To Demonstrate that USC's Spring 2020 Semester Was Less Valuable, Putative Class Members Were Not Necessarily Damaged

Mr. Tatos's Theory is flawed and unreliable because, even if it generated a reliable reduced tuition and fee amount, which it does not, that alone does not establish that any individual student actually suffered any damages. Individual student damages require a highly individualized analysis that must account for changes in student aid, expected family contributions, and other economic considerations that offset the alleged reduced tuition. Mr. Tatos ignores and does not account for such considerations in his Theory.

1. Students Receiving Financial Aid Might Not Be Damaged

Students receiving financial aid might not be damaged.

University officers dispensing Federal and institutional need-based financial aid at least partially base their aid recommendations on the school's Cost of Attendance ("COA") and the student's Expected Family Contribution ("EFC").

Financial aid officers regularly address situations where a student's COA or EFC changes during a term. For example, some students' tuition is based upon the number of credit hours a student is taking.²⁸⁰ If a student drops a class at the beginning of a term, the required tuition and fees and the COA would decrease. In such an instance, USC's Office of Financial Aid could reduce the grants or scholarships it awarded.²⁸¹

In this lawsuit, students are seeking a refund of tuition. If such a refund were to occur, every student's COA would change. As a result, USC's Office of Financial Aid could recalculate the grants and loans it provided to all students. For example, suppose that USC's List Price for tuition

²⁷⁹ Reference Manual, p. 434.

²⁸⁰ https://sc.edu/about/offices_and_divisions/bursar/tuition_and_required_fees/index.php viewed on February 28, 2023.

²⁸¹ https://sc.edu/about/offices_and_divisions/student_affairs/our_experts/our_offices/dean_of_students/withdrawal/ropping_courses/index.php viewed on February 28, 2023.

and fees were \$20,000, and that USC's Office of Financial Aid determined that a given student's family should only contribute \$5,000 toward the student's education in that year. In this situation, USC would provide this student with a \$15,000 scholarship.

Assuming that it is determined that the combined List Price for USC's tuition should have been \$1 lower, it would cause the total List Price for tuition and fees to fall to \$19,999. The Office of Financial Aid **might** still determine that the given student's family should only contribute \$5,000. In this revised situation, USC would provide this student with a \$14,999 scholarship.

In this example, the student would not be damaged by the supposed tuition and fee overcharge. The student actually paid \$5,000 and would have paid \$5,000 if the tuition were "properly" priced. Therefore, this student incurred no out-of-pocket losses from USC's alleged actions in transitioning to ERT.

Even if USC did not adjust this student's scholarship amount, they likely could not claim damages as they paid \$5,000 to receive something that had \$19,999 in value.

This concept can be demonstrated by analyzing both Ms. Bunch's financial interactions with USC, as well as all USC students' financial interactions with the school.

Figure 13 below shows the List Prices for the tuition and Board Mandated Fees allegedly at issue that Ms. Bunch was charged, as well as the alleged damages implied by Mr. Tatos's model.²⁸² As mentioned above, Mr. Tatos only presented alleged damages calculations considering Gross Tuition / Fees and Net Tuition / Fees that USC Received. Therefore, Figure 13 also shows what Mr. Tatos's model would result in if he considered all financial aid for Ms. Bunch (see "Net Tuition / Fees Students Paid"). For illustration purposes, this Figure excludes the scholarships that she received from Miss America and Miss South Carolina, which covered the rest of her tuition and fees.

²⁸² Bunch Deposition Exhibit 99 (USC_00000027) and Tatos Report paragraphs 144-156 and paragraphs 169-171. Figure 13 corrects the base tuition amount used in Mr. Tatos's model in order to not double count the Board Mandated Fees for Ms. Bunch.

Figure 13 Mr. Tatos's Alleged Damages for Ms. Bunch								
		Base Tuition / Fee Amount				Alleged Damages		
Scenario	Base Amount	Gross Tuition / Fees	Net Tuition / Fees USC Received	Net Tuition / Fees Students Paid	Refund % ²⁸³	Gross Tuition / Fees	Net Tuition / Fees USC Received	Net Tuition / Fees Students Paid
		<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e = a*d</i>	<i>f = b*d</i>	<i>g = c*d</i>
Tuition Class								
Scenario T1								
Cancelled Classes	Tuition (E&G Only)	\$5,263	\$4,263	\$1,291	6.1%	\$323	\$262	\$79
ERT Classes	Face-to-Face ("F2F") Tuition (E&G Only)	\$3,158	\$2,558	\$774	43.0%	\$1,357	\$1,099	\$333
Total						\$1,680	\$1,361	\$412
Scenario T2								
Cancelled Classes	Tuition (E&G Only)	\$5,263	\$4,263	\$1,291	6.1%	\$323	\$262	\$79
Lab Classes	F2F Tuition – Labs (E&G Only)	\$0	\$0	\$0	43.0%	\$0	\$0	\$0
ERT Classes	F2F Tuition – No Labs (E&G Only) ²⁸⁴	\$3,158	\$2,558	\$774	35.8%	\$1,131	\$916	\$277
Total						\$1,454	\$1,178	\$357
Fees Class								
Scenario F1	All BMF's	\$882	\$882	\$882	49.1%	\$433	\$433	\$433
Scenario F2	All BMF's except Institutional & Athletic Bond Fees	\$562	\$562	\$562	49.1%	\$276	\$276	\$276

As shown in **Figure 14** below, Mr. Tatos's model would result in a range of alleged damages from \$633 to \$2,133 for Ms. Bunch. Since Ms. Bunch's total List Price cost of attendance for the Spring 2020 Semester was \$6,344, it also shows that Mr. Tatos believes that Ms. Bunch only received \$4,231 to \$5,711 in value or 67% to 90% of the List Prices from the education and services associated with the tuition and Board Mandated Fees allegedly at issue in this lawsuit.

²⁸³ Scenarios T1 & T2 Cancelled Classes Refund 6.1% = 7 / 114; Scenario T1 ERT Classes Refund 43.0% = 49 / 114; Scenario T2 Lab Classes Refund 43.0% = 49 / 114; Scenario T2 ERT Classes Refund 35.8% = 49 / 114 * [1-(2/12)]; Scenario F1 & F2 Refund 49.1% = 56 / 114.

²⁸⁴ According to Bunch Deposition Exhibit 99 (USC_00000016), Ms. Bunch took 9 credit hour Face-to-Face Instruction (F2F) and 6 credit hours Web 100% Asynchronous. Therefore, Ms. Bunch's E&G tuition was allocated to be 60% of the total (=9/15).

Figure 14 Summary of Total Alleged Damages & Value Received by Scenario			
Description	Gross Tuition / Fees	Net Tuition / Fees USC Received	Net Tuition / Fees Students Paid
Total List Price Cost of Attendance	\$6,344	\$6,344	\$6,344
Total Alleged Damages (from Figure 13)			
Tuition Class Scenario T1 & Fees Class Scenario F1	\$2,113	\$1,794	\$845
Tuition Class Scenario T2 & Fees Class Scenario F1	\$1,887	\$1,611	\$790
Tuition Class Scenario T1 & Fees Class Scenario F2	\$1,956	\$1,637	\$688
Tuition Class Scenario T2 & Fees Class Scenario F2	\$1,730	\$1,454	\$633
Total Value Received (List Price Cost of Attendance less Alleged Damages)			
Tuition Class Scenario T1 & Fees Class Scenario F1	\$4,231	\$4,550	\$5,499
Tuition Class Scenario T2 & Fees Class Scenario F1	\$4,457	\$4,733	\$5,554
Tuition Class Scenario T1 & Fees Class Scenario F2	\$4,388	\$4,707	\$5,656
Tuition Class Scenario T2 & Fees Class Scenario F2	\$4,614	\$4,890	\$5,711
Net Price Actually Paid (from Figure 12)			
Net Price Charged to Students before COVID-19	\$2,372	\$2,372	\$2,372
CARES Act Grant	\$800	\$800	\$800
COVID-19 Parking Refund	\$22	\$22	\$22
Net Price Charged to Students after COVID-19	\$1,550	\$1,550	\$1,550

As USC and the federal government provided Ms. Bunch with \$1,000 and \$2,972 in financial aid and Pell Grants, respectively,²⁸⁵ only \$2,372 or 37% ($= (\$6,344 - \$3,972) / \$6,344$) of her bill was paid by herself. Again, this example does not include her pageant scholarships, which would result in her not paying anything for her cost of attendance in Spring 2020.

Even assuming that Mr. Tatos's calculations were correct, they show that Ms. Bunch received \$4,231 to \$5,711 (67% to 90%) of the value of the education and services that USC was "supposed" to provide associated with the tuition and Board Mandated Fees at issue in this lawsuit, but only \$2,372 (37%) was charged to Ms. Bunch (i.e., only \$2,372 needed to be paid on her behalf). Therefore, Mr. Tatos's own calculations show that Ms. Bunch received more value than was paid on her behalf before COVID-19. In addition, Ms. Bunch received additional funding from the University in the form of a CARES Act grant and COVID-19 parking refund. This reduced the Net Price She Paid to \$1,550, which is lower than any total value received as well. Consequently, Mr. Tatos overstates the alleged damages attributable to Ms. Bunch. With this correction, the actual damages attributable to Ms. Bunch are zero (even without considering her pageant scholarships).

Additionally, COVID could further affect students' available finances. While some families could have been adversely affected by COVID, others saw their financial positions greatly improved during the Spring 2020 Semester. As a result, students' EFC could also change, which could add additional individualized potential modifications to the financial aid USC provides its students.

²⁸⁵ Bunch Deposition, Exhibit 99 (USC_00000027).

For example, as discussed below, many students received COVID-relief funds from USC during the Spring 2020 Semester.

Therefore, if it is determined that USC's tuition and fees should have been lower, at a minimum, USC's Office of Financial Aid would have to recalculate all the aid it provided students. To determine the amount that students were allegedly damaged by USC's tuition and fees, one would have to, at a minimum, calculate the supposed tuition and fee overcharge and subtract out any financial aid changes caused by COA and other COVID-related changes.

Because the aid the Office of Financial Aid provides is highly individualized, any aid recalculation also would be highly individualized. Consequently, properly determining any economic loss students might have suffered because of any alleged tuition and fee overcharge would also be highly individualized. As a result, Mr. Tatos is unable to provide a manner for calculating any economically proper refunds of these net prices on a uniform formulaic, class-wide basis.

Mr. Tatos potentially attempts to ignore such financial aid recalculations for the Spring 2020 Semester by stating that U.S. Department of Education did not require recalculations of Title IV financial aid for that semester, and that sometimes students receive excess financial aid.²⁸⁶

Both of these statements are incorrect and/or misleading.

a. Financial Aid Would Be Recalculated If Damages Are Awarded to The Named Plaintiffs

While Mr. Tatos is correct that the U.S. Department of Education did not require Title IV financial aid recalculations in March 2020, it did not prevent schools from recalculating such aid. The Department of Education's March 20, 2020 pronouncement stated that if a school "provide[s] a refund or waiver of expenses for all or part of a student's tuition [and] fees, ... [the school] is not required to recalculate the student's cost of attendance (COA) nor to recalculate the student's Title IV aid."²⁸⁷

There is a big difference between a school being prevented from doing something and not being required to do that thing. As a result, the actual text shows that the Department of Education still allows schools to recalculate financial aid relating to the Spring 2020 Semester; it is just not mandatory.

Even setting aside the difference between prevented and not required, the Department of Education's pronouncement only applies to Title IV aid and not to university-provided scholarships.

Title IV funds are federal student aid funds, which are from federal student aid programs administered by the U.S. Department of Education. Title IV funds include Direct Subsidized/Unsubsidized Loan, Direct Graduate PLUS Loan, Direct PLUS Loan, Federal Pell Grant, Federal Supplemental Educational Opportunity Grant

²⁸⁶ Tatos Report, paragraphs 194 & 197-203 and Tatos Deposition, p. 90.

²⁸⁷ US Department of Education, Office of Post-Secondary Education (OPE), COVID-19 Frequently Asked Questions, available at <https://www2.ed.gov/about/offices/list/oep/covid19faq.html>. (emphasis added)

(SEOG), Federal Perkins Loan, and TEACH grants. **It does not include scholarships from the University or other private organizations.**²⁸⁸

Therefore, USC is legally entitled to recalculate all students' university provided financial aid. Additionally, other aid providers like Federal and state governments could similarly recalculate financial aid. Not only would such recalculations be highly individualized, but they would reduce overall damages as discussed in the example in subsection 1 above.

Because Mr. Tatos did not consider such financial aid recalculations, he overstated alleged damages.

Economic logic demonstrates why financial aid recalculations for the Spring 2020 Semester are appropriate now and why they might not have been back in March 2020. Financial aid recalculations are intricate and time-consuming. Universities had to make many quick decisions in March 2020 in the midst of the global pandemic that did not afford them the time to recalculate all students' financial aid. Now, USC has the luxury of time to recalculate financial aid for the Spring 2020 Semester.

b. Students Do Not Receive Excess Financial Aid In General

In paragraphs 199 and 200 of his Expert Report, Mr. Tatos provided an incomplete example of a University of Michigan student whose grants and scholarships exceeded their tuition and certain university fees, which he claims as a justification for his model providing putative class members with cash refunds.

However, even if the financial position of a non-USC student were applicable, Mr. Tatos misinterprets his incomplete example. As discussed above, financial aid is based on a student's Cost of Attendance ("COA"), which is calculated by estimating 1) the List Price of tuition and fees; 2) the List Price of room and board (or living expenses for students who do not contract with the school for room and board); 3) the cost of books, supplies, transportation, loan fees, and miscellaneous expenses (including a reasonable amount for the documented cost of a personal computer); 4) an allowance for child care or other dependent care; 5) costs related to a disability; and/or 6) reasonable costs for eligible study-abroad programs.²⁸⁹ Students use the financial aid they receive to pay for these items. Mr. Tatos's incomplete University of Michigan example only details the first category, the List Price of tuition and fees; his example does not detail this University of Michigan student's spending on all of these other categories. Consequently, Mr. Tatos's incomplete University of Michigan example does **not** show that his example student received a refund; it just shows that the student was advanced money to pay for other COA items that Mr. Tatos did not detail.

²⁸⁸<https://studentaccounts.gwu.edu/sites/g/files/zaxdzs1311/f/downloads/FREQUENTLY%20ASKED%20QUESTIONS%20FEDERAL%20TITLE%20IV.pdf> viewed on February 17, 2023. (***emphasis*** added)

²⁸⁹ <https://studentaid.gov/complete-aid-process/how-calculated> viewed on January 17, 2022.

2. Mr. Tatos Ignores COVID-19 Relief Funding

Essentially, Mr. Tatos is claiming that had all USC students known that COVID-19 was going to cause USC's transition during the Spring 2020 Semester, they would have paid less for tuition than they actually did.

However, with such a claim, one must fully analyze all of the economic effects on the students; one cannot isolate one's analysis to just tuition.

For example, **Figure 15** shows that USC distributed \$17.6 million CARES Act funds they received to 25,168 students; however, these fund distributions varied by USC campus and by student,²⁹⁰

Figure 15 CARES Act Distributions by USC Campus			
USC Campus	Distribution to Students	Students Receiving Aid	Average Aid per Student
Aiken	\$1,532,706	1,725	\$889
Beaufort	\$1,037,627	1,326	\$783
Columbia	\$10,707,565	17,475	\$613
Lancaster	\$285,432	486	\$587
Salkehatchie	\$391,621	314	\$1,247
Sumter	\$352,900	363	\$972
Union	\$228,957	247	\$927
Upstate	\$3,052,328	3,232	\$944
Total	\$17,589,136	25,168	\$699

Because these COVID-relief payments, like the alleged tuition overcharges, would not have happened but for COVID, any COVID-relief money students received would have to be subtracted from any damages award. Mr. Tatos also acknowledged that universities used the CARES Act

²⁹⁰ University of South Carolina Comprehensive Annual Financial Report for the Year Ended June 30, 2020 (USC_00050094), p. 79, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.aiken.12-31-2020.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.beaufort.3-31-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.columbia.12-31-2020.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.lancaster.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.salkehatchie.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.sumter.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.union.6-30-2021_final.pdf, and https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.upstate.6-30-2021_final.pdf, all viewed on February 28, 2023 .

funds to refund students for costs that “were necessitated by significant changes to the delivery of instruction, including interruptions in instruction, due to the coronavirus.”²⁹¹

As plaintiffs have a duty to mitigate their damages, the COVID-relief and other money that students could have received also needs to be subtracted from damages. For example, there were 28,148 CARES Act fund-eligible USC students, but only 25,168 students received the funding.²⁹² Therefore, for the 2,980 eligible students that could have received CARES Act funds but did not properly mitigate their alleged damages by accepting the award, one must subtract from their alleged damages the amounts of what their CARES Act funds would have been.

In addition to CARES Act funds, USC also provided students with money from its own emergency relief fund. Over \$350,000 was raised for 1,899 students who qualified for such relief and provided vital assistance to students impacted by the pandemic and the unexpected challenges it created.²⁹³ These funds would have to be deducted from alleged damages, which Mr. Tatos did not do.

Because students could have received different COVID-relief payments and not all students might have mitigated their alleged damages, this damages adjustment would also necessitate an individualized inquiry.

XVI. Mr. Tatos Made Several Other Erroneous Statements That Further Flaw His Calculation of Alleged Damages

Below, I discuss several other erroneous statements that Mr. Tatos made and how they impact his calculation of alleged damages.

A. Mr. Tatos Confuses Liability and Damages

Mr. Tatos incorrectly believes that he could ignore individualized damages issues because “USC and other universities that adopted a similar pedagogical response to the COVID-19 pandemic

²⁹¹ Tatos Report, paragraph 60, see (USC_00013123-24).

²⁹² University of South Carolina Comprehensive Annual Financial Report for the Year Ended June 30, 2020 (USC_00050094), p. 79, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.aiken.12-31-2020.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.beaufort.3-31-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.columbia.12-31-2020.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.lancaster.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.salkehatchie.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.sumter.6-30-2021_final.pdf, https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.union.6-30-2021_final.pdf, and https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grants_reporting.upstate.6-30-2021_final.pdf, all viewed on February 28, 2023.

²⁹³ <https://crowdfunding.sc.edu/project/20456> viewed on March 6, 2023.

transitioned to alternative instruction via online delivery,”²⁹⁴ where USC supposedly commonly forced all of its students to learn in an ERT format, which students allegedly did not prefer.²⁹⁵

Even if it accurately described USC’s Spring 2020 Semester, which it does not, this statement does not absolve Mr. Tatos from his need to conduct individualized damages analyses. The aforementioned statement addresses liability issues, not damages issues.

For example, when my wife and I purchased our house, my parents gifted us an outdoor grill. The store called me the day it was supposed to be delivered, said the model we purchased was out of stock and ended up delivering a more advanced grill, which had features that I have not used in the 15+ years I had it.

In this example, the store is allegedly liable because they did not deliver the item I purchased. However, it is questionable whether or not I was damaged as I received an upgraded model and obtained valuable features that I did not purchase.

Similarly, even if USC were found liable based on Mr. Tatos’s aforementioned statement, one must still address different damages issues, which Mr. Tatos’s statement does not do. As each putative class member could view the changes described in Mr. Tatos’s statement differently, and because USC has the tools to individually set Net Prices, individualized analyses would be required to determine the extent, if any, of each putative class member’s alleged damages.

B. Mr. Tatos Is Unable To Identify The Modality of USC’s Spring 2020 Semester Classes

As discussed above, Mr. Tatos excludes Online Classes from his calculation of alleged damages. He incorrectly claimed in his Expert Report that he could identify such Classes through USC’s course catalog.²⁹⁶ In his deposition, he recognized that additional information about class modality could be contained in course syllabi and that he believes students would have those syllabi prior to registering for their classes.²⁹⁷

However, not every USC student receives their course syllabi prior to registering.²⁹⁸ When I was an academic, I also never provided my syllabi before the first day of class. Additionally, I understand that the modality listed in USC’s course catalog did not match the actual modality shown in the syllabus of one of Ms. Kelly’s classes, which she did not possess prior to or during registration.²⁹⁹

²⁹⁴ Tatos Report, paragraph 66.

²⁹⁵ Tatos Deposition, pp. 48-51.

²⁹⁶ For example, see Tatos Report, paragraphs 34-35.

²⁹⁷ Tatos Deposition, pp. 101-102.

²⁹⁸ Cavanagh Report, p. 4 and Bunch Deposition, pp. 172-173.

²⁹⁹ Kelly Deposition, pp. 100 & 296-298. According to Kelly Deposition, Exhibit 78 (USC_00047918), the syllabus for Spanish 122 states “This class consists of face-to-face instruction blended with on-line web-based instruction.” According to Kelly Deposition Exhibit 78 (USC_00047903) the syllabus for Media Studies 308 states “This class has a hybrid online and in-class schedule.” Furthermore, Mr. Tatos’s reference to USC provost’s statement about switching modality came from faculty guidance for the Fall 2022 Semester. Tatos Report, footnote 21. Mr. Tatos did not demonstrate that such a statement was operable during the relevant Spring 2020 Semester.

As a result, Mr. Tatos cannot accurately claim that he is able to identify USC's Spring 2020 Semester Online Classes. This lack of identification prevents his ability to determine putative class members' alleged damages.

C. Mr. Tatos Incorrectly Identifies the Implications of the Difficulty of Determining University Quality

Mr. Tatos devotes a section of his Expert Report to discussing the information asymmetries he claims exist in the procurement of higher education services.³⁰⁰ In particular, he claims that "[i]t is difficult for families and students to evaluate the quality of the [educational] services supplied" by a university.³⁰¹

Economists have studied this issue and found that because the quality of college is hard to identify, the prices universities charge "is taken by many to be an indicator of quality; if an institution lets its tuition fall relative to its competitors, it runs the risk of being perceived as an inferior institution."³⁰²

As a result, a university might not lower its tuition even if suggested by a hypothetical model that does not take into account this quality effect, like Mr. Tatos's.

D. Mr. Tatos Incorrectly Claims That Students Should Be Owed a Refund If Classes Are Cancelled

Mr. Tatos's Cancelled Classes damages are based on the premise that USC students should be owed a refund if classes are cancelled. However, there are many instances of USC cancelling classes where students did not obtain or demand refunds. For example, USC students did not receive or request refunds when classes were cancelled:

- Earlier during the Spring 2020 Semester on February 6, 2020 due to inclement weather;³⁰³
- For a power outage in 2013;³⁰⁴
- For one week in 2015 due to flooding from Hurricane Joaquin;³⁰⁵
- For Hurricane Matthew in 2016;³⁰⁶
- For a student death in 2017;³⁰⁷

³⁰⁰ Tatos Report, paragraphs 41-48.

³⁰¹ *Id.*, paragraph 45.

³⁰² Arnott, p. 36.

³⁰³ <https://www.wltx.com/article/weather/latest-updates-severe-weather-columbia-south-carolina/101-1fd5db8c-cada-4ca8-b1bb-5fc4e1263147> viewed on February 27, 2023.

³⁰⁴ <https://patch.com/south-carolina/columbia-sc/power-outage-darkens-usc-classes-employees-affected> viewed on March 7, 2023.

³⁰⁵ <https://www.andthevalleyshook.com/2015/10/6/9464431/flooding-issues-in-columbia-sc-have-put-lsu-scar-in-doubt> viewed on February 27, 2023.

³⁰⁶ <https://www.onlineathens.com/story/sports/high-school/football/2016/10/05/uga-and-south-carolina-still-watching-hurricane-finalizing-plans/15341544007/> viewed on March 7, 2023.

³⁰⁷ <https://abcnews4.com/news/local/university-of-south-carolina-closes-campus-building-after-student-death> viewed on March 8, 2023.

- For Hurricane Florence and Michael in 2018;³⁰⁸ and
- For Hurricane Ian in 2022.³⁰⁹

Dr. Cavanagh agreed that higher education institutions, including USC, have a history of successfully adjusting to unexpected impacts to campus and courses as they tend to occur on a regular basis.³¹⁰ He said that USC successfully adjusted to these required cancellations and closures without adversely impacting students' learning outcomes or their progress toward their degrees.³¹¹ As he opined that the educational objectives for the Named Plaintiffs' courses were met during the Spring 2020 Semester despite the remote transition, the cancelled classes during Spring 2020 Semester (both due to inclement weather and COVID-19) did not impact student learning either.³¹²

Given USC's history of not providing refunds for cancelled classes and its refund policy that would allow for no refund at such a late date in the semester, Mr. Tatos's calculations do not accurately state alleged damages.

E. Transfer Costs Could Nullify Any Alleged Damages

Mr. Tatos incorrectly considers only tuition and fee costs in his evaluation of putative class members' alleged damages.

Transfer or switching costs could nullify any alleged damages for students. Mr. Tatos acknowledged that students who already enrolled at USC prior to Spring 2020 would approach their enrollment and purchasing decisions differently than a student enrolling for the first time. He states:

The former would be "locked-in" to their decision to a certain extent, making switching costs prohibitively high. For example, Ferris State University's Faculty Guide makes this very point:

We have many students who are in the middle of their degree/certificate where COVID changes may make success challenging to say the least. It's not the same situation as if all students signed up for online courses and some were simply unrealistic about their ability to succeed—just as for many faculty, teaching in this new fluid environment is not what they expected or wanted. It's what they have and are committed to finishing the certificate or degree; they can't afford to lose their existing investment of time, effort and money to wait it out. There are a

³⁰⁸ <https://www.independentmail.com/story/news/2018/09/11/hurricane-florence-south-carolina-college-charleston-southern/1267107002/> and <https://www.thestate.com/latest-news/article219787580.html> both viewed on March 7, 2023.

³⁰⁹ <https://carolinanewsandreporter.cic.sc.edu/usc-campus-prepares-for-hurricane-ians-impact/> viewed on February 27, 2023.

³¹⁰ Cavanagh Report, pp. 11-12.

³¹¹ *Id.*, p. 12.

³¹² *Id.*, p. 3.

different set of expectations from students who specifically sign up through the statewide/online programs.³¹³

To illustrate this point, assume that USC's tuition per semester was \$8,000 and Ms. Bunch and Ms. Kelly were able to find a "comparable" university that charged \$7,500 in tuition. USC would only have economic pressure to reduce its tuition if a large number of students decided to transfer to that "comparable" university. However, there can be significant costs to transferring universities. These costs could vary by individual. If, for example, all students believed that they would incur \$500 in transfer costs, the assumed "comparable" university would not put economic pricing pressure on USC. In such an example, USC would know that students would not transfer because the transfer costs would outweigh any tuition benefit they might receive.

However, students were not "locked-in" to their university as Mr. Tatos suggests given that some students did not reenroll at USC as discussed above in Section VII.A.2.

F. Mr. Tatos Did Not Consider Whether One Semester of Fees Would Influence Students' Enrollment Decisions

Mr. Tatos's calculations are based on the assumption that students scrutinize USC's tuition and fees and would change their demand and not enroll because of one semester's tuition and fees.

Such an assumption is inapplicable to USC's Spring 2020 Semester.

First, students generally do not scrutinize university charges. For example, one Harvard researcher concluded that "[e]vidence suggests that students are quite poor at estimating" the tuition and fees they pay their university.³¹⁴ A Brookings study found that:

[A] bare majority of respondents (52 percent) at a selective public university were able to correctly identify (within a \$5,000 range) what they paid for their first year of college....

Using nationally representative data, we find that about half of all first-year students in the U.S. seriously underestimate how much student debt they have, and less than one-third provide an accurate estimate within a reasonable margin of error.³¹⁵

Even though one survey found that more than half of respondents believed they knew "a lot or a good amount" about college costs, they significantly misestimated those costs.³¹⁶ A study of schools found that few students could accurately estimate fees.³¹⁷ "Many students simply pay their

³¹³ Tatos Report, paragraph 64 & Ferris Faculty Guide & Fall 2020 Online Survival Skills. Available at <https://www.ferris.edu/HTMLS/news/coronavirus/FacultyGuide.pdf> viewed on March 7, 2023.

³¹⁴ Dynarski, Susan and Judith Scott-Clayton "Financial Aid Policy: Lessons From Research" NBER Working Paper, 2013, p. 30.

³¹⁵ Akers, Elizabeth J. and Matthew M. Chingos "Are College Students Borrowing Blindly?" Brown Center on Education Policy at Brookings, December 2014, p. 1.

³¹⁶ Scott-Clayton, p. 4.

³¹⁷ Jones, Willis A. and Michael J. Rudolph "Athletic Subsidies and College Costs: Are Students Paying for Rising Costs in Intercollegiate Athletics Spending?", p. 7.

tuition bills without actually reading the fine print.”³¹⁸ These data are likewise individualized as studies have shown that specific demographics tend to be less knowledgeable about college tuition and fees.³¹⁹ For example, Ms. Bunch testified that she did not have a full understanding of her student loans, corresponding interest rates or how she even received certain scholarships from USC.³²⁰

Consequently, Mr. Tatos’s damages methodology, which assumes students scrutinize the fees they would pay, is not realistic.

Second, even if students did scrutinize university charges, Mr. Tatos did not demonstrate that the alleged modality changes during USC’s Spring 2020 Semester would have altered students’ enrollment decisions. Students decide to enroll at universities and pay tuition and fees for many reasons.

Researchers in decision theory have found that “70% of respondents in some choice studies seem to be making lexicographic choices.”³²¹ Under a lexicographic decision rubric, respondents identify the most important attribute to them and select the item(s) with the highest value to them of that attribute. If more than one item possesses that highest value, respondents eliminate all items that do not possess the highest value for the most important attribute from the choice set. They then identify the second most important attribute to them and select the item(s) with the highest value to them of that attribute from the remaining choice set. Respondents continue that process until one item is identified.

Therefore, in analyzing the many different university attributes Mr. Tatos acknowledges exist, students might focus on one key attribute and ignore all others. For example, one of my colleagues, who is from Birmingham, Alabama, once stated that he would have only attended the University of Alabama; he would not have gone to Auburn University, Alabama’s rival, no matter what Auburn’s List Prices were or the financial aid or other attributes it offered. So, he claims he would have attended Alabama even if Auburn was arguably superior along all other dimensions. Therefore, he concentrated on one university attribute, the university name, and ignored all others.

USC students might be similar to my colleague as some students might be so attracted to Gamecock football, family members’ attendance at USC or another USC attribute that the cost of attendance would have a minimal impact on their college selection.

Basic economic Supply and Demand shows that if a sufficient number of USC students would not credibly demonstrate that the alleged USC modality changes during the Spring 2020 Semester would cause them to alter their enrollment decisions, USC would have no economic incentive to lower prices because of those changes. This is the case here as Fall 2020 Semester reenrollment data discussed above shows that potential modality changes did not cause most students to alter

³¹⁸ Kaufman, Jonathan “State of the Unions: The Impact of *Janus* on Public University Student Fees” *Georgia Law Review*, Vol 54, 2020, p. 759.

³¹⁹ For example, see Krsmanovic, Masha and Lou L. Sabina “Resident, Non-resident, and ‘The Other’: Examining Institutional and State Policies for International Student Residency Classification for Tuition Purposes and the Associated Cost of Fees” *Journal of Education Finance*, Volume 45, Number 4, Spring 2020, p. 544.

³²⁰ Bunch Deposition, pp. 44-46.

³²¹ Orme & Chrzan, p. 5.

their enrollment decisions. Alternatively, as discussed above, USC could use financial aid to individually set Net Prices to certain students.

Because Mr. Tatos did not demonstrate that a sufficient number of USC students would demand lower prices (after taking into account transfer costs discussed in Section XVI.E above), he cannot assume that USC would have globally lowered prices in the But For World as he speculatively assumes it would have.

Furthermore, buying university services is unlike most products because students buy them without knowing the price. For example, when selecting a university, students might know the price they will be charged their first year, but they do not necessarily know the price in subsequent years due to annual tuition/fee increases, program enrolled, courses selected, etc. Thus, students who enrolled at USC prior to Fall of 2019 did not know what their tuition and fees would be for the 2019-2020 academic year. Since most students enroll in college intending to be there for multiple semesters, it is arguably more appropriate to assess the total cost of attendance over the course of a student's intended degree as opposed to only scrutinizing the costs and alleged services of individual fees cost for a single semester (as Mr. Tatos did) to properly measure a student's willingness to pay in the But For and Actual Worlds. This would be an even more individualized analysis than what was explained in Section VII.B.

XVII. Mr. Tatos's Damages Theories Do Not Demonstrate that USC Was Unjustly Enriched

It is my understanding that the Named Plaintiffs' Complaint also seeks damages pertaining to USC's alleged unjust enrichment. However, neither the Named Plaintiffs nor Mr. Tatos have put forth an alleged damages calculation for the putative class as it relates to unjust enrichment. Mr. Tatos's Damages Theories only "address" the tuition and fees USC students paid. However, other items need to be analyzed in order to determine if USC was unjustly enriched. Any proper unjust enrichment analysis must, at least, analyze whether USC incurred significant costs and sacrificed revenue, which USC did, as discussed below. I reserve the right to update my opinions if and when a complete unjust enrichment calculation is put forward.

After evaluating USC's finances, I conclude that USC was not unjustly enriched by its alleged actions in transitioning to ERT. As discussed in the prior Sections, it did not overcharge its students.

Additionally, USC was not unjustly enriched because it did not save any money by substituting remote classes for in-person classes in Spring 2020. In fact, remote classes cost USC more than it would have if USC had maintained campus-based classes. As discussed above in Section IV, USC estimated that it incurred at least \$32 million in unexpected refunds and expenditures during the Spring 2020 Semester.³²² Specifically, USC gave \$20.7 million in refunds to students for housing, dining, parking and transportation. In addition, USC incurred over \$11.5 million in mitigation

³²² University of South Carolina Comprehensive Annual Financial Report for the Year Ended June 30, 2020 (USC_00050094), p. 23.

costs related to personal protective equipment (PPE), cleaning and sanitation and virus testing and tracing.³²³

Even though it did not earn revenue from refunded items such as housing and dining during the campus closure, USC still incurred expenses relating to building costs, staffing and other items.

Furthermore, even if one assumes that, counter to actual evidence, USC's costs did not increase during the Spring 2020 Semester, USC did not "pocket any differences." As discussed above in Section X, USC rolled over any excess funds it might have obtained to the Fall 2020 Semester. Section X shows that all putative class members benefited from this rollover irrespective of their enrollment status in the fall. Therefore, the students still benefited from any "excess" payments that might have been made.

XVIII. Conclusion

For the reasons discussed above, Mr. Tatos has not presented a model or methodology that is capable of feasibly determining alleged damages in this case on a classwide basis, consistent with the Named Plaintiffs' claims.

March 8, 2023



Benjamin S. Wilner, Ph.D.

³²³ *Ibid.*

**University of South Carolina
Documents Considered**

Exhibit 1

I. Legal Filings

Second Amended Summons, filed August 2, 2022.

II. Depositions

Deposition of August Grant & Exhibits, dated October 27, 2022.

Deposition of Davia Bunch & Exhibits, dated February 17, 2023.

Deposition of Kelly Morgan Epting & Exhibits, dated October 27, 2022.

Deposition of Nicole Pressley & Exhibits, dated September 7, 2022.

Deposition of Sandra J. Kelly, PhD., dated July 27, 2022.

Deposition of Ted Tatos & Exhibits, dated February 15, 2023.

Depositions of Casey Kelly & Exhibits, dated May 6, 2022 and November 2, 2022.

Depositions of Mandy Kibler & Exhibits, dated October 17, 2022 and June 16, 2022.

III. Plaintiffs' Expert Report

Expert Report of Ted Tatos, dated January 4, 2023.

IV. Defendant's Expert Report

Expert Witness Report of Thomas B. Cavanagh, Ph.D., dated March 6, 2023.

V. Documents Received From Counsel

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**University of South Carolina
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[illegible]

**University of South Carolina
Documents Considered**

Exhibit 1

VII. Other Documents Considered (cont.)

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Exhibit 1

VII. Other Documents Considered (cont.)

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<i>In re: General Motors LLC Ignition Switch Litigation</i> , 14-MD-2543 (SD NY, 2019).
<i>Michel v. Yale</i> , Ruling on Motion for Summary Judgment, January 30, 2023.
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State of Michigan Court of Appeals Opinion dated February 10, 2022.



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Education

Kellogg Graduate School
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Northwestern University
Ph.D.
Managerial Economics
and Decision Science

University of
Pennsylvania
BA magna cum laude
with distinction in major
Economics &
Mathematics

London School of
Economics
General Course Degree
Mathematics & Statistics

Dr. Benjamin Wilner has more than twenty years of advisory, valuation, and general economic & financial services experience as a consultant, academic & testifier. He is a Ph.D. economist and statistician who regularly serves as a consultant and testifying expert witness on financial damages, economic & statistical issues.

Dr. Wilner's disputes experience encompasses many industries and a broad range of single plaintiff, class action and criminal disputes including antitrust liability & damages, business interruption, business valuations, economic analyses, intellectual property, labor, lost income, product liability, statistical data analyses, and other corporate and litigation related matters. Dr. Wilner was a panelist at the ABA Litigation Section's 26th Annual National Institute on Class Actions discussing "The Conjoint Damages Standoff: Benefit of the Bargain or Procedural Shortcut?"

In his consulting practice, Dr. Wilner advises corporations and governments on economic and statistical issues. For example, in addition to redesigning statistical aspects of an automobile manufacturer's warranty process, Dr. Wilner received a special commendation from the Commissioner of US Customs & Border Protection for building an economic model to restructure a \$2.5 billion tariff, which has won praise by a Cabinet member, Congressional officials, and the industry.

Prior to joining Alvarez & Marsal, Dr. Wilner worked at other multinational consulting firms. He also has been a professor in the business schools at the University of Michigan, University of Iowa, Northwestern University, and the Helsinki School of Economics. Dr. Wilner was a research assistant for a Nobel Prize-winning economist and studied under two other Nobel Laureates. His work has been published in leading academic journals and textbooks as well as regularly cited in the academic and popular press. Dr. Wilner won several awards for teaching and research including a grant from the National Science Foundation.

Testimony before a Trier of Fact

- Employment Hearing Testimony in Scott Coren v. Ronald Pieri, Board of Fire and Police Commissioners, Highwood, Illinois, October 2019 & January 2020
- Sentencing Hearing Testimony in United States v. Mark Hazelwood, United States District Court, Eastern District of Tennessee, September 2018
- Arbitration Testimony in Topix Media Lab, LLC, v. Athlon Sports Communications, Inc., American Arbitration Association, November 2017
- Trial Testimony in Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited, United States District Court, Middle District of North Carolina, September 2017
- Trial Testimony in Christine Ekallipse Moulouki v. Marie Paule Epee and Eric Ngado Epee, United States District Court, Northern District of Illinois, Eastern Division, July 2017
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Deposition Testimony

- Marc Schultz et al. v. Emory University, United States District Court, Northern District of Georgia, Atlanta Division, February 2023
- In re: Boston University COVID-19 Refund Litigation, United States District Court, District of Massachusetts, February 2023
- Richard Parks and Steven Parks v. Horizon Holdings LLC, Parks Manufacturing LLC a/k/a PMI Opco, LLC and PMI Holdco, LLC, State of Delaware, Court of Chancery, January 2023
- Alec Faber and Ahnaf Rahman et al. v. Cornell University, United States District Court, Northern District of New York, October 2022
- Holly Blaine Vanzant and Sherry Nevius et al. v. Hill's Pet Nutrition Inc. and PetSmart, Inc., United States District Court, Northern District of Illinois, September 2022
- Penny Ninivaggi et al. v. University of Delaware & Hannah Russo et al. v. University of Delaware, United States District Court, District of Delaware, September 2022
- Nicholas Bergeron and Nick Quattrociocchi, et al. v. Rochester Institute of Technology, United States District Court, Western District of New York, August 2022
- Jennifer Pennington and Josh Pennington v. Memorial Hospital of South Bend, Inc. d/b/a Beacon Health and Fitness, Spear Corporation and Panzica Building Corporation, State of Indiana, St. Joseph Superior Court, April 2022



- Honeywell International Inc. v. North American Refractories Company Asbestos Personal Injury Settlement Trust, United States Bankruptcy Court, Western District of Pennsylvania, March 2022
- Astria Health v. Cerner Corporation and Cerner Revenue Cycle, LLC., United States Bankruptcy Court, Eastern District of Washington, March 2022
- Paul E. Dubuque v. Dubuque Coffee Co., LLC and Charles T. Dubuque, State of Illinois, Circuit Court of Cook County, October 2021
- Winamac Southern Railway Company v. Irving Materials, Inc., State of Indiana, County of Howard, October 2021
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- H&T Fair Hills, Ltd., et al. v. Alliance Pipeline L.P., United States District Court, District of Minnesota, April 2021
- Thomas P. Gorczynski, et al. v. Electrolux Home Products, Inc., et al., United States District Court, District of New Jersey, Camden Division, February 2020
- Thomas Allegra, et al. v. Luxottica Retail North America, United States District Court, Eastern District of New York, Brooklyn Division, December 2019
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- In re: Whole Foods Market Group, Inc. Overcharging Litigation, United States District Court, Southern District of New York, January 2019
- WHB International, Inc. and WHB Fundição, S/A v. Allison Transmission, Inc., Marion Superior Court, Indiana Commercial Court, December 2018
- Teresa Elward, et al. v. Electrolux Home Products, Inc., United States District Court, Northern District of Illinois, Eastern Division, August 2018
- Roger Coffelt, Jr., et al. v. The Kroger Co., The Pictsweet Company and CRF Frozen Foods LLC., et al., United States District Court, Central District of California, Riverside Division, May 2018
- Rick Lindsey v. Officer Michael Orlando, Officer Jamie Falardeau, the City of Chicago, Delta Airlines, Thomas Steinfelds, and Marcella Pirvu, United States District Court, Northern District of Illinois, Eastern Division, March 2018
- Syncora Guarantee Inc. v. Alinda Capital Partners, LLC, American Roads LLC, Macquarie Securities (USA) Inc., and John S. Laxmi, Supreme Court of the State of New York, County of New York, December 2017



- Kelley Antekeier v. Laboratory Corporation of America, United States District Court, Eastern District of Virginia, Alexandria Division, November 2017
- Topix Media Lab, LLC, v. Athlon Sports Communications, Inc., American Arbitration Association, October 2017
- Christine Ekallipse Moulouki v. Marie Paule Epee and Eric Ngado Epee, United States District Court, Northern District of Illinois, Eastern Division, July 2017
- Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited, United States District Court, Middle District of North Carolina, September 2016
- In re: Hardieplank Fiber Cement Siding Litigation, United States District Court, District of Minnesota, February 2016
- In re: Atlas Roofing Corporation Chalet Shingle Products Liability Litigation, United States District Court, Northern District of Georgia, Atlanta Division, December 2015
- Churchill Downs Incorporated v. Illinois Department of Revenue, Brian Hamer, as Director of The Illinois Department of Revenue, and Dan Rutherford as Treasurer of the State of Illinois, State of Illinois, Circuit Court of Cook County, August 2014
- Victor Tracy, Power of Attorney for Anne Tracy and Victor Tracy, Individually v. Robert K. Erickson, M.D., Lake County Neurosurgery, LLC, Advocate Condell Medical Center, State of Illinois, Circuit Court of Cook County, July 2014
- Marylee Arrigo v. Link Stop, Inc., et al., United States District Court, Western District of Wisconsin, October 2013
- Andrew C. Dillon v. Transportation Solutions Group, LLC, Freight Exchange of North America, LLC, 3PLogic, LLC, Transportation Solutions Enterprises, LLC and Todd Berger, United States District Court, Northern District of Illinois, Eastern Division, September 2013
- Grater, Inc., and James T. Zavacki v. Kevin T. Keating and Keating & Shure, Ltd., State of Illinois, Circuit Court of Cook County, September 2013
- Think Tank Software Development Corporation et al. v. Chester Inc., et al., State of Indiana, County of Porter, February 2012 & October 2009
- Continental Datalabel, Inc. v. Avery Dennison Corporation, United States District Court, Northern District of Illinois, Eastern Division, December 2011



- Ross v. Ross, Circuit Court of the Nineteenth Judicial Circuit, Waukegan, Lake County, Illinois, September 2011
- In re: IKO Roofing Shingle Products Liability Litigation, United States District Court, Central District of Illinois, Urbana Division, August 2011
- Jessica Ellen Legens, et al. v. Mark Alan Ikerman and Manheim Services Corporation, d/b/a Manheim Gateway St. Louis, et al., State of Illinois, Circuit Court of Madison County, November 2010
- Ronald Seymour v. Wausau Signature Agency, et al., United States District Court, Northern District of Illinois, Eastern Division, May 2010
- Neil Simon and Clarissa Simon v. Heritage Title Company, State of Illinois, Circuit Court of Cook County, December 2009
- Mario Vara v. Integra Properties, Inc., Abe Polatsek, S&M Corporation and Michael Strick, State of Illinois, Circuit Court of Cook County, December 2009
- Saint-Gobain Autover USA, Inc., et al. v. Xinyi Glass North America, Inc., et al., United States District Court, Northern District of Ohio, Eastern Division, October 2009
- Sleepy's LLC, v. Select Comfort Wholesale Corporation, et al., United States District Court, Eastern District of New York, July 2009
- Indeck Power Equipment Company v. Professional Power Products, et al., State of Illinois, Circuit Court of Cook County, September 2008
- NSM Music Group, Ltd. and NSM Music, Inc. v. Synergy Law Group and Arthur E. Mertes, State of Illinois, Circuit Court of Cook County, May 2008
- Maria Belbis, et al. v. County of Cook, United States District Court, Northern District of Illinois, Eastern Division, January 2008
- Bucyrus International, Inc. v. Price Erecting Company and Kentucky Rebuild Corp., State of Wisconsin, Circuit Court of Milwaukee County, October 2007
- Mark A. Sindecuse, M.D. v. Dean M. Katsaros, Katsaros & Associates, and CIB Marine Bancshares, Inc., United States District Court, Eastern District of Missouri, Eastern Division, June 2007
- Quentin Bullock et al., v. Michael Sheahan and Cook County, United States District Court, Northern District of Illinois, Eastern Division, September 2006

Professional Memberships

- American Bar Association (Associate Status)
- American Statistical Association



Awards

- National Science Foundation Grant, 1998
- Old Gold Research Fellowship, University of Iowa, Summer 1997
- Outstanding Professor, University of Iowa Panhellenic Council, Fall 1996
- Doctoral Teaching Award, Kellogg Graduate School of Management, 1994

Publications

- "Sampling is Harder and Cheaper than You Think" *Raising the Bar*, January 2021
- "Does (Sample) Size Matter" *For the Defense*, February 2019
- "The U.S. Federal Crop Insurance Program in 2012 and Beyond," (with Frank Schnapp) *Trébol*, July 2013
- "Profitability & Effectiveness of the Federal Crop Insurance Program," (with Laura Carolan & Frank Schnapp), *Crop Insurance Today*, 44(2), pp. 28 – 32, May 2011
- "Economic and Accounting Analyses in Post-Acquisition Disputes," (with Allen Burt and Matthew Paye) *The SRR Journal*, Spring 2010
- "Statistical Analyses Relation to Reductions In Force," *The SRR Journal*, Spring 2009
- "Antitrust Analyses in Horizontal Mergers," (with Thomas R. Jackson) *The SRR Journal*, Fall 2007
- "Options Backdating: The Latest Corporate Imbroglio," (with Idris Raja) *The SRR Journal*, Spring 2007 (reprinted on mondaq.com)
- "Multi-Unit Auctions: A Comparison of Static and Dynamic Mechanisms" (with Alejandro Manelli and Martin Sefton), *Journal of Economic Behavior and Organization*, 61(2), pp. 304 – 323, October 2006
- "The Exploitation of Relationships in Financial Distress: The Case of Trade Credit," *Journal of Finance*, February 2000
- "Everything you always wanted to know about discounting, but were afraid to ask: A Finance 101 Primer," *Credit and Financial Management Review*, Summer 1999
- "Paying Your Bills: The Effect of Corporate Quality" September 1996
- Refereed for the *American Economic Review*, *American Real Estate Society*, *Journal of Finance*, the *Journal of Business*, *Finance and Accounting*, and John Wiley Publishers



Description	Full Time			Part Time		
	2019-2020	2020-2021	% Change	2019-2020	2020-2021	% Change
USC COLUMBIA						
GENERAL						
UNDERGRADUATE - RESIDENT - TUITION	\$ 6,144	\$ 6,144	0.00%	\$ 512.00	\$ 512.00	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 16,764	\$ 16,764	0.00%	\$ 1,397.00	\$ 1,397.00	0.00%
UNDERGRADUATE - NONRESIDENT - SCHOLARSHIP -	\$ 9,240	\$ 9,240	0.00%	\$ 770.00	\$ 770.00	0.00%
UNDERGRADUATE - NONRESIDENT - SCHOLARSHIP - GENERAL UNIVERSITY	\$ 6,144	\$ 6,144	0.00%	\$ 512.00	\$ 512.00	0.00%
UNDERGRADUATE - NONRESIDENT - SCHOLARSHIP - ATHLETICS	\$ 6,144	\$ 6,144	0.00%	\$ 512.00	\$ 512.00	0.00%
UNDERGRADUATE - NONRESIDENT - SCHOLARSHIP - DIVISIONAL	\$ 11,916	\$ 11,916	0.00%	\$ 993.00	\$ 993.00	0.00%
UNDERGRADUATE - NONRESIDENT - SCHOLARSHIP - RECOGNITION	n/a	\$ 14,250	n/a	n/a	\$ 1,187.50	n/a
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
UNDERGRADUATE - RESIDENT, NONRESIDENT SCHOLARSHIP, ACTIVE DUTY MILITARY - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
UNDERGRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 208	\$ 208	0.00%	n/a	n/a	n/a
GRADUATE - RESIDENT - TUITION	\$ 6,867	\$ 6,867	0.00%	\$ 572.25	\$ 572.25	0.00%
GRADUATE - NONRESIDENT - TUITION	\$ 14,880	\$ 14,880	0.00%	\$ 1,240.00	\$ 1,240.00	0.00%
GRADUATE - NONRESIDENT ONLINE - TUITION	n/a	n/a	n/a	\$ 572.25	\$ 572.25	0.00%
GRADUATE - RESIDENT - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
GRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 170	\$ 170	0.00%	n/a	n/a	n/a
ALL USC SYSTEM INSTITUTIONS - CROSS CAMPUS FEES						
GRADUATE - RESIDENT - TUITION	\$ 6,867	\$ 6,867	0.00%	\$ 572.25	\$ 572.25	0.00%
GRADUATE - NONRESIDENT - TUITION	\$ 14,880	\$ 14,880	0.00%	\$ 1,240.00	\$ 1,240.00	0.00%
GRADUATE - NONRESIDENT ON-LINE - TUITION	n/a	n/a	n/a	\$ 572.25	\$ 572.25	0.00%
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
UNDERGRADUATE NONRESIDENT - TUITION - ARUBA	\$ 6,144	\$ 6,144	0.00%	\$ 512.00	\$ 512.00	0.00%
SC CERTIFIED TEACHER RATE - COLUMBIA ONLY (STUDENTS TAKING LESS THAN 12 HOURS)	n/a	n/a	n/a	\$ 515.00	\$ 515.00	0.00%
NONRESIDENT - SC CERTIFIED TEACHER RATE - COLUMBIA ONLY (STUDENTS TAKING LESS THAN 12 HOURS)	n/a	n/a	n/a	\$ 620.00	\$ 620.00	0.00%
SC CERTIFIED TEACHER RATE - SYSTEM INSTITUTIONS (STUDENTS TAKING LESS THAN 12 HOURS)	n/a	n/a	n/a	\$ 362.25	\$ 362.25	0.00%
NONRESIDENT - SC CERTIFIED TEACHER RATE - SYSTEM INSTITUTIONS (STUDENTS TAKING LESS THAN 12 HOURS)	n/a	n/a	n/a	\$ 413.00	\$ 413.00	0.00%
BUSINESS - MOORE SCHOOL						
EXECUTIVE INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - MEXICO	\$ 41,500	\$ 41,500	0.00%	\$ 864.50	\$ 864.50	0.00%
EXECUTIVE INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - CHONNAM (KOREA)	\$ 39,000	\$ 39,000	0.00%	\$ 812.50	\$ 812.50	0.00%
EXECUTIVE INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - NTNU (TAIWAN)	\$ 35,000	\$ 35,000	0.00%	\$ 729.00	\$ 729.00	0.00%
EXECUTIVE INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - ESAN (PERU)	\$ 35,000	\$ 35,000	0.00%	\$ 729.00	\$ 729.00	0.00%
GRADUATE SPECIAL STUDENT (PER CREDIT HOUR) - RESIDENT	n/a	n/a	n/a	\$ 705.00	\$ 705.00	0.00%
GRADUATE SPECIAL STUDENT (PER CREDIT HOUR) - NONRESIDENT	n/a	n/a	n/a	\$ 1,096.50	\$ 1,096.50	0.00%
INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - RESIDENT	\$ 43,142	\$ 32,000	-25.83%	\$ 634.00	\$ 432.00	-31.86%
INTERNATIONAL MASTER OF BUSINESS ADMINISTRATION - NONRESIDENT	\$ 71,580	\$ 60,384	-15.64%	\$ 1,053.00	\$ 816.00	-22.51%
MASTER OF BUSINESS ADMINISTRATION - ONE YEAR PROGRAM - RESIDENT	\$ 35,702	\$ 20,910	-41.43%	\$ 830.00	\$ 510.00	-38.55%
MASTER OF BUSINESS ADMINISTRATION - ONE YEAR PROGRAM - NONRESIDENT	\$ 40,790	\$ 29,520	-27.63%	\$ 949.00	\$ 720.00	-24.13%
MASTER OF BUSINESS ADMINISTRATION - ONE YEAR PROGRAM - MILITARY	\$ 27,500	\$ 20,910	-23.96%	\$ 639.50	\$ 510.00	-20.25%
MASTER OF BUSINESS ADMINISTRATION - ONE YEAR PROGRAM - DEFENSE COMPTROLLERSHIP PROGRAM	\$ 27,500	\$ 20,910	-23.96%	\$ 639.50	\$ 510.00	-20.25%
MASTER OF ACCOUNTANCY - RESIDENT	\$ 15,840	\$ 15,840	0.00%	\$ 528.00	\$ 528.00	0.00%
MASTER OF ACCOUNTANCY - NONRESIDENT	\$ 30,930	\$ 30,930	0.00%	\$ 1,031.00	\$ 1,031.00	0.00%
MASTER OF ARTS IN ECONOMICS - RESIDENT	\$ 15,851	\$ 15,851	0.00%	\$ 528.00	\$ 528.00	0.00%
MASTER OF ARTS IN ECONOMICS - NONRESIDENT	\$ 30,937	\$ 30,937	0.00%	\$ 1,031.00	\$ 1,031.00	0.00%

Electronic Case# 2020CP002301
FILED - 2023 Jun 14 2:45 PM
CLERK OF DISTRICT COURT
RICHMOND - COMMON PLEAS
Case# 2020CP002301

Description	Full Time			Part Time		
	2019-2020	2020-2021	% Change	2019-2020	2020-2021	% Change
COLUMBIA – MEDICINE						
MEDICINE - RESIDENT – TUITION	\$ 21,444	\$ 21,444	0.00%	\$ 1,787.00	\$ 1,787.00	0.00%
MEDICINE - NONRESIDENT SCHOLAR - TUITION	\$ 26,388	\$ 26,388	0.00%	\$ 2,199.00	\$ 2,199.00	0.00%
MEDICINE - NONRESIDENT – TUITION	\$ 43,575	\$ 43,575	0.00%	\$ 3,631.25	\$ 3,631.25	0.00%
GRADUATE CERTIFICATE IN BIO STUDIES - RESIDENT PROGRAM FEE	\$ 18,000	\$ 18,000	0.00%	\$ 1,500.00	\$ 1,500.00	0.00%
GRADUATE CERTIFICATE IN BIO STUDIES - NONRESIDENT PROGRAM FEE	\$ 23,940	\$ 23,940	0.00%	\$ 1,995.00	\$ 1,995.00	0.00%
PHYSICIAN ASSISTANT - RESIDENT TUITION	\$ 7,545	\$ 7,545	0.00%	\$ 628.75	\$ 628.75	0.00%
PHYSICIAN ASSISTANT - NONRESIDENT TUITION	\$ 13,128	\$ 13,128	0.00%	\$ 1,094.00	\$ 1,094.00	0.00%
PHYSICIAN ASSISTANT - NONRESIDENT SCHOLAR TUITION	\$ 9,552	\$ 9,552	0.00%	\$ 796.00	\$ 796.00	0.00%
NURSE ANESTHESIA - RESIDENT TUITION	\$ 7,545	\$ 7,545	0.00%	\$ 628.75	\$ 628.75	0.00%
NURSE ANESTHESIA - NONRESIDENT TUITION	\$ 13,128	\$ 13,128	0.00%	\$ 1,094.00	\$ 1,094.00	0.00%
NURSE ANESTHESIA - NONRESIDENT SCHOLAR TUITION	\$ 9,552	\$ 9,552	0.00%	\$ 796.00	\$ 796.00	0.00%
NURSING						
RN TO BSN ONLINE NURSING PROGRAM TUITION	n/a	n/a	n/a	\$ 409.75	\$ 409.75	0.00%
MASTER OF SCIENCE IN NURSING (MSN) / DOCTOR OF NURSING PRACTICE (DNP) & CERTIFICATE PROGRAM – RESIDENT	\$ 9,243	\$ 9,243	0.00%	\$ 770.25	\$ 770.25	0.00%
MASTER OF SCIENCE IN NURSING (MSN) / DOCTOR OF NURSING PRACTICE (DNP) & CERTIFICATE PROGRAM - NONRESIDENT	\$ 17,256	\$ 17,256	0.00%	\$ 1,438.00	\$ 1,438.00	0.00%
MASTER OF SCIENCE IN NURSING (MSN) / DOCTOR OF NURSING PRACTICE (DNP) & CERTIFICATE PROGRAM - NONRESIDENT SCHOLARSHIP RATE	\$ 10,443	\$ 10,443	0.00%	\$ 870.25	\$ 870.25	0.00%
PHARMACY - COLLEGE OF PHARMACY						
PROFESSIONAL - FULL TIME - RESIDENT - PROGRAM FEE - YEARS ONE, TWO AND THREE - EACH YEAR	\$ 27,840	\$ 27,840	0.00%	\$ 1,010.00	\$ 1,010.00	0.00%
PROFESSIONAL - FULL TIME - NONRESIDENT - PROGRAM FEE - YEARS ONE, TWO AND THREE - EACH YEAR	\$ 42,048	\$ 42,048	0.00%	\$ 1,522.25	\$ 1,522.25	0.00%
PROFESSIONAL - FULL TIME - NONRESIDENT - SCHOLARSHIP - PROGRAM FEE - YEARS ONE, TWO AND THREE - EACH YEAR	\$ 35,709	\$ 35,709	0.00%	\$ 1,299.25	\$ 1,299.25	0.00%
PROFESSIONAL - FULL TIME - RESIDENT - PROGRAM FEE - YEAR FOUR	\$ 24,396	\$ 24,396	0.00%	\$ 1,016.50	\$ 1,016.50	0.00%
PROFESSIONAL - FULL TIME - NONRESIDENT - PROGRAM FEE - YEAR FOUR	\$ 36,834	\$ 36,834	0.00%	\$ 1,534.75	\$ 1,534.75	0.00%
PROFESSIONAL - FULL TIME - NONRESIDENT - SCHOLARSHIP - PROGRAM FEE - YEAR FOUR	\$ 31,410	\$ 31,410	0.00%	\$ 1,308.75	\$ 1,308.75	0.00%
PUBLIC HEALTH - ARNOLD SCHOOL						
DOCTOR OF PHYSICAL THERAPY - RESIDENT – TUITION (New Students as of Fall 2016 and after)	\$ 7,542	\$ 7,542	0.00%	\$ 628.50	\$ 628.50	0.00%
DOCTOR OF PHYSICAL THERAPY - NONRESIDENT – TUITION (New Students as of Fall 2016 and after)	\$ 12,228	\$ 12,228	0.00%	\$ 1,019.00	\$ 1,019.00	0.00%
DOCTOR OF PHYSICAL THERAPY - NONRESIDENT - SCHOLARSHIP – TUITION (New Students as of Fall 2016 and after)	\$ 9,936	\$ 9,936	0.00%	\$ 828.00	\$ 828.00	0.00%
MHA PROFESSIONAL FORMAT - RESIDENT TUITION - PER CREDIT HOUR	n/a	n/a	n/a	\$ 572.25	\$ 572.25	0.00%
MHA PROFESSIONAL FORMAT - NONRESIDENT TUITION - PER CREDIT HOUR	n/a	n/a	n/a	\$ 597.25	\$ 597.25	0.00%
SOCIAL WORK						
KOREAN MSW PROGRAM - SOCIAL WORK - FOR 2 1/2 YEAR PERIOD - 60 CREDIT HOUR PROGRAM	\$ 34,335	\$ 34,335	0.00%	\$ 572.25	\$ 572.25	0.00%
USC AIKEN						
UNDERGRADUATE - RESIDENT – TUITION	\$ 5,199	\$ 5,199	0.00%	\$ 433.25	\$ 433.25	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 10,428	\$ 10,428	0.00%	\$ 869.00	\$ 869.00	0.00%
UNDERGRADUATE - NONRESIDENT SCHOLARSHIP - FOUNDATION SCHOLARS – TUITION	\$ 7,821	\$ 7,821	0.00%	\$ 651.75	\$ 651.75	0.00%
UNDERGRADUATE – ATHLETIC NR & GENERAL SCHOLARSHIP	\$ 5,199	\$ 5,199	0.00%	\$ 433.25	\$ 433.25	0.00%
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
MASTER OF BUSINESS ADMINISTRATION – ONLINE PROGRAM RESIDENT AND NONRESIDENT PER CREDIT HOUR	n/a	n/a	n/a	\$ 450.00	\$ 450.00	0.00%
RN TO BSN – ONLINE – RES AND NONRES / CREDIT HOUR	n/a	n/a	n/a	\$ 306.00	\$ 306.00	0.00%
UNDERGRADUATE - RESIDENT, NONRESIDENT, SCHOLARSHIP, ACTIVE DUTY MILITARY - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a

University of South Carolina
List Price Tuition

Exhibit 3

Description	Full Time			Part Time		
	2019-2020	2020-2021	% Change	2019-2020	2020-2021	% Change
UNDERGRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 208	\$ 208	0.00%	n/a	n/a	n/a
GRADUATE - RESIDENT - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
GRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 170	\$ 170	0.00%	n/a	n/a	n/a
SC CERTIFIED TEACHER RATE - RESIDENT (LESS THAN 12 HOURS)	n/a	n/a	n/a	\$362.25	\$362.25	0.00%
SC CERTIFIED TEACHER RATE - NONRES (LESS THAN 12 HOURS)	n/a	n/a	n/a	\$413.00	\$413.00	0.00%
INTERNATIONAL PARTNER UNIVERSITY UNDERGRAD TUITION	\$ 6,201	\$ 6,201	0.00%	\$ 516.75	\$ 516.75	0.00%
INTERNATIONAL PARTNER UNIVERSITY GRADUATE TUITION	\$ 7,869	\$ 7,869	0.00%	\$ 655.75	\$ 655.75	0.00%
USC BEAUFORT						
UNDERGRADUATE - RESIDENT - TUITION	\$ 5,172	\$ 5,172	0.00%	\$ 431.00	\$ 431.00	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 10,695	\$ 10,695	0.00%	\$ 891.25	\$ 891.25	0.00%
UNDERGRADUATE - NONRESIDENT SCHOLARSHIP	\$ 8,022	\$ 8,022	0.00%	\$ 668.50	\$ 668.50	0.00%
UNDERGRADUATE - ATHLETIC NR SCHOLARSHIP & GENERAL SCHOLARSHIP	\$ 5,172	\$ 5,172	0.00%	\$ 431.00	\$ 431.00	0.00%
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
UNDERGRADUATE - RESIDENT, NONRESIDENT SCHOLARSHIP, ACTIVE DUTY MILITARY - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
UNDERGRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 208	\$ 208	0.00%	n/a	n/a	n/a
GRADUATE - RESIDENT - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
GRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 170	\$ 170	0.00%	n/a	n/a	n/a
INTERNATIONAL PARTNER UNIVERSITY UNDERGRAD TUITION	n/a	\$ 6,180	n/a	n/a	\$ 515.00	n/a
USC UPSTATE						
UNDERGRADUATE - RESIDENT - TUITION	\$ 5,604	\$ 5,604	0.00%	\$ 467.00	\$ 467.00	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 11,355	\$ 11,355	0.00%	\$ 946.25	\$ 946.25	0.00%
UNDERGRADUATE - NONRESIDENT SCHOLARSHIP - TUITION	\$ 8,517	\$ 8,517	0.00%	\$ 709.75	\$ 709.75	0.00%
UNDERGRADUATE - ATHLETIC NR SCHOLARSHIP & GENERAL SCHOLARSHIP	\$ 5,604	\$ 5,604	0.00%	\$ 467.00	\$ 467.00	0.00%
UNDERGRADUATE SUMMER - RESIDENT - TUITION	\$ 5,268	n/a	n/a	\$ 439.00	n/a	n/a
UNDERGRADUATE SUMMER - NONRESIDENT - TUITION	\$ 10,689	n/a	n/a	\$ 890.75	n/a	n/a
UNDERGRADUATE SUMMER - NONRESIDENT SCHOLARSHIP -	\$ 8,019	n/a	n/a	\$ 668.25	n/a	n/a
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
UNDERGRADUATE - RESIDENT - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
UNDERGRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 208	\$ 208	0.00%	n/a	n/a	n/a
GRADUATE - RESIDENT - 17 HOURS AND ABOVE	\$ 80	\$ 80	0.00%	n/a	n/a	n/a
GRADUATE - NONRESIDENT - 17 HOURS AND ABOVE	\$ 170	\$ 170	0.00%	n/a	n/a	n/a
INTERNATIONAL PARTNER UNIVERSITY STUDENTS - TUITION RATE	\$ 8,104	\$ 8,104	0.00%	\$ 675.50	\$ 675.50	0.00%
SC CERTIFIED TEACHER RATE - CAMPUSES (STUDENTS TAKING LASS THAN 12 HOURS)	n/a	n/a	n/a	\$ 362.25	\$ 362.25	0.00%
NONRESIDENT - SC CERTIFIED TEACHER RATE - CAMPUSES (STUDENTS TAKING LASS THAN 12 HOURS)	n/a	n/a	n/a	\$ 413.00	\$ 413.00	0.00%
REGIONAL PALMETTO COLLEGES - USC LANCASTER, SALKEHATCHIE, SUMTER, AND UNION						
UNDERGRADUATE - RESIDENT - TUITION	\$ 3,579	\$ 3,579	0.00%	\$ 298.25	\$ 298.25	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 8,919	\$ 8,919	0.00%	\$ 743.25	\$ 743.25	0.00%
UNDERGRADUATE - ATHLETIC NR SCHOLARSHIP & GENERAL SCHOLARSHIP	\$ 3,579	\$ 3,579	0.00%	\$ 298.25	\$ 298.25	0.00%
ACTIVE DUTY MILITARY UNDERGRADUATE - TUITION	\$ 3,000	\$ 3,000	0.00%	\$ 250.00	\$ 250.00	0.00%
PALMETTO PATHWAY PROGRAM (PALMETTO COLLEGE) SC	\$ 3,498	\$ 3,498	0.00%	\$ 291.50	\$ 291.50	0.00%
PALMETTO COLLEGE (4 YEAR ONLINE DEGREE) - OFFERED BY USC CAMPUSES IN AIKEN, BEAUFORT, COLUMBIA, AND UPSTATE						
UNDERGRADUATE - RESIDENT - TUITION	\$ 5,199	\$ 5,199	0.00%	\$ 433.25	\$ 433.25	0.00%
UNDERGRADUATE - NONRESIDENT - TUITION	\$ 10,428	\$ 10,428	0.00%	\$ 869.00	\$ 869.00	0.00%

Source: University of South Carolina Budget Document FY 2020-2021 (USC_00000329), pp. 33-50.

ELECTRONICALLY FILED JUN 25 2020 11:25 AM RICHMOND, VIRGINIA

University of South Carolina
Distribution of List Price Tuition per Semester

Exhibit 4

	2019-20																						
Campus/Program/Residency Status	Educational & General	Institution Bond	Athletic Bond	Transportation Fee	Wellness Center	Renovation Reserve	Student Health	Computer Fee	Campus Activity	Student Union	Student Recreation	Athletic Activity	Campus Media	Student Govt Activities	Gregory Wellness Center	Palmetto Program Fee	Student Services	Law Review	Total Tuition	Educational & General	Fees	Alleged Tatos Fees	
USC Columbia																							
Columbia - Undergraduate - Resident	\$ 5,262.50	\$ 319.50	\$ -	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,144.00	\$ 5,262.50	\$ 881.50	\$ 881.50	
Columbia - Undergraduate - Non-Resident	\$ 15,386.50	\$ 734.50	\$ 81.00	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,764.00	\$ 15,386.50	\$ 1,377.50	\$ 1,377.50	
Columbia - Graduate - Resident	\$ 5,985.50	\$ 319.50	\$ -	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,867.00	\$ 5,985.50	\$ 881.50	\$ 881.50	
Columbia - Graduate - Non-Resident	\$ 13,885.50	\$ 351.50	\$ 81.00	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,880.00	\$ 13,885.50	\$ 994.50	\$ 994.50	
Columbia - Law - Resident	\$ 9,653.00	\$ 319.50	\$ -	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.50	\$ 10,536.00	\$ 9,653.00	\$ 883.00	\$ 883.00	
Columbia - Law - Non-Resident	\$ 24,661.00	\$ 734.50	\$ 81.00	\$ 28.00	\$ 105.00	\$ 40.00	\$ 190.00	\$ 40.00	\$ 87.00	\$ 15.00	\$ 5.00	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.50	\$ 26,040.00	\$ 24,661.00	\$ 1,379.00	\$ 1,379.00	
Columbia - Medicine - Resident	\$ 19,897.50	\$ 1,090.00	\$ -	\$ -	\$ 105.00	\$ 22.50	\$ 190.00	\$ -	\$ 87.00	\$ -	\$ -	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,444.00	\$ 19,897.50	\$ 1,546.50	\$ 1,546.50	
Columbia - Medicine - Non-Resident	\$ 40,947.50	\$ 2,090.00	\$ 81.00	\$ -	\$ 105.00	\$ 22.50	\$ 190.00	\$ -	\$ 87.00	\$ -	\$ -	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,575.00	\$ 40,947.50	\$ 2,627.50	\$ 2,627.50	
Greenville - Medicine - Resident	\$ 20,987.50	\$ -	\$ -	\$ -	\$ 105.00	\$ 22.50	\$ 190.00	\$ -	\$ 87.00	\$ -	\$ -	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,444.00	\$ 20,987.50	\$ 456.50	\$ 456.50	
Greenville - Medicine - Non-Resident	\$ 43,037.50	\$ -	\$ 81.00	\$ -	\$ 105.00	\$ 22.50	\$ 190.00	\$ -	\$ 87.00	\$ -	\$ -	\$ 52.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,575.00	\$ 43,037.50	\$ 537.50	\$ 537.50	
USC Aiken																							
Aiken - Undergraduate - Resident	\$ 4,639.00	\$ 241.00	\$ -	\$ -	\$ -	\$ 12.00	\$ 32.00	\$ -	\$ 32.00	\$ -	\$ -	\$ 238.00	\$ 5.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,199.00	\$ 4,639.00	\$ 560.00	\$ 555.00	
Aiken - Undergraduate - Non-Resident	\$ 9,868.00	\$ 241.00	\$ -	\$ -	\$ -	\$ 12.00	\$ 32.00	\$ -	\$ 32.00	\$ -	\$ -	\$ 238.00	\$ 5.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,428.00	\$ 9,868.00	\$ 560.00	\$ 555.00	
USC Beaufort																							
Beaufort - Undergraduate - Resident	\$ 4,624.00	\$ 89.00	\$ -	\$ -	\$ -	\$ 47.00	\$ -	\$ -	\$ 111.00	\$ -	\$ -	\$ 301.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,172.00	\$ 4,624.00	\$ 548.00	\$ 548.00	
Beaufort - Undergraduate - Non-Resident	\$ 10,147.00	\$ 89.00	\$ -	\$ -	\$ -	\$ 47.00	\$ -	\$ -	\$ 111.00	\$ -	\$ -	\$ 301.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,695.00	\$ 10,147.00	\$ 548.00	\$ 548.00	
USC Upstate																							
Upstate - Undergraduate - Resident	\$ 4,605.00	\$ 295.00	\$ -	\$ -	\$ -	\$ 85.00	\$ -	\$ -	\$ 144.00	\$ -	\$ -	\$ 475.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,604.00	\$ 4,605.00	\$ 999.00	\$ 999.00	
Upstate - Undergraduate - Non-Resident	\$ 10,356.00	\$ 295.00	\$ -	\$ -	\$ -	\$ 85.00	\$ -	\$ -	\$ 144.00	\$ -	\$ -	\$ 475.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,355.00	\$ 10,356.00	\$ 999.00	\$ 999.00	
USC Lancaster																							
Lancaster - Undergraduate - Resident	\$ 3,239.00	\$ -	\$ -	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ 45.00	\$ -	\$ -	\$ 195.00	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ -	\$ 3,579.00	\$ 3,239.00	\$ 340.00	\$ 290.00	
Lancaster - Undergraduate - Non-Resident	\$ 8,579.00	\$ -	\$ -	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ 45.00	\$ -	\$ -	\$ 195.00	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ -	\$ 8,919.00	\$ 8,579.00	\$ 340.00	\$ 290.00	
USC Salkehatchie																							
Salkehatchie - Undergraduate - Resident	\$ 3,472.00	\$ -	\$ -	\$ -	\$ -	\$ 34.00	\$ -	\$ -	\$ 13.00	\$ -	\$ -	\$ 60.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,579.00	\$ 3,472.00	\$ 107.00	\$ 107.00	
Salkehatchie - Undergraduate - Non-Resident	\$ 8,812.00	\$ -	\$ -	\$ -	\$ -	\$ 34.00	\$ -	\$ -	\$ 13.00	\$ -	\$ -	\$ 60.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,919.00	\$ 8,812.00	\$ 107.00	\$ 107.00	
USC Sumter																							
Sumter - Undergraduate - Resident	\$ 3,353.00	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ -	\$ 46.00	\$ -	\$ -	\$ 140.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,579.00	\$ 3,353.00	\$ 226.00	\$ 226.00	
Sumter - Undergraduate - Non-Resident	\$ 8,693.00	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ -	\$ 46.00	\$ -	\$ -	\$ 140.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,919.00	\$ 8,693.00	\$ 226.00	\$ 226.00	
USC Union																							
Union - Undergraduate - Resident	\$ 3,344.00	\$ -	\$ -	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ 185.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,579.00	\$ 3,344.00	\$ 235.00	\$ 235.00	
Union - Undergraduate - Non-Resident	\$ 8,684.00	\$ -	\$ -	\$ -	\$ -	\$ 50.00	\$ -	\$ -	\$ 185.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,919.00	\$ 8,684.00	\$ 235.00	\$ 235.00	
Palmetto Colleges																							
Regional Palmetto Colleges - Palmetto Program Courses - Undergraduate - Resident	\$ 3,365.50	\$ -	\$ -	\$ -	\$ -	\$ 33.50	\$ -	\$ -	\$ 30.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150.00	\$ -	\$ -	\$ 3,579.00	\$ 3,365.50	\$ 213.50	\$ 63.50	
Regional Palmetto Colleges - Palmetto Program Courses - Undergraduate - Non-Resident	\$ 8,705.50	\$ -	\$ -	\$ -	\$ -	\$ 33.50	\$ -	\$ -	\$ 30.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150.00	\$ -	\$ -	\$ 8,919.00	\$ 8,705.50	\$ 213.50	\$ 63.50	
Palmetto College - Columbia - Undergraduate - Resident	\$ 4,899.00	\$ 240.00	\$ -	\$ -	\$ -	\$ 20.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ 5,199.00	\$ 4,899.00	\$ 300.00	\$ 260.00	
Palmetto College - Columbia - Undergraduate - Non-Resident	\$ 10,128.00	\$ 240.00	\$ -	\$ -	\$ -	\$ 20.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ 10,428.00	\$ 10,128.00	\$ 300.00	\$ 260.00	
Palmetto College - Aiken - Undergraduate - Resident	\$ 4,899.00	\$ 228.00	\$ -	\$ -	\$ -	\$ 12.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60.00	\$ -	\$ 5,199.00	\$ 4,899.00	\$ 300.00	\$ 240.00	
Palmetto College - Aiken - Undergraduate - Non-Resident	\$ 10,128.00	\$ 228.00	\$ -	\$ -	\$ -	\$ 12.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60.00	\$ -	\$ 10,428.00	\$ 10,128.00	\$ 300.00	\$ 240.00	
Palmetto College - Beaufort - Undergraduate - Resident	\$ 4,899.00	\$ 63.00	\$ -	\$ -	\$ -	\$ 222.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15.00	\$ -	\$ 5,199.00	\$ 4,899.00	\$ 300.00	\$ 285.00	
Palmetto College - Beaufort - Undergraduate - Non-Resident	\$ 10,128.00	\$ 63.00	\$ -	\$ -	\$ -	\$ 222.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15.00	\$ -	\$ 10,428.00	\$ 10,128.00	\$ 300.00	\$ 285.00	
Palmetto College - Upstate - Undergraduate - Resident	\$ 4,899.00	\$ 165.00	\$ -	\$ -	\$ -	\$ 95.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ 5,199.00	\$ 4,899.00	\$ 300.00	\$ 260.00	
Palmetto College - Upstate - Undergraduate - Non-Resident	\$ 10,128.00	\$ 165.00	\$ -	\$ -	\$ -	\$ 95.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40.00	\$ -	\$ 10,428.00	\$ 10,128.00	\$ 300.00	\$ 260.00	

Source: University of South Carolina Budget Document FY 2020-2021 (USC_00000329), pp. 158-166 (Appendix 23).

ELECTRONICALLY FILED BY: JEFFREY M. HUNTER, III, CLERK OF SUPERIOR COURT, JUDICIAL DISTRICT OF CLAY COUNTY, FLORIDA, CASE# 2024-00000002330

EXHIBIT C

Columbia Campus 2019-2020 Undergraduate Studies Bulletin

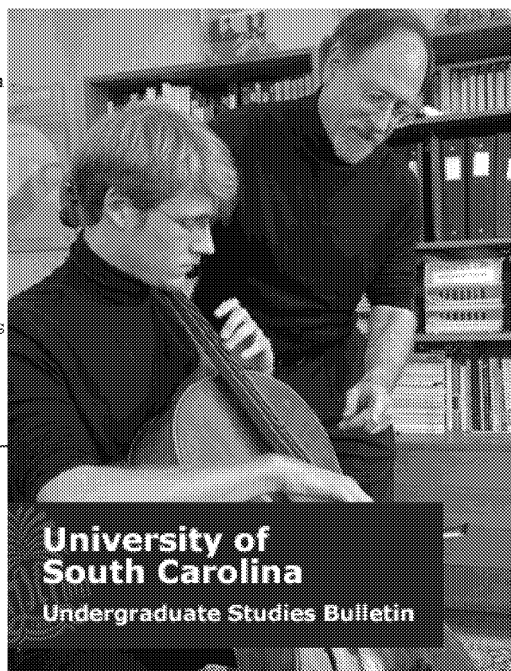
2019-2020 Undergraduate Studies Bulletin

Welcome to the Undergraduate Studies Bulletin

The Undergraduate Studies Bulletin is the official document of record concerning undergraduate academic programs and regulations.

Please note that there is now a separate link for Policies and Regulations that may be accessed by clicking on the drop down menu above or the link in the navigation bar to the right. The Policies and Regulations section also contains information about the history of the University, student life and other helpful sources of information.

This bulletin is for information purposes only and does not constitute any contractual agreement between a student and the University of South Carolina. The University reserves the right to make changes in curricula, degree requirements, course offerings, or academic regulations at any time when, in the judgment of the faculty, the president, or the Board of Trustees, such changes are in the best interest of the students and the University.



Academic Bulletin Information

- [Administrative Copies](#)
 - [Bulletin Updates and Corrections](#)
 - [Printing Portions of the Online Bulletins](#)
 - [Other Printed Academic Documents](#)
 - [Looking for a Different Bulletin?](#)
-

Administrative Copies

Printed administrative copies of the academic bulletins through the 2008-2009 academic year are available for reference in Thomas Cooper Library, the School of Medicine Library, Coleman Karesh Law Library, the Office of Undergraduate Admissions, The Graduate School, the Office of the Provost, and each college, school, and department office. Complimentary administrative copies are no longer produced.

Bulletin Updates and Corrections

Non-curricular information (i.e., faculty listings, contact information, college or departmental descriptive text) can be updated by contacting the Office of the University Registrar. Any material pertaining to course descriptions or curriculum changes must have the approval of the Faculty Senate, Graduate Council, Board of Trustees, and/or S.C. Commission on Higher Education before it can be published in the bulletins.

Printing Portions of the Online Bulletins

Except for a limited run of administrative copies up to the 2008-2009 academic year (copies of which are available for reference in the USC libraries), the academic bulletins are available online only. However, you may produce hard copy of any portion or all of an online bulletin using your local printer. Every bulletin page has a "Print" icon in the top right corner of each page.

Other Printed Academic Documents

Supplementary materials are available on request as follows: the School of Medicine bulletin may be obtained by writing to the medical school; the School of Law bulletin may be obtained by writing to the School of Law. These offices are at the University of South Carolina, Columbia, SC 29208.

Final authority for all aspects of content rests with the Office of the Provost. All material submitted for publication in the undergraduate bulletin must be cleared through the academic editor, Sandra Kelly, vice provost and dean of undergraduate studies. For the graduate bulletin, clearance must be obtained through Cheryl Addy, vice provost and dean of the Graduate School.

Registration at the University of South Carolina assumes the students' acceptance of all published regulations, including both those which appear in this document and all others as applicable in any official announcement such as Carolina Community: Student Handbook and Policy Guide.

Official policies of the University listed below are published annually in Carolina Community.

1. Student Rights and Freedoms within the Academic Community
2. Code of Student Academic Responsibility and Procedures for Implementation of this Code
3. Grievance Policy and Procedures for Non-Academic Areas
4. University Policy on Use of Alcohol
5. University Policy on Campus Solicitation
6. University Policy on Student Patent and Copyright Matters

The University has established procedures to certify that all classroom activities are conducted by individuals with spoken and written proficiency in the English language at a suitable level. Student complaints concerning the English proficiency of an individual with classroom responsibilities should follow the grievance procedures available from the Office of the Provost.

The University of South Carolina provides equal opportunity in education and employment for all qualified persons regardless of race, color, religion, sex, national origin, age, disability, or veteran status. The University of South Carolina has designated as the ADA Title II, Section 504 and Title IX coordinator the Executive Assistant to the President for Equal Opportunity Programs. The Office of the Executive Assistant to the President for Equal Opportunity Programs is located in Suite 805 of 1600 Hampton St., Columbia, South Carolina; telephone 803-777-3854.

Looking for a Different Bulletin?

Visit: <http://sc.edu/bulletin/>

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
DAVIA BUNCH and CASEY KELLY,	)	Civil Action No. 2020-CP-40-02330
individually and on behalf of others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	<u>AFFIDAVIT OF</u>
vs.	)	<u>AARON MARTERER</u>
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

I, Aaron Marterer, having been duly sworn, depose and say, under penalty of perjury, that:

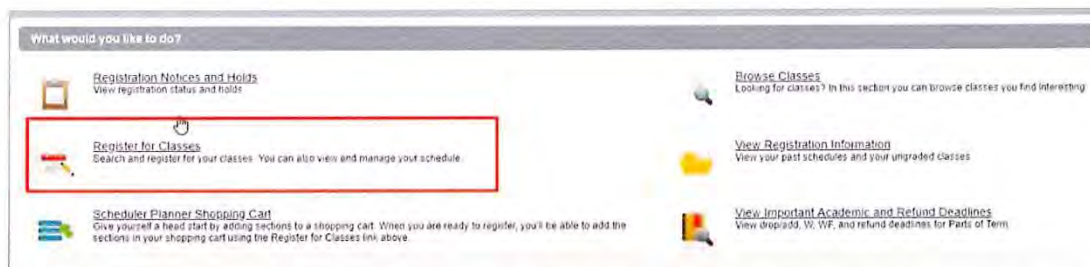
1. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts herein stated.
2. I am the University System Registrar and Assistant Vice President for Enrollment Management at the University of South Carolina (the "University"). At all times relevant to this litigation, including during the 2019-2020 academic year, I held the position of University System Registrar. In my position, I am familiar with the University's registration process and policies.
3. I make the following statements based upon my personal knowledge and review of the University's records and registration process.
4. Save for certain situations, including, for example, high school students enrolled in a dual enrollment program and first-year medical students, students registered for classes for the Spring 2020 semester through Self Service Carolina, which is a web-based platform students enrolled with the University use to review and manage their academic, financial, and personal information and perform many student-related transactions.

5. The University's Advising Center uploaded a YouTube video in June 2019 showing students how to register for classes. This video can be found at <https://www.youtube.com/watch?v=8R7dwJT00Ms>, and it accurately depicts the registration process students would have undergone when registering for classes for the Spring 2020 semester at the University (the "Registration Video").

6. Once a student signed into Self Service Carolina, the student would click on "Registration" below the "Student" tab, as shown in the below screenshot from the Registration Video.



7. On the next page, the student would search for courses by selecting "Register for Classes," as shown in the below screenshot from the Registration Video.



8. Next, the student would use the drop-down arrow to search by term and would select the term for which the student would like to add classes. The student would then click "Continue" in order to search for classes for the selected term, as shown in the below screenshot from the Registration Video.

Select a Term

Terms Open for Registration
Fall 2019

Continue

9. On the next page, as shown in the below screenshot from the Registration Video, the student would select the campus in the “Campus” field, such as USC Columbia, and the student would then select the course subject in the “Subject” field, such as ENGL – English. In the “Course Number” field, the student would have the option to either enter the exact course number the student is searching for or leave it blank to search for all course options for that subject. The student would then click “Search.”

Register for Classes

Find Classes Enter CRNs Shopping Cart Schedule and Options

Enter Your Search Criteria ⓘ

Term: Fall 2019

* Campus

* Subject You can add another

Course Number

Search Clear ▶ Advanced Search

10. Self Service Carolina did not require students to enter any other search criteria on this page, including “Instructional Method.” A student *could* decide to click on the “Advanced Search” option, located to the right of the “Search” button, to filter for additional search criteria, including “Instructional Method,” as shown in the below screenshot, but this was not required and would depend on a student-by-student basis.

Browse Classes

Enter Your Search Criteria
Term: Spring 2020

* Campus:

* Subject:

Course Number:

Open Sections Only: ☐

Title:

Instructional Method:

Course Level:

Part of Term:

Attribute:

Meeting Days:

Sunday: ☐

Monday: ☐

Tuesday: ☐

Wednesday: ☐

Thursday: ☐

Search Clear [Advanced Search](#)

11. After clicking “Search,” as described above in paragraph 9, the student would be taken to a page with a listing of all courses and sections offered, as shown in the below screenshot from the Registration Video. This page included columns showing the CRN, subject, course, section, title, hours, instructor, date/time/location, seat availability, attribute, and part of term. This page did not include a column showing the “Instructional Method” for the courses offered.

Register for Classes

Find Classes

Enter CRN

Showing Grid

Schedule and Options

Search Results — 325 Classes

Term: Fall 2019 * Campus: USC Columbia * Subject: ENGL - English

View & Filter

CRN	Subject	Course	Section	Title	Hours	Instructor	Days/Times/Location	Seat Availability	Attribute	Part of Term	
10039	ENGL	101	001	Critical Reading and Composition	3	Beatty, Elise (Primar) Dustin, Scott	1 10:30 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		35	Add
10114	ENGL	101	002	Critical Reading and Composition	3		1 10:30 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10010	ENGL	101	003	Critical Reading and Composition	3		1 10:30 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10092	ENGL	101	004	Critical Reading and Composition	3		1 10:30 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10058	ENGL	101	005	Critical Reading and Composition	3		1 10:30 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10103	ENGL	101	006	Critical Reading and Composition	3		1 10:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10106	ENGL	101	011	Critical Reading and Composition	3		1 10:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10109	ENGL	101	012	Critical Reading and Composition	3		1 10:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10113	ENGL	101	013	Critical Reading and Composition	3		1 10:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add
10111	ENGL	101	014	Critical Reading and Composition	3		1 10:40 AM - 11:40 AM Type: Class Build: 19 of 19 seats rem	CMN Communication/Writing		30	Add

Page 1 of 33 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 30 31 32 33 Per Page

Records: 325

12. The only way the student would be able to see the “Instructional Method” for any course on this page is if the student clicked on the hyperlinked course title to view additional information, as shown in the below screenshot from the Registration Video. Students were not required, however, to click on the hyperlinked course title and view the additional information, such as “Instructional Method,” to complete registration.

SSSES

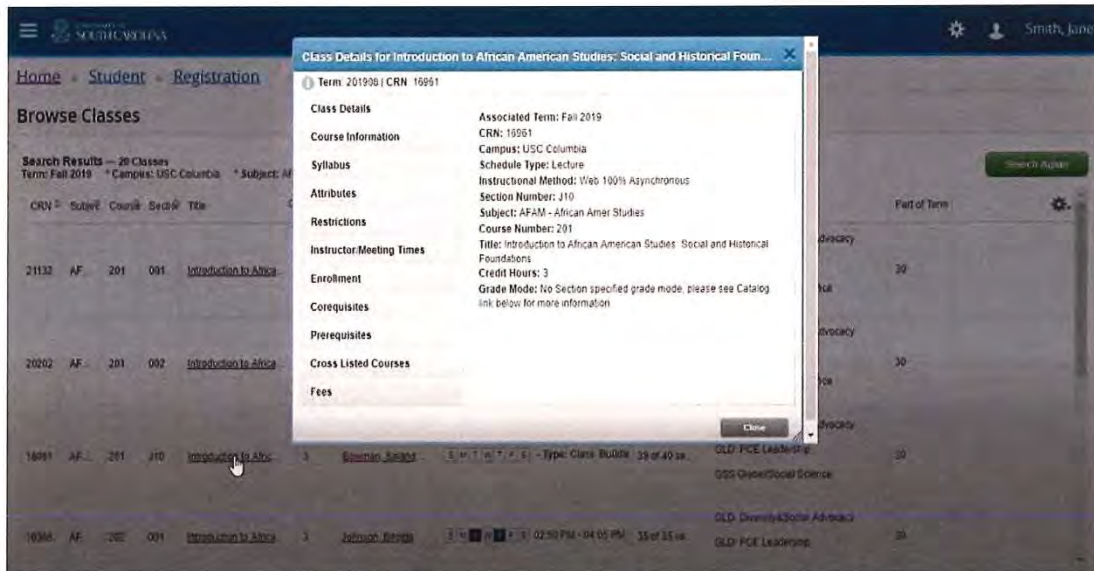
Other Shopping Cart Schedule and Classes

Classes

sac: USC Columbia * Subject: ENGL - English

Course	Section	Title	Hours	Instructor	Days/Times/Location	Seat Availability	Abstract	Part of Term
101	901	Critical Reading and Composition	3	Benny, Eliot (Primary) Dana, Eran	M Tu W Th F 08:30 AM - 09:20 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	902	Critical Reading and Composition	3		Tu W Th F Sa 08:30 AM - 09:20 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	903	Critical Reading and Composition	3		W Th F Sa Su 08:30 AM - 09:20 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	904	Critical Reading and Composition	3		Th F Sa Su M 08:30 AM - 09:20 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	905	Critical Reading and Composition	3		F Sa Su M Tu W 08:30 AM - 09:20 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	906	Critical Reading and Composition	3		Sa Su M Tu W Th 09:40 AM - 10:30 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	911	Critical Reading and Composition	3		Su M Tu W Th F 09:40 AM - 10:30 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	912	Critical Reading and Composition	3		M Tu W Th F Sa 09:40 AM - 10:30 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	913	Critical Reading and Composition	3		Tu W Th F Sa Su 09:40 AM - 10:30 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	
101	914	Critical Reading and Composition	3		W Th F Sa Su M 10:50 AM - 11:40 AM Type: Class Bldg: 19 of 19 seats rem	CMW Communication/Writing	30	

13. The additional information the student could view after opening the hyperlinked course title included, among other things, the “Instructional Method” for the selected course. An example of this view can be seen in another YouTube video, also uploaded by the University’s Advising Center in June 2019, which can be found at <https://www.youtube.com/watch?v=liDmVCflp0E>, as shown in the below screenshot. This video accurately depicts the process students could take to browse classes before and during registration, including when registering for classes for the Spring 2020 semester at the University.



14. The student could choose to bypass the search criteria entirely by entering the course registration number (“CRN”) of each course for which the student wants to register. To register for classes using this method, the student would click on the “Enter CRNs” tab, enter the CRN of the course for which the student wants to register, and click “Add to Summary,” as shown in the below screenshot from a YouTube video uploaded by the University in April 2020. This video can be found at <https://www.youtube.com/watch?v=cPeKtEwVgFI&t=126s>, and it accurately depicts the registration process students could have undergone when registering for classes for the Spring 2020 semester at the University (the “CRN Registration Video”).

Register for Classes

Find Classes **Enter CRNs** Shopping Cart Schedule and Options

Enter Course Reference Numbers (CRNs) to Register

Term: Fall 2020

CRN:

[+ Add Another CRN](#) [Add to Summary](#)

15. On the next page, the student could view the course summary and enroll in the class by clicking “Submit,” as shown in the below screenshot from the CRN Registration Video.

16. Again, the only way the student would be able to see the “Instructional Method” for any course on this page is if the student clicked on the hyperlinked course title to view additional information, as shown in the below screenshots from the CRN Registration Video. Students were not required, however, to click on the hyperlinked course title and view the additional information, such as “Instructional Method,” to complete registration.



17. The University's Advising Center uploaded a third YouTube video in June 2019 showing students how to register for classes using the Schedule Planner feature within Self Service Carolina. This video can be found at <https://www.youtube.com/watch?v=TOYRBKV-TBw>, and it accurately depicts the registration process students would have undergone when registering for classes for the Spring 2020 semester at the University using Schedule Planner (the "Schedule Planner Video").

18. Once a student signed into Self Service Carolina, the student would click on "Advisement Planning" below the "Student" tab, instead of clicking on "Registration" as described above in paragraph 6. Next, the student would select "Schedule Planner" in the top right-hand column, as shown in the below screenshot from the Schedule Planner Video.



19. Next, the student would select the term and campus for which the student would like to add classes, as shown in the below screenshot from the Schedule Planner Video, and would then click “Save and Continue” to proceed to the Schedule Planner homepage.

The left screenshot shows the University of South Carolina logo and the text "UNIVERSITY OF SOUTH CAROLINA". Below this is the "Select Term" section. It has a "Term" label and two radio buttons: "Summer 2019" and "Fall 2019". The "Fall 2019" button is selected. Below the buttons is a "Save and Continue" button. The right screenshot shows the University of South Carolina logo and the text "UNIVERSITY OF SOUTH CAROLINA". Below this is the "Select Campus" section. It has a "Select All Campuses" label and a list of campuses: "USC Aiken", "USC Beaufort", "USC Columbia", "USC Lancaster", "USC Salkehatchie", "USC Sumter", "USC Union", and "USC Upstate". The "USC Columbia" option is selected. Below the list is a "Save and Continue" button.

20. Next, the student would begin adding the courses recommended to them by their advisor. As shown in the below screenshot from the Schedule Planner Video, the student could add a course by selecting the subject in the “Subject” field, such as ENGL – English, and the course in the “Course” field, such as 101 Critical Reading and Composition. The student would then click “Add Course” and see the course added to the course list on the right-hand side of the screen.

The screenshot shows the "Add Course" form. At the top, a green message bar says "Added ENGL 101 - Critical Reading and Composition". Below this is the "Add Course" section. It has two tabs: "By Subject" and "Search By Section Attribute". The "By Subject" tab is selected. Below the tabs are two dropdown menus: "Subject" and "Course". The "Subject" dropdown is set to "ENGL - English" and the "Course" dropdown is set to "101 Critical Reading and Composition". Below these dropdowns are "Done" and "+ Add Course" buttons. The "+ Add Course" button is highlighted. To the right of the form is the "Courses" section. It shows a list of courses. The first course is "ENGL 101 Critical Reading and Composition", which is highlighted with a blue circle and a checkmark icon.

21. The student would then add the remaining courses using the same drop-down arrows to search by subject and course, and would then click “Done” in order to return to the Schedule Planner homepage, as shown in the below screenshot from the Schedule Planner Video.

22. Once back at the Schedule Planner homepage, a student could click on “Options” next to each course to view additional information on each section of the course for which the student could register, as shown in the below screenshot from the Schedule Planner Video.

23. On the next page, the student could further access additional information by clicking on the blue information icon next to each course section, as shown in the below screenshot from the Schedule Planner Video. This page did not include information showing the “Instructional Method” for the sections offered.

Schedule Planner Text Only Help Sign out

Section	Type	CR	Instructor	Days	Location	Campus	Seats
094	Lecture	19	Turner, Blaine Parrish	MW 3:55pm - 5:10pm	SLOAN 103	Columbia	3
095	Lecture	17	Wright, Kristen Rose	TTh 10:05am - 11:20am	WRDLAW 109	USC Columbia	3
096	Lecture	18	Not Assigned	MWF 12:00pm - 12:50pm	COL 3005	USC Columbia	3
098	Lecture	19	Timmons, Jonathan Tyler	MWF 1:10pm - 2:00pm	MCMSTR 314	USC Columbia	3
099	Lecture	19	Deinert, Gregory William	TTh 8:30am - 9:45am	HUMCB 315	USC Columbia	3
101	Lecture	18	Mullen, Travis Anthony	TTh 4:24pm - 5:40pm	GAMBRL 123	USC Columbia	3
102	Lecture	19	Irei, Laura Jane	MWF 10:50am - 11:40am	GAMBRL 354	USC Columbia	3
103	Lecture	19	Porubsky, Katelyn Elizabeth	MWF 8:30am - 9:20am	GAMBRL 205	USC Columbia	3
104	Lecture	19	Not Assigned	MWF 9:40am - 10:30am	SWG 2A21	USC Columbia	3
105	Lecture	18	Not Assigned	MWF 12:00pm - 12:50pm	WRDLAW 109	USC Columbia	3
106	Lecture	19	Turner, Blaine Parrish	MWF 9:40am - 10:30am	SJMC 321	USC Columbia	3
107	Lecture	18	Not Assigned	MWF 12:00pm - 12:50pm	PETIGR 102	USC Columbia	3
A01	Lecture	19	Lee, Amber	MW 2:20pm - 3:35pm	GAMBRL 204	USC Columbia	3

Title: Critical Reading and Composition
Section: A01
Component: Lecture
Seats Open: 19
Instructor: Lee, Amber
Campus: USC Columbia
Credits: 3
Section Attributes: CMW Communication/Writing

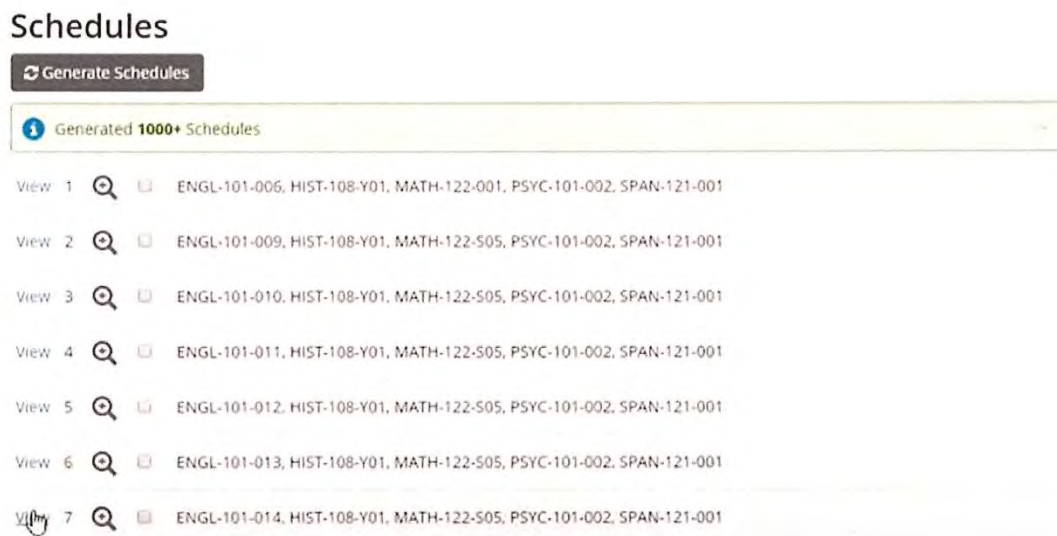
Day(s) & Location(s):
 MW 2:20pm - 3:35pm - GAMBRL 204
 Dates: 08/28/2017 - 12/06/2017
Notes: Restricted to Preston College students

Section	Type	CR	Instructor	Days	Location	Campus	Seats
C01	Lecture	19	Ntibe, Catherine-Watkin Chika	TTh 10:05am - 11:20am	MCMSTR 314	USC Columbia	3
C02	Lecture	18	Martin, Jennifer Dawn	MWF 12:00pm - 12:50pm	MCMSTR 314	USC Columbia	3
C03	Lecture	19	Bonner, Cathleen Elizabeth	MWF 1:10pm - 2:00pm	GAMBRL 354	USC Columbia	3
C04	Lecture	19	Ntibe, Catherine-Watkin Chika	TTh 8:30am - 9:45am	HUMCB 204	USC Columbia	3
C05	Lecture	19	Fisk, Shirley Nicole Piyer	TTh 2:50pm - 4:05pm	HUMCB 416	USC Columbia	3

24. Once the student reviewed all available options, the student would click “Generate Schedules” in order to review possible class schedules, as shown in the below screenshot from the Schedule Planner Video.



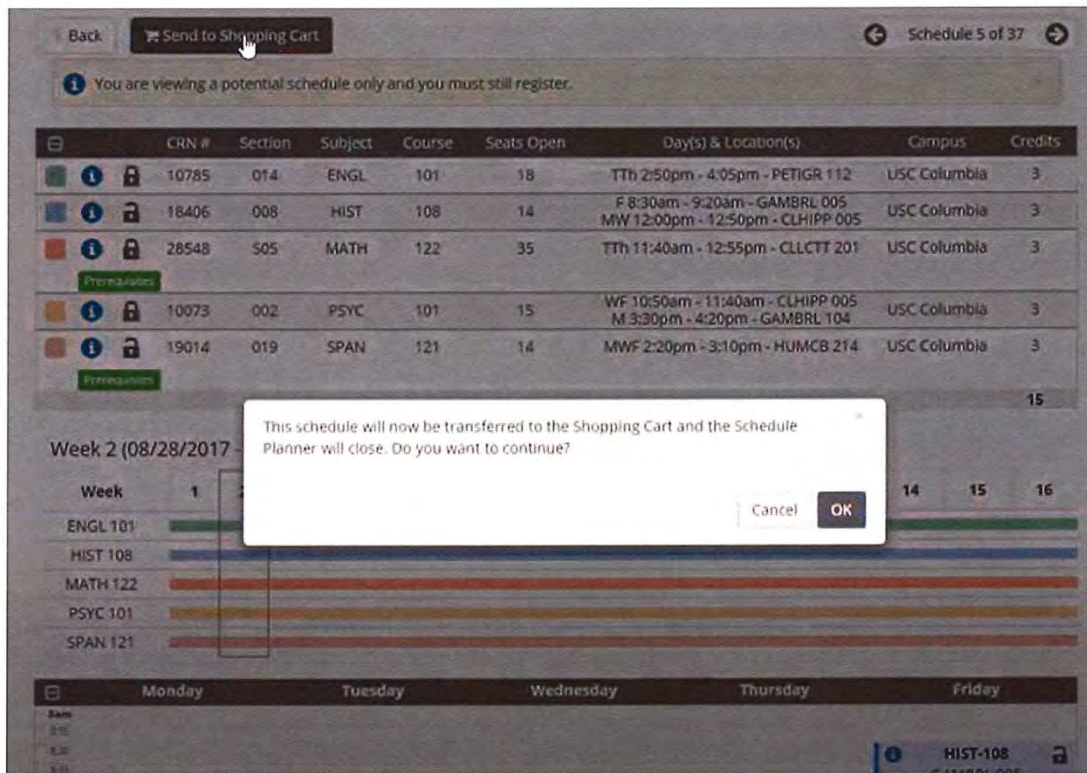
25. On the next page, once the student finds an adequate schedule, the student would click on “View” to review the details more closely, as shown in the below screenshot from the Schedule Planner Video.



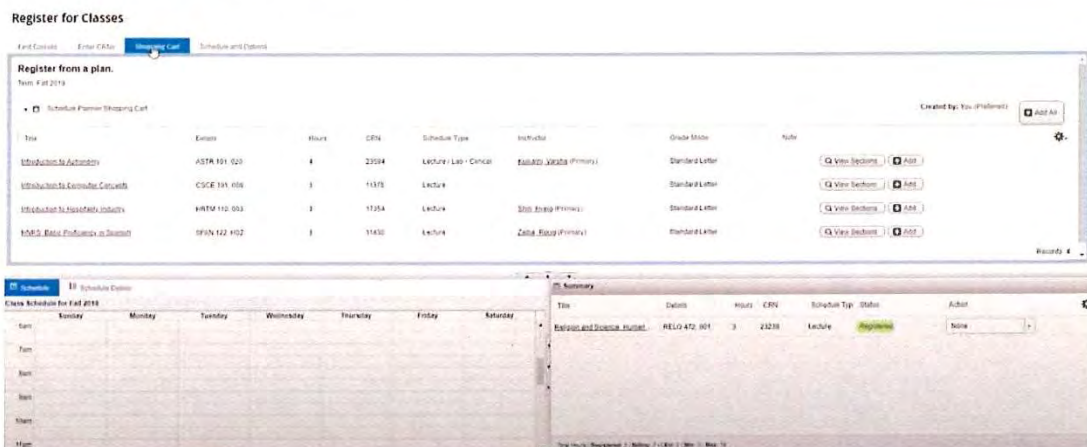
26. From here, the student could review all of the information pertaining to each of the classes in their schedule, as shown in the below screenshot from the Schedule Planner Video. This page did not include information showing the “Instructional Method” for the courses offered.

	CRN #	Section	Subject	Course	Seats Open	Day(s) & Location(s)	Campus	Credits								
Show Section Details	10785	014	ENGL	101	18	TTh 2:50pm - 4:05pm - PETIGR 112	USC Columbia	3								
	14931	Y01	HIST	108	1	MW 5:30pm - 6:45pm - CLHIPP 350	USC Columbia	3								
Title: Science and Technology in World History CRN #: 14931 Section: Y01 Subject: HIST Course: 108 Seats Open: 1 Component: Lecture Parts of Term: Fall 2017 - Columbia Full Term Instructor: Not Assigned Campus: USC Columbia Credits: 3 Section Attributes: GHS Global/History, VSR Values/Ethics						Day(s) & Location(s): MW 5:30pm - 6:45pm - CLHIPP 350 Dates: 08/28/2017 - 12/06/2017										
	28548	S05	MATH	122	35	TTh 11:40am - 12:55pm - CLLCTT 201	USC Columbia	3								
Prerequisites																
	10073	002	PSYC	101	15	WF 10:50am - 11:40am - CLHIPP 005 M 3:30pm - 4:20pm - GAMBR 104	USC Columbia	3								
	11268	001	SPAN	121	21	MWF 8:30am - 9:20am - HUMCB 103	USC Columbia	3								
Prerequisites																
15																
Week 2 (08/28/2017 - 09/03/2017)																
Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
ENGL 101																
HIST 108																
MATH 122																
PSYC 101																
SPAN 121																

27. Next, the student would click “Send to Shopping Cart” and be prompted to send the student’s schedule of courses back to Self Service Carolina, as shown in the below screenshot from the Schedule Planner Video.



28. To locate the student's schedule in Self Service Carolina, the student would select the "Shopping Cart" tab, as shown in the below screenshot from the Schedule Planner Video. To add the courses for which the student is registering, the student may wish to add the courses individually or simply click "Add All."



29. Next, the student could view the course summary and enroll in the class by clicking “Submit,” as shown in the below screenshot from the Schedule Planner Video.

Title	Details	Hours	CRN	Schedule Type	Status	Action
<u>HNRS Basic Proficiency in Sp</u>	SPAN 122, H02	3	11430	Lecture	Pending	Web Registered
<u>Introduction to Hospitality Indu</u>	HRTM 110, 003	3	17354	Lecture	Pending	Web Registered
<u>Introduction to Computer Conc</u>	CSCE 101, 008	3	11376	Lecture	Pending	Web Registered
<u>Introduction to Astronomy</u>	ASTR 101, 020	4	23594	Lecture / L	Pending	Web Registered
<u>Religion and Science Human</u>	RELG 472, 001	3	23238	Lecture	Registered	None

Total Hours: Registered: 3 | Billing: 2 | CEU: 0 | Min: 0 | Max: 16

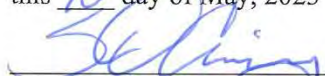
Submit

30. As illustrated by the foregoing, it was possible that a student could register for classes for the Spring 2020 semester without ever seeing the “Instructional Method” and, thus, without ever seeing the term “Face-to-Face Instruction.”

FURTHER AFFIANT SAYETH NOT


Aaron Marterer

SWORN to and subscribed before me Selvin Cummings
this 10 day of May, 2023


Notary Public of South Carolina
My Commission Expires: June 24, 2031

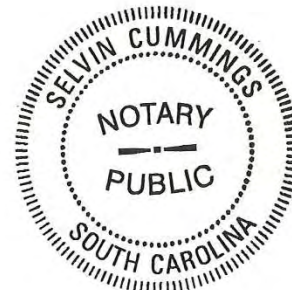


EXHIBIT E

Page 1

IN THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

DAVIA BUNCH, PETER KELLY, and
TERRY KELLY, individually and
on behalf of others similarly
situated,

Plaintiffs,

vs.

THE UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

CIVIL ACTION NO.:
2020-CP-40-02330

VIDEOTAPED DEPOSITION OF CASEY KELLY
San Diego, California
Friday, May 6, 2022
Volume I

Reported by:
MONICA M. CLINE
RPR, CSR No. 8933
Job No. 5219288
PAGES 1 - 244

Page 2

IN THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

DAVIA BUNCH, PETER KELLY, and
TERRY KELLY, individually and
on behalf of others similarly
situated,

Plaintiffs,

vs.

THE UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

CIVIL ACTION NO.:
2020-CP-40-02330

VIDEOTAPED DEPOSITION OF CASEY KELLY,
Volume I, taken on behalf of Defendant, at
750 B Street, Suite 2200, San Diego, California,
beginning at 9:07 a.m. and ending at 3:52 p.m. on
Friday, May 6, 2022, before MONICA M. CLINE, RPR,
Certified Shorthand Reporter No. 8933.

1 end of the year.

2 Q So after the pandemic and classes changed
3 online, with respect to this internship for two
4 weeks you continued to go to the office?

5 A Yeah, because you had to get a certain
6 amount of hours to receive full credit. And so
7 since I wasn't going home, I just continued to put
8 in the hours so that I could get the full
9 assignment.

10 Q Okay. And then what happened after those
11 two weeks? Had you put in enough hours by then?

12 A Yeah.

13 Q So you did complete that course?

14 A Correct.

15 Q So it would be fair to say the change to
16 online did not affect --

17 A This course.

18 Q -- this course at all?

19 A Correct.

20 MR. PRATT: Object to form.

21 BY MR. BRUNSON:

22 Q And then the next page, which is 19, is
23 Moving Image Advanced Documentary. And that says
24 Lecture and Face-to-Face Instruction.

25 What was your experience with this class

1 But it seems to me like what you're saying
2 is you started with Exhibit 2 and you would filter
3 down based on your criteria.

4 A You could. I didn't do it that way. I
5 would browse the classes, pick my CRN number and
6 make it my schedule myself, because I'm --

7 Q So did you ever use Exhibit 2? You know,
8 it sounded like you didn't need it.

9 A No, I personally did not.

10 Q Okay. So you just started with Exhibit 1
11 because you knew what you were going for?

12 A Yeah.

13 Q I got it.

14 The only thing I now don't get is when you
15 do pick that class that you want, how do you
16 communicate to the university that you would like to
17 take that class?

18 A You still register through the same
19 process, you would click it and you would add it
20 into your -- your registration list. It's the same
21 thing. You can just -- this is a different way to
22 filter it if you aren't sure.

23 Q Where is your registration list? Is that a
24 separate web, another web page?

25 A No, it's on the same website, it's just

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

DAVIA BUNCH and CASEY KELLY,)
individually and on behalf of)
others similarly situated,)
Plaintiffs,)

vs.) Case No. 2020-CP-40-02330

THE UNIVERSITY OF SOUTH)
CAROLINA,)
Defendant.)

_____)

REMOTE VIDEO DEPOSITION OF CASEY KELLY

VOLUME II

November 2, 2022

Reported by: Rosalie A. Kramm, CSR No. 5469, RPR, CRR

1 THE VIDEOTAPE OPERATOR: The time is
2 a.m., and we're back on the record.

3 BY MR. BRUNSON:

4 Q. Just for the record, during the break, we
5 produced some documents last night that I have and will
6 use in this deposition during that break. Did you have
7 an opportunity to look at those documents with your
8 counsel?

9 A. Yes.

10 MR. BRUNSON: And we had no objection to that,
11 just for the record.

12 Now I'm showing you Exhibit No. 83.

13 (Exhibit 83 was marked for identification.)

14 BY MR. BRUNSON:

15 Q. Do you see it?

16 A. Yes.

17 Q. Do you recognize this as your syllabus for your
18 Spanish 122 class, which was basic proficiency in Spanish
19 for spring semester 2020?

20 A. Yeah.

21 Q. And if you scroll down to the very bottom of
22 the first page, under "Faculty," the heading, "Faculty,"
23 it says, "This class consists of face-to-face instruction
24 blended with online web-based instruction."

25 So was it your understanding when you saw this

1 syllabus that this would be a hybrid class as well?

2 MR. CHAPMAN: Objection to the form.

3 THE WITNESS: Yes, from what I remember.

4 BY MR. BRUNSON:

5 Q. And when you found that out, was it within the
6 drop/add, predrop/add period, so you could have dropped
7 the class if you wanted to?

8 A. Sure.

9 Q. And did you check to see if you were paying the
10 same tuition for this hybrid class that you would have if
11 it were entirely face-to-face?

12 MR. CHAPMAN: Objection to the form.

13 THE WITNESS: Not that I remember.

14 BY MR. BRUNSON:

15 Q. Would it be fair to say that that wasn't
16 important to you at the time?

17 MR. CHAPMAN: Objection to form.

18 THE WITNESS: Probably.

19 BY MR. BRUNSON:

20 Q. Now, under the heading "Special note on
21 materials" on the first page, do you see that?

22 A. Yes.

23 Q. The second bullet point says, "MindTap," and
24 it -- and after that word it says, "Use your access card
25 and your professor's instructions to sign up for this

1 instruction," correct?

2 A. Correct.

3 Q. Then if you scroll down two more pages, you see
4 the "Hong Kong Action Cinema class" details?

5 A. Correct.

6 Q. For the Hong Kong Action Cinema details, how
7 was this class presented to you after the pivot to remote
8 instruction? I don't think we talked about that.

9 A. It was similar to how Lauren structured the
10 Global Media Studies. She taught both. So it was all
11 online. She prerecorded her lessons and uploaded them.

12 Q. Before the pivot to remote instruction, how was
13 this class presented?

14 A. I believe the same, where we would meet once
15 and then watch the video at home on the second day of our
16 instruction.

17 Q. So that would be a hybrid?

18 A. Yeah.

19 MR. CHAPMAN: Objection do the form.

20 THE WITNESS: I believe so.

21 BY MR. BRUNSON:

22 Q. Okay. And here where you signed up for it, it
23 says, "Course Information. Schedule Type: Lecture.
24 Instructional Method: Face-to-face," correct?

25 A. Correct.

EXHIBIT F



FAMS/GLST 308: Global Media Industries

Course Description:

Provides the foundation for the study of globalized film and media industries.

Course Overview:

In this class, you will be exposed to key frameworks used to study media industries within and beyond the confines of national borders, including structural examination of industries and organizations (e.g., studios, unions, networks, festivals), analysis of cultural policies (e.g., trade policy, network regulations, government/industrial censorship) and production studies research on media workers above and below the line (e.g., media executives, writers, actors, craft workers).

Instructor: Dr. Lauren Steimer

Office: 217 McMaster

Office Hours: Monday 5:30pm to 6:30pm & Wednesday 1:00pm to 2:pm, by Appointment

Email: lsteimer@mailbox.sc.edu

Email: Expect a response time of up to 2 days.

Course Schedule/Enrollment:

This class has a hybrid online and in-class schedule. On dates on the schedule identified as "In Class," you are expected to be in attendance from 3:55PM-5:10 PM in Gambrell 124. On dates on the schedule identified as "At Home," you are expected to utilize online material as listed and not come to the classroom. Please check the schedule.

Required:

All course readings are provided in **PDF format on Blackboard** ([https:// blackboard.sc.edu/](https://blackboard.sc.edu/)). Students are expected to read and take detailed notes on all required readings and the lecture podcasts before Monday's class each week. Students will be quizzed on course readings and the lecture podcasts weekly.

Learning Outcomes:

By the end of this course students will be able to:

- ☼ describe the current organization of mainstream media production, distribution, and exhibition worldwide;
- ☼ describe how core concepts such as "labor," "nation," and "citizen" function in different theoretical, political, and economic discussions;
- ☼ describe why media industries have seemed to require special economic models;
- ☼ recognize major ways policy makers have attempted to encourage and restrict media production and distribution within and across state borders;
- ☼ recognize common models for human subjects research in media industry studies;
- ☼ analyze the effect of a particular policy, law, or structure key to the transnational operation of a specific media industry.

Page 1

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FAMS/GLST 308: Global Media Industries

ELECTRONICALLY FILED - 2023 Jun 14 12:45 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

Course Grade Scale:

A 90 to 100; B+ 85 to 89; B 80 to 84; C+ 75 to 79; C 70 to 74; D+ 65 to 69; D 60 to 64; F 59 and Below

Assignments:

Weekly Quizzes (25%): Every Week

Each week you will be given a quiz on the readings and lecture podcast. You CANNOT consult the readings or the podcast while taking the quiz, you can consult your handwritten or printed typed notes (NO LAPTOPS).

Worksheet on Methods (10%): 2 March at 3:55:00PM

Select one to three media industries news stories. Answer questions on different methodological approaches to the problems they present. Comprehensive assignment instructions and an assessment rubric will be posted on Blackboard on 2/17.

Midterm Exam (25%): 16 March in class at 3:55:00PM

The Midterm Exam consists of 25 multiple choice questions. The Midterm Exam covers all lecture material from weeks 1- 7 and will be administered in class. Students who are late will not be admitted to the exam and makeup exams will not be given.

Case Study Essay/Presentation (15%): 15 April at 3:55:00PM

Conduct research on a particular policy, law, or structure key to the transnational operation of a specific media industry. Use the sources included on the syllabus to make an argument about how and why that policy, law, or structure matters. Comprehensive assignment instructions and a self-assessment rubric will be posted on Blackboard in Week 6.

Final Exam (25%): Wednesday, 29 April 4:00 p.m.

The Final Exam consists of 50 multiple choice questions. The Final Exam covers lecture material from weeks 8-15 and will be administered in class during the final exam block assigned by the registrar. Students who are late will not be admitted to the exam and makeup exams will not be given.

Academic Integrity:

Every student has a role in maintaining the academic reputation of the University. Students are to refrain from engaging in plagiarism, cheating, falsifying their work, and/or assisting other students in violating the Honor Code. Two important components of the Honor Code are:

* Faculty members are required to report potential violations of the Honor Code to the Office of Academic Integrity.

* When a student is uncertain as to whether conduct would violate the Honor Code, it is the responsibility of the student to seek clarification from the appropriate faculty member.

Assignments and examination work are expected to be the sole effort of the student submitting the work. Cheating on a test or copying someone else's work, will result in a 0 for the work, possibly a grade of F in the course, and, in accordance with University policy, be referred to the University Committee for Academic Responsibility and may result in expulsion from the University.

To clarify your understanding of the Honor Code, use these resources:

Academic Integrity Tutorial (sc.edu/academicintegrity) Student Success Center (sc.edu/success)

Instructor's office hours

The Writing Center (artsandsciences.sc.edu/write)

The Purdue Online Writing Lab (owl.english.purdue.edu) University Libraries (guides.library.sc.edu/citation)

Your enrollment in this class signifies your willingness to accept these responsibilities and uphold the Honor Code of the University of South Carolina. Please review the Honor Code via sc.edu/academicintegrity. Any deviation from this expectation can result in a (insert academic penalty here) and a referral to the Office of Academic Integrity.

Office of Disability Services:

Reasonable accommodations are available for students with a documented disability. If you have a disability and may need accommodations to fully participate in this class, contact the Office of Student Disability Services: 777-6142, TDD 777-6744, email sasds@mailbox.sc.edu, or stop by LeConte College Room 112A. All accommodations must be approved through the Office of Student Disability Services.

FAMS/GLST 308: Global Media Industries

ELECTRONICALLY FILED - 2023 Jun 14 12:45 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

Course Policies & Requirements:

Attendance:

Students who wish to successfully complete

this course must attend regularly. I realize that students encounter personal difficulties (emergencies, illness, the passing of family members, etc.) which cause them to miss class. For this reason you may miss a maximum of 2 classes this semester with no questions asked and no need for notes. Other than the 2 aforementioned absences all additional absences will result in a course grade deduction. If you miss 3 total classes your course grade goes down 3 points, (Ex. 82 to 79); if you miss 4 total classes your course grade goes down 6 points, (Ex. 78 to 72); and if you miss 5 total classes your course grade goes down 9 points (Ex. 75 to 66), Students who have more than 6 absences have missed too much course content to pass and therefore fail the course for the semester.

Lateness:

Lateness which exceeds 10 minutes is counted as an absence. Students who leave class early will be marked absent.

Sleeping:

If you fall asleep in class once you will be marked absent because your body may be here but your brain is not absorbing course content.

Class Participation:

This includes not only substantial involvement in class discussion but also in-class performance which demonstrates your familiarity with the assigned readings. In order to pass this course students MUST do the required readings.

Disruptive Behavior:

Student behavior which is rude or disruptive will not be tolerated. This type of behavior makes it difficult for the instructors to teach the class and makes it difficult for other students to learn. If you are disruptive or rude you will be asked to leave the class. If you are repeatedly disruptive or rude the matter will be referred to the Office of Student Conduct.

Computer Use:

In order to use a computer in this class you must have the express permission of the instructor. If you are not on the list of students who have been allowed to use computers and you use a computer in class, you fail the course for the semester. Email the instructor for permission in your first week of class.

All students who have been explicitly cleared to use their computers in class can only utilize word processing software and a PDF reader to access material for this class. If you go online to access material not directly related to class or work on materials not directly related to class, you will be marked absent.

If you are found using a device for online access during a quiz or exam, you fail this class. If you are found using an instant messenger/texting during a quiz/exam you automatically fail this class. If you are found using a personal audio device you fail this class.

This class is for adults who want to learn, if you cannot separate from your electronic devices for the length of our class period, maybe you should reconsider whether college is for you.

A Note on Deadlines:

Do not turn an assignment in late and expect a grade for the assignment. It is not fair to students who worked hard to get their assignments in on time for an instructor to accept late work. This is a reading intensive class. Do not complete your assignments at the last minute. Check your computers and printers to make sure that they are in working order on the week an assignment is due. If your computer is not working properly the week the assignment is due I suggest you utilize one of the Computer Labs on campus: <http://uts.sc.edu/academic/labs.shtml>

Diversity and Inclusion:

The University is committed to a campus environment that is inclusive, safe, and respectful for all persons, and one that fully embraces the Carolinian Creed. To that end, all course activities will be conducted in an atmosphere of friendly participation and interaction among colleagues, recognizing and appreciating the unique experiences, background, and point of view each student brings. Students are expected at all times to apply the highest academic standards to this course and to treat others with dignity and respect.

Spring 2020 Global Media Industries Schedule

January 2020						
S	M	T	W	T	F	S
			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	30	31	

February 2020						
S	M	T	W	T	F	S
						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

March 2020						
S	M	T	W	T	F	S
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	30	31				

April 2020						
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26	27	28	29	30		

DATE	DESCRIPTION
1/13	Introduction & Syllabus (In Class) Consider your goals for the semester.
1/15	Discussion of Self-Grading Protocol (In Class) Organize a prioritized list of your goals.
1/22	Listen to Week 2 Lecture Podcast: Doing Global Media Industry Studies on Blackboard (at Home)
Readings	1) Holt, Jennifer and Alisa Perren. "Does the World Really Need One More Field of Study?" <i>Media Industries: History, Theory, Method</i> . Eds. Jennifer Holt and Alisa Perren. Walden, MA: Wiley-Blackwell, 2009. 1-16. 2) Curtin, Michael. "Thinking Globally: From Media Imperialism to Media Capital" <i>Media Industries: History, Theory, Method</i> . Eds. Jennifer Holt and Alisa Perren. Walden, MA: Wiley-Blackwell, 2009. 108-119.
1/27	Quiz on Week 2 Lecture and Readings & Class Discussion (In Class)
1/29	Listen to Week 3 Lecture Podcast: Global Media Distribution on Blackboard (at Home)
Readings	1) Acland, Charles R. "Dirt Research for Media Industries." <i>Media Industries Journal</i> 1.1 (2014): 6-10. 2) Steemers, Jeanette. "Selling Television: Addressing Transformations in the International Distribution of Television Content." <i>Media Industries Journal</i> 1.1 (2014) 44-49.
2/3	Quiz on Week 3 Lecture and Readings & Class Discussion (In Class)
2/5	Listen to Week 4 Lecture Podcast: Media Economics on Blackboard (at Home)
Readings	1) Napoli, Philip M. "Media Economics and the Study of Media Industries" <i>Media Industries: History, Theory, Method</i> . Eds. Jennifer Holt and Alisa Perren. Walden, MA: Wiley-Blackwell, 2009. 161-170. 2) Sparviero, Sergio. "Hollywood Creative Accounting: The Success Rate of Major Motion Pictures." <i>Media Industries Journal</i> 2.1 (2015): 19-36.
2/10	Quiz on Week 4 Lecture and Readings & Class Discussion (In Class)
2/12	Read Trade Journals or Periodicals (At Home) Collect 3 examples of current media industries news stories that interest you.
2/17	Class Discussion of Media Industries News Take Home Worksheet on Methods Distributed (In Class)
2/19	Listen to Week 6 Lecture Podcast: Cultural Policy on Blackboard (at Home)
Readings	Freedman, Des. "Media Policy Research and the Media Industries." <i>Media Industries Journal</i> 1.1 (2014): 11-15.
2/24	Quiz on Week 6 Lecture and Readings & Class Discussion (In Class)
2/26	Listen to Week 7 Lecture Podcast: Production Cultures and The Global Division of Media Labor on Blackboard (at Home)
Readings	1) Caldwell, John Thornton, "Cultures of Production: Studying Industry's Deep Texts, Reflexive Rituals, and Managed Self-Disclosures." <i>Production Studies: Cultural Studies of Media Industries</i> . Eds. Vicki Mayer and Miranda J. Banks. New York: Routledge, 2009. 199-212. 2) Curtin, Michael and Kevin Sanson (eds.). "Listening to Labor." <i>Voices of Labor: Creativity, Craft, and Conflict in Global Hollywood</i> . Berkeley: University of California Press, 2017. 1-17.
3/2	Quiz on Week 7 Lecture and Readings & Class Discussion (In Class) Turn in Worksheet on Methods
3/4	Listen to Week 8 Lecture Podcast: The Global Trash heap of Media History on Blackboard (at Home)
Reading	1) Maxwell, Richard. "Media Industries and the Ecological Crisis." <i>Media Industries Journal</i> 1.2 (2014): 36-39.
3/16	Midterm Exam (In Class)
3/18	Listen to Week 10 Lecture Podcast: Nation and Diaspora - Bollywood on Blackboard (at Home)
Reading	1) Kumar, Shanti. "Media Industries in India: An Emerging Regional Framework." <i>Media Industries Journal</i> 1.2 (2014): 22-30.
3/23	Quiz on Week 10 Lecture and Readings & Class Discussion (In Class)

DATE	DESCRIPTION
3/25	Listen to Week 11 Lecture Podcast Transnational Regional Markets - Pan-Arab Media Industries and Revolution on Blackboard (at Home) 1) Kraidy, Marwan. "Media Industries in Revolutionary Times." <i>Media Industries Journal</i> 1.2 (2014): 16-21.
3/30	Quiz on Week 11 Lecture and Readings & Class Discussion (In Class)
4/1	Listen to Week 12 Lecture Podcast Transnational Regional Markets Latin America/ China and Hong Kong on Blackboard (at Home)
Readings	1) Orozco, Guillermo and Toby Miller. "Television in Latin America Is 'Everywhere': Not Dead, Not Dying, but Converging and Thriving." <i>Media and Communication</i> 4.3 (2016): 99-108. 2) Ma, Eric Kitwai. "Rethinking Media Studies: The Case of China." <i>DeWesternizing Media Studies</i> . Eds. MyungJin Park and James Curran. 17-28.
4/6	Quiz on Week 12 Lecture and Readings & Class Discussion (In Class)
4/8	Listen to Week 13 Lecture Podcast Edges and Centers/Translocal "Creative" Cities Wellywood, Vancouver, South African Media Industries on Blackboard (at Home)
Reading	1) Newman, David. "In the Service of the Empire: 'Runaway' Screen Production in Aotearoa New Zealand and Canada, 1997-2006." <i>Cross-Border Cultural Production: Economic Runaway or Globalization?</i> Eds. Janet Wasko and Mary Erickson. New York: Cambria Press, 2008. 217-250.
4/13	Quiz on Week 13 Lecture and Readings & Class Discussion (In Class)
4/15	Papers Due and Presentations Due
4/20	Presentations (In Class)
4/22	Presentations (In Class)
4/27	Self-Grading Assessments Due and Presentation Review (In Class)
4/29	4pm-6:30pm Final Exam (In Class)

EXHIBIT G

SPANISH 122 (Day TTH classes) – Spring Semester, 2020
Department of Languages, Literatures, and Cultures
University of South Carolina, Columbia, SC 29208

Professor: Tim McAteer
Class time: (026) 8:30am-9:45am, (024) 10:05am-11:20am
Class location: HuCl 304
Office: 801 Humanities Office Bldg
Office Hours: 11:30am – 1:00pm Tu/Th and by appointment
Email: tcmcatee@mailbox.sc.edu

Exhibit
083

COURSE DESCRIPTION: Basic Proficiency in Spanish. 3 credit hours. Practice and further development of essential listening, speaking, reading, and writing skills.

Prerequisites: Span 110, or Span 111, or Span 121, or placement into Span 122 by placement exam

REQUIRED MATERIALS: (Available in bookstores and also online at cengagebrain.com)

1. *Conectados*, Patti J. Marinelli and Karin Fajardo, Cengage Learning, 2020.
2. *Conectados*, *MindTap* on-line component (If you purchased an iLearn account earlier in the year that gave you access through December, you do not need to buy additional access).

Special note on materials:

- **Textbook and e-books:** Students are expected to bring their textbook to class every day and are strongly encouraged to use print copies of the textbook.
- **MindTap:** Use your access card and your professor's instructions to sign up for this online component.
- **Shop carefully!** Some internet sites sell the printed textbook or an ebook without the MindTap access code. The MindTap access code is required!

RECOMMENDED MATERIALS / SOURCES:

- Online dictionary: <http://www.wordreference.com>
- Web site for extra practice (not for reference for exams or compositions): <http://www.studyspanish.com/>

DAILY ASSIGNMENTS:

- Your professor may occasionally modify the assignments in this syllabus or add to them, but will only do so provided that the students are given sufficient notice (at least 24 hours).
- If you miss class, contact a classmate about any changes announced in class.
- If your professor is absent from class and a substitute cannot be found, continue to follow the syllabus and look for an email with further instructions.
- Changes to the syllabus will be announced via the University email system and/or MindTap. Please check your USC email account daily.

FACULTY: This class consists of face-to-face instruction blended with on-line web-based instruction. You will have one instructor on TTH for face-to-face instruction, and you will be

expected to complete additional on-line instruction and practice before each class.

LEARNING OUTCOMES: This course has a two-fold goal: to prepare you to use Spanish to communicate with others at a “novice high level” of proficiency and to deepen your understanding of the cultures of the Spanish-speaking world through readings, videos, art and music. Students who successfully complete this course should be able to do the following:

1. **Communication**

- demonstrate understanding of the main ideas and many supporting details of written and spoken communication in the present and past time frames on topics of personal interest such as friends, family and pets; pastimes; travel; home and university life; shopping; food; holidays and celebrations; etc.
- engage in oral and written exchanges with a focus on providing and obtaining basic information, expressing feelings and preferences, describing and narrating, giving directions, and exchanging opinions on topics of personal interest such as those mentioned above.

2. **Cultures**

- demonstrate understanding of cultural information and relationships between cultural perspectives, products, and practices, especially as they relate to the Hispanic countries featured in the text.
- use appropriate cultural behavior in social and transactional situations (making arrangements for an outing or event, shopping, getting medical care, etc.)

3. **Connections**

- use the Spanish language to reinforce and learn new information in academic areas such as history, geography, art, anthropology, and literature.

4. **Comparisons**

- explain insights into their own language and culture, as developed through readings and classroom activities which deal with Spanish speakers in the students’ community and abroad.

5. **Communities**

- identify opportunities to practice and hear the Spanish language outside of the classroom in activities such as concerts, movies, lectures, exhibits, festivals, and conversational exchanges with Hispanics in the community.

FINAL GRADE:

NOTE: Students will be awarded a three-point bonus to the class-participation grade if they complete the course/instructor evaluation before the date designated by the instructor. No other extra credit is offered in this course; no grades are dropped.

Component	Percentage of final grade
Homework (MindTap)	25%
Class participation	10%
Speaking sample* (2)	5%
Interpretive Assessment (3) Listening, Reading, Culture & Content	18%
Grammatical Quizzes (3)	7%
Presentational Assessment (2) Comprehensive Writing	10%
Final Proficiency Exam (Oral Interview, Listening, Reading, Culture & Writing)	25%
Total	100%

* Note: Your speaking sample grade will be based on two of your oral activities during the semester completed on MindTap. The particular activities chosen for this grade will not be announced in advance.

GRADING SCALE:

Percentage	Letter Grade	Percentage	Letter Grade
90-100%	A	70-77%	C
88-89%	B+	68-69%	D+
80-87%	B	60-67%	D
78-79%	C+	BELOW 60%	F

BACK CREDIT: If this is your first Spanish course at USC and you earn a final grade of B or higher, you **may be** eligible for up to 6 credits of 100-level Spanish, which count as elective credit toward graduation. To request these credits, wait until the grades are posted by the Registrar onto your transcript. Then, fill out the form in room 813-A Humanities Office Bldg. If your request is denied, you will receive notice via your USC email account. If the request is approved, you will see the credit on your transcript.

Please note the following restrictions on back credit:

1. If you have AP or IB credit for Spanish 121 and complete Spanish 122, you are not eligible to receive additional back credit.
2. If you have AP or IB credit for Spanish 121 and Spanish 122, you are not eligible to receive additional back credit.
3. If you have AP or IB credit for Spanish 121 and place into and complete a 200-level Spanish course, you may be eligible for 3 back credits if you earn a B or higher in the 200-level course.
4. If you have transferred college-level Spanish credit from another technical college or university, you cannot receive back credit.

CLASS POLICIES: Be sure to familiarize yourself with these policies.

ATTENDANCE:

Regular class attendance is essential for successful completion of the course, since we will work actively in class on increasing your skills in Spanish. Please note the following definitions and policies.

Definitions:

- **Excused absences.** Excused absences are those documented absences due to illness, attendance at family weddings or funerals, or official representation of the university. In exceptional cases, absences due to other similar serious circumstances may be excused, at the discretion of your professor and the course coordinator. The student must provide the requested documentation within one week of returning from the absence: doctor's note, funeral program, coach's letter or similar official documents, as directed by the professor and course coordinator. (Original documents must be provided; scanned copies are not accepted.)
- **Unexcused absences.** Absences due to reasons other than those listed above and/or absences for which the student does not provide official documentation are considered unexcused. Examples: If you have a minor illness and miss class, but do not seek medical expertise and therefore cannot provide a medical note, the absence is considered unexcused. Vacation travel is an unexcused absence. Similarly, absences due to routine responsibilities of student organizations, jobs, house/vehicle maintenance are not excused.
- **Partial attendance = unexcused absence.** Each time you arrive more than 10 minutes late or leave more than 10 minutes early will count as an unexcused absence.
- **Late arrival / early departure.** Your professor will keep a record of every time you arrive up to 10 minutes late to class or leave up to 10 minutes early. The following equivalencies will apply:
 - o Every 3 late arrivals/early departures = 1 unexcused absence

Policies for attendance: All absences may negatively affect your participation grade.

- A. Penalties are given for excessive unexcused absences (including late arrival/early departure and partial attendance, as defined above):
- B. Up to 3 unexcused absences = No effect on final grade. Use your 3 permitted absences wisely and plan your semester accordingly.
- C. With the 4th unexcused absence, and for all subsequent unexcused absences, the final course grade is reduced by one (1) percentage point. (For example 89 to 88, 88 to 87, 87 to 86, etc.)
- D. Students with excessive absences due to health issues (or other extenuating circumstances) should consult with the Dean's office to consider formal withdrawal – such as a medical withdrawal.

ASSESSMENTS (INTERPRETIVE & QUIZZES):

- If you miss one assessment due to a **documented, excused** absence, the grade for that assessment will be replaced by the average of the two remaining assessments.
- If you miss an assessment due to an unexcused (and/or undocumented) absence, you will receive a score of zero (0) for the missing evaluation.
- If you miss a second assessment due to a documented, excused absence, please contact your professor ASAP about making this up.
- Excused absences include official representation of the University, illness, attendance at funerals or weddings of family members, and the like; **the student must provide the requested documentation (official letter, doctor's note, funeral program, etc.)** Please note that vacation travel does not count as an excused absence.
- **The use of any electronic device during any type of assessments will result in a zero on that assessment.**

HOMEWORK AND WRITTEN ASSIGNMENTS:

- Assignments on MindTap are due before 11:59 p.m. the day BEFORE class is held. For example, homework for "Tuesday's class" is due at 11:59 p.m. on Monday.
- Assignments missed due to a documented, excused absence may be completed for full credit within TWO weekdays of returning to class. For example, if you return to class on Tuesday, you need to turn in missed work by Thursday of the same week. All other assignments not completed in time will be assigned a zero (0).

PRESENTATIONAL ASSESSMENTS (COMPREHENSIVE WRITING):

- Compositions will be written in class. You are expected to complete the necessary preparatory materials (assigned as homework on your MindTap) before class.
- If you miss a composition due to an **excused, documented** absence, contact your professor immediately for instructions on how to make up this composition.

CLASSROOM PROTOCOL:

- All students are expected to come to class fully prepared to participate in all activities and to speak Spanish in class with classmates and professors. Failure to do so can adversely affect your success and the success of your classmates since pair work and group interaction are necessary for successful development of your conversational skills in Spanish.
- Please refrain from eating and drinking during class.
- After class begins, do not read newspapers or do work from other courses.
- Turn off phones and similar electronic devices in class.

CELL PHONES AND ELECTRONIC DEVICES

- Please ensure that your cell phone, smartphone and all other similar electronic devices (earpieces, earphones, mp3 players, etc.) are turned off and put away before class begins.
- **Handling/using electronic devices during a composition or exam will result in a grade of zero for that evaluation.**
- Handling/using electronic devices at other times during class will negatively affect the class participation grade. Students who violate the policies on electronic devices will be subject to disciplinary action.

- First violation of this policy: Student will be given a verbal warning. Student may be asked to leave the room.
- Second violation: Student will be given a written warning with copies to the program director and department chair.
- Additional violations: An incident report will be filed with the Office of Student Conduct.

HONOR CODE: You are expected to practice the highest possible standards of academic integrity. Any deviation from this expectation will result in substantial grade penalties ranging from a score of 0 in the assignment/evaluation to a final course grade of F. The Office of Academic Integrity may also impose further sanctions. Violations of the honor code include using another student's work; use of translation tools other than simple dictionaries; obtaining help from friends, family or tutors; using notes or phones during quizzes and tests; improper citation of sources; possession of answer keys; and any other form of academic misrepresentation. Please refer to your *Student Handbook* for information regarding the USC code of ethics and also see the web site of the Office of Academic Integrity.

FOREIGN LANGUAGE LEARNING CENTER (FLLC)

This center is located on the first floor (not ground floor) of the Humanities Classroom Bldg. Additional resources, such as Mango, are available for use in the "lab". The center will be open Monday through Thursday from 8:00 a.m. to 7:00 p.m.; and on Fridays, from 8:00 a.m. to 5:00 p.m. (Hours are subject to change.).

DISABILITIES

Reasonable accommodations are available for students with a documented disability. If you have a disability and may need accommodations to fully participate in this class, contact the Office of Student Disability Services: 777-6142, TDD 777-6744, email sasds@mailbox.sc.edu, or stop by LeConte College Room 112A. All accommodations must be approved through the Office of Student Disability Services.

ADDRESSING CONCERNS

If you have a question or concern about your course, assignments or instructor, please address it with your instructor first. If you do not feel your situation has been adequately resolved you may address it with the following people in this order:

1. Spanish 122 Coordinator – Dr. Rocío Zalba (Zalba@mailbox.sc.edu)
2. Spanish Program Director – Dr. Rajca (rajca@mailbox.sc.edu)
3. Department Chair – Dr. Vazsonyi (NVAZSONY@mailbox.sc.edu)

Date	Weekly on-line topics (see iLrn for daily homework)	Communicative Objectives	In-class activities

	assignments, which are due <u>at 11:59 p.m. the day before class.</u>		
Tuesday, January 14th	If you did not take SPAN 121 with <i>Conectados</i>, use this time to familiarize yourself with Chapters 1-6. Create your MindTap account and sign up for your course. If you have not purchased your book and code yet, be SURE to sign up for the free three-week trial and begin your homework.		Intro to SPAN 122, Syllabus, policies, MindTap, course format.
Thursday, January 16th	Selective review of Chapters 1-6, in MindTap. Cap. 7: Nuestro mundo: Costa Rica y Panamá	¿Cómo te llamas? ¿De dónde eres? ¿Cuál es tu carrera? ¿Qué clases tomas este semestre? ¿Qué te gusta hacer en tu tiempo libre? ¿Qué hacen tú y tus amigos los fines de semana por lo general? ¿Cuáles de los datos sobre Panamá y Costa Rica que	Repaso y conversación Texto: pp. 262-263

		menciona Marisabel te interesa más?	
Tuesday, January 21st	Cap. 7: De compras La ropa y el estilo; adjetivos y los pronombres demostrativos; Los verbos como <i>gustar</i>	¿Qué tipo de ropa te gusta? ¿Qué colores prefieres llevar? En tu familia ¿a quién le encanta ir de compras? ¿A quién no le importa mucho la moda?	Texto: pp. 264- 273
Thursday, January 23rd	Cap. 7: Vamos de compras; <i>Por</i> y <i>para</i> ;	¿Para quién necesitas comprar un regalo? ¿Qué talla necesita esa persona? ¿Es posible comprar un regalo bonito por poco dinero? ¿Por ejemplo...?	Texto: pp. 276- 285
Tuesday, January 28th	Capt 7: El Mercado de Artesanías; El presente Perfecto del Indicativo	¿Has trabajado en alguna tienda de ropa? ¿Has tomado alguna clase de mercadotecnia?	Texto: pp. 283- 285 pp. 288-291
Thursday, January 30th	Lengua en Acción Comunicación Interpretativa & Comunicación Interpersonal	¿Qué dice Marisabel sobre las normas de vestir en Costa Rica? Y ¿En EE.UU qué diferencias regionales hay en la forma de vestir?	Texto: pp. 274- 275 A interpretar la lectura: <i>Guía Urbana de Santiago: Museo de la Moda</i> Texto pp. 286-287 A dialogar: ¿Qué piensas del

			Museo de la Moda? GRAMMAR QUIZ # 1
Tuesday, February 4th	Capt 7: Repaso de los pronombres de complemento directo e indirecto	Estás en Panamá: ¿Qué recuerdos quieres comprar para tus amigos y tus familiares? ¿Qué vas a comprar para ti? ¿Y qué le puedes comprar a tu familia?	Texto: pp. 292-294
Thursday, February 6th	Capt 7: Repaso de los pronombres de complemento directo e indirecto usados juntos	¿Quién te presta dinero cuando lo necesitas? ¿A quién le compras recuerdos cuando vas de viaje?	Texto: pp. 295-297
Tuesday, February 11th	Lengua en Acción Comunicación Presentacional	Según Marisabel ¿Dónde se puede regatear en Costa Rica? Y ¿Has regateado alguna vez?	Texto: pp. 298-299 Eres curador del Museo de la Moda: Escribe una propuesta
Thursday, February 13th	Practice in MindTap for Cap. 7		Interpretive Assessment Capt 7
Tuesday, February 18th	Capt 8: Nuestro mundo: Colombia y Venezuela; Los días festivos	¿Cuáles de los datos sobre Colombia y Venezuela que menciona Antonio te interesa más? ¿Cuál es una tradición popular en tu ciudad?	Texto: pp. 304-309

Thursday, February 20th	Capt 8: El se impersonal/pasivo; el presente, pasado y futuro	¿Se celebra la Navidad en tu casa? ¿Qué festivales se celebran en Venezuela pero no en Estados Unidos? ¿Qué piensas hacer para Acción de Gracias? ¿Con quién celebraste Año nuevo el año pasado?	Texto: pp. 310-315
Tuesday, February 25th	Capt 8: Ferias, Festivales y Campeonato; la formación del imperfecto; los usos del imperfecto	En la escuela secundaria ¿En qué actividades extracurriculares participabas? ¿Cuáles eran los eventos sociales más populares o importantes en tu escuela?	Texto: pp. 318-327
Thursday, February 27th	Lengua en Acción Comunicación interpretativa & Comunicación Interpersonal	Según Antonio Mijares ¿Qué evento histórico se celebra en Venezuela? Y ¿Qué eventos históricos se celebran con orgullo en Estados Unidos?	Texto: pp. 316-317 A interpretar la lectura: <i>El toque dulce y secreto del Amor y la Amistad</i> pp. 328-329 A escuchar y dialogar con tus compañeros sobre el Día del Amor y la Amistad GRAMMAR QUIZ # 2

Tuesday, March 3rd	Cap. 8: Mitos y Leyendas; El imperfecto y el pretérito: primera parte; El imperfecto y el pretérito: segunda parte.	Describe un festivo reciente. ¿Cómo era el ambiente y las personas? ¿Qué hiciste tú? Cuenta un cuento original usando el pretérito e imperfecto	Texto: pp. 330-339
Thursday, March 5th	Practice in MindTap for Capt 8	¿Qué leyenda venezolana nos cuenta Antonio Mijares?	Interpretive Assessment Capt 8
Tuesday-Thursday, March 10th to 12th	Descanso de Primavera		
Tuesday, March 17th	Lengua en Acción Comunicación Presentacional.	¿Qué leyenda venezolana nos cuenta Antonio Mijares? ¿Cuál es una leyenda popular en Estados Unidos?	pp. 340-341 A escribir una anécdota sobre el Día del Amor y la Amistad
Thursday, March 19th	Reading and Writing Practice in MindTap Capt 9: Ecuador, Perú y Bolivia; El cuerpo y la Salud	¿Cuáles de los datos sobre Bolivia que menciona Daniella Delius te interesa más? ¿Cuáles son los idiomas más	Presentational Assessment I (50 min) Texto: pp. 346-351 (25 min)

		importantes de Estados Unidos?	
Tuesday, March 24th	Cap. 9: El verbo doler + reflexivos y En el consultorio médico; Los mandatos formales	¿Te duele el estómago cuando estás nervioso? ¿Te duele la espalda cuando llevas una mochila por el campus? ¿Te has roto un hueso alguna vez? ¿Qué te dice el doctor durante un examen médico?	Texto: pp. 352-357 (35 min) Texto: pp 360-365 (35 min)
Thursday, March 26th	Cap. 9: Las expresiones de tiempo con hacer; Secretos para el bienestar	¿Cuánto tiempo hace que estudias español? ¿Cuánto tiempo hace que no ves a tu familia? ¿Qué haces para seguir una dieta saludable? familia?	Texto: 367-369 y 372-375
Tuesday, March 31st	Lengua en Acción Comunicación Interpretativa & Comunicación Interpersonal	Según Daniella ¿Cuáles son las enfermedades que más preocupan a los bolivianos? ¿Qué enfermedades preocupan más a los estudiantes universitarios?	Texto: pp. 358-359 A practicar la lectura: Juan Lligalo revela a los jóvenes el secreto de la medicina andina. pp. 370-371

			A escuchar y dialogar con tus compañeros sobre el uso de las hierbas y flores. GRAMMAR QUIZ # 3
Thursday, April 2nd	Cap. 9: El presente de subjuntivo con expresiones de influencia; El presente de subjuntivo: verbos con cambo de raíz y verbos irregulares; Sign up in class for your oral exam appointment	¿Qué le recomiendas a un amigo que está estresado? ¿Qué le aconsejas a un amigo que fuma demasiado?	Texto: pp. 376-381
Tuesday, April 7th	Practice in MindTap for Capt 9	Según Daniella ¿Por qué el bienestar es un concepto subjetivo?	Interpretive Assessment Capt 9
Thursday, April 9th	Lengua en Acción Comunicación Presentacional	¿Qué factores contribuyen al bienestar?	Texto: pp. 382-383 (50 min) A escribirle una carta a la Profesora Zambrano! Practice for the speaking test (See Review document) (25 min)

Tuesday, April 14th	Reading and Writing Practice in MindTap In MindTap: Review ser y estar, saber y conocer, irregular verbs, speaking and listening practice; reading practice. Bring to class the Review document.	You will consolidate and strengthen your ability to handle short conversations and simple travel and social transactions.	Presentational Assessment II (50 minutos) Practice for the speaking test (See the Review document).(25 min)
Thursday, April 16th	In iLrn: practice verb conjugation and preterite tense, listening practice, speaking practice, reading practice. Speaking tests: Be sure you know the time and place of you appointment. (No class meeting)	You will consolidate and strengthen your ability to understand spoken and written Spanish.	Speaking test (by appt.)
Tuesday, April 21st	In MindTap: Review the preterite tense and irregular stem change; listening practice, writing practice. Speaking tests: Be sure you know the time and place of your appointment. (No class meeting)	You will consolidate and strengthen your ability to understand spoken and written Spanish; and to write well-organized paragraphs in different time frames	Speaking test (by appt.)
Thursday, April 23th	In MindTap: Review of the present tense Review of the imperfect and the preterite	You will consolidate and strengthen your ability to write well-organized letters and blog entries.	In-class listening and writing practice (See the Writing Practice document.)

	Go to the Blackboard supersite: • Click on the "Final Proficiency Exam" tab. • Print and take the Sample Final Proficiency Exam. • Check your own answers. • Bring the corrected sample test to class. Print and bring to class the Writing practice document. Complete the first 3 pages for homework		
The Final Proficiency Exam will be held in our regular classroom on the day and time established by the Registrar. See the exam calendar at: http://www.sc.edu/about/offices_and_divisions/registrar/final_exams/index.php Note: The day and time of the Final Proficiency Exam may not be changed. Don't forget to complete your course/instructor evaluation. We appreciate your helpful comments!			

EXHIBIT H

State of South Carolina
Executive Department



FILED

MAR 15 2020

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-09

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, in addition to declaring a State of Emergency, Executive Order No. 2020-08 directed, *inter alia*, the closure of public schools in the two counties where the South Carolina Department of Health and Environmental Control ("DHEC"), in consultation with the Centers for Disease Control and Prevention ("CDC"), identified instances of COVID-19 transmission via "community spread"; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the threat posed by the COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

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WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is further empowered with certain additional authority, to include "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. I hereby direct the continued execution of the South Carolina Emergency Operations Plan and the utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

Section 2. I hereby direct the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, unless such directive is otherwise modified, amended, extended, or rescinded. This Order applies to all students and employees of public schools, to include state-supported colleges, universities, and technical colleges, in the State of South Carolina, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district, college, or university official. I further authorize the requisite school district, college, and university officials to make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances, to include establishing or maintaining means to deliver virtual instruction and remote learning, assisting with or facilitating the distribution of food and the delivery of nutritional services, and housing out-of-state or displaced students.

Section 3. I hereby direct that any election, to include special, county, and municipal elections, scheduled to be held in this State or conducted by any agency, department, or political subdivision thereof, on or before May 1, 2020, shall be postponed and rescheduled. The State Election Commission ("SEC") shall work with county boards of voter registration and elections to ensure that candidate filing period(s) continue as scheduled and that individuals may register to vote without interruption. The SEC shall issue any necessary and appropriate guidance regarding the implementation of this directive.

Section 4. To provide for and promote the health, safety, and welfare of residents and visitors, I urge that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people. This Section does not apply to meetings of state or local government bodies or to private businesses and employers.

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This Order is effective immediately. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.



GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 15th DAY OF
MARCH, 2020.

A handwritten signature in blue ink, reading "Henry McMaster".

HENRY MCMASTER
Governor

ATTEST:

A handwritten signature in blue ink, reading "Mark Hammond".

MARK HAMMOND
Secretary of State

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