

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 II (429-894)**

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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,	)	<u>THE UNIVERSITY OF SOUTH</u>
	)	<u>CAROLINA'S MEMORANDUM IN</u>
vs.	)	<u>SUPPORT OF MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

The University of South Carolina ("USC"), by and through its undersigned counsel, hereby submits this memorandum in support of its Motion for Summary Judgment filed June 14, 2023. As explained below, each of Plaintiffs' eight causes fail as a matter of law and should be dismissed, with prejudice, in their entirety.

INTRODUCTION

Plaintiffs Davia Bunch and Casey Kelly were undergraduate senior students at USC's Columbia campus during the Spring 2020 semester. They purport to represent a proposed class of undergraduate, graduate, and professional students under the USC system for the purpose of seeking partial tuition and fee refunds for USC's transition to virtual instruction in the Spring 2020 semester necessitated by the COVID-19 pandemic and governmentally mandated orders. USC's transition protected the health and safety of its community and enabled its more than 49,000 students, including Plaintiffs, to complete their course objectives and make uninterrupted progress toward their degrees. Plaintiffs nonetheless bring claims against USC for breach of contract, unjust enrichment, promissory estoppel, and conversion. Even though USC took reasonable, necessary,

and legally mandated steps in response to a global health crisis, Plaintiffs claim they are entitled to a partial refund of tuition and fees because the classes and services delivered during the crisis did not meet their subjective expectations.

This motion is directed to the claims of the named Plaintiffs. If granted, the summary judgment motion will moot Plaintiffs' class certification motion.

USC is entitled to summary judgment in its favor on all of Plaintiffs' claims as a matter of law for several reasons. First, the doctrine of sovereign immunity bars Plaintiffs' claims against USC as an arm of the state of South Carolina. Second, Plaintiffs lack standing because they completed their courses, obtained fully the credits associated with each of their courses, and graduated and, thus, suffered no cognizable damages, and to the extent Plaintiffs claim damages based on the value of the instruction they received, Plaintiffs' purported injuries amount to impermissible damages for educational malpractice for which they cannot recover. In addition, Plaintiff Bunch further lacks standing because she did not pay USC any out-of-pocket tuition or fees. Third, Plaintiffs' claims for breach of contract fail as a matter of law for several reasons: (1) Plaintiffs cannot point to contractual language promising in-person instruction at all times, even during a pandemic; (2) USC's course registration website does not contain a promise to provide face-to-face instruction at all times; (3) Plaintiffs' theory that USC made a universal offer of face-to-face instruction to its students via USC's registration process fails because there was more than one way to register, and students could register without ever seeing the purported promise of a face-to-face instructional method; (4) USC reserved the right to make changes to the policies and procedures that are the basis of Plaintiffs' contract claims; and (5) Plaintiff Kelly cannot claim breach of contract for her internship class because she in fact completed it. Fourth, USC's performance was excused as a matter of law under the doctrine of impossibility in light of the

COVID-19 pandemic and Governor’s executive orders. Fifth, Plaintiffs waived their right to bring this lawsuit by acquiescing to remote instruction. Sixth, Plaintiffs’ promissory estoppel claims fail because the parties’ relationship is governed by contract, and because USC did not make an unambiguous promise to provide in-person instruction. Seventh, Plaintiffs’ unjust enrichment claims fail because the parties’ relationship is rooted in contract, and because there is no genuine issue of material fact regarding the conferral of a benefit that is inequitable for USC to retain. Lastly, Plaintiffs’ conversion claims fail as a matter of law because Plaintiffs cannot show any right to possession of the funds or USC’s unauthorized assumption of said funds.

FACTUAL BACKGROUND

In February 2020, USC—in consultation with the Centers for Disease Control and Prevention, the South Carolina Department of Health and Environmental Control, and public health experts at USC —began a measured response to mitigate the spread of COVID-19 and keep its students safe. By March 11, 2020, while students were already away from campus on spring break, USC announced it would implement virtual instruction beginning March 23, 2020. (Exhibit A, Wilner¹ Rpt. at 4-5; Exhibit B, USC_00008841-2.) USC extended spring break an extra week to allow faculty and staff to prepare for the transition. (Exhibit B, USC_00008841-2.) It was not until Governor McMaster’s March 15, 2020 executive order directing the closure of all state-supported universities and authorizing university officials to establish a “means to deliver virtual

¹ USC retained Benjamin S. Wilner, Ph.D. with Alvarez & Marsal Disputes and Investigations, LLC as an expert on damages in this matter. Dr. Wilner 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. Dr. Wilner has 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. (Exhibit A, Wilner Rpt. at 3-4 and Exhibit 2.)

instruction and remote learning” (Exhibit C, USC_00000849-51), that USC announced it would close all system institutions to everyone except those with extenuating circumstances and extend virtual instruction and services through the remainder of the Spring 2020 semester—six weeks of classes followed by exams. (Exhibit A, Wilner Rpt. at 5; Exhibit D, USC_00005271-2.) This act of pivoting classes to virtual instruction consumed an extraordinary amount of effort, attention, coordination, technological resources, and financial resources across the entire university. It required the cooperation of all eight USC campuses in 20 locations across the state of South Carolina to quickly respond to an unprecedented situation to protect its students while continuing to maintain the excellence in all of its academic programs.

On April 1, 2020, USC announced it would follow the guidance and direction of the South Carolina Commission on Higher Education and provide prorated refunds to students for non-academic fees related to university housing, meal plans, and parking permits, as those services could not be provided to students after March 16, the first day the campus was closed following spring break. (Exhibit E, USC_00004993-4; Exhibit F, USC_00005126-7.) In total, USC issued more than \$20.7 million in prorated refunds. (Exhibit A, Wilner Rpt. at 6.) Tuition and other fees assessed during the Spring 2020 semester were not refunded because they related to educational and technology services that students continued to receive before, during, and after the transition to virtual instruction. (Exhibit G, Defendant’s Answer to Int. 24.) Importantly, the cost of tuition 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. 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, Bunch Dep. at 18:9-22; Exhibit A, Wilner Rpt. at 7.)

Plaintiffs also both paid a \$200 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, Bunch Dep. at 72:2-24 and 94:23-95:11; Exhibit G, Defendant’s Answer to Int. 8.) Plaintiffs incorrectly assumed that the technology fee pays for “computers and WiFi and printers all over campus,”² when, in reality, the technology fee is used for the “enhancement of technology,” including, for example, helping “acquire, install, and maintain up-to-date and emerging technologies to enhance student-learning outcomes.” (Exhibit I at USC_00015756.) When USC transitioned to virtual instruction, it “shifted to massive use of Blackboard, Blackboard Collaborate, webcams, computer services, as well as training, and those are all technology fee support.” (Exhibit J, S. Kelly Dep. 42:17-20.) Plaintiff Bunch admits that the use of technology was essential to USC’s continuation of classes during the pandemic, and both Plaintiffs used Blackboard, Blackboard Collaborate, Self Service Carolina, Teams, and other online platforms paid for and maintained by USC throughout the Spring 2020 semester. (Exhibit H, Bunch Dep. at 95:12-15.) USC’s Department of Technology even assisted students who did not have adequate resources to participate in remote classes by shipping laptops and offering funding for unlimited data for hotspots. (Exhibit K, USC_00008957-61.) Thus, even in the face of the unprecedented worldwide pandemic, USC made sure that its students continued to receive a robust educational experience and opportunities for interactions with professors and other students online. Plaintiffs simply cannot show that USC used the tuition and fees it received for anything other than the just and legitimate purpose of furthering its educational mission.

² Exhibit L, C. Kelly Dep. at 134:16-25 and 170:5-24; Exhibit H, Bunch Dep. at 93:23-94:22.

USC also distributed \$17.6 million of federal relief funds pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act³ to aid 25,168 students system-wide who qualified and accepted the award, including Plaintiff Bunch who received \$800 in funding. (Exhibit A, Wilner Rpt. at 6 and 74.) USC further provided over \$350,000 from its own donor-supported COVID-19 Emergency Relief Fund to support 1,899 students facing financial hardship and other burdens due to the unexpected challenges created by the pandemic and transition to virtual instruction. (*Id.* at 6 and 75.) Because Plaintiff Kelly failed to complete a FAFSA form to be eligible to receive CARES Act funding, she did not receive funding, nor did either Plaintiff seek financial support through USC's COVID-19 Emergency Relief Fund.

Moreover, in keeping with USC's core principle of maintaining academic excellence while also acknowledging the disruption COVID-19 caused students, USC provided a special benefit that ordinarily was not available by allowing undergraduate students the option of switching their classes to being graded on a pass/fail basis. (Exhibit N, at USC_00002343.) USC was not required to provide this benefit to students, and students were allowed to accept the pass/fail option after receiving their letter grades at the end of the semester. (*Id.*) Plaintiffs achieved grade point averages for the Spring 2020 semester that were higher than their cumulative averages, which ultimately raised their cumulative grade point averages, and neither Plaintiff opted to accept the pass/fail option. (Exhibit H, Bunch Dep. at 90:18-23; Exhibit L, C. Kelly Dep. at 158:1-17.) In addition to improving their grade point averages, Plaintiffs also accomplished all of their course objectives

³ The CARES Act, which established and funded the Higher Education Emergency Relief Fund, provided one-time funding to institutions to "provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to the coronavirus." (Exhibit M, USC_00013751-5.) To fulfill the Department of Education's guidance, the USC system institutions issued grants to students across all levels as determined by each student's FAFSA form.

during the Spring 2020 semester, received full credit, and graduated with honors. (Exhibit O, Cavanagh⁴ Rpt. at 3 and 8.) Prior to graduating, Plaintiff Bunch accepted a job as a finance manager at a political consulting firm in Charleston, South Carolina. (Exhibit A, 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, CKELLY0000007.) Plaintiff Bunch filed this class action lawsuit against her alma mater merely seven days after completing the Spring 2020 semester.

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 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). 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,

⁴ USC retained Thomas B. Cavanagh, Ph.D. as a consulting expert in this matter. Dr. Cavanagh is the Vice Provost for Digital Learning at the University of Central Florida, and he has been widely recognized as a national educational expert on digital learning and teaching. (Exhibit O, Cavanagh Rpt. at 19-47.)

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).

ARGUMENT

For the reasons discussed in detail below, USC is entitled to summary judgment in its favor on all claims as a matter of law.

I. The doctrine of sovereign immunity bars Plaintiffs’ claims against USC.

The Court should grant summary judgment in favor of USC on all of Plaintiffs’ claims because USC is protected by the doctrine of sovereign immunity. Pursuant to the doctrine of sovereign immunity, “the 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). 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”).

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”). Even when legislative action is taken to enact waiver statutes, statutes enacted in derogation of sovereign immunity must be strictly construed. *See Unisys*, 346 S.C. at 167, 551 S.E.2d at 268.

Originally, 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). The Supreme Court, however, expressly overruled *Kinsey's* general waiver of sovereign immunity for breach of contract claims in 2001, holding that "the State can be sued only in the manner and upon the terms and conditions prescribed by [statute]." *Unisys*, 346 S.C. at 170, 551 S.E.2d at 270 (citing *Jeff Hunt Mach. Co. v. S.C. State Highway Dep't*, 217 S.C. 423, 60 S.E.2d 859 (1950)). Since this 2001 decision, the State waives its immunity related to a breach of contract claim only when a statute governs the specific contract at issue. *See, e.g., Unisys*, 346 S.C. at 168, 551 S.E.2d at 269 (finding the contract was properly solicited and awarded under the provisions of the Procurement Code, S.C. Code Ann. § 11-34-4220, which establishes the exclusive original means of resolving contract controversies between contractors and a governmental body).

Here, Plaintiffs do not and cannot identify a waiver of USC's sovereign immunity pursuant to specific *statutory authority* enacted by the General Assembly as to the type of breach of contract claims that Plaintiffs assert here. This conclusion is supported by a 2019 order from the Court of Common Pleas granting a motion to dismiss filed by the State of South Carolina (although this Order does not constitute binding authority). In *Thomas v. State of S.C.*, the plaintiff filed a breach of contract claim alleging the State breached a contract requiring it to procure life insurance for plaintiff's wife following plaintiff's Senate retirement. Case No. 2015-CP-40-07269, at 1 (S.C. Ct. Com. Pl. Apr. 2, 2019) (attached as Exhibit Q). The circuit court held that the State is a party "immune from suit in contract." *Id.* at 3. The court further held that the complaint failed to specify any statute for life insurance coverage for spouses of retired employees. *Id.* at 4. Thus, like here,

no statute existed to allow the causes of action to be brought against the State. *Id.* As a result, the doctrine of sovereign immunity completely bars Plaintiffs’ breach of contract, unjust enrichment,⁵ conversion, and promissory estoppel claims.

The General Assembly enacted a limited waiver of State liability through the South Carolina Tort Claims Act (“SCTCA”). *See* S.C. Code Ann. § 15-78-20(b). However, the SCTCA does not create causes of action. Rather, it “remove[s] the common law bar of sovereign immunity in certain circumstances, but only to the extent legislatively authorized.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 567, 743 S.E.2d 778, 782 (2013). Importantly, the SCTCA only provides a remedy for **a tort** committed by a governmental entity. *See* S.C. Code Ann. § 15-78-20(b) (expressly preserving “[a]ll other immunities”). Further, the SCTCA is “liberally construed in favor of limiting liability of the State” (S.C. Code Ann. § 15-78-20(f)) and contains numerous exceptions to the State’s tort liability, including, in relevant part:

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(18) imposition or establishment of a quarantine by a governmental entity, whether this quarantine relates to persons or property.

Id. at §§ 15-78-60(4) and (18). Both enumerated exceptions are grounds for dismissal of Plaintiffs’ conversion claims.

In accordance with subsections (4) and (18), USC was required to stop in-person instruction to comply with the Governor’s executive orders—laws with which USC and all

⁵ Courts of other jurisdictions agree that claims of *quantum meruit* against the State—which South Carolina courts treat as identical to claims for unjust enrichment—are barred by sovereign immunity. *See e.g., Eastway Wrecker Serv., Inc. v. City of Charlotte*, 599 S.E.2d 410, 412 (N.C. Ct. App. 2004) (finding sovereign immunity bars *quantum meruit* actions against the State “because the remedy of *quantum meruit* is based on the implied contract and an implied contract cannot support the inference of an express waiver”).

students were required to comply. This included the “Home or Work” Order, which imposed a quarantine by mandating all residents and visitors of the State to “limit their movements outside of their home.” (Exhibit R, Henry McMaster, Executive Order No. 2020-21 at p. 6, § 1(B) (Apr. 6, 2020); *see also* Merriam-Webster Online Dictionary (2023), <https://www.merriam-webster.com/dictionary/quarantine> (defining quarantine as “a state of enforced isolation,” “a restraint upon the activities or communication of persons...designed to prevent the spread of disease,” and “to isolate from normal relations or communications”).) This order remained in effect until at least June 26, 2020—more than eight weeks after the last day of classes in the Spring 2020 semester. (Exhibit S, Henry McMaster, Executive Order No. 2020-42 at p. 12, § 1(I) (June 26, 2020).)

Based on the foregoing, USC is entitled to sovereign immunity as a matter of law, and the Court should grant summary judgment in favor of USC on all of Plaintiffs’ claims.

II. Plaintiffs lack standing because they suffered no damages, and any purported injuries amount to damages for educational malpractice for which Plaintiffs cannot recover.

Plaintiffs (1) have no cognizable damages and, hence, Plaintiffs lack standing to sue, and (2) to the extent Plaintiffs rely on a purported difference in value in the instruction they received, Plaintiffs’ alleged 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, 460, 578 S.E.2d 711, 716 (2003). In either case, summary judgment is required as to all causes of action.

A. *Plaintiffs lack standing due to lack of damages.*

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 refers to a plaintiff’s right to commence a legal action and

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). Central to this matter, to establish constitutional standing, Plaintiffs must show that they (1) “suffered an invasion of a legally protected interest, which is concrete and particularized, and actual or imminent”; (2) there is a “causal connection between the injury and the challenged conduct”; and (3) it is “likely that the injury will be redressed by a favorable decision.” *S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 117–18, 804 S.E.2d 854, 858 (2017). “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). Here, summary judgment is appropriate because Plaintiffs have not suffered any cognizable damages.

Plaintiffs assert that they are not seeking damages arising from a diminished quality of education. *See* Second Am. Comp. ¶ 28 (“Plaintiffs’ claims are not based on the . . . quality of the emergency remote instruction they received through their online classes.”). However, outside of any alleged diminished quality of instruction by the transition to virtual learning, Plaintiffs were not otherwise harmed and did not sustain any damages. Both class representatives continued their Spring 2020 coursework at USC after the transition to virtual instruction without seeking a refund or withdrawal, and earned the same credits they would have received had the instruction continued in-person. (Exhibit A, Wilner Rpt. at 7.) USC’s swift and necessary response to the COVID-19 pandemic allowed Plaintiffs, and thousands of other seniors, to make uninterrupted progress toward their degrees and graduate on time in May 2020. Plaintiffs not only accomplished all of their course objectives during the Spring 2020 semester and received full academic credit, but they did so in an exceptional manner by increasing their cumulative GPAs, graduating with honors, and

accepting employment upon graduation. (Exhibit O, Cavanagh Rpt. at 3, 8, and 17; Exhibit A, Wilner Rpt. at 7.) Plaintiff Kelly surpassed her cumulative GPA of 3.42 to earn a 3.8 GPA during Spring 2020. (Exhibit O, Cavanagh Rpt. at 8.) Similarly, Plaintiff Bunch outperformed her previous 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, 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, CKELLY000007.) Plaintiffs Bunch and Kelly's success during the Spring 2020 semester and after graduation demonstrates that Plaintiffs have not and cannot show any cognizable harm as a result of the transition to remote instruction. Accordingly, the Court should find that Plaintiffs lack standing to bring their causes of action because they suffered no injuries and grant summary judgment in USC's favor.

i. *Plaintiff Bunch also lacks standing because she did not pay USC any out-of-pocket tuition or fees.*

An award of any refunds or damages demanded by Plaintiff Bunch would result in a financial benefit and windfall to her because she would be getting such refunds for tuition and fees she never actually paid. Plaintiff Bunch simply has no standing to seek any such refund of tuition and fees because she paid no such costs in the first place.

Plaintiff Bunch did not pay USC any out-of-pocket tuition or fees. She received an education at USC at no cost to her. (Exhibit A, Wilner Rpt. at 65-67, including Figure 12.) For the Spring 2020 semester, Plaintiff Bunch incurred charges for tuition of \$6,144 and \$200 technology fee. (Exhibit T, USC_00000027.) Rather than paying these costs herself, Plaintiff Bunch received a Federal Pell Grant (\$2,972), a USC Achievement Scholarship (\$1,000), and USC CARES Federal Grant money (\$800). (*Id.*; Exhibit H, Bunch Dep. at 48:19-49:6.) The Federal Pell Grant

is a federally funded grant awarded to undergraduate students who demonstrate exceptional financial need. (Exhibit H, Bunch Dep. at 45:15-22; Exhibit U, Derrick Aff., ¶ 5.) Funds from Federal Pell Grants are sent directly to USC and applied to a student's account for any unpaid tuition and fees. (Exhibit U, Derrick Aff., ¶ 5.) Any remaining balance of funds after tuition and fees are paid is refunded to the student. (*Id.*) The USC Achievement Scholarship is provided by USC to select undergraduate senior students who have demonstrated superb academic achievement and have not previously received scholarship assistance from USC. (*Id.* at ¶ 7.)

Plaintiff Bunch also received over \$50,000 in scholarship funds from the Miss South Carolina and Miss America organizations. (Exhibit H, Bunch Dep. at 54:21-23.) Plaintiff Bunch submitted bills from her student loan provider to the pageant scholarship organizations and requested payment of her student loans, and the pageant organizations then made payments directly to Plaintiff Bunch's student loan provider. (*Id.* at 61:9-23.) Thus, even though Plaintiff Bunch obtained a Federal Direct Unsubsidized Loan (\$990) and a Federal Direct Subsidized Loan (\$2,721) for Spring 2020, she paid these off entirely using her Miss South Carolina/Miss America scholarships. Indeed, her pageant funds were sufficient to pay all of her student loans for all four years at USC, including the Spring 2020 semester. (*Id.* at 62:1-4.)⁶ After paying off all of her student debt, Plaintiff Bunch retained a credit of \$15,000 which she could use for future educational endeavors. (*Id.* at 67:1-14.)

⁶ Plaintiff Bunch, after paying off all of her loans with the pageant funds, then borrowed another \$7,000 in student loans not to pay for tuition or fees, but to pay for "personal reasons," which included purchasing a car. In other words, she used the restricted pageant funds for their allowed purpose – paying off loans that had been used for tuition and fees—and then took back \$7,000 of the funds to use for purposes that would not have been allowed by the Miss South Carolina organization. (Exhibit H, Bunch Dep. at 62:1-64:15.)

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. Without paying any out-of-pocket tuition or fees, Plaintiff Bunch has not suffered a concrete injury in fact and, therefore, has no standing. See *Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 433 S.C. 405, 414, 859 S.E.2d 263, 267 (Ct. App. 2021) (finding constitutional standing's "injury in fact" element requires an invasion that is both "actual or imminent" and "concrete"). As a result, the Court lacks subject matter jurisdiction over Plaintiff Bunch's alleged claims. In *Patel v. Univ. of Vermont & State Agric. Coll.*, No. 5:20-CV-61, 2021 WL 4523683, at *1, 6 (D. Vt. Oct. 1, 2021), a similar COVID-19 tuition class action, the court denied the motion to reconsider the dismissal of non-paying plaintiffs because "they lack constitutional standing to seek the return of tuition they had not actually paid." The court in *Patel* emphasized that 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." For these same reasons, the Court should grant summary judgment in favor of USC as to Plaintiff Bunch's claims.

B. Plaintiffs alleged damages amount to an impermissible educational malpractice claim.

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. Thus, Plaintiffs' claims fail because they are impermissible causes of action for educational malpractice. Plaintiffs have put forth *no other theory* as to what harm they allegedly experienced from having to take some of their classes online for the remaining portion of the Spring 2020 semester. Accordingly, this Court should grant USC's motion for summary judgment because Plaintiffs' claims amount to an improper backdoor attempt to second-guess the quality of

the education and services USC provided after the transition to virtual instruction necessitated by the global COVID-19 pandemic.⁷

Educational malpractice claims have been bluntly 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 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”). The South Carolina 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.” *Hendricks*, 353 S.C. at 457, 578 S.E.2d at 715 (citations omitted). These same policy concerns apply just as strongly to Plaintiffs’ claims here.

Moreover, in similar COVID-19 tuition refund cases across the country, courts have dismissed such complaints as impermissible educational malpractice suits. *See, e.g., Raimo v.*

⁷ Courts across the country routinely dismiss backdoor educational malpractice claims framed as other causes of action, even where the gravity of the harm is far greater than that alleged by Plaintiffs. In *Krebs v. Charlotte Sch. of Law, LLC*, for example, many plaintiffs “were forced to drop out and find a different profession” after the Department of Education denied the law school’s request to participate in a federal student loan program. No. 3:17-CV-00190-GCM, 2017 WL 3880667, at *34 (W.D.N.C. Sept. 5, 2017). The North Carolina district court rejected any inquiry into the “quality or value of the services provided” as an “impermissible foray into educational malpractice” and dismissed all breach of contract and unjust enrichment claims. *Id.* at *5-6. The plaintiffs’ complaint did not include any allegation that the law school failed to provide classes in legal instruction, professors to teach those classes, or classrooms in which students could be taught. *Id.* at *6. “In short, the Plaintiffs paid for a legal education and in return they received a legal education.” *Id.* (citations omitted). Other examples include the dismissal of suits where a university arranged instruction at a different school and by different professors (*Roe v. Loyola Univ. of New Orleans*, No. CIV.A. 07-1828, 2007 WL 4219174 (E.D. La. Nov. 26, 2007)) or suspended classes midway through a semester without any alternative means of instruction (*Paynter v. N.Y. Univ.*, 66 Misc. 2d 92, 92-93, 310 N.Y.S.2d, 893, 893-94 (N.Y. App. Term 1971)).

Washington University in St. Louis, No. 4:20-cv-00634-SEP, 2022 WL 796239, at *3-6 (E.D. Mo. Mar. 16, 2022) (finding that plaintiff’s breach of contract, breach of implied contract, unjust enrichment, and conversion claims were barred by educational malpractice doctrine, stating: “[Plaintiff] can either predicate his claim on the breach of a promise that caused him no cognizable injury, which would result in a lack of standing; or he can claim that the education he received was of diminished value and demand that the Court quantify that difference in value—something the educational malpractice doctrine forecloses. Either way, his claims cannot succeed and thus merit dismissal.”); *Clingan v. Wichita State Univ.*, No. 2020-CV-290, 2021 WL 7450400, at *9-10 (D. Kan. 2021) (finding that plaintiff’s breach of contract claims violated educational malpractice doctrine, stating: “Plaintiff’s premise would call for a comparison and evaluation by the factfinder of the modalities of in-person versus online education, and an assignment of value to differing methods of instruction to determine whether the university provided substantially similar services. The allegations would bring squarely into question the internal operations, curriculum and academic decisions of an educational institution. . . . [Plaintiff’s] lawsuit represents the embodiment of an educational malpractice claim” (citation and internal quotation marks omitted)); *Linder v. Occidental Coll.*, No. 20-8481-JFW(RAOx), 2020 WL 7350212, at *7 (C.D. Cal. Dec. 11, 2020) (dismissing case because “resolution of Plaintiffs’ claims would require the Court to make judgments about the quality and value of the education”).

Although Plaintiffs purport that their claims do not critique the quality of USC’s emergency remote instruction during the remainder of the Spring 2020 semester, in reality Plaintiffs’ allegations repeatedly allude to the alleged diminished quality of online learning and emergency remote instruction. (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). Even 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"⁸ (hereinafter, "ERT") 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.) Mr. Tatos' entire methodology for computing Plaintiffs' alleged damages is based and operates on his assumption that the benefits of ERT are allegedly less than the benefits of normal face-to-face instruction. 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.)⁹

USC did not cancel classes for the remainder of the semester, nor did it cease operations and send students to another university. Rather, USC merely shifted instruction to an online platform due to the danger posed by the worldwide COVID-19 pandemic. As a result, Plaintiffs cannot claim that their purported damages resulted from USC's failure to provide promised

⁸ 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.)

⁹ The numerous flaws that riddle Mr. Tatos' methodology and render it wholly unreliable are discussed at length in USC's Memorandum in Opposition to Motion for Class Certification filed with this Court on May 12, 2023. (*See id.* at 33-40.)

instruction. Instead, Plaintiffs 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.) Importantly, Plaintiffs have not and cannot show that USC charges different amounts for tuition and fees for online instruction versus face-to-face instruction. *See Michel v. Yale Univ.*, No. 3:20-CV-01080 (JCH), 2023 WL 1350220, at *6-7 (D. Conn. Jan. 30, 2023) (granting summary judgment in favor of university because there was “no evidence in the record from which a reasonable juror could calculate the financial detriment” student experienced, finding there was undisputed evidence that university had always “charged the same tuition for online and in-person instruction”). The cost per credit hour at USC was the same no matter the mode of instruction. These 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. Instead, students were assessed tuition 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. 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, Bunch Dep. at 18:9-22; Exhibit A, Wilner Rpt. at 7.)

Thus, it is evident that by their very nature, Plaintiffs’ damages claims would require the Court to make a qualitative evaluation of USC’s educational programs 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.

Plaintiffs do not and cannot contend that USC's shift to virtual classrooms prevented students from completing their coursework or being awarded the 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. (Ex. O, Cavanagh Rpt. at 3 and 8.) Absent USC's failure to provide those contractual requirements, 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. Plaintiffs have put forth no other theory as to what harm they experienced from having to take their classes online for the remainder of the Spring 2020 semester or how to calculate the damages for such alleged harm. Plaintiffs' inability to do so implicates the policy concerns behind South Carolina's judicial prohibition of educational malpractice claims. *See Hendricks*, at 457, 578 S.E.2d at 715 (stating the preclusion of educational malpractice claims are, in part, due to "the inherent uncertainties of the cause and nature of the damages"). Thus, Plaintiffs' claims amount to an impermissible attempt to second-guess the quality of the education—an allegation that cannot be the basis for a claim in contract, quasi-contract, or tort. *See Hendricks*, at 460, 578 S.E.2d at 716. Moreover, to allow claims like Plaintiffs' to proceed would open the floodgates of litigation against already beleaguered universities and colleges, thereby implicating yet another policy concern precluding educational malpractice claims. *See Hendricks*, 353 S.C. at 457, 578 S.E.2d at 715 (citations omitted).

As a result, without question, Plaintiffs' claims necessarily implicate the educational malpractice doctrine, and the Court should grant summary judgment in favor of USC.

III. **Plaintiffs' Causes of Action for Breach of Contract Fail as a Matter of Law.**

Plaintiffs fail to satisfy the basic elements of a breach of contract claim. To state 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)). Plaintiffs, therefore, must 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)).

A. ***Plaintiffs are unable to point to contractual language promising an in-person instruction at all times.***

Plaintiffs cannot prove the basic elements of a breach of contract claim because they do not identify the source of their purported contractual right to face-to-face instruction and access to USC’s on-campus facilities at all times, even during a pandemic. Merely making broad allegations without reference to a specific contractual promise of in-classroom instruction is not sufficient to state a claim for breach of contract. *See, e.g., Hendricks*, 353 S.C. at 461, 578 S.E.2d at 717 (dismissing breach of contract claim when plaintiff “fail[ed] to point to any written promise from Clemson”). Plaintiffs make unsupported allegations that members of the putative class “entered into contracts with [USC]” whereby “Plaintiffs and other members of the Tuition Class would pay tuition, and, in exchange, [USC] would provide live ‘face-to-face’ instruction in a physical building and classroom,” and whereby “Plaintiffs and other members of the Fees Class would pay certain fees . . . and, in exchange, [USC] would provide access to on-campus equipment and services related to those fees.” (Second Am. Compl. ¶¶ 60, 93.) Plaintiffs, however, do not – and

cannot – reference or show any specific contractual provisions where USC supposedly made such promises of in-person instruction and access to all campus facilities at all times and under all circumstances (including in the midst of a pandemic). Nor do Plaintiffs show when, where, and how USC made any of these alleged promises.

Plaintiffs also seek to rely on the terms of the Financial Arrangement. (*See id.* at ¶¶ 25, 62.) Plaintiffs’ reliance on the Financial Agreement between USC and its students, however, fails to support their claim for breach of contract because the Financial Agreement does not include a promise of in-person face-to-face instruction. Each semester of enrollment, as a prerequisite to registration for classes, students are required to accept the Financial Agreement – called the Student Statement of Financial Responsibility – pursuant to which students expressly agree to “accept the responsibility for all charges billed to [their] account” by “submitting course registration.” (Exhibit V, USC_00001466.) This is an express contract and a condition to registering for classes. Nothing in the Financial Agreement, however, promises students in-person courses, unfettered access to campus buildings, or the right to take their courses in the modality of their choice. Nor does it promise that the classes will be conducted in exactly the same way they are described in Self Service Carolina¹⁰ such that the failure to do so would amount to a breach. *See Zwiker v. Lake Superior State Univ.*, 986 N.W.2d 427, 444 (Mich. Ct. App. 2022) (oral argument scheduled on application for leave to appeal by Michigan Supreme Court) (affirming trial court’s grant of summary disposition¹¹ in favor of the university defendant and finding “no

¹⁰ Self Service Carolina is USC’s web-based platform through which most USC students, among other things, register for classes. (*See* Exhibit W, Marterer Aff., ¶ 4.)

¹¹ A motion for summary disposition under Michigan Court Rule 2.116(C)(8) is the same as a motion under SCRCP 12(b)(6). “A motion for summary disposition under 2.116(C)(8) tests the legal sufficiency of the complaint, and summary disposition is appropriate if the opposing party has failed to state a claim on which relief can be granted.” *Id.* (citations and internal quotation marks omitted).

error in the trial courts' conclusions that the financial agreements between the parties were unambiguous and did not promise live, in-person instruction"); *Chong v. Ne. Univ.*, 494 F. Supp. 3d 24, 28 (D. Mass. 2020) (dismissing plaintiffs' breach of contract claim based on the plain language of the financial responsibility agreement between the parties, noting that it "tie[d] the payment of tuition to registration for courses, not to the receipt of any particular method of course instruction"). Similarly to *Zwiker* and *Chong*, nothing in the Financial Agreement here provides that USC is obligated to provide in-person instruction and permit access to campus facilities and activities at all times, irrespective of any health or safety risks doing so may pose.

Plaintiffs also quote snippets from brochures and refer to generalized statements regarding the college experience from USC's website. (See Second Am. Compl. ¶¶ 26-27.) These descriptive documents do not constitute contractual promises and, regardless, like the Financial Arrangement, they do not promise exclusively in-classroom instruction. For example, Plaintiffs quote USC's website for the claim that USC "touts that its in-person instruction 'form[s] the basis of [its] educational requirements.'" (Second Am. Compl. ¶ 26.) The correct language, however, is: "Leadership is at our very core, woven into the classes that form the basis of our educational requirements." (Exhibit DD, The Wayback Machine's capture of USC's website from March 30, 2019, last accessed on October 12, 2023.) 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 USC's description of certain fees highlights only that the fees will be used for "instruction," not for a particular instructional *modality*. (Second Am. Compl. ¶ 38.) 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. (See Exhibit A, Wilner Rpt. at 42-43.) Moreover, as other

courts have held in COVID-19 tuition refund cases, descriptive statements on websites do not constitute a contractual promise of in-classroom instruction. *See, e.g., Cordero v. Montana State University*, BDV-25-2020-0001975-BC (Mont. Dist. Ct. Aug. 22, 2023) (holding university was entitled to summary judgment on student’s contract breach claim, finding that the “unilateral and self-serving patchwork of various MSU catalogs, marketing or promotional materials, publications, web pages and other materials” on which student relied “d[id] not constitute an express contract for MSU to provide, at all times, in-person educational services”) (attached hereto as Exhibit EE); *Stenger v. Ferris State Univ. & Bd. of Trs. of Ferris State Univ.*, No. 20-000084-MK, 2020 Mich. Ct. Cl. LEXIS 5, *8-9 (Mich. Ct. Cl. Oct. 1, 2020) (appeal filed) (dismissing COVID-19-related contract case against university because brochures and catalogs, while “written with the expectation that instruction would be in-person,” “[did] not create a contractual promise that no matter the circumstance, all instruction would be in-person”). *See also Soto v. Siskin Steel & Supply Co.*, No 92-CP-23-4067, 1993 WL 764497, at *1 (S.C. Ct. Com. Pl. July 20, 1993) (finding that plaintiffs “blanket reliance” on an employee guide “without pointing to some specific provision” was not sufficient to state a legitimate claim).

In short, Plaintiffs’ argument that USC explicitly promised “face-to-face” instruction and access to campus at all times is not contained within any document, website statement, or promotional material, let alone one that is a contractual agreement between USC and its students. As a result, Plaintiffs’ claim that the mere payment of tuition gave rise to a contractual right to instruction exclusively in a classroom, their general reliance on the Financial Arrangement, and their reference to brochures and website statements are not sufficient to state a claim for breach of contract. Thus, Plaintiffs’ claims for breach of contract fail as a matter of law.

B. USC’s course registration website does not contain a promise to provide face-to-face instruction at all times.

Plaintiffs now seem to argue that the instructional method description during course registration is the sole source of Plaintiffs’ supposed contractual right to in-person education that USC allegedly breached.¹² Plaintiffs argue that when students allegedly selected the “Face-to-Face Instruction” instructional method during the registration process for Spring 2020, USC undertook a contractual duty to provide face-to-face instruction for those classes so designated. Plaintiffs contend USC made the alleged offer to students by describing certain courses to a student registering for classes as “Face-to-Face Instruction.” (See Pl’s Motion for Class Certification at 5-7.) Plaintiffs further contend that all students accepted this alleged offer when they “selected the ‘Instructional Method’ of ‘Face-to-Face Instruction’ for at least one course in their ‘Shopping Cart,’ and then clicked a button to lock in their selection.” (*Id.* at 8.)

USC disputes that the selection of a method of instruction would constitute an offer that could be accepted to form a contract. In any event, however, this breach-of-contract theory of Plaintiffs fails because USC’s registration website does not state anywhere that face-to-face instruction will be provided at all times even if it is precluded by public health concerns, as in a pandemic. Courts across the country agree that mere references in course registration systems to specific locations and modality of instruction do not create or imply a contractual promise to continued in-person instruction at all times and regardless of the circumstances involved. *See, e.g., Bergeron v. Rochester Inst. of Tech.*, No. 20-CV-6283 (CJS), 2023 WL 1767157, at *8 (W.D.N.Y. Feb. 3, 2023) (appeal filed) (granting summary judgment in favor of university defendant, finding that “[a]s other courts in the Second Circuit have found, mere references in university bulletins,

¹² See Exhibit H, Bunch Dep. at 134:16-21 (“[W]hat I’m here to dispute is the course registration face-to-face instruction. . . . Other things I’m not too concerned with.”).

course catalogs, and course registration systems to specific locations and modes of instruction do not imply a contractual entitlement to continued instruction in the same location and manner” (citations and internal quotation marks omitted)); *Linder*, 2020 WL 7350212, at *8 (concluding that plaintiff could not rely on course schedules and syllabi as evidence of the in-person nature of the 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, 685–86 (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)).

Therefore, a mere instructional method label of “Face-to-Face Instruction” on a course description on USC’s registration website does not constitute a contractual duty to provide face-to-face instruction even if precluded by public health, weather-related, or other serious concerns.

C. *Plaintiffs’ theory that USC made a universal offer of face-to-face instruction to its students via USC’s registration process fails because there was more than one way to register, and students could register without ever seeing the purported promise of a face-to-face instructional method.*

Plaintiffs’ breach-of-contract theory also fails for the additional reason that “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 W, Marterer Aff., ¶ 30.) In short, Plaintiffs’ claim that USC made a universal offer of

“Face-to-Face Instruction” via its registration process is not supported by the facts, and no such universal offer exists.

As explained in detail in the attached affidavit of Aaron Marterer, USC System Registrar, a variety of tools were available to the student registering for Spring 2020 classes, and the information about “Face-to-Face Instruction” would be conveyed to the student only if the student clicked on certain links, such that a student might register without ever seeing that quoted phrase, “Face-to-Face Instruction.” (See Exhibit W, Marterer Aff., ¶¶ 10, 12, and 16.)¹³ A student could most easily register for classes for the Spring 2020 semester without ever seeing the “Instructional Method” or the term “Face-to-Face Instruction.” (See *id.* at ¶ 30.) For example, Plaintiff Kelly’s own undisputed deposition testimony demonstrates that she cannot proceed on Plaintiffs’ theory of a universal offer of face-to-face instruction because during the registration process, she simply typed in the course registration numbers to specify the courses for which she intended to register. (Exhibit L, C. Kelly Dep. at 127:4-6.) 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. (See *id.* at 126:1-9; Exhibit W, Marterer Aff., ¶ 16.)

Further, not all students registered for classes in the same way—not even the two named Plaintiffs themselves. For example, students could register by searching for courses using set search criteria as Plaintiff Bunch purported to do (Exhibit H, Bunch Dep. at 148:21-8), by entering

¹³ As further visually illustrated with pertinent screenshots from Self Service Carolina’s registration process in the Marterer affidavit, a student would see the term “Face-to-Face Instruction” only if (1) they chose to open the “Advanced Search” option, located to the right of the “Search” button, to filter for instructional method or (2) if after clicking the “Search” button, the student then also clicked on the hyperlinked course title to view additional information about a course. (Exhibit W, Marterer Aff., ¶¶ 10, 12, and 16.)

course registration numbers as Plaintiff Kelly did (Exhibit L, C. Kelly Dep. at 127:4-6), or by using USC's Schedule Planner to create the student's preferred weekly schedule. (See Exhibit W, Marterer Aff., ¶ 17.) Moreover, some students were also not entirely free to choose whatever classes in whatever modalities they wished, and some students did not even use Self Service Carolina to register for classes that semester. Plaintiff Kelly, for example, had no choice in registering for her Internship in Media Arts class for the Spring 2020 semester because this course was required for her to graduate with her dedicated major. As an internship, the class was neither face-to-face, nor online, but rather was experiential. In addition, a first-year law student attending USC's School of Law is automatically registered in the same foundational courses required of all first-year law students. (Exhibit X, Sandra Kelly Aff., ¶ 8.) It is not until their second or third years that law students have the opportunity to choose from elective courses that match their unique interests. High school students enrolled in a dual enrollment class and medical students similarly are automatically registered and do not even log-in to Self Service Carolina to enroll in classes. (Exhibit Y, Pressley Dep. at 51:20-52:3.) Even Plaintiff Kelly admits she could not choose to enroll in a different Spanish 122 section that Spring 2020 semester, despite there being more than 10 sections with multiple different professors, because "they were all full." (Exhibit L, C. Kelly Dep. at 99:7-11.)

D. USC reserved the right to make changes to the policies and procedures that are the basis of Plaintiffs' contract claims.

i. Professors can change the method of instruction long after the registration process via syllabi once the course starts.

Plaintiffs' theory of a universal offer of face-to-face instruction based on the "Instructional Method" listed on USC's registration website when the class registration timeframe opens also fails because professors have the authority to plan and provide a mode of instruction that differs from the "Instructional Method" listed when students registered for classes. Thus, long after the

registration process is completed, professors can still subsequently change the instructional modality via syllabi once the course actually starts. Course expectations, including the extent of online learning, are generally not established until the syllabus is given to students on the first day of class. (Exhibit O, Cavanagh Rpt. at 4.)

For example, although Plaintiff Kelly's FAMS 308 class was listed as having a face-to-face instructional method during class registration, Plaintiff Kelly was notified through the syllabus she received from her professor on her first day of class that the class would be a hybrid class with 49% of it online. (*Id.*; Exhibit Z, FAMS 308 Syllabus, at USC_00047903.) Likewise, Plaintiff Kelly's SPAN 122 class was also listed as having a face-to-face instructional method during registration, but the syllabus that the professor provided to students when classes began indicated it had a considerable web-based component. (Exhibit AA, SPAN 122 Syllabus, at USC_00047918-9; *see also* Exhibit L, 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 L, C. Kelly Dep. at 325:12-18.) "It was 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," and, if the face-to-face method of instruction were important to her, Plaintiff Kelly could have dropped these courses at no cost upon finding out they were in fact hybrid classes with a significant online component. (Exhibit O, Cavanagh Rpt. at 4.) In fact, Plaintiff Kelly had eight days after classes began to change or remove the courses from her schedule through Self Service Carolina. (Exhibit N at USC_00002318.) However, she chose not to do so and voluntarily remained enrolled in these courses despite their online characteristics.

- ii. USC expressly reserved its right to amend or alter its policies and procedures at any time.

Even if a contractual promise of in-person instruction existed, which USC strenuously denies, USC expressly reserved the right to amend its policies and procedures at any time. Class locations, meetings times, professors, and modalities are all subject to change by USC if circumstances require. All academic bulletins for the 2019-2020 academic year across the USC system, which students are provided during course registration, 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].” (Exhibit N at USC_00001467.) The 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. (*Id.*) The Financial Agreement requires students to agree to pay tuition and fees before they may register without regard to the classes selected in the registration process, much less whether the classes are presented in one modality or another. And the official policies dictate that USC may make changes if it is in the best interest of its students. USC’s reservation of its right to make changes exists for the exact purpose at issue in this litigation — to allow USC to shift operation in the face of unprecedented, extenuating, and unexpected circumstances such as the COVID-19 pandemic. Because of this express reservation, USC cannot be held liable for exercising its right to alter university policies, particularly in the midst of a global pandemic.

Most recently, the Eleventh Circuit Court of Appeals agreed with this premise when it affirmed the district court’s grant of summary judgment in favor of the University of Miami in *Dixon v. Univ. of Miami*, 75 F.4th 1204 (11th Cir. 2023). The Eleventh Circuit held that “even if Miami’s contract included a provision for in-person classes and access to campus facilities, [it]

agree[d] with the district court 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.’” *Id.* at 1208, 1210. To support the proposition that it reserved the right to transition classes to remote learning, Miami pointed to, among other things, a provision in the Student Handbook’s “Foreword,” which stated, “From time to time it may be advisable for the University to alter or amend its procedures or policies.” *Id.* at 1209. The Eleventh Circuit agreed, stating “We agree that these provisions . . . unambiguously give Miami the authority to temporarily close its campuses in response to the COVID-19 pandemic. Thus, even if a contract did include rights to an in-person education and access to on-campus facilities, those rights were qualified by provisions that permitted Miami to modify its procedures Thus, Miami did not breach any agreement by temporarily transitioning to remote learning.” *Id.*

As in the *Dixon* case, USC expressly reserved the right to alter or amend its policies and procedures at any time when such changes were in the best interest of the students, and USC cannot be held liable for temporarily switching to remote learning for the remainder of the Spring 2020 semester as a result of the unprecedented global pandemic. The Eleventh Circuit put it most aptly when it concluded as follows:

The pandemic forced students of all ages to learn from behind their computer screens for a period of time, and we certainly harbor a great deal of sympathy for those students whose educations and relationships were affected by the transition. Yet, for the reasons outlined above, we agree with the district court and hold that *Dixon* is not entitled to damages stemming from any alleged breach of contract, unjust enrichment, or inadequate refunds on the part of Miami. We hope that some comfort can be found, however, in our certainty that despite enduring the hardships created by the pandemic, any student who has earned a degree from a school like the University of Miami retains the unspoiled potential for a fulfilling and prosperous future.

Id. at 1212-13. The Eleventh Circuit’s conclusion applies with full force to USC and its students in this matter, and the Court here should grant summary judgment to USC.

E. Plaintiff Kelly cannot claim breach of contract for her internship class because she completed it.

Plaintiff Kelly specifically does not have a claim for breach or damages as to her 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, C. Kelly Dep. at 113:7-114:14.) The shift to virtual learning did not have any impact on Plaintiff Kelly’s internship at all. (See *id.* at 114:15-19 (“Q: So it would be fair to say the change to online did not affect . . . this course at all” A: Correct.”).)

For all of the foregoing reasons, Plaintiffs cannot show that USC provided – during registration or otherwise – any “offer” of a face-to-face instructional method at all times and regardless of any extenuating circumstances (like a pandemic), and Plaintiffs similarly cannot show that Plaintiffs and/or other students accepted such an alleged “offer” of face-to-face instruction. As a result, Plaintiffs cannot put forth proof of their breach of contract claims and, therefore, USC is entitled to summary judgment.

IV. USC’s performance was excused as a matter of law under the doctrine of impossibility.

Not only would it have been reckless for USC to provide in-person instruction during the global pandemic in the Spring of 2020, but the closure of all state-supported universities was required by law by virtue of the Governor’s executive orders. Governor McMaster’s March 15, 2020 executive order, for example, 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, USC_00000849-51; Exhibit C, Henry McMaster, Executive Order No. 2020-09 at p. 2, § 2 (Mar. 15, 2020).)

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, 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. 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 in all classes so designated during registration in the Self Service Carolina system during the pandemic. And in any event, doing so was simply not possible because it would be illegal and would require USC to violate state law. The proscription contained in the executive orders remained in effect until at least June 26, 2020, which was 8 weeks after the last day of classes in the Spring 2020 semester, making it unlawful for students to be on campus throughout the remainder of the semester. (Exhibit S, Henry McMaster, Executive Order No. 2020-42 at p. 12, § 1(I).) Although there is no contractual right to in-person instruction as explained above, even if there were such a contract, which USC expressly denies, the unforeseen event of the worldwide pandemic made it impossible – and unlawful – for USC to continue providing in-person courses and student access to on-campus resources. Therefore, USC’s performance was excused in this regard.

Notably, courts in other jurisdictions have granted universities summary judgment on an impossibility defenses in similar COVID-19 tuition refund cases. *See e.g., Pranger v. Oregon State*

Univ., No. 3:21-CV-00656-HZ, 2023 WL 3381387 at *4 (D. Or. May 8, 2023) (appeal filed) (granting summary judgment to university, holding that university’s “duty to provide in-person instruction and full access to campus facilities was discharged by the governor’s executive orders [related to COVID-19] that made such performance impossible”); *In re Pepperdine Univ. Tuition & Fees COVID-19 Refund Litig.*, No. CV 20-4928-DMG (KSX), 2023 WL 2576766, at *6 (C.D. Cal. Mar. 7, 2023) (granting summary judgment as to university’s impossibility defense, discarding plaintiff’s argument that “Pepperdine could have continued to hold classes in person by holding classes of fewer than 10 people”); *In re Bos. Univ. COVID-19 Refund Litig.*, No. CV 20-10827-RGS, 2023 WL 2838379, at *3 (D. Mass. Apr. 7, 2023) (appeal filed) (granting summary judgment to university on plaintiffs’ tuition and fee-based claims where “Governor Baker’s emergency orders [related to COVID-19] rendered continued performance of the alleged contract *illegal*, not just unsafe”); *Burt v. Bd. of Trustees of Univ. of Rhode Island*, No. 120CV00295JJMLDA, 2023 WL 1408202 at *7 (D.R.I. Jan. 31, 2023) (appeal filed) (granting summary judgment to university where university’s performance of contract was “permanently impossible” because “contract only contemplated a student-university relationship for the spring 2020 semester” and “the underlying purposes were ‘totally and unforeseeably destroyed’ because they became illegal” due to COVID-19 state executive order (citations and internal quotation marks omitted)). Here, as in these cases, summary judgment should be granted in favor of USC as a matter of law.

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

Because Plaintiffs acquiesced to USC’s transition to virtual learning and accepted the resulting benefits, Plaintiffs waived their right to bring the claims asserted in this action. A plaintiff that 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, both Plaintiffs voluntarily remained enrolled in their courses after USC had to shift to virtual instruction for the remainder of the Spring 2020 semester as a result of the pandemic, continued their Spring 2020 semester coursework online, 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), and failed to claim a breach or ask for reimbursement at the time of the transition to remote instruction in Spring 2020.¹⁴ Instead, Plaintiffs proceeded to accept and enjoyed all the benefits that USC expended extraordinary efforts to provide to its students in the midst of a worldwide pandemic. Rather than ceasing its educational activities altogether, which would have adversely impacted students’ learning outcomes and progress toward their degrees, USC continued to provide robust educational experience while keeping students and the rest of the USC community safe. By way of example, both Plaintiffs earned and accepted all the same credits they would have received had instruction remained face-to-face during the remainder of Spring 2020, increased their overall GPAs, graduated from USC with honors and obtained employment without any delays or disruption. (Exhibit O, Cavanagh Rpt. at 3 and 8; Exhibit A, Wilner Rpt. at 7.) Additionally, Plaintiffs continued to receive benefits from the various fees, as the USC health clinic remained open for in-person and telehealth visits, the Wellness Center offered virtual exercise classes and daily meditation classes, and money was

¹⁴ See Exhibit H, Bunch Dep. at 122:13-18; *see also* Exhibit BB, USC_00047916 (Mar. 25, 2020 email from Plaintiff Kelly thanking her FAMS 308 and FAMS 363 professor for her handling of the transition to virtual instruction: “I also wanted to just thank you for all you’ve been doing lately and wanted to let you know I’ve been thinking about you & really appreciate all you’re doing for us. It’s not going unnoticed.”).

used to enhance the Renovation Reserve fund and Athletic fund for later performance. (Exhibit A, Wilner p. 42-43). Further, Plaintiffs accepted the prorated refunds that USC issued to students for non-academic fees related to university housing, meal plans, and parking permits, as those services could not be provided to students after March 16, the first day the campus was closed following spring break (Exhibit E, USC_00004993-4; Exhibit F, USC_00005126-7.) Plaintiff Bunch also received \$800 in federal relief funds, which USC distributed pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to aid students who qualified and accepted the award.¹⁵ (Exhibit A, Wilner Rpt. at 6 and 74.)

Thus, because of Plaintiffs' acquiescence and silence, as well as their acceptance and enjoyment of the benefits provided by USC that represents USC's change in position, Plaintiffs should be 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 an 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 the former rate). Therefore, Plaintiffs waived their right to bring these claims, and USC is entitled to summary judgment.

VI. Plaintiffs' promissory estoppel claims fail because the parties' relationship is governed by contract, and because USC did not make an unambiguous promise to provide in-person instruction.

The Court should grant summary judgment in USC's favor on Plaintiffs' causes of action for promissory estoppel. First, like unjust enrichment discussed below, promissory estoppel is not

¹⁵ Because Plaintiff Kelly failed to complete a FAFSA form to be eligible to receive CARES Act funding, she did not receive such funding. Nor did either Plaintiff seek financial support through USC's own donor-supported COVID-19 Emergency Relief Fund, which USC created to support students facing financial hardship and other burdens due to the unexpected challenges created by the pandemic and transition to virtual instruction. (Exhibit A, Wilner Rpt. at 6 and 75.)

an available remedy when a relationship is governed by contract, as it is here. *See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001). Promissory estoppel is an impermissible claim when the parties' relationship is rooted in contract. *See id.* As discussed above, the contractual relationship between Plaintiffs and USC is firmly established and undisputed here. The parties agreed to these contractual terms, and, as with their unjust enrichment claims, Plaintiffs cannot use equitable theories of promissory estoppel to add terms that are not part of the contract or contradict the terms of the contract. Accordingly, the parties' contractual relationship forecloses Plaintiffs' promissory estoppel claims.

Second, Plaintiffs' promissory estoppel claims also fail because they cannot prove the necessary elements of this cause of action. 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). "Courts have used the doctrine where the refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice." *Id.* at 379, 769 S.E.2d at 241 (citations and internal quotation marks omitted). The requisite unambiguous promise is one with "clearly articulated, definite terms," and "the presence of . . . an ambiguous promise . . . precludes promissory estoppel's application, though perceived inequities may exist." *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 11-12 (Ct. App. 2013). *See also A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 589, 812 S.E.2d 759, 764 (Ct. App. 2018) (finding that an "implied" or "vague promise" was "insufficient to support a promissory estoppel claim" because "promissory estoppel does not rest on an implied contract").

Here, as demonstrated in detail above with regard to the failure of Plaintiffs' breach of contract claims, Plaintiffs are similarly unable to establish a genuine issue of material fact with respect to their promissory estoppel claims as they cannot show USC made an unambiguous promise to continue providing face-to-face instruction at all times, even during the pandemic and in violation of state law. By way of summary, Plaintiffs are unable to point to any unambiguous promise of in-person instruction and access to campus at all times, and such an alleged promise by USC is not contained within any document, website statement, or promotional material, nor do Plaintiffs allege any such verbal unambiguous promise. USC's course registration website similarly does not contain any such unambiguous promise of exclusively face-to-face instruction. Further, Plaintiffs' theory that USC made a universal offer of face-to-face instruction through the course registration process is likewise not supportable because there was more than one way to register, and students could register without ever seeing the purported promise of a face-to-face instructional method. Moreover, professors could and did frequently change the method of instruction via syllabi once classes actually started and long after course registration took place. Importantly, USC unambiguously and expressly reserved the right to alter and amend its policies. In exercising that discretion, USC implemented a shift to remote instruction during the remainder of the Spring 2020 semester to protect its students, faculty, and staff from the raging COVID-19 pandemic, and this shift to online learning was also necessary to comply with state legislative mandates. Such justified and legally required actions by USC are a far cry from the "perpetration of a fraud" or "other injustice" that warrant the application of promissory estoppel under South Carolina law.

Finally, 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. The syllabi for these courses plainly and clearly stated that the courses would be taught in a hybrid format. (Exhibit Z, FAMS 308 Syllabus, at USC_00047903; Exhibit AA, SPAN 122 Syllabus, at USC_00047918-9.) As discussed above, it was not at all unusual for professors to disclose such modality details for their courses on the first day of class, even if such details were not apparent during course registration. (Exhibit O, Cavanagh Rpt. at 4.) In this case, Plaintiff Kelly did not detrimentally rely on a promise of face-to-face instruction because she could have dropped these courses at no cost upon finding out they were hybrid classes. In fact, Plaintiff Kelly had eight days after classes began to change or remove the courses from her schedule through Self-Service Carolina, yet she chose not to do so. (Exhibit N at USC_00002318.) 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, C. Kelly Dep. at 114:2-19.)

In light of the foregoing, USC is entitled to summary judgment on Plaintiffs' promissory estoppel claims.

VII. Plaintiffs' unjust enrichment claims fail because the parties' relationship is rooted in contract, and because there is no genuine issue of material fact regarding the conferral of a benefit that is inequitable for USC to retain.

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 Laidlaw Transit*, 348 S.C. at 425, 559 S.E.2d at 364. Second, 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.

A. *Plaintiffs’ unjust enrichment claims are unavailable because Plaintiffs’ relationship with USC 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).

Here, it is undisputed and acknowledged by Plaintiffs that a contractual relationship exists between Plaintiffs and USC. (*See* Second Am. Compl. ¶¶ 25, 60 (discussing the Financial Arrangement and “contracts” Plaintiffs entered with USC).)¹⁶ Plaintiffs cannot attempt to rely on equitable theories of unjust enrichment to fill purported gaps in a contract, contradict a contract’s terms, or, in this case, correct their failure to identify a specific term of the contract that was supposedly breached. Ultimately, Plaintiffs’ sole potential remedy is their breach of contract claims, even if that contract does not actually entitle them to the relief they seek. Other courts in similar COVID-19 tuition refund cases agree. *See, e.g., Zwiker v. Lake Superior State Univ.*, 986 N.W.2d 427, 446 (Mich. Ct. App. 2022) (oral argument scheduled on application for leave to appeal by Michigan Supreme Court) (holding trial court did not err when it granted summary disposition with respect to students’ unjust enrichment claims, finding “The University defendants’ housing contracts addressed the possibility of circumstances affecting the health and

¹⁶ Moreover, courts consistently hold that the student-university relationship is contractual in nature. *See, e.g., Carter v. Univ. of S.C.*, 360 S.C. 428, 432 n. 4, 602 S.E.2d 59, 62 (Ct. App. 2004) (noting it is well established under South Carolina law that a “contract exists between a university and its students”) (citations omitted)).

welfare of students. Similarly, the University defendants' tuition contracts specifically addressed student payment obligations when registering for courses. The parties agreed to these terms. Thus, the express agreements between the parties governed the same subject matter as their equitable claims regarding tuition and room and board.”). *See also Chong v. Northeastern Univ.*, 494 F. Supp. 3d 24, 30 (D. Mass. 2020) (dismissing students' unjust enrichment claim and noting “[i]t is the availability of a remedy at law, not the viability of that remedy, that prohibits a claim for unjust enrichment”); *Aubrey v. New School*, 624 F. Supp. 3d 403, 423 (S.D.N.Y. 2022) (dismissing students' unjust enrichment claim, finding “Plaintiffs' claim for unjust enrichment is based on the same set of facts and seeks to recover the ‘value of enrichment’ based on the same tuition and fees as the claims for breach of contract.”); *Oyoque v. DePaul Univ.*, 520 F. Supp. 3d 1058, 1065-66 (N.D. Ill. 2021) (dismissing students' unjust enrichment claim, stating that “when the unjust enrichment claim is premised on a failure to fulfill contractual terms . . . dismissal of the unjust enrichment claim is appropriate”). Accordingly, Plaintiffs' claims for unjust enrichment are not permitted here.

B. Plaintiffs' unjust enrichment claims fails as a matter of law because Plaintiffs cannot satisfy the requisite elements of this cause of action.

Additionally, Plaintiffs' unjust enrichment claims fail because they have not established a genuine issue of material fact regarding the 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)).

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, 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, Wilner Rpt. at 7-8.) It is not inequitable for USC to retain payment of full tuition because 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 an in-person environment. Other courts in COVID-19 tuition refund cases have rejected plaintiffs’ unjust enrichment claims against universities for similar reasons. *See, e.g., Dixon v. Univ. of Miami*, 75 F.4th 1204, 1211 (11th Cir. 2023) (affirming district court’s entry of summary judgment in university’s favor on student’s unjust enrichment claim, stating that “the decision to transition to remote learning was largely out of Miami’s hands” because “[h]ad Miami continued to provide in-person education throughout the Spring 2020 semester, it would have violated not one, but two separate executive orders,” and emphasizing that “[a]s a result of Miami’s efforts . . . [student] successfully completed her spring courses, received credits toward her graduation, and obtained a university education from a location that the State of Florida impliedly considered to be safer than a populated campus”); *Beck v. Manhattan College*, No. 20 CIV. 3229 (LLS), 2023 WL 4266015, at *3 (S.D.N.Y. June 29, 2023) (appeal filed) (granting college’s motion for summary judgment on unjust enrichment claim, finding that college’s retention of tuition payments “was not unjust” because it was undisputed that college’s suspension of in-person instruction was for “compelling – indeed, compulsory – reasons,” and that “during that shift . . . students received continuity in their education and were able to timely complete their coursework

with their same professors (albeit remotely) to continuously earn credits toward their degrees” (citation and internal quotation marks omitted)); *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) (granting university’s motion for summary judgment on unjust enrichment claim where students received their course credits and the “remote modality of instruction was necessary given the public health emergency caused by Covid-19 and the subsequent shut-down of all school campuses in New York State”); *Goldberg v. Pace Univ.*, 535 F. Supp. 3d 180, 199 (S.D.N.Y. 2021) (appeal filed) (dismissing student’s unjust enrichment claim, finding that “this is not close to a case in which ‘equity and good conscience’ require restitution,” that “[o]n the contrary . . . there were compelling—indeed, compulsory—reasons for Pace’s abrupt move to online learning,” and that “Pace continued to furnish Goldberg with an education, [and] that Goldberg was able to earn credits and graduate on time”); *Hewitt v. Pratt Inst.*, No. 20-cv-2007, 2021 WL 2779286, at *4 (E.D.N.Y. Jul. 2, 2021) (dismissing students’ unjust enrichment claim, finding it “is quite implausible to view [university’s] suspension of in-person instruction as inequitable” where plaintiffs “had already enjoyed half their semester in person” and “continued to receive an education and credits toward their degrees”).

To the extent Plaintiffs argue that the quality of the education they received in Spring 2020 was less valuable than what they paid for it, then Plaintiffs’ unjust enrichment claim is barred by the doctrine of educational malpractice. “[I]n order to adjudicate Plaintiff[s’] tuition based-claim for unjust enrichment, this [C]ourt would have to examine and evaluate the *quality* of the education that was provided to Plaintiff[s].” *De Leon v. New York Univ.*, No. 21 CIV 05005 (CM), 2022 WL 179812, at *13 (S.D.N.Y. Jan. 20, 2022) (dismissing student’s claim for unjust enrichment and finding that “the only way that Plaintiff could prove that NYU was ‘unjustly’ enriched would be

to prove that she did not receive an education during the second half of the spring 2020 semester that was worth the amount of money she paid for it” and “[t]hat is precisely where a court of law cannot go”). *See also Polley v. Nw. Univ.*, 560 F. Supp. 3d 1197, 1209 (N.D. Ill. 2021) (dismissing student’s unjust enrichment claim, finding that the “only additional allegation for unjust enrichment [that does not repeat student’s contractual claims] pleads that the online education had ‘lesser value’ than its in-person counterpart” and “comparison in value is a non-cognizable educational malpractice claim”). This foray into valuation of the quality of education provided by USC is exactly what South Carolina’s educational malpractice doctrine prohibits. *See Hendricks v. Clemson Univ.*, 353 S.C. 449, 460, 578 S.E.2d 711, 716 (2003).

Accordingly, USC is entitled to summary judgment on Plaintiffs’ causes of action for unjust enrichment.

VIII. Plaintiffs’ conversion claims fail as a matter of law because Plaintiffs cannot show any right to possession of the funds or USC’s unauthorized assumption of said funds.

Plaintiffs’ causes of action for conversion also fail as a matter of law for several reasons. First, Plaintiffs merely attempt to repackage their breach of contract claims into tort claims of conversion, and, thus, Plaintiffs’ conversion claims cannot survive summary judgment. *See, e.g., Brezinski v. Widener Univ.*, 582 F. Supp. 3d 257, 268 (E.D. Pa. 2022) (dismissing student’s conversion claim in COVID-19 tuition refund case, noting that “[c]laims for conversion have been consistently disallowed where such claims are based on the same facts as the contract claim” (citation and internal quotation marks omitted)).

Second, Plaintiffs’ conversion claims fail because they cannot prove the requisite elements of this cause of action. A valid conversion claim must establish 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, 582 S.E.2d 432, 442 (Ct. App. 2003) (citation and internal quotation marks omitted). To establish a cause of action for conversion, “a plaintiff must prove (1) an interest by the plaintiff in the thing converted; (2) the defendant converted the property to his or her own use; and (3) the use was without the plaintiff’s permission.” *Builders Source Direct v. Cosco Logistics (Americas) Inc.*, 2008 WL 11349731, at *11 (D.S.C. 2008). “[I]t is essential that the plaintiff establish either title to or right to the possession of the personal property” at the time of conversion. *Regions Bank*, 354 S.C. at 667, 582 S.E.2d at 442 (citation and internal quotation marks omitted); *see also Moore v. Weinberg*, 373 S.C. 209, 227, 644 S.E.2d 740, 749 (Ct. App. 2007).

Here, Plaintiffs do not claim a right to possession of personal property. Rather, Plaintiffs claim that USC allegedly wrongfully retained the tuition and fees Plaintiffs paid for the Spring 2020 semester — i.e., money. (Second Am. Compl. ¶¶ 80-82, 109-111.) South Carolina courts, however, have long held that conversion is 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). The money must be “capable of being identified.” *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990).

In this case, Plaintiffs do not seek a specific and identifiable amount of money. Instead, Plaintiffs only seek the return of an unspecified, prorated portion of the money paid for tuition and fees. Other courts have dismissed similar conversion claims in the COVID-19 context. For example, in *Salerno v. Fla. S. Coll.*, 488 F. Supp. 3d 1211, 1218 (M.D. Fla. 2020), the court dismissed a nearly identical conversion claim because it found that the obligation to pay money is “insufficiently tangible to qualify as ‘property’.” *Id.* The court explained that this was “not a case where a party refused to pay over to the demanding party a specific fund capable of separate

identification required to be deposited into a special account” *Id.* at 1219. Other courts in these types of cases also agree that students’ conversion claims cannot stand. *See, e.g., Linder*, 2020 WL 7350212, at *10 (dismissing conversion claim, finding that student’s “tuition and fees [were] fungible amounts that [could] not be identified as a specific thing,” and “the value of six weeks of in-person instruction [was] not an identifiable sum” (citations and internal quotation marks omitted)); *see also Barkhordar v. President & Fellows of Harvard Coll.*, 544 F. Supp. 3d 203, 216 (D. Mass. 2021) (finding that students’ conversion claim failed because they sought an “unspecified, prorated portion of the money paid for tuition and fees, as opposed to a specific fund in which they have a possessory interest”); *Saroya v. Univ. of Pac.*, 503 F. Supp. 3d 986, 999 (N.D. Cal. 2020) (dismissing conversion claim, holding that student’s “claim for partial tuition reimbursement” was “insufficiently tangible to qualify as property”). Therefore, Plaintiffs here cannot state plausible claims for conversion and such claims fail as a matter of law.

Second, even assuming that the identifiable source of money necessary for a conversion claim existed, Plaintiffs cannot identify the basis or source of “ownership rights” to such money with any reasonable specificity. USC accepted payment in the form of money from Plaintiffs in exchange for education, room, board, meals, and other services. This money was not misappropriated. Instead, Plaintiffs willfully and voluntarily paid it to USC pursuant to the Financial Arrangement between the parties and, thus, Plaintiffs transferred any interest they had in those specific funds to USC. USC rightfully accepted payment before the semester began, as it always does, and USC was not obligated to hold each of Plaintiffs’ tuition and fee payments separate and apart for any purpose, much less to pay refunds. *See Ford v. Rensselaer Polytechnic Inst.*, 2020 WL 7389155, at *9 (N.D. N.Y. Dec. 16, 2020) (granting university’s motion for judgment on the pleadings as to student’s conversion claim, holding that students “cannot

realistically argue that once that money was paid to [university] it remained intact, as opposed to pooling in with [university's] other funding"). The money belonged to USC upon delivery, and consequently, USC could not convert it. Plaintiffs also had no right to possession in March 2020 of the tuition and fees paid to USC because, at that time, the refund deadlines had already passed. (Exhibit DD, 2019-2020 Academic Calendar, 000072).

In light of the foregoing, Plaintiffs' causes of action for conversion fail as a matter of law, and USC is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, USC respectfully requests 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 additional memoranda USC may submit prior to the hearing, and all other materials permitted by the SCRCF and/or the Court at the hearing on this motion.

Respectfully submitted,

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October 12, 2023

EXHIBIT A

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,)
)
Plaintiffs,)
)
v.)
)
THE UNIVERSITY OF SOUTH)
CAROLINA,)
)
Defendant.)
_____)

Civil Case No. 2020CP4002330

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_grant_s_reporting.aiken.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.beaufort.3-31-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.columbia.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.lancaster.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.salkehatchie.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.sumter.6-30-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.union.6-30-2021_final.pdf, and

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_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 Cavanaugh 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/coursedescriptions.php?crn=47050&term=202301,

https://www.sc.edu/study/academic_overview/online_education/courses/course_search/coursedescriptions.php?crn=1495&term=202208,

https://sc.edu/study/academic_overview/online_education/courses/course_search/coursedescriptions.php?crn=42356&term=202301,

https://sc.edu/study/academic_overview/online_education/courses/course_search/coursedescriptions.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-ratio (=7/114), 2) ERT Days Pro-ratio (=49/114), and 3) Fees Class Pro-ratio (=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)

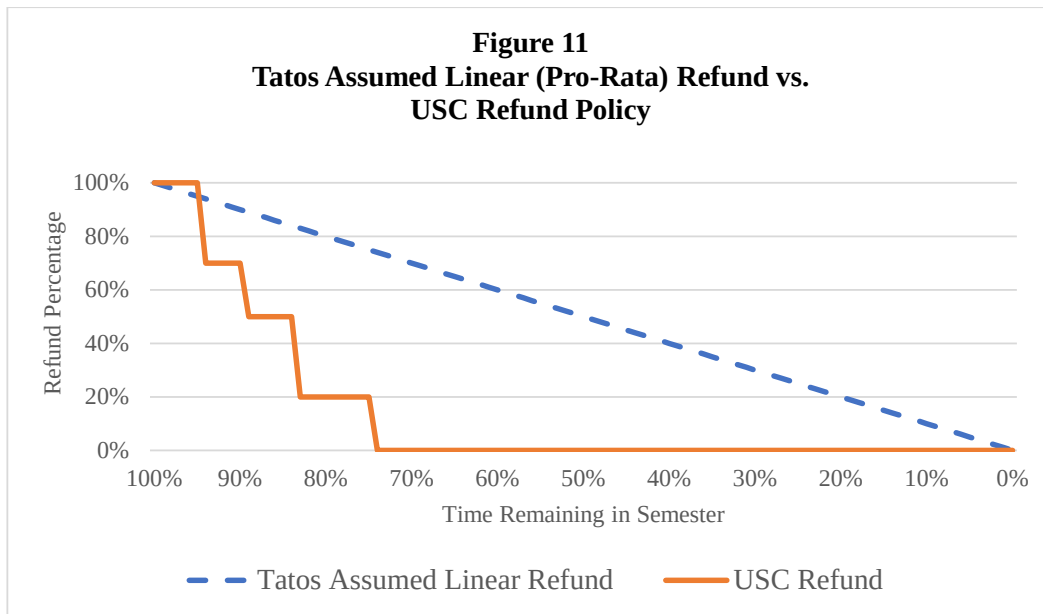
²⁵⁷ USC provided prorated refunds to students for fees related to housing, meal plans and parking.

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. Wohlgenuth "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/dropping_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_grant_s_reporting.aiken.12-31-2020.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.beaufort.3-31-2021_final.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.columbia.12-31-2020.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.lancaster.6-30-2021_final.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.salkehatchie.6-30-2021_final.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.sumter.6-30-2021_final.pdf,
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.union.6-30-2021_final.pdf, and
https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_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_grant_s_reporting.aiken.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.beaufort.3-31-2021_final.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.columbia.12-31-2020.pdf,

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.lancaster.6-30-2021_final.pdf,

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https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_reporting.union.6-30-2021_final.pdf, and

https://sc.edu/about/offices_and_divisions/controller/documents/cares_act/cares_act_emergency_financial_aid_grant_s_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

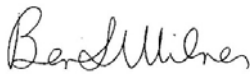
Even though it did not earn revenue from refunded items such as housing and dining during the campus closure, USC still incurred expenses relating to building costs, staffing and other items.

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
Documents Considered**

Exhibit 1

VI. Texts (cont.)
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**University of South Carolina
Documents Considered**

Exhibit 1

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University of South Carolina
Documents Considered

Exhibit 1

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Education

Kellogg Graduate School
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Northwestern University
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Managerial Economics
and Decision Science

University of
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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
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- 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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- Trial Testimony in Sleepy's LLC, v. Select Comfort Wholesale Corporation, et al., United States District Court, Eastern District of New York, May – June 2012 & July 2015
- Trial Testimony in Grater, Inc., and James T. Zavacki v. Kevin T. Keating and Keating & Shure, Ltd., State of Illinois, Circuit Court of Cook County, March 2015
- Trial Testimony in Think Tank Software Development Corporation et al. v. Chester Inc., et al., State of Indiana, County of Porter, March 2014
- Trial Testimony in Sharon P. Clark, Commissioner of the Kentucky Department of Insurance, in her Capacity as Rehabilitator of AIK Comp v. TransAmerica Insurance Company and TIG Insurance Company, Commonwealth of Kentucky, Franklin Circuit Court, Division Two, October 2012
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- Nicholas Bergeron and Nick Quattrociochi, et al. v. Rochester Institute of Technology, United States District Court, Western District of New York, August 2022
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- Think Tank Software Development Corporation et al. v. Chester Inc., et al., State of Indiana, County of Porter, February 2012 & October 2009
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- 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
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- Neil Simon and Clarissa Simon v. Heritage Title Company, State of Illinois, Circuit Court of Cook County, December 2009
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- 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
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University of South Carolina
List Price Tuition

Exhibit 3

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%

Description	Full Time			Part Time		
	2019-2020	2020-2021	% Change	2019-2020	2020-2021	% Change
MASTER OF HUMAN RESOURCES - RESIDENT	\$ 23,776	\$ 23,776	0.00%	\$ 528.00	\$ 528.00	0.00%
MASTER OF HUMAN RESOURCES - NONRESIDENT	\$ 46,405	\$ 46,405	0.00%	\$ 1,031.00	\$ 1,031.00	0.00%
EXECUTIVE MASTER OF HUMAN RESOURCES - PROGRAM FEE	\$ 45,900	\$ 45,900	0.00%	\$ 1,020.00	\$ 1,020.00	0.00%
PROFESSIONAL MASTER OF BUSINESS ADMINISTRATION PROGRAM FEE – RESIDENT	\$ 35,568	\$ 35,568	0.00%	\$ 741.00	\$ 741.00	0.00%
PROFESSIONAL MASTER OF BUSINESS ADMINISTRATION - NONRESIDENT	\$ 35,568	\$ 35,568	0.00%	\$ 741.00	\$ 741.00	0.00%
PROFESSIONAL MASTER OF BUSINESS ADMINISTRATION - BANKING PROGRAM - PER CREDIT HOUR	n/a	n/a	n/a	\$ 753.00	\$ 753.00	0.00%
MASTER OF INTERNATIONAL BUSINESS PROGRAM FEE - RESIDENT	\$ 15,300	\$ 15,300	0.00%	\$ 510.00	\$ 510.00	0.00%
MASTER OF INTERNATIONAL BUSINESS PROGRAM FEE - NONRESIDENT	\$ 18,360	\$ 18,360	0.00%	\$ 612.00	\$ 612.00	0.00%
MASTER OF INTERNATIONAL BUSINESS PROGRAM FEE - DOUBLE DEGREE PROGRAM - RESIDENT	\$ 30,600	\$ 30,600	0.00%	\$ 510.00	\$ 510.00	0.00%
MASTER OF INTERNATIONAL BUSINESS PROGRAM FEE - DOUBLE DEGREE PROGRAM - NONRESIDENT	\$ 36,720	\$ 36,720	0.00%	\$ 612.00	\$ 612.00	0.00%
GRADUATE CERTIFICATES PROGRAM - PER CREDIT HOUR	n/a	n/a	n/a	\$ 705.00	\$ 705.00	0.00%
GRADUATE CERTIFICATES EXECUTIVE PROGRAM - PER CREDIT	n/a	n/a	n/a	\$ 790.00	\$ 790.00	0.00%
EDUCATION						
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%
CAROLINA LIFE TUITION - PER SEMESTER - RESIDENT & NON-RESIDENT (GENERAL UNIVERSITY COURSES)	n/a	n/a	n/a	n/a	\$ 512.00	n/a
ENGINEERING AND COMPUTING						
APOGEE - PER CREDIT HOUR - ABOVE REGULAR TUITION	n/a	n/a	n/a	\$220.00	\$ 220.00	0.00%
EXECUTIVE MASTER OF ENGINEERING MANAGEMENT - ONLINE PROGRAM - PER CREDIT HOUR	n/a	n/a	n/a	\$412.00	n/a	n/a
MASTER OF SCIENCE IN TECHNOLOGY INNOVATION AND ENTREPRENEURIAL ENGINEERING - PER CREDIT HOUR	n/a	n/a	n/a	\$75.00	\$ 75.00	0.00%
SYSTEMS DESIGN - ONLINE PROGRAM - PER CREDIT HOUR	n/a	n/a	n/a	\$292.00	\$ 292.00	0.00%
ENGLISH PROGRAMS FOR INTERNATIONALS – EPI						
TUITION – PER EPI TERM – FULL TIME	n/a	n/a	n/a	\$ 2,000.00	\$ 2,000.00	0.00%
TUITION - TWO CLASSES	n/a	n/a	n/a	\$ 1,360.00	\$ 1,360.00	0.00%
TUITION - ONE CLASS	n/a	n/a	n/a	\$ 700.00	\$ 700.00	0.00%
TUITION - BY WEEK - 3 CLASSES	n/a	n/a	n/a	\$ 425.00	\$ 425.00	0.00%
TUITION - BY WEEK - 2 CLASSES	n/a	n/a	n/a	\$ 290.00	\$ 290.00	0.00%
TUITION - BY WEEK - 1 CLASS	n/a	n/a	n/a	\$ 190.00	\$ 190.00	0.00%
NON-PROFIT HIGHER EDUCATION INSTITUTION PARTNER – FULL TIME RATE PER EPI TERM	n/a	n/a	n/a	\$ 1,800.00	\$ 1,800.00	0.00%
FORMER SC HIGH SCHOOL GRAD OR ATT CERT RECIPIENT – FULL-TIME TUITION PER EPI TERM (SC PERM. RESIDENTS WHO COMPLETED HS IN SC BUT REQUIRE ESL STUDY)	n/a	n/a	n/a	\$ 1,800.00	\$ 1,800.00	0.00%
LAW SCHOOL						
LAW - RESIDENT – TUITION	\$ 10,536.00	\$ 10,536.00	0.00%	\$ 878.00	\$ 878.00	0.00%
LAW - NONRESIDENT – TUITION	\$ 26,040.00	\$ 26,040.00	0.00%	\$ 2,170.00	\$ 2,170.00	0.00%
LAW - NONRESIDENT SCHOLAR – TUITION	\$ 14,769.00	\$ 14,769.00	0.00%	\$ 1,230.75	\$ 1,230.75	0.00%
LAW - RESIDENT - 17 HOURS AND ABOVE	\$ 86.00	\$ 86.00	0.00%	n/a	n/a	n/a
LAW - NONRESIDENT - 17 HOURS AND ABOVE	\$ 182.00	\$ 182.00	0.00%	n/a	n/a	n/a
LONDON MAYMESTER (COURSE FEE) (RESIDENT AND NONRESIDENT) TUITION ONLY – TECH FEE SEPARATELY ASSESSED	\$ 3,512.00	\$ 3,512.00	0.00%	n/a	n/a	n/a
LAW – NONRESIDENT COASTAL LAW SUMMER PROGRAM -TUITION	\$ 6,847.50	\$ 6,847.50	0.00%	\$ 1,141.25	\$ 1,141.25	0.00%
MASTERS IN HEALTH LAW (STARTS FALL 2021)	n/a	n/a	n/a	n/a	\$840.00	n/a
CERTIFICATE IN HEALTH LAW (STARTS FALL 2021)	n/a	n/a	n/a	n/a	\$ 720.00	n/a
GREENVILLE - 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%

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	\$ 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	n/a	n/a	n/a	\$ 450.00	\$ 450.00	0.00%
RESIDENT AND NONRESIDENT PER CREDIT HOUR	n/a	n/a	n/a			
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 WITH THE CLERK OF THE COURT OF THE COMMON PLEAS OF ALCOA COUNTY, OHIO

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 Fee
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).

EXHIBIT B

Message

From: PRESIDENT, USC [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9E651EA92463466193CE8681CF621E64-PRESIDENT]
Sent: 3/11/2020 11:02:43 AM
To: ROBINSON, CLAIRE [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f1ae5153df384f57a4fd383a75c7c41e-CLAIRER1]
Subject: UofSC COVID-19 Update



Wednesday, March 11, 2020

Dear Faculty and Staff:

Note: Last night, Tuesday March 10, an internal draft memo intended only for university officials was leaked to the press. The official message to faculty and staff regarding our change of schedule due to the COVID-19 virus is below. We had intended to send it out this morning in advance of its public release and we have now released this as planned, vetted by the leadership of the faculty senate.

As we continue to monitor the spread of the Coronavirus Disease (COVID-19), our first priority is the health, welfare, and safety of our students, faculty, staff, and community. After meeting today with the university taskforce and continuing to work closely with the South Carolina Department of Health and Environmental Control and the Centers for Disease Control, President Caslen has made the following decision about our academic schedule after spring break:

- Classes will be cancelled for the week after Spring Break, March 16-22.
- All campus events next week (March 16-22) will be cancelled.
- From Monday, March 23 through Friday, April 3, we will suspend face-to-face instruction in lectures, discussion sections, seminars and other similar classroom settings and move to virtual instruction.

Please take until Sunday, March 22 to plan your alternative, virtual instruction. Many institutional resources are being marshalled to assist faculty in making adjustments to their teaching modalities. Additional information regarding whom to consult about your class and what procedures to use to adjust classes will be provided in a separate memo from the Provost office later today (Wednesday, March 11).

- The university will, however, remain open, including administrative offices, residence halls, food services, and limited transit.
- Students will be encouraged not to return to campus from March 16 through April 3, but will not be forbidden from doing so if in their judgement a return to campus affords the safest option.
- Intercollegiate athletics events are expected to continue. We will alert fans if anything changes. Regardless, per guidelines from the Centers for Disease

Control people over the age of 60 with preexisting medical conditions should avoid attending events with large crowds because they are a greater risk of complications related to COVID-19.

In the interest of protecting our community and based on the best information available, cancelling classes after spring break to discourage the return to campus of 32,000 students simultaneously is the best measured approach to prevent a high risk situation and is an attempt to mitigate the spread of the virus.

The COVID-19 outbreak spreading throughout the U.S. and the world presents a public health challenge unprecedented in our lifetimes. Because there is little that can be predicted with certainty, because the effects of the virus are most significant only for a limited population of our citizenry and not others, and because of the efficient way it spreads, it demands of us, ALL OF US in the university community a commitment to the public good like we have rarely been asked to observe. In this spirit, we humbly seek a devotion by everyone involved to rise to this occasion by practicing a flexibility, a sensitivity, and a creativity with how we all approach our instruction and go about our work serving students and each other. There will undoubtedly be questions we cannot answer today, but the guidance provided above and in the coming days will allow you time to plan and prepare prior to resumption of classes.

We realize that changes of any kind to our normal schedule are inconvenient and takes a toll on all of us, but we are confident that our plan for next week and the weeks to come will help mitigate the spread of COVID-19 on campus and provide us with the flexibility we need to plan our next steps.

Updated guidance for preventing the spread of COVID-19 continues to be updated on the university's COVID-19 landing page. For additional questions, please contact our dedicated hotline: 803-576-8511.

Bob Caslen, President

Tayloe Harding, Executive Vice President for Academic Affairs and Provost,
Interim

Mark Cooper, Chair, Faculty Senate

EXHIBIT C

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

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.

Executive Order No. 2020-09
Page 3
March 15, 2020

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

ELECTRONICALLY FILED - 2023 Oct 12 4:55 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

USC_00000851

EXHIBIT D



March 19, 2020

Dear Students, Families, Faculty and Staff,

It is with heavy hearts but firm resolve that in consultation with our senior administration and with guidance from public health experts, we have made the decision to extend remote learning for students through the remainder of the Spring semester. Online instruction will begin on Monday, March 23 and continue through the completion of final exams in May.

Our students and the university's administration are deeply appreciative of the efforts of faculty and staff to adjust to this situation — all of us know it has not been easy and is now even harder.

We also announce to you that the university will follow Governor McMaster's executive order, released this afternoon, which says that only those employees whose presence is necessary in order to maintain continuity of remote educational offerings and to ensure the health and safety of their campuses need report to work. All other employees will continue to work remotely.

In addition, traditional May commencement ceremonies will be postponed. We are committed to and are actively exploring options for rescheduled, in-person ceremonies when it is safe to host them and will be planning experiences for graduates to celebrate their achievements. This change will not impact the degree completion status of those students who were scheduled to graduate in May. All other campus events are canceled through the end of the semester.

We realize that these actions will be deeply disappointing to our students, particularly those of you who are about to graduate and were looking forward to a final semester on campus. This is difficult for you and for your loved ones. It is also difficult for us.

And yet, the decision was clear. The coronavirus presents a serious risk to public health, and we must take these actions in order to best protect our students, faculty and staff. Social distancing is essential to slow the spread of this disease. The nation, and

the world, are facing an extraordinary challenge. We believe that it is precisely during such challenging times that we often see the best of each other. We're proud of the entire UofSC family for rising to the occasion with strength, compassion and resiliency.

There will be many questions in the hours and days to come, and we are working as quickly and thoughtfully as possible to answer them. Here's what we know now:

- Students previously granted permission to remain on campus due to extenuating circumstances will be allowed to stay.
- All other students residing in residence halls will have an opportunity to retrieve their belongings at a later date.
- In consultation with Student Health Services and the SC Department of Health and Environmental Control, University Housing is developing a schedule for retrieval and will update students as soon as possible.
- The state's Commission on Higher Education also is coordinating with colleges and universities in order to address housing and other service reimbursements to ensure student investments are protected.

The [coronavirus website](#) is updated regularly, so please continue to visit it daily.

Gamecocks, we're in this together. Thank you for your continued patience, support and creativity as we navigate this uncertain time and look forward to being back together on campus in the future.

Forever to Thee,



Bob Caslen, President



**Tayloe Harding, Executive Vice-President for Academic Affairs and Provost,
Interim**

EXHIBIT E

Message

From: CASLEN, ROBERT [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A928B5723E4B4A8C9116C0C095FC9344-RCASLEN]
Sent: 4/1/2020 2:58:50 PM
To: shalaine.archie@columbiasc.gov
CC: BIEGER, MARK [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=49b2fe4527c143d6a1891e6487916719-MBIEGER]; SMITH, JAMES [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=74205f0331a04259ab3c71f7dc95bc24-JSMITHJR]; BON, SUSAN [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ce7eef0367049709c3bf8f5a462b682-BONS]; MCKAY, SALLY [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=354e895708814027a35894fc257d97dc-MCKAYST]
Subject: UofSC COVID-19 Update - April 1

Dear Mayor Benjamin:

The University of South Carolina issued the following statement today, after working with the South Carolina Commission on Higher Education (CHE) to establish guidance regarding refunds to students for auxiliary services. I wanted to share this statement with you, as part of our continued efforts to keep you aware of the decisions and actions the university is making in response to COVID-19. If you have any questions about our response, [please visit our COVID-19 landing page](#). Thank you for your continued support as we navigate this challenge.

Sincerely,



Bob Caslen

University of South Carolina Statement on Student Refunds -- April 1, 2020

Under the guidance issued by the South Carolina Commission on Higher Education (CHE) today, the University of South Carolina will begin issuing prorated refunds to students for meal plans, parking permits and on-campus residential housing.

The prorated refunds will include meal plan, parking and housing fees for services not received on or after March 16, the first day the campus was closed following Spring Break as a result of the coronavirus pandemic.

On campus Greek housing and meal plans will be addressed by individual Greek organizations.

Tuition, academic fees and student support fees are not refundable, per CHE guidance due to continuity of academic programs.

The university will begin processing refunds immediately, so most students can expect to have their accounts credited on or before April 22. Thank you to our students and parents for your continued patience as we work through the refund process.

Details on parking refunds for faculty and staff will be available soon.

Please visit the university's [coronavirus website](#) for up-to-date news and information for students, families, faculty and staff.

EXHIBIT F

SC CHE NEWS RELEASE



che.sc.gov



@SCCommHigherEd



/company/sc-che

ELECTRONICALLY FILED - 2023 Oct 12 4:55 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

FOR IMMEDIATE RELEASE

April 1, 2020

S.C. Commission on Higher Education Releases Guidance for Spring 2020 Student Fees

Columbia, SC— In collaboration with the State's public higher education institutions, the South Carolina Commission on Higher Education (CHE) announced today guidelines for public institutions of higher education when remitting fees to students dislocated by the Covid-19 outbreak and the state's response.

The state's public colleges and universities had previously announced they intended to refund or credit students' accounts. The guidance issued by the CHE ensures all South Carolina students will be treated fairly and equitably.

Since the state's public institutions will continue to provide educational and student services online, tuition and other academic/student service fees will not be refunded or credited. The CHE's guidance focuses on auxiliary or self-supporting services that will no longer be provided to students as a result of the Governor's Executive Orders directing public institutions to provide virtual learning instruction for the remainder of the spring academic semester.

Each institution will determine whether refund or credit to the student's account for housing, dining and other fees as deemed appropriate by the institution. Additional guidance includes:

- Students who remain enrolled for the remainder of the semester are eligible for a refund or credit. The suspension of in-person instruction does not change the student's enrollment status for billing, financial aid, and/or reporting purposes.
- Students who remain on campus for the remainder of the semester will not be eligible for refunded or credited services.
- Refunds or credits should be prorated based on the number of days for which the service will not be provided to the student(s). Individual institutions will calculate the amount to be refunded or credited. Further, whether refund or credit, any remittance should first be applied to any remaining current charges.
- Refunds or credits for eligible students should be processed by an institution at the earliest possible time based on a schedule determined by the institution.

Institutions will provide information regarding specific fees that will be refunded or credited and the timeline for receipt of refunds or credits for unused services. The CHE's guidance is on its website at www.che.sc.gov.

For Immediate Contact:

Dr. Rusty Monhollon, President & Executive Officer
(803) 737-2155 or rmonhollon@che.sc.gov

Bunnie Lempesis Ward, Director of Governmental Affairs & Communications
(803) 737-1397 or bward@che.sc.gov

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About CHE

The South Carolina Commission on Higher Education (CHE), established in 1967, serves as the coordinating board for South Carolina's 33 public institutions of higher learning. It acts both as an oversight agency on behalf of the General Assembly and as an advocate for higher education. The CHE is responsible for assuring a balance between student and taxpayer interests and institutional policies, aspirations, and needs. The CHE is committed to access, affordability, and quality in the state system of higher education through coordination, regulation, advocacy and oversight, as directed by the General Assembly.





SOUTH CAROLINA
COMMISSION ON HIGHER EDUCATION

South Carolina Commission on Higher Education (CHE)

Guidance
REFUNDING SPRING 2020 STUDENT FEES GUIDANCE
April 1, 2020

The following guidance is provided for refunding student fees associated with the suspension of in-person instruction due to COVID-19 during the Spring 2020 semester.

Application:

This guidance applies to all public institutions of higher learning in the State of South Carolina.

Background:

U.S. Department of Education (ED) Guidance

Although the US Department of Education has released [[HYPERLINK "https://ifap.ed.gov/electronic-announcements/030520Guidance4interruptionsrelated2CoronavirusCOVID19"](https://ifap.ed.gov/electronic-announcements/030520Guidance4interruptionsrelated2CoronavirusCOVID19)] (March 5, 2020), this guidance does not address the impact of suspending in-person instruction on student living decisions and associated costs.

Instructive guidance was provided by ED in 2018 regarding the inability of an institution to educate students relating to a natural disaster or pandemic influenza outbreak. That [[HYPERLINK "https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.docx"](https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.docx)] encouraged institutions to remit fees and other institutional charges, or to provide credit in a comparable amount against future charges, for students who withdraw from school as a direct result of a disaster.

Commission on Higher Education (CHE) Conclusion:

Given that South Carolina public institutions of higher learning are providing full educational and student services by virtual and remote learning, the CHE concludes that tuition and other academic/student service fees do not need to be refunded.

Furthermore, the CHE concludes that if an institution will not be providing services for which the student has been charged, an appropriate refund (or credit) should be made to the student's account. Therefore, this guidance is focused on auxiliary or self-supporting services that will no longer be provided to students due to the Governor's order authorizing public institutions of higher learning to provide instruction through virtual learning through the end of spring term. See [HYPERLINK

"https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-03-15%20FILED%20Exccutive%20Order%20No.%202020-09%20-%20Closing%20Schools%20Cancelling%20Elections%20Other%20Provisions%20Due%20to%20COVID-19.pdf"] and [HYPERLINK

"https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-03-28%20eFILED%20Executive%20Order%20No.%202020-15%20-%20State%20of%20Emergency%20Due%20to%20COVID-19%20Pandemic.pdf"]

CHE's Recommendations for Refunding Students in Spring 2020 Due to COVID-19:

1. These guidelines are applicable to those students who remain enrolled for the remainder of the semester. The suspension of in-person instruction for the remainder of the semester does not change the student's modality classification for billing, financial aid, and/or reporting purposes.
2. Given that public institutions of higher learning are providing full educational and student services (including health services) by virtual and remote means, tuition and academic/student service fees are outside the scope of this guidance.
3. Students should be refunded housing, dining, and other fees deemed appropriate by the specific institution of higher learning. Students who remain on campus for the rest of spring term 2020 will not be eligible for refunded services.
4. Refunds should be prorated based on the number of days for which the service will not be provided to the student(s). The way institutions calculate the amount to be refunded will be determined at the institutional level.
5. The preferred method of reimbursement is through a refund to the student account. Credits to student accounts for future use may be used as an alternative if circumstances warrant. There may be federal financial aid implications for credits applied for a future award year, so the CHE recommends that institutions review federal guidance to minimize any impact on students. In either case of a refund or credit, it should first be applied to any remaining current charges.
6. Refunds for eligible students should be processed by an institution at the earliest possible time based on a schedule determined by the institution.

EXHIBIT G

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>DEFENDANT'S ANSWERS TO</u>
	)	<u>PLAINTIFFS' INTERROGATORIES</u>
vs.	)	<u>(SET ONE)</u>
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	
	)	

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant the University of South Carolina ("Defendant") responds to Plaintiffs Davia Bunch, Peter Kelly and Terry Kelly, individually and on behalf of others similarly situated ("Plaintiffs") First Set of Interrogatories, dated February 24, 2021, as follows:

ANSWERS TO INTERROGATORIES

1. Has DEFENDANT ever taken the position that ONLINE STUDENTS, ON CAMPUS STUDENTS, or any other student(s) are contractually obligated to make payments for tuition or fees to DEFENDANT? If so, please IDENTIFY each instance in which DEFENDANT has taken that position, including (a) the particular student, (b) the date, (c) a description of the dispute, (d) the document(s) DEFENDANT alleged formed the basis of the contract, (e) the outcome of the dispute, and (f) any authority which determined the outcome (e.g., the name of any court(s) adjudicating the dispute).

ANSWER: Save for certain situations, including, *e.g.*, full scholarships or a student's receipt of financial aid, each student is generally required to pay a specified amount of tuition and fees if the student wishes to enroll in and attend classes with Defendant. In this regard, each student must accept a Student Statement of Financial Responsibility for each

semester of enrollment with Defendant. Defendant has, at times, taken the position that certain students were obligated to make agreed upon payments for tuition and fees to Defendant. For example, some students elect to defer payment in full of their tuition and fees and enter into a payment plan with Defendant whereby the student agrees to pay the balance deferred in a number of installments. Per the student's payment plan agreement with Defendant, Defendant has various options should the student fail to meet the terms of the agreed upon payment plan. Defendant objects to the portion of this Interrogatory which seeks a description and outcome of so-called "disputes," as the intended meaning of this ambiguous term is unknown to Defendant. Defendant further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this case, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because, for example, the temporal scope is unlimited with no start or end date and it seeks a broad scope of information for each and every instance during the entire history of the University where Defendant took the position a student was contractually obligated to make payments for tuition and fees regardless of the date of the incident, the nature of the incident, and the relevance (or lack thereof) of the incident to the claims and defenses in this litigation. Defendant further objects to this Interrogatory on the grounds it seeks confidential student information protected under the Family Educational Rights and Privacy Act ("FERPA"). Defendant would have to comply with FERPA's requirements before it could lawfully produce any FERPA-protected information of its students.

2. Has DEFENDANT ever taken the position that PERSONS who pay tuition or fees to DEFENDANT on behalf of ON CAMPUS STUDENTS, ONLINE STUDENTS, or any other student(s) are contractually obligated to make those payments? If so, please identify each instance in which DEFENDANT has taken that position, including (a) the payor, (b) the date, (c) a description of the dispute, (d) the document(s) DEFENDANT alleged formed the basis of the contract, (e) the outcome of the dispute, and (f) any authority which determined the outcome (e.g., the name of any court(s) adjudicating the dispute).

ANSWER: Defendant objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this case, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because, for example, the temporal scope is unlimited and appears to be ongoing or continuing in nature with no precise end date; and it seeks documents and information on every instance where Defendant took the position that persons paying tuition or fees on behalf of students are contractually obligated to make those payments regardless of the content, subject, or nature of the instance and related position. Defendant further objects on the grounds that it seeks confidential student information protected under FERPA. Before Defendant could produce any such FERPA-protected information of its students,

Defendant would have to comply with FERPA's requirements. Subject to and based on these objections, Defendant answers, upon information and belief, that it does not generally take the position that persons who voluntarily pay tuition or fees on behalf of Defendant's students are contractually obligated to make those payments.

3. IDENTIFY the amount of tuition charged for Plaintiff Davia Bunch as a student from January 1, 2019 through the present.

ANSWER: Defendant charged Plaintiff Davia Bunch the following tuition as a student enrolled in the Spring 2019 Semester through the Spring 2020 Semester, her final semester enrolled at the University:

- a. Spring 2019 Semester: no tuition charged
- b. Fall 2019 Semester: \$6,144.00
- c. Spring 2020 Semester: \$6,144.00

4. IDENTIFY the amount of tuition charged for Casey Kelly as a student from January 1, 2019 through the present.

ANSWER: Defendant objects to this Interrogatory on the grounds that it seeks confidential student information protected under FERPA. Pursuant to the applicable FERPA regulations, absent prior written consent or a court order and requisite notice, Defendant cannot disclose FERPA-protected information as defined in 34 C.F.R. § 99.3. Upon receipt of valid written consent from the student or a court order permitting disclosure and the requisite notice, Defendant will provide an answer to this Interrogatory.

5. IDENTIFY each fee (including the type of fee and the amount of the fee) charged for Plaintiff Davia Bunch as a student from January 1, 2019 through the present.

ANSWER: Defendant charged Plaintiff Davia Bunch the following fees as a student enrolled in the Spring 2019 Semester through the Spring 2020 Semester, her final semester enrolled at the University:

- a. Spring 2019 Semester: no fees charged
- b. Fall 2019 Semester: \$130.00 Language Lab Fee; \$200.00 Technology Fee; \$110.00 Parking Fee for 2019-2020 academic year
- c. Spring 2020 Semester: \$200.00 Technology Fee

6. IDENTIFY each fee (including the type of fee and the amount of the fee) charged for Casey Kelly as a student from January 1, 2019 through the present.

ANSWER: Defendant objects to this Interrogatory on the grounds that it seeks confidential student information protected under FERPA. Pursuant to the applicable FERPA regulations, absent prior written consent or a court order and requisite notice, Defendant cannot disclose FERPA-protected information as defined in 34 C.F.R. § 99.3. Upon receipt of valid written consent from the student or a court order permitting disclosure and the requisite notice, Defendant will provide an answer to this Interrogatory.

7. IDENTIFY the amount of tuition charged for online enrollment students of DEFENDANT's Palmetto College branch during the 2018-2019 school year and the 2019-2020 school year.

ANSWER: Defendant objects to this Interrogatory because it asks Defendant to identify the amount of tuition charged to "online enrollment students" without any identification of the "online enrollment students" to which it refers. Defendant further objects to this Interrogatory on the grounds that it is overly broad and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because it asks Defendant to identify the amount of tuition charged during the 2018-2019 school year, which is not at issue in this litigation. Subject to and based on these objections, Defendant answers it charged the following tuition, per semester, to students enrolled in the University of South Carolina Palmetto College's online degree completion program during the 2019-2020 school year:

- a. Resident tuition: \$5,199.00 for full-time students and \$433.25 per credit hour for part-time students
- b. Non-resident tuition: \$10,428.00 for full-time students and \$869.00 per credit hour for part-time students

The online degree completion program is the only online program offered at the University of South Carolina Palmetto College. Defendant further avers it offers specially priced tuition rates to select groups, including, for example, firefighters, law enforcement officers, and South Carolina residents ages 60 years or older.

8. IDENTIFY the amount of fees (including the type of fee and the amount of the fee) charged for online enrollment students of DEFENDANT's Palmetto College branch during the 2018-2019 school year and the 2019-2020 school year.

ANSWER: Defendant objects to this Interrogatory because it asks Defendant to identify the amount of fees charged to "online enrollment students" without any identification of the "online enrollment students" to which it refers. Defendant further objects to this

Interrogatory on the grounds that it is overly broad and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because it asks Defendant to identify the fees charged during the 2018-2019 school year, which is not at issue in this litigation. Subject to and based on these objections, Defendant answers it charged the following fees to students enrolled in the University of South Carolina Palmetto College's online degree completion program during the 2019-2020 school year, some of which were required of all students, and others of which were required of less than all students:

- a. Technology Fee: \$156.00, per semester, for full-time students and \$13.00, per semester, for part-time students
- b. Nursing Course Fee Per Hour: \$40.00 for part-time students
- c. Matriculation Fee: \$75.00 for full-time degree-seeking students during their entering semester

The online degree completion program is the only online program offered at the University of South Carolina Palmetto College.

9. Did DEFENDANT provide to its faculty at the beginning of the SPRING 2020 SEMESTER instruction regarding how to teach ON CAMPUS STUDENTS through a remote distant learning format? If so, please IDENTIFY (a) the date prior to the beginning of the SPRING 2020 SEMESTER when such instruction was given; (b) the PERSONS who provided the instruction; (c) to which faculty that instruction was provided; and (d) the detailed subject-matter covered in each instruction.

ANSWER: Defendant objects to this Interrogatory because it is unclear what information Plaintiffs seek. The Interrogatory asks about instruction provided to faculty "at the beginning of the SPRING 2020 SEMESTER" but in connection with that asks for "the date **prior to the beginning** of the SPRING 2020 SEMESTER when **such instruction** was given." (emphasis added.) To the extent this Interrogatory seeks the information regarding instruction for an unlimited period of time before the Spring 2020 Semester, Defendant further objects on the grounds that the Interrogatory is overly broad, unduly burdensome, not proportional to the needs of this case, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

10. IDENTIFY all PERSONS known to DEFENDANT to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: Defendant objects to this Interrogatory to the extent it seeks confidential student information protected from disclosure under FERPA. Before Defendant could provide any such FERPA-protected information of its students, Defendant would have to comply with FERPA's requirements. Subject to, based on, and without waiving this objection, Defendant identifies the following individuals who, upon information and belief, are witnesses concerning the facts of the case:

- a. Plaintiff Davia Bunch
- b. Plaintiff Peter Kelly
- c. Plaintiff Terry Kelly
- d. Anna Edwards, Associate Vice President for Student Life
- e. Lisa Jerald, Ombudsman for Undergraduate Students
- f. Sandra Kelly, Vice Provost and Dean of Undergraduate Studies
- g. Mandy Kibler, Associate Vice President for Administration and Finance and the University Controller
- h. Aaron Marterer, University Registrar
- i. Nicole Pressley, University Bursar
- j. Ed Walton, Executive Vice President for Administration and Chief Financial Officer
- k. Dr. Deborah Beck, Chief Health Officer and Associate Vice President for Health and Well-Being
- l. Dr. Dennis Pruitt, Vice President for Student Affairs and Vice Provost

To Defendant's knowledge, no written or recorded statement concerning this litigation or the claims and defenses of the parties have been taken from the above-named individuals.

11. IDENTIFY all PERSONS who participated in the decision not to afford ON CAMPUS STUDENTS any tuition reimbursement after DEFENDANT ceased all in-person in-classroom instruction and shifted to a remote distance form of instruction for the SPRING 2020 SEMESTER.

ANSWER: Defendant answers that guidance on decisions related to refunds during the COVID-19 pandemic was issued by the South Carolina Commission on Higher Education. Defendant further avers that it is still investigating and attempting to identify additional

information responsive to this Interrogatory. Defendant will supplement this response as soon as any responsive information is located.

12. IDENTIFY any courses DEFENDANT offered during the SPRING 2020 SEMESTER for which DEFENDANT could not provide instruction through a remote distance learning form (a) stating each such course; (b) IDENTIFYING the instructor(s) who taught each such course during the SPRING 2020 SEMESTER; (c) IDENTIFYING the students enrolled for each such course during the SPRING 2020 SEMESTER; (d) IDENTIFYING why DEFENDANT could not provide instruction through a remote distance learning form.

ANSWER: Defendant objects to this Interrogatory on the grounds that it seeks confidential student information protected under FERPA. Before Defendant could produce any such FERPA-protected information of its students, Defendant would have to comply with FERPA's requirements. Subject to and based on this objection, Defendant answers, upon information and belief, that all in-person, on-campus classes offered during the Spring 2020 Semester were transitioned to virtual instruction.

13. Does DEFENDANT intend to resume providing in-person in-classroom courses for enrolled students? If so, explain the reasons for YOUR plan to resume in-person in-classroom instruction as opposed to continuing to offer instruction solely through remote distance instruction.

ANSWER: Defendant has reopened its campuses after months spent working with an interdisciplinary group of public health, clinical medicine, academic, and staff experts from across the University, in collaboration with local, state, and national officials, to develop reopening and risk mitigation plans to create reasonably safe conditions in which to study, work, and live in light of the circumstances. Defendant further answers that the reopening of its campuses is based on acceptable risk, the ability to reasonably contain the spread of the virus, and properly care for those who are infected. As such, Defendant has deployed primary public health controls to slow the transmission and reduce disease impact associated with COVID-19. These control measures include, for example, the availability of appropriate personal protective equipment, mandatory face coverings in all campus buildings, environmental measures such as enhanced cleaning and disinfection, and mitigation strategies such as comprehensive testing, contact tracing, isolation, and quarantine.

14. IDENTIFY all insurance companies which provide liability insurance coverage to DEFENDANT relating to PLAINTIFFS' claims in the FAC and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: Defendant is unaware of any insurance policy that may provide coverage to Defendant relating to Plaintiffs' claims.

15. IDENTIFY any and all expert witnesses whom DEFENDANT proposes to use at the trial of the case.

ANSWER: Defendant has not yet identified any person it intends to call as an expert witness at the trial of this case. Once such testifying expert is retained, Defendant will supplement its answer as may be necessary and appropriate and in compliance with Rule 26(b)(4)(A).

16. IDENTIFY each and every PERSON who provided any information in connection with answers to these Interrogatories and the Requests for Production of Documents and Requests for Admissions served concurrently with these Interrogatories.

ANSWER: Defendant identifies the following individuals who provided information in connection with Defendant's responses to Plaintiffs' first set of discovery requests:

- a. Joey Derrick, Director of Student Financial Aid and Scholarships
- b. Anna Edwards, Associate Vice President for Student Life
- c. Kelly Epting, Associate Vice President for Finance and Budget
- d. Edwin Evans, Deputy General Counsel
- e. J.C. Huggins, Assistant Vice President for Branding and Digital Strategy
- f. Lisa Jerald, Ombudsman for Undergraduate Students
- g. Sandra Kelly, Vice Provost and Dean of Undergraduate Studies
- h. Mandy Kibler, Associate Vice President for Administration and Finance and the University Controller
- i. Aaron Marterer, University Registrar
- j. Nicole Pressley, University Bursar
- k. Jeff Stensland, Assistant Vice President of Media and External Engagement
- l. Scott Verzyl, Associate Vice President for Enrollment Management and Dean of Undergraduate Admissions

17. IDENTIFY any calendars, diaries, logs, notes, journals, or any other written or recorded summary of events maintained by DEFENDANT CONCERNING the factual allegations contained in the FAC.

ANSWER: Defendant objects to this Interrogatory to the extent it calls for information protected by the attorney-client privilege and/or attorney work product doctrine; and on the grounds that it is overly broad and unduly burdensome because, for example, the temporal scope is unlimited and appears to be ongoing or continuing in nature with no precise end date and it purports to seek identification of, for example, each and every note “evidencing, or in any way legally, logically, or factually connected with” the factual allegations asserted by Plaintiff. Defendant further objects to this Interrogatory to the extent it seeks student information and documents containing student information protected from disclosure under FERPA. Before Defendant could provide any such FERPA-protected information of its students, Defendant would have to comply with FERPA’s requirements. Subject to and based on these objections, Defendant answers it will search for and identify relevant, non-privileged, non-protected documents and information responsive to this Interrogatory that can be located with a reasonable search, if any exist, and make such responsive documents available for Plaintiffs at a mutually convenient time and place.

18. IDENTIFY any marketing or advertising DOCUMENTS prepared or used by DEFENDANT in the last four years CONCERNING the on-campus experience or in-person instruction as a benefit to enrolling with DEFENDANT, including, but not limited to, any illustration, or depiction that is designed to effect a sale or create interest, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, stickers, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, streaming video, electronic mail, web page, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

ANSWER: As an initial matter, Defendant objects to this Interrogatory because the term “benefit” is subjective; whether an aspect or feature of the “on-campus experience” or “in-person instruction” is deemed a benefit varies from person to person. Defendant further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of this case, and seeks information that is irrelevant and not

reasonably calculated to lead to the discovery of admissible evidence because, for example, it seeks identification of the marketing or advertising materials regardless of the recipients of or intended audience for the material (for example, prospective student versus alumni), whether the material was used or not, and whether the material was viewed by the recipients or intended audience or not, much less whether it was viewed by the Plaintiffs. Defendant further objects to this Interrogatory on the grounds that it is vague because, for example, it seeks all marketing and advertising material “concerning the on-campus experience” without any identification or explanation of the “on-campus experience” to which it refers.

19. IDENTIFY all DOCUMENTS CONCERNING any contracts, policies, guidelines, handbooks, or terms and conditions governing or CONCERNING DEFENDANT’s obligation to provide ON CAMPUS STUDENTS enrolled in the SPRING 2020 SEMESTER with live in-person classroom instruction in exchange for payment of tuition or fees.

ANSWER: Defendant objects to this Interrogatory on the grounds that it seeks student information and documents containing student information protected from disclosure under FERPA. Before Defendant could produce any such FERPA-protected information of its students, Defendant would have to comply with FERPA’s requirements. Defendant further objects to this request because it incorrectly implies and assumes Defendant is obligated to provide live in-person classroom instruction to certain students in exchange for payment of tuition or fees. Subject to and without waiving this objection, Defendant responds it has located no documents responsive to this Interrogatory.

20. IDENTIFY the difference in price for the 2019-2020 school year tuition that DEFENDANT charges for ONLINE STUDENTS versus ON CAMPUS STUDENTS, including any difference for resident tuition and non-resident tuition.

ANSWER: The only full-time online undergraduate degree program offered by Defendant for the 2019-2020 school year was the online bachelor’s degree completion program offered through the University of South Carolina Palmetto College (herein, “Degree Completion Program”). For the 2019-2020 school year, the tuition for the Degree Completion Program was higher than, for example, the tuition charged for on-campus programs at the University of South Carolina Palmetto College. How the Degree Completion Program differed in terms of tuition from the other programs offered by the Defendant varies program to program. In this regard, Defendant directs Plaintiffs to the University of South Carolina Fee Schedule for 2019-20, which is being produced in response to Defendant’s Requests for Production. Last, Defendant avers it offers specially priced tuition rates to select groups, including, for example, firefighters, law enforcement officers, active duty military, and South Carolina residents ages 60 years or older.

21. IDENTIFY the difference in price for the SPRING 2020 SEMESTER tuition that DEFENDANT charges for ONLINE STUDENTS versus ON CAMPUS STUDENTS, including any difference for resident tuition and non-resident tuition.

ANSWER: See Defendant's Response to Interrogatory No. 20, which is incorporated herein by reference.

22. IDENTIFY all DOCUMENTS CONCERNING differences in price for the 2019-2020 school year tuition that DEFENDANT charges for ONLINE STUDENTS versus ON CAMPUS STUDENTS, including any difference for resident tuition and non-resident tuition.

ANSWER: Defendant directs Plaintiffs to the University of South Carolina Fee Schedule for 2019-20, which is being produced in response to Plaintiffs' Requests for Production. To the extent this Interrogatory seeks disclosure of tuition prices charged to individual students, Defendant objects on the grounds that the Interrogatory seeks student information and documents containing student information protected from disclosure under FERPA. Defendant would have to comply with FERPA's requirements before it could lawfully produce any FERPA-protected information of its students. To the extent this Interrogatory seeks identification of other documents, including all documents "reflecting, evidencing, or in any way legally, logically, or factually connected to" a difference in tuition, Defendant objects to the Interrogatory as being overly broad, unduly burdensome, and disproportionate to the needs of the case.

23. IDENTIFY all DOCUMENTS CONCERNING differences in price for the SPRING 2020 SEMESTER tuition that DEFENDANT charges for ONLINE STUDENTS versus ON CAMPUS STUDENTS, including any difference for resident tuition and non-resident tuition.

ANSWER: Defendant directs Plaintiffs to the University of South Carolina Fee Schedule for 2019-20, which is being produced in response to Plaintiffs' Requests for Production. To the extent this Interrogatory seeks disclosure of tuition prices charged to individual students, Defendant objects on the grounds that the Interrogatory seeks student information and documents containing student information protected from disclosure under FERPA. Defendant would have to comply with FERPA's requirements before it could lawfully produce any FERPA-protected information of its students. To the extent this Interrogatory seeks identification of other documents, including all documents "reflecting, evidencing, or in any way legally, logically, or factually connected to" a difference in tuition, Defendant objects to the Interrogatory as being overly broad, unduly burdensome, and disproportionate to the needs of the case.

24. IDENTIFY all fees DEFENDANT charged to ON CAMPUS STUDENTS, including, but not limited to laboratory fees, technology fees, or other fees of any kind or character, for any goods or services applicable to the SPRING 2020 SEMESTER, including IDENTIFYING the amount of the fee, what the fee is for, when it is assessed, whether DEFENDANT refunded the fee or some portion of the fee after DEFENDANT implemented online or remote instruction for ON CAMPUS STUDENTS due to COVID-19, and why or why not the fee was refunded.

ANSWER: Defendant objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome to the extent it seeks identification of “other fees of any kind or character.” Subject to and based on this objection, Defendant answers that hundreds of different fees existed for the Spring 2020 semester and that the nature, type and amount of those fees varied depending on a number of factors, including the type of enrollment, the campus, and the degree or program for which the student was enrolled. In this regard, Defendant refers Plaintiffs to the University of South Carolina Fee Schedule for 2019-20, which is being produced in response to Plaintiffs’ Requests for Production. Defendant notes that the types and amounts of fees it charged each individual student enrolled with Defendant in the Spring 2020 Semester varied by individual student and this Interrogatory seeks identification of fees not charged to or paid by the named Plaintiffs but instead charged to various individual members of the putative class whom the Plaintiffs do not adequately represent. Defendant further answers that Defendant provided prorated refunds for fees related to University housing, meal plans, and parking permits, services that could not be provided to students as a result of the pandemic and that the decision to make such refunds was based upon guidance and direction from the South Carolina Commission on Higher Education. Other fees assessed during the Spring 2020 Semester were not refunded because they related to, for example, educational and technology services that students continued to receive before, during, and after the transition to virtual instruction.

25. IDENTIFY the number of ON CAMPUS STUDENTS enrolled in the SPRING 2020 SEMESTER when DEFENDANT implemented online or remote instruction for ON CAMPUS STUDENTS due to COVID-19.

ANSWER: Defendant directs Plaintiffs to the University of South Carolina Official Enrollment Report by Campus for the Spring 2020 Semester, dated March 25, 2020, which is being produced in response to Plaintiffs’ Requests for Production.

26. For each response to the Requests for Admissions served concurrently with these Interrogatories that is not an unqualified admission, state all facts upon which DEFENDANT bases each response.

ANSWER: Defendant objects to this Interrogatory because it seeks to discover the mental impressions, conclusions, opinions, or legal theories of its counsel concerning this litigation.

27. State all underlying facts in support of any affirmative defense DEFENDANT asserts in response to any of the claims in the FAC.

ANSWER: Defendant objects to this Interrogatory because it is overly broad, unduly burdensome, and seeks to discover the mental impressions, conclusions, opinions, or legal theories of its counsel concerning this litigation.

28. IDENTIFY all COMMUNICATIONS with PLAINTIFFS CONCERNING the facts and circumstances alleged in the FAC.

ANSWER: Defendant directs Plaintiffs to its response to Request for Production No. 20, including documents produced therewith.

29. IDENTIFY all non-privileged COMMUNICATIONS between DEFENDANT and any PERSON CONCERNING the facts and circumstances alleged in the FAC.

ANSWER: Defendant objects to this Interrogatory to the extent it calls for documents and information protected by the attorney work product doctrine and on the grounds that it is overly broad and unduly burdensome because, for example, the temporal scope is unlimited and appears to be ongoing or continuing in nature with no precise end date. Defendant further objects to this Interrogatory on the grounds that it seeks student information and documents containing student information protected from disclosure under FERPA. Before Defendant could produce any such FERPA-protected information of its students, Defendant would have to comply with FERPA's requirements. Subject to, based on, and without waiving these objections, Defendant directs Plaintiffs to its response to Request for Production No. 23.

30. IDENTIFY the reasons, rationales, or other factual bases for DEFENDANT's decision not to refund SPRING 2020 SEMESTER tuition payments, in whole or in part, to PLAINTIFFS and any ON CAMPUS STUDENTS.

ANSWER: Defendant, like virtually every other similarly situated university or college in the nation, was faced with the unprecedented challenge of continuing to provide an education to its students in keeping with governmental and public health guidance and directives to limit personal interactions. With guidance and direction from the South Carolina Commission on Higher Education, Defendant decided to provide prorated refunds for fees related to University housing, meal plans, and parking permits. These are services that could not be provided to students, as a result of the pandemic. Educational services, however, continued through the use of virtual classrooms and by providing instruction online, rather than in the physical classroom. Virtually every other college and university in the nation made the same adjustments to accommodate public health concerns while continuing to operate online. Students continued to receive a robust educational experience, opportunities for interactions with professors and other students online, and full academic credit for the courses they continued to take after the physical campus closed. The university continued, meanwhile, to incur expenses associated with the normal operation of the university, as well as the transition costs associated with moving to a virtual classroom environment. Defendant had no contractual or economically justifiable basis upon which to reimburse tuition and fees for the Spring 2020 Semester, other than the fees specified above. In addition, eligible students, including, for example, Plaintiff Davia Bunch, received payments from Defendant using funds made available by the CARES Act and paid to students for expenses related to the disruption of campus operations caused by the COVID-19 pandemic.

31. IDENTIFY the reasons, rationales, or other factual bases for DEFENDANT's decision not to refund SPRING 2020 SEMESTER fee payments of any kind or character, in whole or in part, to PLAINTIFFS and any ON CAMPUS STUDENTS.

ANSWER: See Defendant's response to Interrogatory No. 30, which is incorporated herein by reference. As discussed therein, Defendant provided prorated refunds for fees related to University housing, meal plans, and parking permits. The other fees assessed during the Spring 2020 Semester which were not refunded related to, for example, educational and technology services that students continued to receive before, during, and after the transition to virtual instruction.

32. IDENTIFY all SPRING 2020 SEMESTER ON CAMPUS STUDENTS.

ANSWER: Defendant objects to this Interrogatory to the extent it seeks student information protected from disclosure under FERPA. Before Defendant could provide any such FERPA-protected information of its students, Defendant would have to comply with FERPA's requirements. Subject to and based on this objection, Defendant directs Plaintiffs to its response to Request for Production Nos. 30 and 31, including, therewith, its production of directory information identifying students enrolled in the Spring 2020 Semester, in the manner allowed by FERPA, with the exception that this will not include students who opted out of directory information.

33. IDENTIFY all non-privileged COMMUNICATIONS between DEFENDANT and ON CAMPUS STUDENTS CONCERNING the facts and circumstances alleged in the FAC.

ANSWER: Defendant objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome because, for example, the temporal scope is unlimited and appears to be ongoing or continuing in nature with no precise end date. Defendant further objects to this Interrogatory on the grounds that it seeks student information and documents containing student information protected from disclosure under FERPA. Before Defendant could provide any such FERPA-protected information of its students, Defendant would have to comply with FERPA's requirements, the compliance with which would be unduly burdensome given the overbreadth of the Interrogatory because, for example, Defendant would have to conduct extensive redactions effectively destroying the meaning of the information and documents. Subject to and based on these objections, Defendant directs Plaintiffs' to its responses to Request for Production Nos. 12, 13, 20, and 23, including Defendant's response that it will conduct a reasonable search for communications with Plaintiff Davia Bunch as well as documents concerning the same and will produce relevant, non-privileged, non-protected documents and information located through the search.

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

April 13, 2021

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, The University of South Carolina, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**DEFENDANT'S ANSWERS TO PLAINTIFFS'
INTERROGATORIES (SET ONE)**

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Attorneys for Plaintiffs



Lauren Lynch

April 13, 2021

EXHIBIT H

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

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.

VIDEOTAPED

DEPOSITION OF: DAVIA E. BUNCH

DATE: February 17, 2023

TIME: 9:15 AM

LOCATION: Regus
170 Meeting Street, Suite 110
Charleston, SC

REPORTED BY: Sandra K. Bjerke, RDR, CRR, CBC

1 APPEARANCES OF COUNSEL:

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23 ALSO PRESENT:
24 Christopher Mills, Videographer
25

(INDEX AT REAR OF TRANSCRIPT)

1 A. Not specifically, but...

2 Q. Okay. So in looking back at your
3 answer, you talked about the classes that you chose
4 because you wouldn't have an opportunity to take
5 those again, and you specifically chose them
6 because of face-to-face experience. Did I capture
7 that right?

8 A. Yes.

9 Q. Okay. And then you -- first of all,
10 are you saying that the five classes that you
11 signed up for in the spring semester you signed up
12 for because they were face-to-face?

13 A. There were two classes that I signed up
14 for as online classes and three classes that I
15 signed up for for face-to-face instruction.

16 Q. Okay. And so you understand that only
17 the three classes that were face-to-face are at
18 issue.

19 A. Exactly.

20 Q. You're not seeking damages for the
21 other two; right?

22 A. Yes.

23 Q. So as to the three, are you saying you
24 picked those three specifically because they were
25 face-to-face?

1 Q. Okay. What is a federal direct
2 unsubsidized loan?

3 A. Honestly, I am not good with -- I don't
4 know the exact meaning of a federal direct
5 unsubsidized loan. I just know it's a loan that I
6 have to pay back.

7 Q. Okay. The next line says federal
8 direct subsidized loan and it's \$2,721. Do you
9 know what a federal direct subsidized loan is?

10 A. All I know, it's money that I had to
11 pay back.

12 Q. Do you know what the interest rate is
13 on either of those two loans?

14 A. No.

15 Q. The next line is federal Pell Grant and
16 that's \$2,972. What is that?

17 A. That's a grant I received based off of
18 my family's income.

19 Q. Okay. When you completed the FAFSA you
20 had to put your father's financial information; is
21 that right?

22 A. Yes.

23 Q. And then USC achievement scholarship,
24 \$1,000. What is that?

25 A. It's a scholarship that I had received

1 amount of \$800; is that fair?

2 A. That is fair.

3 MR. PRATT: Object to form.

4 BY MR. BRUNSON:

5 Q. You just didn't get a check yourself.

6 A. Yes.

7 Q. Okay. And so on the left-hand side
8 here you have a total of \$8,483, and on the
9 right-hand side you have the same number. What's
10 that mean?

11 A. That means -- that is what was paid to
12 the University of South Carolina for that semester.

13 Q. Okay. So for the spring of 2020 you
14 borrowed \$990 plus \$2,720; correct?

15 A. Yes.

16 Q. And whatever those add up to, that's
17 money that you paid, essentially; right?

18 A. Yes, sir.

19 Q. And then the rest of it is Pell Grant,
20 scholarship, CARES Act money. That's money that
21 you didn't have to pay for tuition.

22 A. Yes.

23 Q. Okay. So adding those two together,
24 \$990 plus 2,721, the total loans that you took out
25 to pay towards your tuition and fees for the spring

1 of 2020 was \$3,711; is that fair?

2 A. If I trust your math that's fair.

3 Q. Well, if I did it in my head you
4 shouldn't trust it, but I did it on a calculator,
5 so I think it's right.

6 And below the invoice you have the
7 classes that you took that semester; is that
8 correct?

9 A. Let me scroll. Yes.

10 Q. The loans that you received for the
11 spring of 2020 that amounted to \$3,711, were those
12 forgiven as a part of the recent Biden
13 administration loan forgiveness program?

14 A. I paid them off before that happened,
15 and that has not passed yet. So as of right now,
16 no.

17 Q. Okay. Have you applied for loan
18 forgiveness?

19 A. No, sir.

20 Q. Do you still owe any loans from your
21 undergraduate education?

22 A. Currently, now I do.

23 Q. You do?

24 A. Yes, sir.

25 Q. Okay. But you paid the loans off for

1 nobody else was interested and you just got it.

2 A. No. Yeah.

3 Q. Okay. Not to take anything at all away
4 from it. So the Miss South Carolina pageant, you
5 won scholarship money.

6 A. Yes, sir.

7 Q. Did you get any other financial
8 benefits other than scholarship money?

9 A. Can you determine financial benefits?

10 Q. Either direct payments to you or
11 payments on your behalf to somebody else.

12 A. Through the pageant itself or through
13 the job that I -- which took on afterwards?

14 Q. Well, let's start with the pageant
15 itself.

16 A. The pageant itself, no. Only
17 scholarship money was the financial compensation
18 that I got.

19 Q. Okay. How much scholarship money was
20 that?

21 A. I think it totaled out to be close
22 to -- a little over \$50,000 from all -- Miss South
23 Carolina, Miss America.

24 Q. Okay. And when you say from Miss South
25 Carolina and Miss America, those were all

1 A. Yes.

2 Q. And you'd received, at that point,
3 \$50,000. Let's just say 50,000, realizing that's
4 an approximation. You received that much in
5 scholarship funds; right?

6 A. Um-hum.

7 Q. Yes?

8 A. Yes.

9 Q. Okay. How did they -- how did you get
10 that money? Did they send you a check, or what
11 would they do?

12 A. No. I actually don't receive that
13 money at all. What I do is submit my bill from my
14 loan provider to the Miss South Carolina
15 scholarship organization, request payment, and they
16 pay my student loan provider.

17 Q. Okay. Do you know how much total
18 student loans you took out to go to USC for the
19 full four years?

20 A. I do not.

21 Q. Okay. Was it more or less than
22 \$50,000?

23 A. Less.

24 Q. Okay. So --

25 A. I believe. Yes.

1 Q. Okay. So you received enough money
2 from your scholarships with the pageants to pay off
3 all of your student loans; is that correct?

4 A. Yes, sir.

5 Q. Okay. So why do you still have 7,000
6 outstanding?

7 A. Because I requested a refund from my
8 student loan money due to the pandemic after I paid
9 it.

10 Q. Can you tell me about that?

11 A. Yes. So this past year I -- you are
12 allowed to request refunds from the student loan
13 provider that you paid during 2020, and so I
14 requested a refund on payments that I made. So now
15 I still have outstanding payments.

16 Q. Okay. I'm confused.

17 A. I know. It's confusing.

18 Q. So if you received a refund on payments
19 you previously made towards your student loans,
20 then you would have received money. You wouldn't
21 owe money; right?

22 A. Now I owe money to my student loan
23 provider.

24 Q. That's what confuses me. If you
25 received a refund, how is it that you owe money?

1 A. I received a refund -- basically, it's
2 the opposite of going to a store and buying a
3 product. You're going to a store and you owe a
4 product and you gave it to them and you said,
5 actually, can I get that product back? And they
6 give it to you back, but you still owe them that
7 product at the end of the day.

8 Q. Okay. So basically, you took out
9 another -- you paid off all your loans.

10 A. Um-hum.

11 Q. Yes?

12 A. Yes.

13 Q. And then you borrowed 7 -- took \$7,000
14 of that back.

15 A. Yes.

16 Q. Okay. And you're allowed to do that?

17 A. Yeah. Legally, yes.

18 Q. Okay. Why did you borrow that money?

19 A. To pay -- in the first place, or why
20 did I take it back?

21 Q. No. Why did you take back the 7,000?

22 A. Financial strain.

23 Q. Okay. So that you borrowed that
24 money --

25 A. Personal reasons.

1 Q. -- to just help cover your living
2 expenses?

3 A. Yes, expenses that I had at the time.

4 Q. I mean, it wasn't like to buy a car or
5 to do something specific.

6 A. No, sir.

7 Q. Okay. You just needed that money to
8 pay your bills.

9 A. Bills and other expenses.

10 Q. What expense would there be other than
11 bills?

12 A. Well, I did buy a car at the time, so
13 that is a bill. Living expenses, I was going to be
14 gone, I had to pay rent. So yeah, living expenses
15 also.

16 Q. When did you buy that car?

17 A. The -- this past July.

18 Q. July of 2022?

19 A. Yeah.

20 Q. Okay. What did you buy?

21 A. A 2020 Ford Escape.

22 Q. Escape?

23 A. Um-hum.

24 Q. My daughter has one of those. She
25 loves it.

1 Q. Okay. So you may have already told me
2 this, but you got 50,000 in pageant money,
3 scholarship money. You said that was more than
4 enough to pay off all of your student loans. Did
5 you have money left over?

6 A. Yes.

7 Q. How much?

8 A. I'm not positive. I think it's around
9 \$15,000. I would have to contact the Miss America
10 organization and ask.

11 Q. Okay.

12 A. It's not money that I will ever see
13 until I use it to go back to school if I ever
14 wanted to do that.

15 Q. And that was going to be my next
16 question.

17 A. Um-hum.

18 Q. Did you receive that money?

19 A. No.

20 Q. Okay. And the only way you could
21 receive it would be to go to school and send them
22 the bill.

23 A. Exactly.

24 Q. Okay. And have you ever applied to any
25 graduate school?

1 A. Sorry.

2 Q. That's okay. So to keep it simple, you
3 paid the \$200 technology fee, and you personally --
4 you're looking for a reimbursement of that fee and
5 that fee only; correct?

6 A. If that fee is what my team decided as
7 one within the lawsuit, then yes.

8 Q. Okay. Well, setting your team aside,
9 do you as the student feel like you paid some fee
10 other than the technology fee that you didn't get
11 your value for --

12 A. Yes.

13 Q. -- for the spring 2020 semester?

14 A. Yes.

15 Q. Okay. What other fees?

16 A. As me personally?

17 Q. Just as you, you know, not for the
18 whole class.

19 A. Well, that's the only fee that I paid
20 during the spring semester.

21 Q. Okay. So your answer would be the
22 technology fee of \$200 is the only fee that you,
23 Davia Bunch, are seeking some reimbursement for.

24 A. Yes.

25 Q. Okay. And are you -- I already asked

1 Q. Would you agree that some students at
2 the University of South Carolina who are in your
3 class do enjoy online classes?

4 A. Yeah.

5 MR. PRATT: Object to form.

6 THE WITNESS: It has its benefits.
7 That's exactly why I chose two online classes for
8 my spring semester, but for the majority of us and
9 for the majority of the classes that I took that
10 semester I chose face-to-face instruction.

11 BY MR. BRUNSON:

12 Q. Are you aware of the virtual study
13 union that was made available during the pandemic?

14 A. No.

15 Q. So I take it you did not participate in
16 that.

17 A. No.

18 Q. And you were aware that students were
19 provided a pass/fail option in the spring of 2020?

20 A. I was aware.

21 Q. Okay. But you chose to get your actual
22 letter grades as opposed to pass/fail; correct?

23 A. Correct.

24 Q. And the students could make that choice
25 after they knew what their letter grades were;

1 subject line: Let us know how you're doing. It's
2 dated April 14th, 2020 and at the bottom you see
3 you can complete the survey.

4 A. Yes.

5 Q. Did you complete the survey?

6 A. I did not.

7 Q. Do you recall receiving this
8 opportunity to complete the survey?

9 A. I do not recall.

10 Q. Okay. Did you complete any surveys
11 that you can recall relating to your experience as
12 a student during the pandemic?

13 A. No, sir.

14 Q. So let's talk about your technology fee
15 for a minute, the \$200 that you paid.

16 A. Um-hum.

17 Q. You're seeking some refund for that;
18 right?

19 A. I refer to my legal team on to which
20 fees that we're seeking --

21 Q. Okay.

22 A. -- reimbursement on.

23 Q. Do you know what the technology fee is
24 used for by the university?

25 A. I know some of the things that it's

1 used for.

2 Q. What do you know?

3 A. Just technology that you use at the
4 University of South Carolina, Wi-Fi, things of that
5 sort.

6 Q. Did you know that prior to the spring
7 of 2020?

8 A. Yeah.

9 Q. And you'd paid technology fees before;
10 right?

11 A. Yes. You pay them every semester.

12 Q. Did you ever have a concern that you
13 weren't getting value for your technology fee?

14 A. No, because I was getting value for my
15 technology fee.

16 Q. And what value were you receiving?

17 A. I used on-campus Wi-Fi, I used
18 computers at the University of South Carolina. I
19 didn't own a printer, so I used the printer system
20 all the time at the University of South Carolina.
21 There's a lot of things that I used that I didn't
22 have at my home.

23 Q. Are you aware that students who took
24 all online classes were still required to pay the
25 technology fee?

1 A. I was not aware.

2 Q. But you're not seeking a refund on
3 behalf of those students; correct?

4 MR. PRATT: Object to form.

5 THE WITNESS: Online students?

6 BY MR. BRUNSON:

7 Q. Correct.

8 A. Correct.

9 Q. Students who were taking all online
10 classes that semester.

11 A. Correct.

12 Q. Would you agree that technology, the
13 use of technology was essential to the university's
14 continuation of classes during the pandemic?

15 A. Correct.

16 Q. Did you use Blackboard while you were
17 attending classes during the pandemic?

18 A. Yes.

19 Q. Tell us what Blackboard is.

20 A. Blackboard is an online portal in which
21 we see course information, we can upload course
22 information, et cetera. It was not used by all my
23 teachers, though.

24 Q. Okay. Did you use Blackboard while
25 attending classes remotely?

1 MR. PRATT: Object to form.

2 THE WITNESS: I refer to my team on
3 that one.

4 BY MR. BRUNSON:

5 Q. Okay. But you yourself, you can't say,
6 well, if they had discounted it by 10 percent or 50
7 percent or 90 percent? You don't have that in your
8 head; is that fair?

9 MR. PRATT: Object to form.

10 THE WITNESS: I haven't thought of a
11 number.

12 BY MR. BRUNSON:

13 Q. Okay. And you never -- I think I asked
14 about this with respect to fees, but did you ever
15 ask the university for any reimbursement of any
16 amount of tuition or fees for the spring of 2020
17 before bringing the lawsuit?

18 A. No.

19 Q. Did you have any disabilities that you
20 asked the university to accommodate?

21 A. No.

22 Q. Were you involved in any clubs,
23 organizations or other extracurricular activities
24 at USC?

25 A. Yes.

1 registration?

2 A. No, sir.

3 Q. Okay. Is the professor named?

4 A. Yes.

5 Q. Okay.

6 A. I believe --

7 Q. So let's say --

8 A. I don't know. I'd have to go back and
9 look.

10 Q. What other aspects of the registration
11 process do you think created a contractual
12 agreement where if the university didn't do that
13 that you would be entitled to some reimbursement?

14 MR. PRATT: Object to form.

15 THE WITNESS: Right now, I don't know,
16 but what I'm here to dispute is the course
17 registration face-to-face instruction, and to that
18 I can point where contractually I entered into a
19 financial arrangement between myself and the
20 university. Other things I'm not too concerned
21 with.

22 BY MR. BRUNSON:

23 Q. Okay. And we'll come back to the
24 registration form shortly. Now the date on this
25 financial responsibility form is October 31st,

1 Q. Okay. Is it fair to say you didn't
2 know one way or the other?

3 A. Well, I've never seen a modification to
4 it, so I didn't know it could exist, and since that
5 point I have not seen a modification.

6 Q. Okay. Let's talk about your
7 registration for classes in the spring of 2020.
8 Did you register yourself for those classes?

9 A. Yes.

10 Q. You selected those classes yourself?

11 A. Um-hum.

12 Q. Yes?

13 A. Yes, sir.

14 Q. You don't have to say sir, but you can.
15 Whatever you want. Whatever you're comfortable
16 with.

17 But did you go to any sort of guidance
18 counselor or anything, or did you make those
19 choices on your own?

20 A. I made those choices on my own.

21 Q. Okay. What was the process for signing
22 up for those classes?

23 A. I signed in to Self Service Carolina
24 with my ID, I clicked register for classes, I
25 signed the statement of financial responsibility, I

EXHIBIT I

Message

From: AR, BURS [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2CC6F6A0A95348BD86E1DBE0EF73818B-BURSAR]
Sent: 8/10/2020 1:37:45 PM
To: [REDACTED]
Subject: Re: Tuition/Fee Questions

You're welcome. For questions regarding the Health Service Center Fee charges of \$127.00, what the charges consist of, the day of the visits, the type of service received, or to dispute the charges, etc., please communicate directly with the Student Health Service Center using the information below. They will be able to make the decision on if the charge can be removed due to you taking all online courses.

Student Health Service Center

Phone: 803-777-3175

Fax: 803-777-0126

SAHIAO@mailbox.sc.edu

Thank you,

*Student Customer Services
 Bursar's Office
 University of South Carolina-Columbia*

From: [REDACTED] >
Sent: Sunday, August 9, 2020 11:53 AM
To: AR, BURS <BURSAR@mailbox.sc.edu>
Subject: Re: Tuition/Fee Questions

Thank you for that explanation so that I have clarity. I do wonder though, will the COL Health Center Fee of \$127 be removed or is this too one that cannot be removed?

Best,

[REDACTED]

From: AR, BURS <BURSAR@mailbox.sc.edu>
Sent: Wednesday, August 5, 2020 3:16 PM
To: [REDACTED]
Subject: Re: Tuition/Fee Questions

Hello [REDACTED],
Thank you for contacting the Bursar's Office.

The technology cannot be removed. The Technology fee is in addition to tuition and is charged to all students attending the University of South Carolina. This fee is charged for in-person courses as well as Online courses and is used for the enhancement of technology at the University. This fee helps acquire, install, and maintain up-to-date and emerging technologies to enhance student-learning outcomes. All hardware, software, databases, and other capital equipment procured with these revenues are to support student learning experiences such as Blackboard, Self Service Carolina, etc.

The \$1014.00 is Mandatory insurance that is now required all undergraduate and graduate students enrolled in six or more credit hours, School of Medicine students enrolled in one or more credit hours, graduate assistants and all international students. If you have comparable insurance and want to waive out (which must be done every year), please see the information below. The waiver system will close September 11, 2020. Waivers cannot be accepted after the deadline. Students that do not have comparable health insurance or show proof of health insurance will automatically be enrolled in and charged for the Student Health Plan.

AHP (Academic Health Partner) has stated that it takes 5-7 days for a waiver to be approved once it has been submitted. Once it has been approved, the information will be sent directly to the Student Insurance Office (803-777-1916) and they will then have the charge removed from the student account. If it has been more than 7 days, please contact AHP directly to discuss the status at 855-844-3015.

Process to Waive Out of Mandatory Insurance

If you have a health insurance plan that you intend to keep and want to waive coverage:

Have an electronic copy of your current insurance card and your University of South Carolina student ID, your Carolina Card.

Go to: <https://sc.myahpcare.com/waiver>

Select the appropriate student link.

Login to the system by using the following:

Login – USC ID (1 letter, plus 8-digits; found on the back of your Carolina Card)

Password – Date of Birth in MMDDYYYY format, unless previously changed. (Ex: 01011990)

Select the 'Sign In' button.

On the home page, select the red "WAIVE – Fall 2019-20" button from the "NO, I do not want the insurance" section.

Enter your insurance information and attach your required documentation.

Select the 'Submit Waiver' button at the bottom of the waiver form.

https://sc.edu/about/offices_and_divisions/student_health_services/insurance-payments/index.php.

If you have questions regarding this, please contact the Health Services staff directly to discuss- 803-777-1916 or AHP 855-844-3015.

Thank you,

Student Customer Services
Bursar's Office
University of South Carolina-Columbia

From: [REDACTED]

Sent: Wednesday, August 5, 2020 2:49 PM

To: AR, BURS <BURSAR@mailbox.sc.edu>

Subject: Tuition/Fee Questions

[REDACTED]

Is it possible to get the Health Fees removed? Is it possible to get the Technology Fee removed?

[REDACTED]

ELECTRONICALLY FILED - 2023 Oct 12 4:55 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

EXHIBIT J

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DAVIA BUNCH, PETER KELLY,
TERRY KELLY, INDIVIDUALLY
AND ON BEHALF OF OTHERS
SIMILARLY SITUATED,

Plaintiffs,

vs.

Case No. 2020-CP-40-02330

THE UNIVERSITY OF SOUTH CAROLINA,

Defendant.

VIDEOTAPED

DEPOSITION OF: SANDRA J. KELLY, PhD

DATE: July 27, 2022

TIME: 11:20 AM

LOCATION: Nelson, Mullins, Riley &
Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC

REPORTED BY: Sandra K. Bjerke, RDR, CRR, CBC
(Appearing via Zoom)

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 DAVIA BUNCH, PETER KELLY, TERRY KELLY,
4 INDIVIDUALLY AND ON BEHALF OF OTHERS
5 SIMILARLY SITUATED:

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8 4401 Northside Parkway, Suite 390
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10 (404) 949-8118
11 bradley@prattclay.com

12 KABAT CHAPMAN & OZMER, LLP

13 BY: NATHAN D. CHAPMAN
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19 ATTORNEYS FOR THE DEFENDANT

20 THE UNIVERSITY OF SOUTH CAROLINA:

21 NELSON, MULLINS, RILEY &
22 SCARBOROUGH, LLP

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25 151 Meeting Street, 6th Floor
Charleston, SC 29401
(843) 853-5200
robert.brunson@nelsonmullins.com
gina.horseman@nelsonmullins.com

ALSO PRESENT:

Alan Metts, Videographer

(INDEX AT REAR OF TRANSCRIPT)

1 correct me if I'm wrong -- back in the spring of
2 2020.

3 A. In the spring of 2020, students were
4 ordered away from campus at that point in time.

5 Q. Okay. For the technology fee -- and
6 we'll get to these other explanations as we move up
7 and through the emails.

8 But do you believe that part of the
9 justification for the technology fee is this
10 on-campus use that's described in Ms. Pressley's
11 email here?

12 A. I think in typical times that's part of
13 the technology fee. During the spring of 2020 the
14 technology fee was used in a very different manner.
15 I don't think Nicole has the full justification of
16 the technology fee.

17 When we shifted to online learning we
18 shifted to massive use of Blackboard, Blackboard
19 Collaborate, webcams, computer services, as well as
20 training, and those are all technology fee support.
21 So while we were not using the technology fee in
22 the typical -- during a typical semester, we were
23 using that technology fee. In fact, kind of on
24 steroids.

25 Q. Got it. Okay. And part of my job or a

EXHIBIT K

Message

From: KELLY, SANDRA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5BB449E4C1BD4845837050261F15CC02-SJKELLY]
Sent: 3/21/2020 8:31:18 PM
To: FOSTER, MICHELLE [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a85a4bbb53714ddfb8926146ccaf6e49-MFOSTER]
CC: DOLLAR, MICHAEL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=55db459f0c1345c98f14b32da76512a8-MDOLLAR]
Subject: RE: Checking in on laptops Dean Brews offered to the Provost's office

Thank you, Michelle - - this is great. Best, Sandra

From: FOSTER, MICHELLE <MFOSTER@mailbox.sc.edu>
Sent: Saturday, March 21, 2020 8:24 PM
To: KELLY, SANDRA <SANDRA-KELLY@sc.edu>
Cc: DOLLAR, MICHAEL <MDOLLAR@mailbox.sc.edu>
Subject: Re: Checking in on laptops Dean Brews offered to the Provost's office

Dr. Kelly,

We have the individual email addresses for students, based on the list provided by Lynzie. I'll reach out to the students and notify them that we are working on getting everything organized for them and DoIT will ship the devices to them or arrange an alternate drop-off/pick-up site. We are waiting for delivery of the hot spots (we requested rush shipping) and exploring one other option that may be faster. We will keep you updated.

Thank you for your assistance.

Michelle

Michelle Foster
Executive Director of IT Communications and Governance

803-777-8910

Division of Information Technology
 University of South Carolina
 Thornwell, Suite 323
 1420 Pendleton Street
 Columbia, SC 29208



From: DOLLAR, MICHAEL
Sent: Saturday, March 21, 2020 6:52 PM
To: KELLY, SANDRA <SANDRA-KELLY@sc.edu>
Subject: RE: Checking in on laptops Dean Brews offered to the Provost's office

Agreed on the snooping out idle laptops.

I'm asking all academic unit IT directors to ask their faculty or staff who may have a spare laptop. DoIT will do all the work if we can get them to loan the equipment. We will manage the loaners for anything we can get.

As to the communication strategy, I need to defer to Michelle Foster, the Exec Director for Comm within DoIT.

I'm keeping her informed and will immediately get this question to her inbox. I'll ask her to provide input.

md

From: KELLY, SANDRA
Sent: Saturday, March 21, 2020 2:44 PM
To: DOLLAR, MICHAEL <MDOLLAR@mailbox.sc.edu>
Subject: RE: Checking in on laptops Dean Brews offered to the Provost's office

Hi Mike,

I have a note into Tayloe about just putting together what we have. Social Work has apparently 6 computers (as of COB Friday) ready to share - Sarah Gehlert has already offered this. I have a laptop that I am quite willing to loan out since I will be using my desktop at work and at home (actually I am moving my desktop from work to my home). I am not the only person with a spare laptop. I know that we have spare laptops in this university - we just have to get them.

Lynzie's list has 8 computer requests and 16 internet requests. How are we arranging the loans and also letting students know about the funds for unlimited data for hotspots? Best, Sandra

Sent from Mail for Windows 10

From: DOLLAR, MICHAEL
Sent: Saturday, March 21, 2020 2:38 PM
To: KELLY, SANDRA
Subject: Re: Checking in on laptops Dean Brews offered to the Provost's office

That's an unfortunate response on Pete's part. Ok, we will keep trying.

Mobile. Please excuse any typos.

From: KELLY, SANDRA <SANDRA-KELLY@sc.edu>
Sent: Saturday, March 21, 2020 2:18:00 PM
To: DOLLAR, MICHAEL <MDOLLAR@mailbox.sc.edu>
Subject: FW: Checking in on laptops Dean Brews offered to the Provost's office

Just fyi

Sent from Mail for Windows 10

From: Brews, Peter <Peter.Brews@moore.sc.edu>
Sent: Saturday, March 21, 2020 2:04:56 PM
To: KELLY, SANDRA <SANDRA-KELLY@sc.edu>
Cc: HARDING JR., TAYLOE HARDING <tharding@mozart.sc.edu>
Subject: RE: Checking in on laptops Dean Brews offered to the Provost's office

Sandra: Mike has been in contact with Charles and he told him yesterday by email we do not have any spares at this time. Charles told Mike this yesterday. There has been an unprecedented demand from our staff for our machines, and we now have less than 10 old machines left with some staff requests outstanding. Unfortunately this is now a scarce commodity at DMSB too, given the demand from staff over last week. I'd appreciate Mike not mislead you about a lack of response from Charles, this was not the case. Best, pete

From: KELLY, SANDRA <SANDRA-KELLY@sc.edu>
Sent: Saturday, March 21, 2020 12:23 PM
To: Brews, Peter <Peter.Brews@moore.sc.edu>
Cc: HARDING JR., TAYLOE HARDING <tharding@mozart.sc.edu>
Subject: FW: Checking in on laptops Dean Brews offered to the Provost's office

Dear Peter,

We are not getting a response from Charles about the computers. I understand that this is off hours but DoIT has had trouble getting computers available for students and Mike Dollar is aware that there are a lot of computers available at DMSB (I gather he used to work there).

Is it possible that we could get access to them as soon as possible? I know that you in an earlier email chain offered them as part of the solution. We have students in need. Best, Sandra

Sent from Mail for Windows 10

From: DOLLAR, MICHAEL
Sent: Saturday, March 21, 2020 12:09 PM
To: KELLY, SANDRA
Subject: FW: Checking in on laptops Dean Brews offered to the Provost's office

Sandra,

Below is the latest exchange on laptops with the Moore School IT manager. This has been an ongoing discussion and I expected a more positive response to the needs.

To the best of my recollection, they have somewhere between 120-150 laptops. Possibly more. If they can work with us on the 25 laptops for students, I feel certain we can identify desktop computers for any of their faculty and staff needs.

If Pete Brews can supply the laptop hardware, we will do everything else to prepare them for student use.

Thank you,

Michael

From: "DOLLAR, MICHAEL" <MDOLLAR@mailbox.sc.edu>
Date: Friday, March 20, 2020 at 7:50 PM
To: "Kerns, Charles" <ckerns@moore.sc.edu>
Subject: RE: Checking in on laptops Dean Brews offered to the Provost's office

Charles,

Thanks. Good info.

In that regard, I need to ask that you provide an estimate of current availability and hopefully make a modest, immediate commitment as mentioned by Dean Brews.

The Provost's Office needs a modest 25 laptops to meet immediate needs for students who cannot participate in classes on Monday. These are almost exclusively in-state and disadvantaged students who do not have the personal resources to participate in classes without our help.

Can you commit to 25 laptops right now with the expectation that we won't ask for further commitment prior to exhausting other resources?

The DoIT is working to fill all gaps but, as you can imagine, is in competition with all educational entities and other entities to get requests fulfilled by vendors.

Please let me know how we can get a commitment of 25 laptops with the expectation that we will work towards backfilling any future needs you might have as the vendors can respond to our needs. **We can easily work with any 25 laptops you can provide.**

If you need academic support to provide 25 laptops, I can ask that the Provost's Office work with Dean Brews directly, if that helps you.

Mike

From: Kerns, Charles [<mailto:ckerns@moore.sc.edu>]

Sent: Friday, March 20, 2020 7:23 PM

To: DOLLAR, MICHAEL <MDOLLAR@mailbox.sc.edu>

Subject: Re: Checking in on laptops Dean Brews offered to the Provost's office

Mike,

We are continuing to distribute laptops to our faculty, staff and students. If we have laptops left over I will contact you.

Charles Kerns
Director of IT

Moore School of Business
University of South Carolina
1014 Greene st.
Columbia, SC 29208

Phone 803.397.1083
Fax 803.777.2200
Web mooreschool.sc.edu
email ckerns@moore.sc.edu

EXHIBIT L

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
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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.

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1 A You're talking about behind it?

2 Q Yeah, behind it there's a list of -- I
3 don't know what that is.

4 A Those are all of the other Spanish 122s
5 that you could also sign up for.

6 Q Oh, I see.

7 So the university offered -- I don't know,
8 there's like 10 or 12 different Spanish 122s. You
9 could have signed up for a different professor, for
10 example, or location or schedule?

11 A Right. But they were all full.

12 Q But they were all full. I see. So that's
13 the red in the middle saying they're full?

14 A Uh-huh.

15 Q So the box, is this the one you signed up
16 for?

17 A Yes, that was my class.

18 Q Okay.

19 A The course number is up there at the top,
20 the CRN.

21 Q CRN 46551?

22 A Uh-huh.

23 Q And this says Term 202001, so that means
24 that it was fall of 2020? Or do you know?

25 A I don't know what that means. I think

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1 A Sometimes.

2 Q Okay. So let's flip on over to Page 18.
3 And that one is Internship in Media Arts. And this
4 one says it's an Internship/Cooperative and the
5 Instructional Method is Face-to-Face Instruction.

6 So what did that mean?

7 A So this one was when I interned for the
8 documentary place in the Vista. And I was going
9 there and helping out in the office. I would
10 sometimes organize camera equipment or things like
11 that, do research projects for him. I would go help
12 him out on little sets or I would go with him to a
13 high school, things like that, and/or I would
14 research things at the office. And this was for
15 this course.

16 And I would have to just kind of document
17 what my experience was like. And then the end of
18 the year I just had -- well, it did get cut off when
19 the pandemic happened because I was no longer
20 allowed to work. I think I did it for maybe two
21 weeks into the pandemic because I was still -- I
22 stuck around in Columbia. And I wanted to keep
23 getting the credit. Because if I didn't, I think
24 the kids had an option to just do an extra project.
25 And then we just had to turn in an assignment at the

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

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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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1 when you get access you just -- there's an -- like,
2 you -- it says look up your classes. And I can't
3 remember exactly how the Web page looks, so I can't
4 guide you through that. But you would just go
5 through and you would literally just type in the CRN
6 numbers and that's how I would add them in.

7 Q Okay. Did you have to list alternatives in
8 case you didn't get into one that you wanted?

9 A I believe so. I don't remember, but I
10 think so.

11 Q When did you find out which classes you
12 got?

13 A I think the same day. I could be wrong.
14 But I think once I put those in, you would --

15 Q It spits out your schedule?

16 A Yeah. If there was available seats, you
17 were confirmed.

18 Q Okay. Whoa.

19 MR. PRATT: Be careful.

20 MR. BRUNSON: Just for the record, I
21 overextended the microphone cable.

22 All right. Let's mark this as Exhibit 3.

23 (Exhibit 3 was marked.)

24 BY MR. BRUNSON:

25 Q So Exhibit 3, can you tell me what this is?

1 is?

2 A No.

3 Q The Meal Plan 1,685, you know what that is?

4 A Yes.

5 Q That's a university meal plan as opposed to
6 the Greek meal plan that you used later; right?

7 A Correct.

8 Q By the way, when did you join the sorority?

9 A My freshman year.

10 Q Fall or spring?

11 A Fall.

12 Q Security Network Fee \$76. Do you know what
13 that is?

14 A I believe it was for the WiFi. I could be
15 wrong.

16 Q Okay. Technology Fee 200. Do you know
17 what that is?

18 A That was supposed to maintain the campus
19 WiFi and access the computer labs.

20 Q I think it would be good if you could speak
21 up a little bit for the court reporter. You have a
22 soft-spoken voice sometimes.

23 A Yes. Sorry.

24 To maintain the campus WiFi and update the
25 computers and have access to the computer labs.

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1 Q Okay. So you completed all of your classes
2 for the spring of 2020; correct?

3 A Correct.

4 Q You got A's in Global Media Industries,
5 Hong Kong Action Camera, Internship in Media Arts
6 and Basic Proficiency in Spanish, and a B only in
7 Moving Image Advanced Documentary; is that correct?

8 A Correct.

9 Q And you received full credit towards
10 graduation in each of your courses; correct?

11 A Correct.

12 Q Did you have the option of taking a
13 pass/fail grade that semester?

14 A I think so. I'm not sure.

15 Q At any rate, if you had that option, you
16 went for the A's and B's; right?

17 A I guess so.

18 Q Okay. At the bottom it says "Undergraduate
19 Summary" and that's just showing your cumulative GPA
20 and hours earned and so forth; correct?

21 A Yes.

22 Q Do you know what Quality Points means?

23 A I do not.

24 Q Okay. So when you attended USC, did your
25 parents pay everything for you, tuition, meals,

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1 technology fees from all the students. And because
2 of the pandemic, unbudgeted expenses caused them to
3 spend \$2 million.

4 A Uh-huh.

5 Q Do you still think that you should be
6 reimbursed your \$200 even though the university
7 spent more than it had planned because of the
8 pandemic?

9 MR. PRATT: Object to form.

10 THE WITNESS: I mean, I was paying \$200 for
11 a technology fee so that I could have access to
12 computers and WiFi and printers all over campus, but
13 then when I was moved remotely, now I'm in addition
14 having to pay for my WiFi -- extra WiFi bills at
15 home, I'm having to up my WiFi because me and
16 roommates, you know, are using a lot more WiFi now.
17 I'm having to also go to Kinko's and what have you
18 to print those additional -- you know.

19 So we're as students taking on additional
20 payments for those resources that we should have
21 already been having covered by these technology fees
22 where I could just swipe and pay -- you know, use my
23 Carolina card as a student because I thought that
24 these technology fees covered that.

25 So I shouldn't be having to do that. And

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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

APPEARANCES

FOR THE PLAINTIFFS:

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BY: NATHAN CHAPMAN, ESQ.

171 17th Street NW, Suite 1550

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404.400.7300

nchapman@kcozlaw.com

FOR THE DEFENDANTS:

NELSON MULLINS RILEY & SCARBOROUGH

BY: ROBERT BRUNSON, ESQ.

BY: GINA HORSEMAN, ESQ. (Appearing Remotely)

152 Meeting St. Liberty Center, Suite 600

Charleston, South Carolina 29401

843.853.5200

robert.brunson@nelsonmullins.com

gina.horseman@nelsonmullins.com

ALSO PRESENT: Peter John Kelly

ALSO PRESENT: Theresa Kelly

THE LEGAL VIDEOGRAPHER: Kevin Montgomery

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 M

Higher Education Emergency Relief Fund

Frequently Asked Questions about the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

The CARES Act, which establishes and funds the Higher Education Emergency Relief Fund (HEERF), directs institutions of higher education (“institutions”) to use no less than 50 percent of funds received under Sections 18004(a)(1) and 18004(c) of the CARES Act to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. These FAQs address only those funds provided by the Secretary to an institution for emergency financial aid grants to students under Sections 18004(a)(1) and 18004(c) of the CARES Act.

1) Can institutions that have provided refunds to students for room and board, tuition, and other fees (such as activities fees) reimburse themselves from the funds for the emergency financial aid grants to students?

No. The CARES Act requires institutions to use no less than 50 percent of HEERF funds received under Sections 18004(a)(1) and 18004(c) of the CARES Act to provide emergency financial aid grants to students. These funds distributed by the Department represent the 50 percent minimum of each institution’s HEERF funds under Section 18004(a)(1) of the CARES Act for these emergency financial aid grants to students. Section 2 of the Funding Certification and Agreement for the Emergency Financial Aid Grants to Students states: “Recipient shall not use [these] funds to reimburse itself for any costs or expenses, including but not limited to any costs associated with significant changes to the delivery of instruction due to the coronavirus and/or any refunds or other benefits that Recipient previously issued to students.”

Institutions will have more flexibility in the use of the portion of the HEERF that is made available to cover an institution’s costs associated with significant changes to the delivery of instruction due to the coronavirus. The Department will provide a Frequently Asked Questions (FAQ) document regarding the allowable uses of funds for an institution’s costs shortly after making those funds available to institutions.

2) Can institutions that have provided information technology hardware (such as laptops, hotspot internet devices, etc.) and other related equipment to students reimburse themselves from the funds for the emergency financial aid grants to students?

No. The CARES Act requires institutions to provide the emergency financial aid grants to students. Section 2 of the Funding Certification and Agreement for the Emergency Financial Aid Grants to Students states: “Recipient shall not use [these] funds to reimburse itself for any costs or expenses, including but not limited to any costs associated with significant changes to the delivery of instruction due to the coronavirus and/or any refunds or other benefits that Recipient previously issued to students.”

Institutions will have more flexibility in the use of the portion of the HEERF that is made available to cover an institution's costs associated with significant changes to the delivery of instruction due to the coronavirus. The Department will provide a FAQ document regarding the allowable uses of funds for an institution's costs shortly after making those funds available to institutions.

3) Can institutions that have provided institutionally-funded emergency grants to students as a result of COVID-19 reimburse themselves from the funds for the emergency financial aid grants to students?

The only institutionally-funded emergency grants to students that are eligible for reimbursement from the funds for emergency financial aid grants to students under the CARES Act are grants: 1) for authorized expenses related to the disruption of campus operations due to coronavirus as set forth in Section 18004(c) of the CARES Act; 2) made to students eligible to receive emergency financial aid grants under the CARES Act; and 3) made on or after March 27, 2020, the date the CARES Act was enacted. An institution must use no less than 50 percent of funds provided pursuant to Sections 18004(a)(1) and 18004(c) for emergency financial aid grants to students. An institution must document that reimbursements for institutionally-funded emergency grants to students are made in accordance with the CARES Act.

4) Can institutions that have continued to pay student workers from institutional funds for campus jobs reimburse themselves from the funds for the emergency financial aid grants to students?

No. The CARES Act requires institutions to provide the emergency financial aid grants to students, and institutions may not use that portion of the HEERF set aside for emergency financial aid grants to students for this purpose. The Department notes that Congress has provided additional flexibility to institutions relating to the Federal Work-Study (FWS) Program, including that institutions may continue to pay FWS wages to students for the remainder of the current academic year in instances in which those students' jobs were interrupted as a result of the national emergency due to the coronavirus, as long as those students had started employment prior to this national emergency. The CARES Act also waives the non-federal wage match requirement for institutional and non-profit employers of FWS students. Please see the Department's [Guidance for Interruptions of Study Related to Coronavirus](#), which provides additional information about the FWS Program.

The Department will provide a FAQ document regarding the allowable uses of funds for an institution's costs associated with significant changes to the delivery of instruction due to the coronavirus shortly after making those funds available to institutions.

5) Can institutions use the funds for the emergency financial aid grants to students to pay outstanding or overdue student bills to institutions?

No. The CARES Act requires institutions to provide the emergency financial aid grants to students. The institution may not use that portion of the HEERF set aside for emergency financial aid grants to students to satisfy a student's outstanding account balance. The Department notes that the student may use his or her emergency financial aid grant for expenses related to the disruption of campus operations due to coronavirus.

6) What data will the Department require institutions to report after disbursement of emergency financial aid grants to students?

As explained in the Funding Certification and Agreement for the Emergency Financial Aid Grants to Students, each institution will report to the Secretary the following: how grants were distributed to students, how the amount of each grant was calculated, and any instructions or directions that the institution gave to students about the grant. Institutions must also comply with the reporting requirements under Section 15011 of the CARES Act. The Department will publish a notice in the Federal Register to provide instructions to institutions on these reporting requirements.

7) What obligation does an institution have to continue to pay all its employees after accepting the funds for the emergency financial aid grants to students?

The CARES Act requires each institution that accepts funds from the HEERF, including funds used to pay emergency financial aid grants, to continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of each institution; however, institutions may not use emergency financial aid grants to students to pay employees and contractors.

8) Are incarcerated students participating in the Second Chance Pell Experimental Site Initiative (ESI) eligible for emergency financial aid grants to students?

The CARES Act expressly requires that institutions provide the emergency financial aid grants to students "for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and childcare)." If an incarcerated individual who is participating in the Second Chance Pell experiment is released from incarceration as a result of the national emergency due to the coronavirus, remains enrolled as a student in the program under the Second Chance Pell experiment, and has such expenses, he or she likely qualifies for an emergency financial aid grant. A person who remains incarcerated is unlikely to incur these expenses and would thus be ineligible. Accordingly, for students participating in the Second Chance Pell ESI, institutions will need to review on a case-by-case basis what, if any, expenses an incarcerated person, or a formerly incarcerated person released due to the coronavirus, has incurred due to the disruption of campus operations.

9) What students are eligible to receive emergency financial aid grants from the HEERF?

Only students who are or could be eligible to participate in programs under Section 484 in Title IV of the Higher Education Act of 1965, as amended (HEA), may receive emergency financial aid grants. If a student has filed a Free Application for Federal Student Aid (FAFSA), then the student has demonstrated eligibility to participate in programs under Section 484 the HEA. Students who have not filed a FAFSA but who are eligible to file a FAFSA also may receive emergency financial aid grants. The criteria to participate in programs under Section 484 of the HEA include but are not limited to the following: U.S. citizenship or eligible noncitizen; a valid Social Security number; registration with Selective Service (if the student is male); and a high school diploma, GED, or completion of high school in an approved homeschool setting.

10) Will funds provided through the CARES Act be included in an institution's 90/10 calculation?

Funds paid directly to institutions by the Department through the HEERF will not be included as revenue for 90/10 purposes.

11) How must institutions pay the emergency financial aid grants to students?

Institutions may provide emergency financial aid grants to students using checks, electronic transfer payments, debit cards, and payment apps that adhere to the Department's requirements for paying credit balances to students. The disbursement of the emergency financial aid grant to the student must remain unencumbered by the institution; debts, charges, fees, or other amounts owed to the institution may not be deducted from the emergency financial aid grant. The emergency financial aid grant may not be made to students through the use of a credit card that can be used only on campus or in a retail outlet affiliated with the institution.

12) At institutions that provide both online and ground-based education, are students who were enrolled exclusively in online programs prior to the national emergency due to the coronavirus eligible to receive emergency financial aid grants?

At institutions that provide both online and ground-based education, those students who were enrolled exclusively in an online program on March 13, 2020, the date of the President's Proclamation, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," *Federal Register* Vol. 85, No. 53 at 15337-38, are not eligible for emergency financial aid grants. The formula provided by Congress for calculating the distribution of funds to institutions excludes students who were exclusively enrolled in distance education courses. Additionally, the emergency financial

aid grants to students are for expenses related to the disruption of campus operations due to coronavirus, and students who were enrolled exclusively in online programs would not have expenses related to the disruption of campus operations due to coronavirus.

13) Where can institutions locate additional resources and information related to emergency financial aid grants to students?

CARES Act grant resources and guidance are located on the Office of Postsecondary Education's webpage: <https://www2.ed.gov/about/offices/list/ope/caresact.html>.

EXHIBIT N

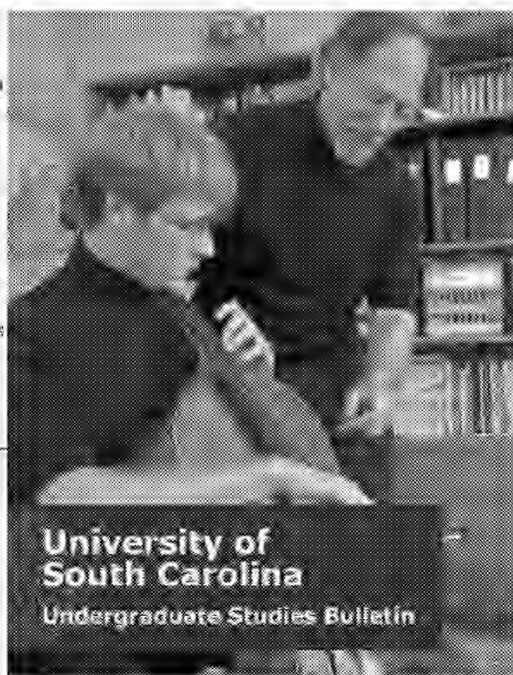
Columbia Campus**2019-2020 Undergraduate Studies Bulletin****2019-2020 Undergraduate Studies Bulletin**

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/>

Columbia Campus

2019-2020 Policies and Regulations

2019-2020 Policies and Regulations

Policies and Regulations

Here you will find helpful information concerning the University of South Carolina System, links to sites addressing fees, financial aid, scholarships and other important resources. Please note that both undergraduate and graduate policies and regulations are found here. Information pertaining to both is listed first in the navigation bar. Undergraduate and graduate specific links follow respectively.

Columbia Campus

2019-2020 Policies and Regulations

The University

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- [USC System Mission Statement](#)
 - [USC Columbia Mission Statement](#)
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-

USC System Mission Statement

The primary mission of the University of South Carolina System is the education of the state's diverse citizens through teaching, research, creative activity, and community engagement. This public university system serves students from its flagship Columbia campus, three comprehensive universities (Aiken, Beaufort, and Florence), and four regional Palmetto College campuses (Lancaster, Salkehatchie, Sumter, and Union).

The University of South Carolina System offers degree programs at the associate's, bachelor's, master's, and doctoral levels. Through classroom and laboratory instruction delivered in a variety of face-to-face and distance learning formats and modalities, degree programs are offered in the following areas: arts and sciences; business; education; engineering and computing; hospitality, retail, and sport management; information and communications; law; medicine; music; nursing; pharmacy; public health; and social work.

With a flagship campus recognized by the Carnegie Foundation as a top research and community engaged institution and nationally ranked in start-up businesses, and an eight-campus system that confers nearly 40% of all bachelor's and graduate degrees awarded at public institutions in South Carolina, the university has a profound relevance, reach, and impact on the people of the state. The University of South Carolina System provides all students with the highest-quality education, including the knowledge, skills, and values necessary for success and responsible citizenship in a complex and changing world through engagement in nationally and internationally ranked research, scholarship, service, and artistic creation.

USC Columbia Mission Statement

The primary mission of the University of South Carolina Columbia is the education of the state's citizens through teaching, research, creative activity, and community engagement. Among America's oldest and most comprehensive public universities, the University of South Carolina Columbia is the major research institution of the university system and its largest campus. At the heart of its mission lies the university's responsibility to state and society to promote the dissemination of knowledge, cultural enrichment, and an enhanced quality of life.

The University of South Carolina Columbia serves a diverse population of students with widely varying backgrounds, career goals, and levels of aspiration. The university offers over 320 degrees at the bachelor's, master's, doctoral, and professional program levels, affording students the most comprehensive array of educational programs in the state. Opportunities for personal and career development are provided to the citizens of South Carolina through outreach and continuing education activities. The university provides additional opportunities for associate degrees through Fort Jackson and through the oversight of regional Palmetto College campuses (Lancaster, Salkehatchie, Sumter, and Union).

Through classroom and laboratory instruction delivered in a variety of face-to-face and distance learning formats and modalities, degree programs are offered in the following areas: arts and sciences; business; education; engineering and computing; hospitality, retail, and sport management; information and communications; law; medicine; music; nursing; pharmacy; public health; and social work. The depth and breadth of its graduate programs distinguishes the University of South Carolina Columbia from all other institutions of higher learning in South Carolina.

Recognized by the Carnegie Foundation as a top research and community engaged institution, nationally ranked in start-up businesses, and conferring over 30% of all bachelor's and graduate degrees awarded at public institutions in South Carolina, the university has a profound relevance, reach, and impact on the people of the state. As the flagship institution of the university system, the University of South Carolina Columbia leads the way in providing all students with the highest-quality education, including the knowledge, skills, and values necessary for success and responsible citizenship in a complex and changing world through engagement in nationally and internationally ranked research, scholarship, community outreach, and artistic creation.

History

Chartered in 1801 as South Carolina College, the University of South Carolina was the first state university to be supported continuously by annual state appropriations. In the years before the Civil War, it rapidly achieved a reputation for academic excellence in the classical tradition and was known as one of the best endowed and most distinguished colleges in the United States. Its faculty included Francis Lieber, editor of the *Encyclopaedia Americana* and author of *On Civil Liberty* and *Self-Government*; the nationally known scientists John and Joseph LeConte; and chemist William Ellet, who produced some of the first daguerreotypes in the United States. By the 1830s, distinguished alumni virtually filled the state's General Assembly. James H. Hammond and Wade Hampton were the most prominent of a parade of future governors, senators, judges, and generals who graduated during the antebellum period.

The pre-Civil War campus included Longstreet Theatre and all the buildings in the area known today as the Horseshoe (with the exception of McKissick Museum). When the voluntary enlistment of all students into the Army of the Confederacy forced the college to close in June 1862, the buildings were used by the Confederate government as a hospital. By the time General Sherman's army reached Columbia in February 1865, the hospital housed wounded Union soldiers as well. A fire soon started that destroyed most of the city, but federal troops helped save the campus buildings from the flames.

After reopening in 1865, the institution went through six reorganizations and name changes during the last decades of the 19th century, while legislators, administrators, and faculties reassessed the institution's goals and struggled to define its mission. Finally in 1906, at the beginning of its second century, it was rechartered for the third, and last, time as the University of South Carolina, with a graduate school.

In sharp contrast to the South Carolina College's antebellum, elitist philosophy, President William Davis Melton in 1925 expressed a far-reaching principle that had emerged in the first quarter of the century: "Education is not a special privilege to be enjoyed by a special few." Thus, in its final reorganization, the University of South Carolina developed this institutional objective: to furnish both liberal and professional education to the people of South Carolina.

Efforts to achieve this objective were almost immediately hampered by the early arrival of the Great Depression in South Carolina. Enrollment declined, some courses were eliminated, and buildings went without repairs. The situation improved greatly in the late 1930s because of grants from federal New Deal agencies. Then America entered World War II, and the campus was virtually transformed into a naval training base, with payments from the Navy helping the school continue to function during the war years.

Fulfillment of the promise of the early years of the 20th century began in earnest in the 1950s. Since then, dynamic academic expansion and the development of a statewide network of campuses have produced highly diverse and innovative education programs. A commitment to graduate education along with involvement in major research programs has attracted an outstanding faculty. A master plan for the campus environment and buildings will preserve the historic campus atmosphere while providing new academic, residence, and campus life facilities.

Today, the University serves the entire state and includes, in addition to the Columbia campus, three four-year campuses (Aiken, Beaufort, and Upstate) and four regional campuses offering primarily two-year programs (Lancaster, Salkehatchie, Sumter, and Union). Enrollment on all campuses totals more than 40,000. Of these, more than 27,000 students are on the Columbia campus, about one-third of whom are enrolled in graduate and professional programs. The University offers more than 350 degree programs, including 11 programs of study for associate degrees, baccalaureate degrees in 140 areas, master's degrees in 150 areas, doctoral degrees in 66 areas, and professional doctorates in law, medicine, and pharmacy. Many programs are nationally and internationally ranked, from the creative arts, liberal arts, health and physical sciences, to law, business, and engineering. Regional campuses primarily offer associate degrees to students who may earn 60 hours of credit applicable toward a baccalaureate degree program. The four-year campuses, in addition to basic courses, primarily offer programs leading to the baccalaureate degree. Graduate courses are also offered at more than 50 sites throughout the state under the Extended Graduate Campus program administered by the Columbia campus. Other programs are broadcast via closed-circuit television from studio classrooms on the Columbia campus and through the state's ETV digital satellite network.

Coinciding with this statewide outreach program has been the establishment of the South Carolina Honors College on the Columbia campus. The college is designed to offer academically gifted undergraduates the finest advantages of a small college in the context of a large comprehensive university.

The University's effort in the international area, particularly important to the state's development of foreign trade and investment, continues to expand; academic exchange programs and research linkages have been established with European, African, and South American universities, as well as with China and Japan.

In keeping with both its 19th-century and its 20th-century heritage, the University continues to promote academic excellence while responding progressively to its educational responsibilities and the citizens of South Carolina. It has committed itself to earning a place in the Association of American Universities (AAU), which includes 60 of the finest institutions of higher learning in America. Pursuing this goal, the University aspires to build upon its commitment to enhancing not only our

students' knowledge, understanding, and economic viability, but also their sense of character, empathy, and mutual respect. Such ambitions and ideals were cornerstones of the original college and remain fundamental to the University's purpose in South Carolina and in society.

Accreditation

The University of South Carolina Columbia is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award associate, baccalaureate, master's, and doctoral degrees. The regional Palmetto College campuses (Laurens, Salkehatchie, Sumter, and Union) are branch campuses of the University of South Carolina Columbia; the branch campuses' accreditation is dependent on the continued accreditation of the University of South Carolina Columbia. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097 or call 404-679-4500 for questions about the accreditation of the University of South Carolina Columbia.

In addition to this comprehensive accreditation, the professional schools on the Columbia campus are individually accredited by their respective associations as follows:

College of Arts and Sciences: In the Department of Psychology, the graduate degrees in clinical-community psychology are accredited by the American Psychological Association; graduate degrees in school psychology are accredited by the National Association of State Directors of Teacher Education and Certification, the National Council for Accreditation of Teacher Education, and the National Association of School Psychologists with the doctoral program also being accredited by the American Psychological Association. The Master of Public Administration degree offered by the Department of Political Science is accredited by the National Association of Schools of Public Affairs and Administration. The Department of Theatre and Dance is accredited by the National Association of Schools of Theatre and the University/Resident Theatre Association. The Department of Art is accredited by the National Association of Schools of Art and Design. The Department of Chemistry is accredited by the American Chemical Society.

Moore School of Business and the School of Accounting: American Assembly of Collegiate Schools of Business.

College of Education: National Council for Accreditation of Teacher Education, Council for the Accreditation of Counseling and Other Related Educational Programs.

College of Engineering and Computing: Programs in chemical engineering, civil engineering, computer engineering, electrical engineering, and mechanical engineering are accredited by the Engineering Accreditation Commission of ABET, <http://www.abet.org>. The programs in computer science and computer information systems are accredited by the Computing Accreditation Commission of ABET, <http://www.abet.org>.

School of Hospitality, Retail, and Sport Management: Accreditation Commission for Programs in Hospitality Administration.

School of Law: American Bar Association, Association of American Law Schools.

College of Information and Communications: The School of Journalism and Mass Communications is accredited by the Accrediting Council on Education in Journalism and Mass Communications. The School of Library and Information Science is accredited by the American Library Association.

School of Medicine: Liaison Committee on Medical Education of the American Medical Association—Association of American Medical Colleges.

School of Music: National Association of Schools of Music.

College of Nursing: Commission on Collegiate Nursing Education.

College of Pharmacy: American Council on Pharmaceutical Education.

Arnold School of Public Health: Accreditation in Physical Therapy Education, Council on Academic Accreditation of the American Speech-Language-Hearing Association, Council on Education for Public Health, National Council for Accreditation of Teacher Education, National Association of State Directors of Teacher Education and Certification.

College of Social Work: Council on Social Work Education.

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Academic and Support Services

Libraries

Detailed instruction concerning the use of library facilities is provided both in English 101 as well as in tours offered by the library's Reference Department. A library guide, which gives information about library services, is available upon request.

Thomas Cooper Library (Green Street). This library, which opened in June 1976, contains all of the University library collections in Columbia except those located in the South Caroliniana Library, Coleman Karesh Law Library, Mathematics Library, Music Library, Springs Business Library, and Medical Library. Thomas Cooper Library seats approximately 2,500 readers. Included in the seating are more than 900 private, locked facilities for faculty and graduate students involved in research and 40 study rooms seating up to four persons each. The library has three classrooms for use by librarians and other faculty on a limited basis. Two of the rooms are modern multimedia classrooms funded by the University 101 program and used

primarily for the library instruction module of LONV 101. A more traditional classroom is also available for library-related instruction and individual class sessions as requested.

Special areas in the library include the student Computer Lab, the Government Information Department and the Map Library on Level 5, the Science Library on Level 4, the Educational Films Collection on Level 3, and Rare Books and Special Collections on the Mezzanine Level. Access to the collections is obtained through the library's Online Catalog with terminals located throughout the building.

The library provides multiple research databases that are available via the Web to the University community from both on and off campus. Librarians provide assistance with these resources in person as well as via phone, via e-mail, and online. The Center for Adaptive Technology located in the Computer Lab in the Thomas Cooper Library has four PCs, a Braille embosser, a tactile graphics-capable Braille embosser, screen readers, screen magnifiers, two scanners with OCR translation software, a CCTV, plus other hardware and software for students with disabilities.

Special Collections, Thomas Cooper Library. The department's foundation stone is the collection of the South Carolina College, assembled by the University between 1801 and 1860. The collections have expanded vastly in recent years. Prominent areas of research strength include English and American literature, historical children's literature, the Civil War, and natural history and science, including the John J. Audubon Collection and the Claudia Lea Phelps Camelia Collection.

Gift collections of international repute include:

- G. Ross Roy Collection of Robert Burns, Burnsiana, and Scottish Literature: Dr. G. Ross Roy, Curator
- John Osman Collection of Braun and Hogenberg City Views
- Matthew J. and Arlyn Brucoli Collection of F. Scott Fitzgerald
- C. Warren Irvin Jr. Collection of Charles Darwin and Darwiniana: Dr. C. Warren Irvin Jr., Honorary Curator
- Anthony P. Campanella Collection of Giuseppe Garibaldi: Dr. Anthony P. Campanella, Honorary Curator
- Augusta Baker Collection of African-American Children's Literature and Folklore
- James Willard Oliver Collection of David Hume
- Joseph Heller Archive
- James Ellroy Archive
- Spreiser and Easterling Hallman Foundation Collection of Ernest Hemingway
- Joel Myerson Collection of Nineteenth-Century American Literature: Dr. Joel Myerson, Curator.

Springe Business Library (Close-Hipp Building, 2nd Floor). A circulating collection of business books plus a collection of noncirculating financial, labor, and tax services; corporation annual reports; textbooks; and periodicals. Multiple business indexes are available via the Web, including *Business Source Premier*, a full-text database that covers most areas of business, including management, economics, finance, accounting, and international business. The reserve reading collection for all courses in business and economics is located in the library. The library is available to all USC students.

Coleman Karash Law Library (Law Center). A noncirculating collection serving the research and study needs of the students and faculty of the School of Law in the field of Anglo-American law.

Mathematics Library (LeConte, 3rd floor). A collection of books and journals in the subject area of pure mathematics serving the research needs of the mathematics department. Available to all USC students.

Medical Library (V.A. Campus). A special collection serving the research and study needs of the students and faculty of the medical school. Available to all USC students.

Music Library (School of Music Building, 2nd Floor). A collection including more than 90,000 books and scores, 135 periodical subscriptions, more than 60,000 sound recordings in all formats, and more than 300 videos, laser discs, and DVDs. Thirty-two carrels are equipped for remote viewing and listening. *The International Index to Music Periodicals*, *RILM Abstracts of Music Literature*, and the *New Grove Dictionary of Music and Musicians* (2nd edition) are available online via the Web. Available to all USC students.

South Caroliniana Library (Horseshoe). Largest collection in the world of South Carolina material. Includes books, pamphlets, newspapers, maps, and manuscripts relating to South Carolina and the South.

Research Bureaus and Institutes

Belle W. Baruch Institute for Marine and Coastal Sciences. The Institute is a leader in research of coastal ecosystems, with research ranging from the molecular to the landscape level of organization. Assessing impacts of human activities is an integral part of many of the studies. Using a multidisciplinary approach to investigate the complexity of coastal and marine environments, we bring together researchers in many fields. These include the sciences and disciplines such as geography,

economics, environmental health, policy, statistics, and geographic information processing and remote sensing technologies. We provide students with opportunities to pursue their research interests, welcome visiting researchers and classes, and offer educational programs for university and secondary-school faculty and students, state and federal agency personnel, nongovernmental organizations, and the general public. The institute was established in 1969 through the joint efforts of the Belle W. Baruch Foundation and the University of South Carolina. A freestanding entity within the College of Arts and Sciences, the institute has headquarters and laboratory facilities on the University's main campus in Columbia and a 25,000-square-foot laboratory located on Hobcaw Barony, near Georgetown, S.C. For more information, please visit our Web site: www.baruch.sc.edu.

Center for Disability Resources/UCEDD. The Center for Disability Resources (CDR), a University Center for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD), is an interdisciplinary training program of the Department of Pediatrics. The CDR receives administrative and operational support from the University of South Carolina and a federal grant awarded under P.L. 106-402, Department of Health and Human Services, Administration on Developmental Disabilities. Through interdisciplinary training, exemplary services, technical assistance, and information dissemination activities, the CDR identifies and uses the vast resources within institutions of higher education to improve the quality of life for people with developmental disabilities and their families as well as other citizens of our state.

Center for Electrochemical Engineering. The Center for Electrochemical Engineering (CEE) was created July 1, 1995, within the Department of Chemical Engineering in the College of Engineering and Information Technology at the University of South Carolina. Its mission is to provide a means for students, faculty, and industrial researchers to interact on projects that involve electrochemical science and engineering. The CEE is dedicated to the integrated study of fuel cells, hydrogen storage, batteries, supercapacitors, corrosion and corrosion protection, and electrodeposition of metal alloys and composites. The CEE serves as a focal point for the development (system identification, specific cell design, engineering, testing, and evaluation) of new power source technologies, novel corrosion protection strategies, and environmentally friendly coatings.

Center for Health Promotion and Risk Reduction in Special Populations. The Center for Health Promotion and Risk Reduction in Special Populations is housed in the College of Nursing. The purpose of the center is to provide the infrastructure to develop a critical mass of investigators to study problems related to the center focus, to promote and support interdisciplinary collaboration in research, and to develop and initiate mechanisms to disseminate research findings into the scientific community, clinical practice, and health care policy. The center supports the College of Nursing's long-range goal to conduct interdisciplinary research, which builds knowledge in the science of health promotion and risk reduction in special populations.

Center for Information Technology. The center establishes the University of South Carolina as a leader in the research and development of advanced information systems. Under the broad themes of agent-based software systems and information security, researchers at the center are investigating multiagent systems, information awareness and security, ontological engineering, service-oriented computing, and computational intelligence, with applications to enterprise integration, executive decision support, and agent-based software development. The center is part of an ongoing effort at USC to increase information systems security awareness and develop high-quality education and research in this area, with a goal of becoming one of the leading academic institutions in information security education. The center serves as a focal point for the University's research, public service, and education efforts in these important new areas of technology, providing well-qualified scientists and engineers and an educational and research capability that meets the needs of industry and government.

Center for Mass Communications Research. Located in the School of Journalism and Mass Communications, the Center for Mass Communications Research engages faculty and graduate students in a wide range of studies for individual and organizational clients involving the processes and effects of mass communication, including audience analysis, readership studies, content analysis, advertising and public relations effectiveness research, communication surveys, polls, samples, and other studies involving consumer and organizational behavior. The center also participates in interdisciplinary studies, especially externally funded projects that involve the communication aspects of scientific research. In addition, the center sponsors conferences and symposia of state, regional, and national interest to mass communications industries and scholars. The center works collaboratively with the College of Mass Communications and Information Studies Office of Research.

Center for Mechanics, Materials, and Nondestructive Evaluation. The statewide center serves as a focus for research in solid mechanics, material science, fracture mechanics, nondestructive evaluation, and advanced joining methods. The center is supported by the Southeastern Electron Microscopy Center, which houses SEM, TEM, STEM, and optical microscopy facilities for microstructural evaluation. With the recent addition of the Advanced Materials Institute, which focuses on industrially relevant research in the area of friction stir joining, the center's research projects span a spectrum from basic science to industry applications. Areas of expertise include materials characterization, dynamic and static mechanical testing, structural analysis, state-of-the-art noncontacting strain measurement methods, advanced numerical simulations, and fracture mechanics. Facilities include sophisticated mechanical test capabilities (including high-vacuum environmental chambers and dynamic loading systems), optical strain analysis equipment for field and laboratory use, novel nanoscale measurement capability including AFM- and SEM-based systems, and a unique friction stir welding process for manufacturing joints under controlled conditions.

Center for Nursing Leadership. The Center for Nursing Leadership is an interdisciplinary center housed in the College of Nursing. The purpose of the center is to develop and advance dynamic nurse leaders in practice, education, and service and provide the structure to continually build the leadership capacity of nurses. Program development and evaluation, seminars, workshops, and consultation are provided to enrich the leadership opportunities for nursing faculty, clinical practitioners, nursing students, and other professionals. It also serves as a forum for local, regional, and national nurse leaders, other health care professionals, and public policy leaders to engage in shaping the future of nursing, the delivery of health care, and the design and implementation of health policy.

Center for Outcomes Research and Evaluation (CORE). The primary purpose of the center is to research clinical, economic, and humanistic outcomes related to the utilization of pharmaceutical products and services. The center strives to cultivate an interdisciplinary research environment, which blends expertise and interest from academia, industry, and government. Currently the center is being restructured and is inactive.

Center for Retailing. The University of South Carolina's Department of Retailing has a goal of becoming the outstanding, comprehensive educational center for retailing education in the world. The department seeks innovative, entrepreneurial initiatives that will serve students while simultaneously benefiting the retail community. One of the major opportunities to accomplish these goals while working closely with colleagues is the Center for Retailing. The Center for Retailing has been developed to support the academic programs and faculty through outreach and research while serving as a resource to the retail community. The ultimate goal of the center is to become a clearinghouse for research in the areas of retail technology and international retailing. The center is supported by founding partners, including Wal-Mart, Miller Brewing Company, Fairchild Books, JDA Software, BIG Research, and Retail Forward.

Center for Science Education. The center, administered as part of the College of Arts and Sciences, coordinates content area aspects of pre-service and in-service science and mathematics teacher training. The center coordinates instruction in all sciences and mathematics, ranging from one-hour in-service presentations through formal, graduate-level course offerings, to multiyear program development. The center draws upon the expertise of science and mathematics faculty from the College of Arts and Sciences and science and mathematics education faculty in the College of Education to provide these services. The goal of the center is the improvement of the quality of instruction in the sciences and mathematics from the elementary-school level through the post-secondary-school level, or K-16.

Division of Research, Moore School of Business. An integral part of the Moore School of Business, the division publishes analyses of significant business and economic problems in its Business & Economic Review and Economic Indicators series. Through its programs the division facilitates research by students and faculty members and encourages the use of economic data by regional businesses and public groups. The division also conducts special research projects for both private and public organizations and sponsors an annual Economic Outlook Conference that features the latest economic forecast from the division's South Carolina Economic Forecasting Service. All of the division's research is available to the public at <http://research.moore.sc.edu>.

Earth Sciences and Resources Institute (ESRI-USC). The institute conducts environmental studies primarily integrating geology, hydrology, and geochemistry with advanced computer applications for subsurface characterization, prediction of groundwater flow and solute transport, and agricultural and nonpoint source studies. Applied research programs focus on both site-specific and regional scale hydrogeologic studies that involve field, laboratory, and modeling activities. A key component of the institute's groundwater research is the use of geophysical techniques to describe the geologic framework of groundwater systems and to determine the extent of groundwater contamination. The institute uses geographic information system (GIS) capabilities for managing large spatially-oriented databases and modeling diverse geographic data.

Funding for the environmental research program comes from both public and private sources. The U.S. Department of Defense, U.S. Department of Energy, Argonne National Laboratory, the U.S. Department of Agriculture, state agencies, and several environmental consulting firms have recently supported environmental earth science research within the institute.

The institute contributes to the academic mission of the University of South Carolina through its contribution to the Master's in Earth and Environmental Resources Management (MEERM) program administered by the School of the Environment. This graduate degree program was initiated in the late 1980s to expand the business- and management-related expertise of technically oriented individuals. The MEERM program offers expanded opportunities to pursue environmental-related course work while maintaining its focus on integrating business and technical decision making. ESRI-USC plays a key role in the MEERM program through teaching, graduate student research opportunities, and graduate student advisement. ESRI-USC also provides many educational opportunities apart from the MEERM program through the availability of graduate research assistantships, summer intern programs, and undergraduate hourly employment. The institute is committed to providing high-quality research opportunities in earth and environmental sciences for graduate and undergraduate students at the University of South Carolina.

The environmental research capabilities of the Earth Sciences and Resources Institute are expanding to meet the increasing need for better understanding of subsurface phenomena. In that regard, the institute is providing state-of-the-science solutions to the environmental challenges before us.

Electron Microscopy Center. Administered as a part of the College of Arts and Sciences, the center is open to USC faculty members and students for training and research in analytical microscopy imaging and microanalysis of materials.

The center is equipped with three transmission electron microscopes (TEMs), including a high-resolution JEM 2100F TEM; three scanning electron microscopes with X-ray microanalysis systems; a wavelength dispersive electron microprobe; a two-photon laser confocal microscope; four ultra microtomes; and other modern equipment necessary for material studies.

Institute for Families in Society (IFS). The Institute for Families in Society seeks to enhance the well-being of families in society through research, education, technical assistance, and consultation at community, state, national, and international levels. The institute's interdisciplinary group of scholars, researchers, and learners believes that this mission can be accomplished best through collaboration with community groups, social institutions, and government.

The institute advances the mission of the University by integrating the talents of various academic units concerned with family issues while creating bridges among public- and private-sector groups concerned with strengthening families. Working with partners outside the University, the institute

- studies the strengths, needs, and functions of families in a changing society;
- focuses on families who face special risks or challenges (e.g. poverty, disparities, disabilities, violence, or chronic mental or physical illness);
- evaluates how interventions affect families and their members throughout the life span;
- informs policy makers and communities about culturally competent effective practices, programs, and policies.

The Richard L. Walker Institute of International and Area Studies in the College of Arts and Sciences serves as an interdisciplinary research and public-service unit of the University.

The Walker Institute was founded in 1961 and is the principal unit in the University for promoting research, scholarship, and public-service programs in international affairs and the comparative cross-cultural study of human societies as well as for encouraging and facilitating related teaching and public-service activities.

The institute works in cooperation with faculty and research units in various colleges and departments of the University to facilitate research on public policy issues. It provides consultative and training services and undertakes special research projects for governmental and nongovernmental organizations, foundations, and public sector agencies.

Incorporated within the institute are the programs in African studies, Asian studies, European studies, Islamic studies, Latin American studies, and Russian studies, as well as the Association for Research on Ethnicity and Nationalism in the Americas (ARENA).

Institute for Public Service and Policy Research. The institute is an interdisciplinary research and public service unit of the University of South Carolina. Its principal purpose is to address current and emerging issues relating to matters of public policy, governance, and leadership through research, educational activities, publications, and direct assistance programs. The goal of the institute is to improve the quality of social, political, environmental, and economic life, with a primary focus on South Carolina. The institute is composed of several programs, including Environmental Research and Service, Survey Research, Governmental Research and Service, the S.C. Semester Program, the Washington Semester Program, and the Center for Bioethics and Medical Humanities.

Institute for Southern Studies. The institute coordinates academic research and public service to further the understanding of South Carolina and the South. Although the institute is administratively located within the College of Arts and Sciences, its interdisciplinary emphasis calls for a working relationship with departments and colleges throughout the University. Funding assistance and research fellowships are often provided to community officials as well as out-of-state and foreign scholars studying the many different aspects of Southern culture. In addition, the institute provides information upon request and works closely with other educational institutions within the state. Public programs, publications, scholarly research, and undergraduate courses of study are sponsored by the institute.

Institute for Tourism Research. The institute is administered as part of the School of Hotel, Restaurant, and Tourism Management with the purpose of developing research, education, and service programs for South Carolina's largest industry—tourism. Among other endeavors, the institute conducts studies in the following areas: feasibility, needs assessment, market segmentation, position analysis, image and advertising effectiveness, visitor profile analysis, and economic impact. At the state, national, and international levels, the aforementioned research enables the institute to provide information to government, industry, and community leaders through publications, workshops, and consultancy.

The National Resource Center for The First-Year Experience and Students in Transition. The center and the University 101 Program at the University of South Carolina form one functionally integrated academic unit. The center's mission is to support and advance efforts to improve student learning and transitions into and through higher education. The center achieves this mission by providing opportunities for the exchange of practical and theory-based information and ideas through the convening of conferences, teleconferences, institutes, and workshops; publishing monographs, a peer-reviewed

journal, an electronic newsletter, guides, and books; generating and supporting research and scholarship; hosting visiting scholars; and hosting a Web site and electronic listservs. As one academic unit, the center and University 101 report to the Office of the Executive Vice President for Academic Affairs and Provost.

The Riegel and Emory Human Resource Research Center. The Riegel and Emory Human Resource Research Center was founded in January 1982 through the generosity of Riegel Textile Corp. and the family of the late Mr. German H.H. Emory, former chair of Riegel. The basic objectives of the center are:

- to conduct research in motivation and satisfaction of workers
- to dignify work and the worker
- to emphasize human values in the workplace
- to enhance skills of management
- to encourage higher levels of cooperation in the workplace
- to preserve the values of the free market system.

The center staff and faculty believe that scholarly research is most useful when practitioners, whom the research results might benefit, are involved in formulating the design and carrying out the research. Thus, center staff work closely with an advisory board made up primarily of business executives in determining the problems needing attention and the approaches that offer the most promise. The center also sponsors periodic executive conferences at which faculty and senior human resource practitioners review the center's research findings and discuss current human resource needs.

South Carolina Institute of Archaeology and Anthropology (SCIAA). The institute is a full-time research facility and state agency within the University with professional and support staff and facilities for field and laboratory research on a year-round schedule. Under the S.C. Code of Laws (60-13-210 and 54-7-610 et seq.), it has a dual responsibility for service research programs for the state and for academic research programs for the University.

SCIAA has some 60 employees (with an additional 10 graduate and undergraduate student employees) in its Columbia, Aiken, and Charleston offices among its research, cultural resource consulting, and administrative divisions; the Office of the State Archaeologist; the Office of the State Underwater Archeologist; and the Savannah River Archaeological Research Program.

The Underwater Archaeology Division administers some 475 hobby licenses yearly and issues salvage licenses for the recovery of cultural resources located beneath the state's navigable waters. The institute has the Western Hemisphere's largest water-logged wood conservation tank and is currently treating numerous cannons, ships, canoes, and other artifacts from around the state.

The service programs under the Office of the State Archaeologist deal with environmental impact archaeology and historic preservation within the same theoretical and methodological concepts of scholarly excellence as the academic programs supported by the University and by grants. The research division of the institute is also excavating, with the assistance of the U.S. Department of Defense/USMC, the 1560s and 1570s Spanish colonial capital of Santa Elena and the French Huguenot site of Charlesfort on the U.S. Marine Corps base at Parris Island, S.C.

The institute is responsible for the statewide inventory of 21,500 archaeological sites, for the curation of all state of South Carolina prehistoric and historic archaeological collections (now amounting to 29,000 cubic feet), and for the synthesis of all research data available concerning the prehistoric and historic archaeology and anthropology of the state, both on land and beneath the waters. This pursuit of research leads to an understanding of the 12,000 or more years of cultural development in South Carolina. The institute sponsors conferences, interdisciplinary studies, avocational societies, and visiting scholars; trains students in research; has an extensive publication program; and has an extensive contracts and grants program. The institute, within the University of South Carolina, participates in numerous University activities, scholarly events, and programs and works cooperatively with other universities to further archaeological and anthropological research.

The South Carolina University Center for Excellence in Developmental Disabilities Education, Research, and Service (S.C. UCEDD). The S.C. UCEDD is an interdisciplinary training program of the Department of Pediatrics in the School of Medicine. The S.C. UCEDD receives administrative support from the University of South Carolina and a federal grant awarded under P.L. 106-402, Department of Health and Human Services, Administration on Developmental Disabilities. Through interdisciplinary training, exemplary direct services, exemplary services, and information/dissemination activities, the S.C. UCEDD identifies and utilizes the vast resources within institutions of higher education to improve the quality of life for people with disabilities, their families, and other citizens of our state.

The term "developmental disabilities" includes severe, chronic disabilities due to mental and/or physical impairment that become manifest early in life, result in substantial functional limitation, and require long-term coordinated, specialized services.

University Technology Services

University Technology Services (UTS), under the direction of the Division of Information Technology and the chief information officer, provides centralized and distributed computing and telecommunications for academic, research, and administrative use to support the University's mission and meet the needs of the faculty, staff, and students at the University of South Carolina. UTS provides computing, telecommunications, networking, data security, video transport, Web services, customer support, desktop and server support, installation and maintenance of technology infrastructure, policies and procedures, software licensing and distribution, planning, partnerships, applications development, and support to operational systems that serve the USC community.

For more information, call the University Technology Services Help Desk at 803-777-1800 or go online to <https://helpdesk.uts.sc.edu>. UTS offers computer support for the University community.

For more information about technology resources at USC, please visit www.sc.edu/technology.

McKissick Museum

McKissick Museum at the University of South Carolina, accredited by the American Association of Museums, is located at the head of the historic Horseshoe. Remodeled in 1976 to serve as a center for the University's museums, art gallery, and archives, McKissick was formerly the central library at USC. In order to "tell the story of Southern life, culture, and community," the museum administers a broad range of activities. Exhibitions and collections include: Southern folk art; works by state and regional artists; artifacts relating to the University's history, the history of South Carolina, and the material culture of the South; and the Bernard Baruch Silver Collection. The Howard Gemstone Collection, which is part of one of the finest collections of minerals in the Southeast; the extensive Ferillo political campaign memorabilia collection; and the South Carolina Folk Arts Resource Center are also parts of McKissick Museum. Art, history, and science traveling exhibitions are offered as well as exhibitions based on the permanent collections and faculty research interests. Special cultural events and other educational activities are also regularly scheduled. McKissick also administers a graduate-level certificate program in museum management.

University of South Carolina Press

The University of South Carolina Press shares the University's central missions—to advance knowledge and to enrich the state's cultural heritage. Established in 1944, it is one of the oldest publishing houses in the South. With more than 1,500 books published, the press is important in enhancing the scholarly reputation and worldwide visibility of the University of South Carolina. The press publishes in a variety of disciplines, including history (African American, American, Civil War, maritime, Southern, and women's), contemporary literature, regional studies, religious studies, rhetoric, and social work. The press now has more than 600 titles in print and publishes approximately 50 new books annually.

Fellowships and Scholar Programs

The Office of Fellowships and Scholar Programs was established in 1994 to provide innovative education initiatives for academically talented students. Reporting to the Office of the Vice President for Academic Affairs and Provost, the staff of the office facilitates the pursuit of nationally prestigious fellowships by University students and coordinates an enhanced University experience for the Carolina and McNair Scholars. The involvement and leadership of these scholars make them prime candidates for national fellowships and scholarships. In addition to the scholars, other high achieving students are identified, recruited, and advised to compete for such prestigious scholarships as the Rhodes, Truman, Marshall, Rotary, NSF, Fulbright, Mellon, Udall, and Goldwater. Once identified, students are provided support and assistance in every aspect of candidacy, such as selecting appropriate courses, completing applications, writing essays, and interviewing. Although the ultimate goal is for University students to be awarded these competitive and prestigious scholarships, the preparation process for potential scholars is designed to be developmental and thus rewarding in and of itself. This program is available for qualified University students.

The coordination of scholar programs is also assigned to this unit. Scholar programs provide an enhanced University experience for Carolina and McNair Scholarship recipients through programs, communication, and student group advisement. An advisory committee representing a wide range of academic and administrative units on campus assists the operations of the office. The office is located in Room 220 of Legare College on the USC Horseshoe.

Division of Student Affairs and Academic Support

The Division of Student Affairs and Academic Support focuses on the promotion of the intellectual, emotional, physical, spiritual, cultural and social development of students and educators, thus preparing them for a life of learning, service, and engagement. The division collaborates with campus and external constituents to provide access, facilitate students' progress and persistence, and advance learning at the University of South Carolina and in the higher education community.

Students are encouraged to take advantage of myriad opportunities to develop leadership, academic success skills, personal physical and emotional wellness, multicultural perspectives, life goals, and personal and civic responsibility, among many others. Such opportunities reflect the university's mission and philosophy of multifaceted learning and development that occurs in and beyond the classroom, in the community, and around the globe.

A summary of departments providing those extensive academic support and student services is available at the following link: <http://www.sa.sc.edu/departments.htm>

Southern Regional Education Board (SREB) Academic Common Market

The Southern Regional Education Board (SREB) Academic Common Market (ACM) enables students from **specific states** to pursue **eligible out-of-state programs at a reduced tuition rate**. Students must **apply for ACM** in order to receive the ACM tuition reduction for a future term. Once USC approval is granted, students must remain in their USC ACM approved major, remain fully and continuously enrolled each major term (Fall/Spring), and must maintain good academic standing.

Beginning **Fall 2019**, new ACM students that wish to declare a dual/double major may only choose majors which are ACM-eligible for their state of residence. ACM students that change their major from their primary USC ACM approved major will lose their USC ACM tuition reduction. Current students with non ACM-eligible dual/double majors will be grandfathered in under the same major for five (5) years from the first term of enrollment at USC. Current students who change their USC ACM approved major will lose their USC ACM tuition reduction. More information is available on our Maintaining ACM page on the USC ACM website at www.sc.edu/acm.

Student Health Center

Student Health Services offers general medical and urgent care; women's care; lab, radiology and pharmacy services; an allergy immunization and travel clinic; sports medicine and physical therapy clinics; counseling and psychiatric services; wellness and prevention programs; and sexual assault and violence intervention and prevention services. The student health fee, which is paid through tuition each semester, covers the cost of some but not all services at Student Health Services. For more information visit: <http://www.sa.sc.edu/shs/>.

Student Ombudspersons

Undergraduate and Graduate Student Ombudspersons serve as a resource for addressing student problems and concerns.

Dale Moore, Graduate Student Ombudsman, Ryones Building, Suite 301

Lisa Jerald, Undergraduate Student Ombudperson, Osborne Administration Building, Room 110

State-specific student complaint procedures are available on the USC State Authorization [website](#).

Distributed Learning

The Office of Distributed Learning provides support for students pursuing degrees and taking courses using alternative delivery methods. Students can search for online courses and find information about online programs, test proctoring, and other services at: www.sc.edu/onlinecourses.

Professional Licensure Information

State boards of professional licensure and certification may limit distributed learning and/or experiential learning activities outside of South Carolina [for programs leading to professional licensure](#). Information for each program leading to professional licensure is found in the Professional Licensure Outcomes statement (click [here to view](#)). Students should contact the appropriate state licensing board for detailed rules regarding distributed learning (online coursework) or experiential learning in the state prior to enrolling or engaging in online or on-the-ground coursework outside of South Carolina.

Columbia Campus

2019-2020 Policies and Regulations

Fees and Refunds

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- [Fees](#)
 - [Legal Residency](#)
 - [Free Tuition](#)
 - [Refund Policy](#)
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Fees

Academic and Other Fees

Complete details about fees, payments, tax credits, loans, late charges, and related information may be found at the bursar's Web site, www.sc.edu/bursar. For the complete fee schedule, visit www.sc.edu/bursar/fees.html. A list of estimated expenses for undergraduate students is available online at www.sc.edu/admissions/costaid.php. **Tuition and fees are approved by the Board of Trustees and subject to change at any time.**

Information regarding the location and accessibility of Guaranty Bonds for prepaid tuition held by the institution, as required by the State Authorization regulations for residents of some states, is available at <http://www.sc.edu/provost/stateauthorization/>.

Non-academic Fees, Charges, and Regulations

For information about non-academic fees, charges, and regulations, visit the Web sites below.

- University Housing: www.housing.sc.edu
- Carolina Dining Services: www.sc.edu/dining
- Thomson Student Health Center: www.sah.sc.edu/shs/tshc
- Vehicle Management and Parking Services: www.sc.edu/vmps

Any student who has failed to pay all required registration fees by the payment deadline may be dropped from class rolls. Any student who fails to relieve any other indebtedness to the University or to any of its auxiliary agencies on the date such obligations become due may not be permitted to remain in University residence halls or be issued a transcript, diploma, or degree.

Checks, Money Orders, and Credit Cards

The University assesses a credit-card convenience fee for all students paying fees by credit/debit cards. If you decide to pay with a credit/debit card, this nonrefundable fee will be added to your bill to cover the cost being charged to the University. Since the majority of students find SSC (Self Service Carolina) on the Web at <https://my.sc.edu> a convenient way to pay, SSC will present you with an option to accept this fee or decline the transaction. If you decline, you must select another method of payment. Alternative methods include payment by check or money order through the mail. You may also pay in person with check, cash, or money order. Alternative methods include payment by E-check, USC's preferred method of payment, when using SSC or payment by check or money order through the mail.

Application Fees

Undergraduate

Every new student will normally be charged a nonrefundable application fee of \$65; exceptions to, or relief from, this charge may be made for certain special categories of admission. All applications must be accompanied by the application fee. This fee is for admission application only. A separate application fee is charged for space in University residence halls. International students pay an enrollment fee of \$750.

Graduate

Every new graduate student will be charged a nonrefundable application fee of \$50. All applications must be accompanied by the application fee. International students pay an enrollment fee of \$750.

Matriculation Fee

A nonrefundable matriculation fee of \$80 is assessed to all current degree-seeking students on a one-time basis. This fee is also assessed to entering (or re-entering) degree-seeking students.

Examination Fees

\$40 Scholastic Assessment Test (SAT) May be taken once only.

\$25 Challenge Examination. This test is used to establish undergraduate college credit without class attendance or to validate credits from a non-regionally accredited college. Per semester hour.

Graduate Record Examination

1. General Test (\$60)
2. Subject Test (\$60)

Revalidation examinations intended to revalidate USC courses, obsolete under the statute of limitations. Per hour, \$25.

Note: *Revalidation examinations require permission of the dean of Graduate Studies. The fee must be paid in advance, and is nonrefundable; once the student is presented to the instructor for the examination.*

Legal Residency

The University of South Carolina is required by state law to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

Legal Residency Requirements for Fee and Tuition Purposes

Code of Laws Governing Residence

Rules regarding the establishment of legal residence for tuition and fee purposes for institutions of higher education are governed by Title 59, Chapter 112, of the 1976 South Carolina Code of Laws, as amended.

Definitions

"Academic Session" is defined as a term or semester of enrollment.

"Continue to be Enrolled" is defined as continuous enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions.

"Dependent Person" is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her federal income tax return. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education. A dependent person's residency is based upon the residency of the person upon whom they are dependent.

"Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an

old domicile upon establishing a new one. Housing provided on an academic session basis for student at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary.

"Family's Domicile in this State is Terminated" is defined as an employer directed transfer of the person upon whom the student is dependent and is not construed to mean a voluntary change in domicile. Also included is a relocation of the person upon whom the student is dependent who is laid off through no fault of their own, e.g., plant closure, downsizing, etc., who accepts employment in another state prior to relocating.

"Full time employment" is defined as employment that consists of at least thirty-seven and one half hours a week on a single job in a full time status, with gross earnings of at least minimum wage. However, a person who works less than thirty-seven and one half hours a week but receives or is entitled to receive full time employee benefits shall be considered to be employed full time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full time employment.

"Guardian" is defined as one legally responsible for the care and management of the person or property of a minor child based upon the five tests for dependency prescribed by the Internal Revenue Service; provided, however, that where circumstances indicate that such guardianship or custodianship was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or dependent person, it shall not be given such effect.

"Immediately Prior" is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year.

"Independent Person" is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person cannot claim the domicile of another individual as their own for the purposes of establishing intent to become a South Carolina resident. An independent person must have established his/her own domicile for twelve months prior to receiving in-state tuition and fees. An independent person cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested.

"Minor" is defined as a person who has not attained the age of eighteen years. An "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor.

"Non-resident Alien" is defined as a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status "non-resident aliens" generally do not have the capacity to establish domicile in South Carolina.

"Parent" is defined as the father, mother, stepfather, stepmother, foster parent or parent of a legally adopted child.

"Reside" is defined as continuous and permanent physical presence within the State, provided that absences for short periods of time shall not affect the establishment of residence. Excluded are absences associated with requirements to complete a degree, absences for military training service, and like absences, provided South Carolina domicile is maintained.

"Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, not withstanding other provisions of the Statute.

"Spouse" is defined as the husband or wife of a married person in accordance with Title 20, Chapter 1 of the 1976 South Carolina Code of Laws, as amended.

"Temporary Absence" is defined as a break in enrollment during a fall or spring semester (or its equivalent) during which a student is not registered for class (02-600.A)

"Terminal Leave" is defined as a transition period following active employment and immediately preceding retirement (with a pension or annuity), during which the individual may use accumulated leave.

"United States Armed Forces" is defined as the United States Air Force, Army, Marine Corps, Navy, and Coast Guard.

“Trust” is defined as a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument. However, that where circumstances indicate that such trust was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or independent person, it shall not be given such effect.

Citizens and Permanent Residents

Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605 entitled “Establishing the Requisite Intent to Become a South Carolina Domiciliary.” The twelve month residency period cannot start until the absence of indicia in other states is proven. Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.

The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims or, only in the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.

In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; or based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; or based on the resident status of the person who makes payments under a court order for child support and at least the cost of his/her college tuition and fees.

Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents

Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out of state rate. Independent non-resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the U.S. Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

Title 8 of the Code of Federal Regulations (CFR) serves as the primary resource for defining visa categories.

Establishing the Requisite Intent to Become a South Carolina Domiciliary

Resident status may not be acquired by an applicant or student while residing in South Carolina for the sole primary purpose of enrollment in an institution or for access to state supported programs designed to serve South Carolina residents. An applicant or student from another state who comes to South Carolina usually does so for the purpose of attending school. Therefore, an applicant or student who enrolls as a non-resident in an institution is presumed to remain a non-resident throughout his or her attendance and does not qualify under any of the residency provisions.

If a person asserts that his/her domicile has been established in this State, the individual has the burden of proof. Such persons should provide to the designated residency official of the institution to which they are applying any and all evidence the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

For independent persons or the parent, spouse, or guardian of dependent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

1. Statement of full time employment;
2. Designating South Carolina as state of legal residence on military record;
3. Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a South Carolina driver's license is obtained;

4. Possession of a valid South Carolina vehicle registration card. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a South Carolina vehicle registrations card;
5. Maintenance of domicile in South Carolina;
6. Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
7. Ownership of principal residence in South Carolina; and
8. Licensing for professional practice (if applicable) in South Carolina.

The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.

Maintaining Residence

A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

1. Continuing to use a South Carolina permanent address on all records;
2. Maintaining South Carolina driver's license;
3. Maintaining South Carolina vehicle registration;
4. Satisfying South Carolina resident income tax obligation. Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country.

Effect of Change of Residency

Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in state rate. Any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated after his/her enrollment may continue to receive in state rates, however, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

If a dependent or independent person voluntarily leaves the state, and information becomes available that would impact the existing residency status, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

Effect of Marriage

In ascertaining domicile of a married person, irrespective of gender, such a review shall be determined just as for an unmarried person by reference to all relevant evidence of noncollusory intent.

If a nonresident marries a South Carolina resident, the nonresident does not automatically acquire South Carolina resident status. The nonresident may acquire South Carolina resident status if the South Carolina resident is an independent person and the nonresident is a dependent of the South Carolina resident.

Marriage to a person domiciled outside South Carolina shall not be solely the reason for precluding a person from establishing or maintaining domicile in South Carolina and subsequently becoming eligible or continuing to be eligible for residency.

No person shall be deemed solely by reason of marriage to a person domiciled in South Carolina to have established or maintained domicile in South Carolina and consequently to be eligible for or to retain eligibility for South Carolina residency.

Exceptions

Persons in the following categories qualify to pay in state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on

or before the first day of class of the term for which payment of in state tuition and fees is requested. The following categories apply only to in state tuition and do not apply to State supported scholarships and grants. Individuals who qualify for in state tuition and fees under the following exceptions do not automatically qualify for LIFE, SC HOPE or Palmetto Fellows Scholarships:

1. "Military Personnel and their Dependents": Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled. Such persons (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month "physical presence" requirement for them or their dependents to qualify to pay in state tuition and fees.
2. "Faculty and Administrative Employees with Full Time Employment and their Dependents": Full time faculty and administrative employees of South Carolina state supported colleges and universities and their dependents are eligible to pay in state tuition and fees.
3. "Residents with Full Time Employment and their Dependents": Persons who reside, are domiciled, and are full time employed in the State and who continue to work full time until they meet the twelve month requirement and their dependents are eligible to pay in state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in Section 42-605 entitled ("Establishing the Requisite Intent to Become a South Carolina Domiciliary").
4. "Retired Persons and their Dependents": Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

South Carolina residents who wish to participate in the Contract for Services program sponsored by the Southern Regional Education Board must have continuously resided in the State for other than educational purposes for at least two years immediately preceding application for consideration and must meet all other residency requirements during this two year period.

Application for Change of Resident Status

Persons applying for a change of resident classification must complete a residency application/petition and provide supporting documentation prior to a reclassification deadline as established by the institution.

The burden of proof rests with those persons applying for a change of resident classification who must show required evidence to document the change in resident status.

Incorrect classification

Persons incorrectly classified as residents are subject to reclassification and to payment of all non-resident tuition and fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

Inquiries and Appeals

Inquiries regarding residency requirements and determinations should be directed to the Legal Residency Office, University Of South Carolina, Columbia, SC 29208, 803-777-4000.

Any person, following a decision on his or her resident classification, may appeal the decision to the University Committee on Legal Residence. The committee, however, is bound by the same laws and regulations as the residency officials, so its purpose is only to review the facts and details of any case brought before it to evaluate the correctness of the decision made by residency officials. Neither the committee nor residency officials may waive the provisions of the law or regulations.

Persons who appeal residency decisions must provide a letter to the Legal Residency Office informing the office that they want to appeal the decision made by the residency official. The letter must also include a summary of the person's situation and a statement which specifies the residency provision under which the person feels he or she qualifies to pay in-state fees. The director of legal residency will then schedule a hearing as soon as possible for the committee to hear the appeal.

The residency requirements are subject to change without notification.

Free Tuition

Undergraduate

Certain exemptions from tuition fees have been established under South Carolina Law. Relevant sections of the code are reproduced below. Please note that these laws include free tuition only. Other academic fees and mandatory fees are still the responsibility of the student.

1. S.C. Code Ann. § 59-111-20 (Law Co-op. Supp. 1993)

A. A child of a wartime veteran, upon application to and approval by the South Carolina Department of Veterans Affairs, may be admitted to any state-supported college, university, or post high school technical education institution free of tuition so long as his work and conduct are satisfactory to the governing body of the institution, if the veteran was a resident of this state at the time of entry into service and during service or has been a resident of this state for at least one year and still resides in this state or, if the veteran is deceased, resided in this state for one year before his death, and provided the veteran served honorably in a branch of the military service of the United States during a war period, as those periods are defined by Section 101 of Title 38 of the United States Code and:

1. was killed in action
2. died from other causes while in the service;
3. died of disease or disability resulting from service;
4. was a prisoner of war as defined by Congress or Presidential proclamation during such war period;
5. is permanently and totally disabled, as determined by the Veterans Administration from any cause;
6. has been awarded the Congressional Medal of Honor;
7. is missing in action, or
8. the applicant is the child of a deceased veteran who qualified under items (4) and (5);
9. has been awarded the Purple Heart for wounds received in combat.

B. The provisions of this section apply to a child of a veteran who meets the residency requirements of Chapter 112 of this title, is 26 years of age or younger, and is pursuing any type of undergraduate degree.

2. S.C. Code Ann. § 59-111-110 (Law Co-op. 1976) No tuition may be charged for a period of four school years by any state-supported college or university or any state-supported vocational or technical school for children of:

(1) firemen, both regularly employed and members of volunteer organized units, organized rescue squad members, members of the Civil Air Patrol, law enforcement officers, or corrections officers, as defined herein, including reserve and auxiliary units of counties or municipalities who become totally disabled or are killed in the line of duty on or after July 1, 1964;

(2) government employees who become totally disabled or are killed in the line of duty while working on state time on or after July 1, 1996, as a result of a criminal act committed against them which constitutes a felony under the laws of this State.

The tuition authorized to be paid by this section applies only to undergraduate courses or curriculum and may be paid for a period not exceeding four years, regardless of the number of state-supported colleges, universities, or state-supported vocational or technical schools the child attends.

HISTORY: 1962 Code Section 22-71; 1968 (55) 2909; 1969 (56) 659; 1971 (57) 457, 481; 2000 Act No. 281, Section 1.

3. S.C. Code Ann. § 59-111-10 (Law Co-op. 1976) Each year the first place winner of the essay contest sponsored by the Governor's Committee on the Employment of the Physically Handicapped shall receive a four-year scholarship from the State-supported institution of his choice, provided he is otherwise qualified. The scholarship shall be granted by the governing body of the particular institution upon certification by the Governor's Committee of the first-place winner and that the winner is in financial need. The scholarship shall provide free tuition and fees, and may be cancelled if a recipient does not maintain general scholastic and conduct standards established by the institution.

HISTORY: 1962 Code Section 22-55; 1960 (51) 2084; 1961 (52) 61.

4. **S.C. Code Ann. § 59-111-320 (Law Co-op Supp. 1984)** State-supported colleges and universities, and institutions under the jurisdiction of the State Board for Technical and Comprehensive Education, are authorized to permit legal residents of South Carolina who have attained the age of sixty to attend classes for credit or noncredit purposes on a space available basis without the required payment of tuition, if these persons meet admission and other standards deemed appropriate by the college, university, or institution.

HISTORY: 1962 Code Section 22-82; 1974 (58) 2844; 1978 Act No. 503, Section 1; 1992 Act No. 263, Section 1; 2015 Act No. 50 (S.261), Section 1, eff. June 3, 2015.

Effect of Amendment:

2015 Act No. 50, Section 1, inserted ", and if these persons do not receive compensation as full-time employees".

Graduate

(This includes tuition only-all other academic and mandatory fees are the responsibility of the student.)

Certain exemptions from tuition fees have been established under South Carolina Law. Relevant sections of the Code are reproduced below:

1. **S.C. Code Ann. § 59-111-320 (Law Co-op Supp. 1984)** State-supported colleges and universities, and institutions under the jurisdiction of the State Board for Technical and Comprehensive Education, are authorized to permit legal residents of South Carolina who have attained the age of sixty to attend classes for credit or noncredit purposes on a space available basis without the required payment of tuition, if these persons meet admission and other standards deemed appropriate by the college, university, or institution.

HISTORY: 1962 Code Section 22-82; 1974 (58) 2844; 1978 Act No. 503, Section 1; 1992 Act No. 263, Section 1; 2015 Act No. 50 (S.261), Section 1, eff. June 3, 2015.

Effect of Amendment:

2015 Act No. 50, Section 1, inserted ", and if these persons do not receive compensation as full-time employees".

Refund Policy

I. Policy

The University will refund a part of academic fees in certain cases:

A. Changes in a student's status, which may require a refund:

1. Change in a full-time student's schedule which results in reclassification to part-time.
2. Change in a part-time student's schedule which results in fewer credit hours.

B. Situations which may require a refund:

1. Course or courses dropped.
2. Drop/Withdrawal from the University.
3. Cancellation of a class by the University.

II. Procedure

A. Refund Requests

All requests for refunds must be received during the academic year for which the fees were paid. The academic year begins with the fall term and ends with the summer term. Refunds may be requested at any time during the academic year in which the applicable term occurs.

B. Determining the Refundable Portion Procedure

Student refunds for tuition are calculated based on the student's liable hours after the drop/withdrawal. Liable hours are calculated as the total hours a student is still registered plus the liable portion of the dropped/withdrawn course(s). The liable portion is computed by taking the number of dropped hours times the liability rate (which is 100 percent minus the refund percentage). The refund amount is determined to be the difference of the original assessment and the assessment based on the new liable hours. For students whose liable hours are 12 or above, no refunds are processed. Other academic fees are non-refundable after the 100 percent refund percentage. For students activated for full-time military service during an academic term, the University follows state law in Section 59-104-395. Any refund calculated will be applied to the student account.

C. Drop/Withdrawal Refund Policy

Standard refund procedures for dropping/withdrawal from the university:

All refunds will be based solely on the percentage of time (in days) between the first day of a part-of-term and the last day of a part-of-term. The percentage (in days) will include all Saturdays, Sundays, and holidays between the start and end dates of each part-of-term. Exceptions to this rule may only be made by the Bursar's Office. In these instances, any change in the refund percentage would be moved out to the next closest business day. Courses fewer than six days long, first day = 100% refund, remaining days = no refund.

1. 100 percent if the student's official drop/withdrawal calculation is within 6% of the enrollment period for which the student is liable.
2. 70 percent if the student's official withdrawal calculation is between the period specified in (1) or before the end of the 10 percent period of enrollment for which the student is liable.
3. 50 percent if the student's official withdrawal calculation is between the period specified in (2) or before the end of the 16 percent period of enrollment for which the student is liable.
4. 20 percent if the student's official withdrawal calculation is between the period specified in (3) or before the end of the 25 percent period of enrollment for which the student is liable.

D. Refund Schedules

Refund schedules are located under the important deadlines on the Registrar's website - <http://registrar.sc.edu/>.

E. Return of Title IV Funds

1. Refunds Policy for Students Who Have Received Title IV Funds And Withdraw From The University.

Federal financial aid funds are awarded with the expectation that students will complete the entire period of enrollment. Students "earn" a percentage of the funds that are disbursed with each day of class attendance. When a student who has received federal aid funds (Title IV Funds) leaves school before the end of the semester or period of enrollment, federal regulations require the University of South Carolina to calculate the percentage and amount of "unearned" financial aid funds that must be returned. Once a student has completed more than 60 percent of the enrollment period, they are considered to have earned all funding received. This calculation may have the effect of requiring the student who withdraws before this time frame to repay funds that have already been disbursed to the student or credited towards their current account for tuition, fees, housing and/or meals. Students are encouraged to meet with a counselor in the Office of Student Affairs, or the appropriate office on their campus, prior to making the decision to withdraw from school.

2. Title IV Refund Distribution

- a. For fully withdrawn students receiving federal and/or state funds, the refund will be governed by the current Federal Title IV refund policy. The Office of Student Financial Aid and Scholarships determines the amount of the funds that are distributed back to Title IV, HEA Programs or other Financial Aid sources. For students and their parents who have received student loans or other forms of financial aid, funds will be returned in the order prescribed by federal regulations. The institution must return the funds to the financial aid program other than College Work Study, up to the amount of assistance that the student received from those programs. Funds are to be distributed to the financial aid programs in the following order:

- Unsubsidized Federal Stafford
- Subsidized Federal Stafford
- Federal Perkins
- Federal PLUS Loan
- Federal Pell Grant
- Federal Supplemental Education Opportunity Grant
- Federal TEACH Grant
- Federal Iraq/Afghanistan Service Grant

b. Any remaining balance will first be used to repay any outstanding university charges and any subsequent balances will be refunded to the student/parent.

c. Exit interviews are required before leaving the University of South Carolina for all students who withdraw and have received Stafford, Perkins or Federal Nursing/Health Professions Loans. Exit interviews can be completed at: http://www.sc.edu/financialaid/loan_counseling/default.html. Questions regarding exit counseling should be referred to the appropriate campus Financial Aid and Scholarships Office.

F. Appeals Process

A process for appeals exists for students or parents who believe circumstances warrant exceptions from published policy. The student must be fully withdrawn from the University in order to apply for an appeal.

The Withdrawal Refund Appeals Committee for each campus reviews and act on all appeals. Address appeals to your respective campus:

Withdrawal Refund Appeals Committee (Columbia Campus Only)
Office of the Registrar
University of South Carolina
Columbia, SC 29208 803-777-5555

III. Reason for Revision

Policy revised to reflect change in student system refund processing, align drop and withdrawal schedules, and update summer information for one summer term. Policy designator changed due to reorganization to Administration and Finance.

Housing Fees

1. Students in the following categories are eligible for refunds in accordance with the terms shown in their Residence Hall contract:

1. newly admitted students who do not attend the University of South Carolina
2. students who graduate from school at the end of the fall semester
3. students who are suspended for academic reasons
4. students who get married.

Check the contract or call University Housing for deadline dates and other information.

2. Tenants who do not withdraw from the University but desire release from their contracts will be placed on a contract release waiting list with University Housing. Releases will be granted only when all other space is filled and the space can be rented for the balance of the year to another tenant. Students will be notified upon release and appropriate refunds will be made.

Withdrawal Refunds

All full- or part-time students wishing to withdraw from the University or to discontinue enrollment from all courses for the semester should follow the instructions online at <https://vip.sc.edu> when they request to drop their last course. Staff members of the Office of the University Registrar are available to assist students in completing the withdrawal process. In addition, staff from the Student Ombudsman Office located in the Osborne Administration building can provide counseling. Students

requesting withdrawal for extenuating circumstances after the penalty date (last date for **W** grade) should see their college dean.

In establishing a diminishing-scale refund process for withdrawals, the University operates on the philosophy that many of the basic costs of instruction are incurred at the end of the first week of classes or within an equivalent period for nonstandard semesters. The assignment of a classroom seat to an individual student precludes any other student from occupying that seat. In addition, an instructor is assigned and the costs of instruction are encumbered on the first day of classes.

A student who withdraws from the University after the first week of classes has already occupied a classroom seat that cannot be reassigned. As a result, the University cannot both maintain its financial integrity and also provide a full refund. Accordingly, the University has established a series of refund deadlines commensurate with student progress into the semester.

University Withdrawal Refund Appeal Procedures

The University Withdrawals Refund Appeal Committee is authorized to consider appeals and approve extraordinary exceptions to the University's published withdrawal refund schedule due to humanitarian and due-process considerations.

Guidelines for committee consideration of withdrawal appeals are:

1. The appeal must be submitted in writing to the Office of the University Registrar and will be considered only in written form. A standardized appeal form must be submitted.
2. All requests for appeal must be submitted directly by the student through the Office of the University Registrar and must meet one or more of the following criteria to be considered and approved by the appeals committee:
 - A. Documentation of an accident, illness, injury, or incident which could not be influenced, predicted, planned for, or prevented by the student or the institution. This provision specifically excludes conditions or chronic illnesses known to the student at the time of enrollment.
 - B. Demonstration that the application of the published refund policy would result in a specific and substantial personal hardship to the student. This provision specifically excludes circumstances or effects which would simply inconvenience the student or the student's family.
 - C. Documentation of substantiated circumstances where a student has in good faith relied upon the veracity of a University official's advice, or the official's interpretation of the text of a University document or publication, and was consequently misled or mistaken about the terms of the published refund policy.
3. The appeal must be initiated during the semester for which the refund is requested.
4. The appeal must involve a total withdrawal from the University. No partial withdrawals will be considered.
5. Appeals will only address whether or not a refund will be granted. No consideration will be given to grade assignment or other academic issues. Students must address such issues directly with the faculty members and the college. If applicable, requests for Extenuating Circumstances Withdrawals for grade change purposes must be resolved prior to deliberations by this committee.
6. Grounds for consideration of an appeal will be restricted to only those circumstances personally experienced by the enrolled individual with whom the University has a direct relationship. Loss or illness of a family member, close associate, or employee, and/or difficulty in family-operated businesses, are excluded from consideration.
7. Decisions will be made by a simple majority vote of the committee membership and documented in writing by the chair. The student will be informed of the outcome of the appeal by letter from the Office of the Associate Vice President for Student Life and Development.

Columbia Campus

2019-2020 Policies and Regulations

Undergraduate Academic Regulations

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• <u>Bulletin Rights and Exclusions</u>	• <u>Academic Standards Policies</u>
• <u>Academic Calendar Policies</u>	• <u>Academic Forgiveness Policy</u>
• <u>Advisement Policies</u>	• <u>Academic Honors Policies</u>
• <u>Course and Academic Credit Policies</u>	• <u>Degree Conferral and Graduation Policies</u>
• <u>Registration Policies</u>	• <u>Records, Transcript, and Enrollment Certification Policies</u>
• <u>Attendance Policy</u>	• <u>Notification of Student Rights under FERPA</u>
• <u>Examination Policies</u>	• <u>Academic Assessment Policy</u>
• <u>Grading Policies</u>	
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As the chief governing body of the University, the Board of Trustees delegates the powers of the president and the faculty in accord with its policies. Subject to the review of the president and the Board of Trustees, the faculty retains legislative powers in all matters pertaining to the standards of admission, registration, instruction, research, extracurricular activities, requirements for and granting of degrees, the curricula, the discipline of students, the educational policies and standards of the University, and all other matters affecting the conduct of academic affairs.

The University reserves the right to make changes in curricula, degree requirements, course offerings, and all academic regulations whenever, 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.

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 the Medical School Bulletin, Law School Bulletin, Graduate Studies Bulletin, the University Master Schedule of Classes, or the Carolina Community. Official policies of the University listed below are published in the Carolina Community, which is available online as well as through the Student Government Office or the Office of the Vice President for Student Affairs.

1. Student Rights and Freedoms within the Academic Community
2. Rule of Academic Responsibility and Academic Disciplinary Procedures
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
7. Student Right to Know

Unforeseen circumstances may interfere with the scheduling of a course or degree offering. Students must accept such developments even if doing so will mean a delay in some of their academic goals or a modification of these goals. The departments concerned will work closely with students facing such problems in an effort to resolve them with a minimum of difficulty.

The University reserves the right to withdraw any course because of inadequate enrollment. Additional courses may be offered upon application of a sufficient number of students; a minimum of 10 applicants is the usual requirement. Registration in any course may be closed when the maximum enrollment for efficient work has been reached.

Bulletin Rights and Exclusions

Bulletin Rights

An undergraduate student may choose to obtain a degree in accordance with the curricular requirements in force for the particular degree at the time the student first enrolls as a degree-seeking student at any University campus, or under subsequent requirements published while the student is enrolled.

Bulletin Exclusions

The student's choice is restricted to a specific bulletin and the curricular requirements described therein. Undergraduate students have a period of eight years, inclusive and continuous, in which to claim the rights of a specific bulletin.

Within the eight-year limit, an undergraduate student who is absent from the University for no longer than three years, and who returns to complete the program of study, shall have the right to continue under the bulletin in effect at the time of the student's original enrollment as a degree-seeking student. Alternatively, the student may elect the degree requirements under the bulletin in effect at the time of return. If the period of absence is longer than three years, the student will be subject to the curricular requirements in force at the time of return. Under no circumstances will students be allowed to appeal to short-lived rules and regulations which were adopted and abandoned during the period of their absence.

If drastic revisions of curricula or program requirements have occurred during a student's absence (even if for less than three years), or during the period between the student's original enrollment as a degree-seeking student and the eventual movement to a different degree program or campus within the University, a reasonable effort will be made by the academic dean to permit the student to undertake a transitional program that is equivalent to the educational experience intended under the bulletin in force at the time of the student's original enrollment as a degree-seeking student.

Academic Calendar Policies

Academic Calendar

The University follows an early Semester Calendar, with Fall semester beginning the Thursday of the third full week in August and ending in December before the winter break. Spring classes begin the second Monday of January, provided neither Monday is a holiday (New Years or MLK). For Fall and Spring semesters, there are 70 class days with a minimum of 2100 minutes of instruction for a standard 3 hour class-28 Tuesday and Thursday classes of 75 minutes per class meeting and 42 Monday-Wednesday, Friday classes of 50 minutes per class meeting. All nonstandard one or two day per week classes must meet the minutes of instruction requirements as part of the calendar.

Summer Term

The summer term consists of multiple course sessions between the spring and fall terms.

Students regularly enrolled in the University may take work applicable to their degree during the summer term. Regulations governing the regular academic year also pertain to the summer term.

A complete listing of all courses offered in the summer term will be available by April 1 on the registrar's Web site under "Master Schedule." Course sessions and times may vary.

Please refer to the registration calendars on the registrar's Web site for more detailed information.

Advisement Policies

Academic Advising

When students are accepted into the University, they are assigned an academic advisor. Students are expected to arrange to meet with their advisor at least once a semester to plan their course of study for the following semester. Students who do not know their assigned advisor should obtain this information from the appropriate departmental or academic dean's office.

Information, advice, and interpretations of University policies offered by advisors do not supersede the official statement of policies and academic regulations described in the University Undergraduate Studies Bulletin. Exceptions to University regulations cannot be made by academic advisors. Any exceptions to the policies and regulations set forth in the University Undergraduate Studies Bulletin must be made by the appropriate College Scholastic Standards and Petitions Committee or by the dean of the college.

Records of academic progress may be kept by advisors and deans, but the only official student records are maintained by the Office of the University Registrar.

Classification of Students

Classification is based on the total number of semester credit hours earned: A student must have earned 30 hours to be classified as a sophomore, 60 for classification as a junior, and 90 for senior classification. Students are classified at the beginning of each semester and maintain that classification until the next semester begins.

Undeclared Freshmen

For various reasons it may be impossible or inappropriate for a student to declare a major. Nevertheless, all students will receive advisement in the college most closely related to their interests and abilities. Transient students are subject to the rules of their home institution and may take course work at the University of South Carolina without a declared major. University courses are open to those seeking career advancement or life enrichment and who meet stated course prerequisites. Freshmen who have been accepted by the University, but who are unsure of academic or career goals, may need a period in which to establish their major interest. To accommodate students in these categories, courses which are usually open to students with 30 or fewer hours (freshmen) are open to all students who meet prerequisites published in the University's Undergraduate Studies Bulletin. Students who have earned 30 semester hours and wish to continue their studies at the University of South Carolina must declare a major in a program in which they meet entrance or progression requirements.

Course of Studies

Students are expected to follow the programs outlined by their school or college as closely as possible, particularly in the first two years when satisfying basic degree requirements and prerequisites for advanced work. Students must pursue required courses in the prescribed sequence. Failure to do so may lead to future schedule difficulties, and students may find that the subjects for which they wish to enroll are either not available or are closed to students with advanced standing. Students who fail to complete successfully all freshman requirements may not enroll in courses in their major field beyond the sophomore level. Students ineligible to continue courses in their major field may take electives until the deficiency is removed. Students who enroll in classes for which prerequisites or other defined requirements have not been met may be removed from these classes. Learning-disabled students who wish to take advantage of University-approved program accommodations must have an academic advisory plan on file with the Office of Student Disability Services and the dean of the college. This plan will be formulated by the student's academic advisor with the assistance of the Office of Student Disability Services and will contain recommended accommodations which specifically relate to and are consistent with the student's diagnosed disability. A copy of the student's academic advisory plan must be provided to the course instructor for the student to be eligible for a particular accommodation. Any substitutions for degree requirements recommended in the student's academic advisory plan must be referred to the Scholastic Standards and Petitions Committee of the student's college for action.

Changes in Curriculum

Undergraduate students interested in changing majors should contact the college or school offering the new curriculum the student intends to follow. Once all necessary permissions are obtained, the college or school that offers the new curriculum will notify the Office of the University Registrar to update the student's record. Curriculum changes can affect loan deferment, scholarship eligibility, athletic participation eligibility, tuition and fee assessment, and international student VISA regulations. For this reason, all curriculum changes must be completed before the end of the free drop/add period in Fall and Spring Terms (in Part of Term 30), and prior to June 1 during the Summer Term. Curriculum change requests that arrive at the Office of the University Registrar after these deadlines will be processed for the following term. Exceptions to this rule may be made in the event that a change request is being made in the semester that student is graduating from the University.

Course Substitutions

Only under unavoidable and exceptional circumstances will the faculty permit substitution for or exemption from the prescribed curricula. When it becomes necessary to request a deviation from the prescribed course of study, students should consult the dean of their college or the head of the department in which they are majoring before preparing a petition listing the substitutions or exemptions sought and the reasons for the request. Petitions are submitted on forms obtainable from the Scholastic Standards and Petitions Committee of the particular college, and must be returned to the dean of the college in which the student is enrolled. Deviations from degree requirements published in the bulletin must be approved by the student's dean and the head of the student's major department. The Scholastic Standards and Petitions Committee of each college functions as an appeal board in cases where agreement between the dean, department head, and the student cannot be reached.

Course and Academic Credit Policies

Course Numbering

Courses numbered from 101 to 699 are available at different levels for undergraduate credit. Courses numbered from 700 to 899 may be taken for graduate credit only and are described in the *Graduate Studies Bulletin*. All courses numbered from 101 to 499 are for four-year baccalaureate degree candidates. Courses numbered from 500 to 699 may be taken by advanced undergraduate and graduate students for undergraduate or graduate credit, respectively. A 500- to 600-level course taken for undergraduate credit cannot later be awarded graduate credit.

Course Credit

The credit value of each course is usually determined by the amount of formal instructional time per week for one semester. At least 700 minutes of instruction (and at least twice that for laboratory time) can be expected per credit hour. The semester hour credit for each course is included in each course description.

No student suspended from the University of South Carolina for any reason may earn academic credit during the period of suspension, whether by residence elsewhere or by correspondence courses of any origin.

Remedial courses (courses numbered 100 or below) may not be used to meet degree requirements.

Credit by Examination

Currently enrolled students may obtain credit by examination in a course in which they have had no class attendance or semester standing; permission must, however, be obtained from the dean of the college or department chair in which the course is offered. A grade of not less than B on the examination is necessary in order to receive credit for the course. Examinations are not permitted in courses in which a student previously has been enrolled regularly or as an auditor. The applicant must pay to the Office of Financial Services in advance of the examination a fee of \$25 per semester hour; this fee is not refundable. The Office of Financial Services will issue a receipt which must be shown to the head of the department conducting the examination, who shall immediately report the results of the examination to the Office of the University Registrar. Credits earned under this regulation are recorded with hours earned only.

Transfer Credit

Students transferring to the University from another college or university must, before enrolling in class at the University, have their transcripts evaluated by the University. It is only in the light of such evaluation that students will know definitively the transferability and equivalency of each transfer course. Degree applicability will be determined by the college or school in which the student is enrolled.

Transferability refers to the conditions under which the University accepts credit for inclusion in the student's record. Transfer courses must have been taken at a regionally accredited post-secondary institution, or, if taken at a foreign post-secondary institution, have been recommended by a NACES - member external evaluation service. Exceptions to this rule may be made by the Office of the Registrar when state scholarship eligibility rules require inclusion.

Equivalency entails equating transfer credit, both in hours and content, to University of South Carolina coursework. The Registrar's Office works with USC colleges and schools to coordinate the process of transfer evaluation to equate transfer courses directly to courses in the USC course catalog; to subject codes which represent subjects not offered at USC; or to subject codes that identify courses as remedial/technical/non-accredited coursework. A list of transfer equivalencies for the Columbia catalog of courses can be found at:

http://www.sc.edu/about/offices_and_divisions/registrar/transfer_credits/course_equivalency.php

Applicability of credit toward a degree refers to the prerogative of academic divisions to count specific credit toward the fulfillment of a student's degree requirements. The student's college or school of enrollment is responsible for determining applicability.

However, a transfer course is not applicable towards any University of South Carolina academic program or degree if:

1. The transfer course was essentially remedial in nature (example: Developmental English).
2. The transfer course was occupational or technical in nature (examples: welding, paralegal, or radiography courses).
3. A grade lower than 2.0 on a 4 point scale, or equivalent, was earned in the transfer course.
4. The transfer course was taken by a degree-seeking University of South Carolina student without prior approval as described in the Earning Credit in Transient Status section of this bulletin.
5. The transfer course was taken while a student was on an academic suspension from the university.
6. The student received any grade other than W in an equivalent course at this university, unless the student was enrolled full time at least one year at the transfer institution.

Exceptions to the rules of applicability may be made only by petition to the dean for undergraduate studies of the College or School in which the student is majoring.

Effective Summer 2017 for all newly admitted and readmitted students, transfer grade points and GPAs will no longer appear on the USC record. Transfer course equivalencies, grades, attempted hours, and earned hours will appear on students' advising transcript in Self Service Carolina, while only transfer earned hours will appear on the official transcript.

Earning Credit in Transient Status

Since the University is accountable for the integrity of its degrees, it is essential that degree programs be closely monitored by University faculty. Therefore, students entering the University to seek a degree should expect to complete the majority of their academic work at the University of South Carolina. Normally students who wish to earn more than a semester of credit at another institution should meet all requirements and transfer to that institution. In some programs, and with the permission of the academic dean, students may take up to 18 semester hours of courses in transient status provided they have a 2.00 USC grade point average; the courses are approved in advance by the academic advisor and dean; and the other institution is fully accredited and the course work meets University specifications for transfer credits.

Study abroad or in special academic programs within the United States may be of particular benefit to students, and the University cooperates in a variety of national and international exchange programs in which students may pursue up to a year of academic work at another institution. Special permission is granted to students in these programs with the advance approval of the academic advisor and dean.

Course Load

Maximum credit limits, published in the Master Schedule of Classes, also vary according to college policy. Students will not be permitted to register for a semester load in excess of that prescribed for their program of study unless they earned an average of B or better on all courses for which they were enrolled (minimum 12 semester hours) for the preceding semester. New students are eligible for an extra course if they submit to the academic dean satisfactory evidence of equivalent academic achievement. Students eligible for an additional course on this basis must obtain prior approval for each course addition from the dean of their college. No course may be added after the last date to change course schedule or drop without a grade of W being recorded, as published in the academic and refund calendars on the registrar's Web site. (Note: This regulation does not apply to aerospace studies, Army or naval science courses, which may be added to a course program during the regular registration period without special approval.)

Undergraduate students who are enrolled in 12 semester hours or more for the fall, spring, or summer semester are considered full-time for academic purposes. Students who have been verified as learning disabled by the Office of Student Disability Services must be enrolled in 9 semester hours or more for the fall, spring or summer semesters to be considered full-time students with regard to access to University residence halls and eligibility for financial aid, provided this is consistent with their academic advisory plan.

Graduate students who are enrolled in 9 semester hours or more for the fall, spring, or summer semester are considered full time for academic purposes.

Full-time fees for undergraduate students are calculated on 12 to 16 semester hours. Full-time status for graduate students with assistantships is determined by the dean of Graduate Studies.

Full-time benefits for veterans are determined by the Office of Veterans Services.

Auditing

A student must be admitted to the University and go through the regular registration process to be eligible for auditing any course. All auditors must be admitted to the University and go through the regular registration process. Those who are not full-time students will be charged the same fees as for courses taken for academic credit.

Auditing a course consists of attending classes and listening without responsibility for any assignments or examinations. An auditor is not responsible for any assignments or examinations. No record of audit shall appear on a transcript unless a student attends 75 percent of the classes.

No credit may be earned in an audited course by examination or otherwise. No audited course may be repeated for credit at a later date except by those students who have been verified as learning disabled by the Office of Student Disability Services and whose academic advisory plan recommends auditing a specific course before it is taken for credit.

The applicant must complete the prescribed procedure for enrollment through the Office of the University Registrar before class attendance will be permitted.

Students who have registered for a course on an audit basis and who wish to change their registration to take the course for credit (or who wish to change from credit to audit) must do so no later than the last day to change course schedule or drop without a grade of W being recorded, as published in the academic and refund calendars on the registrar's Web site.

Independent Study

The purpose of the independent study option is to allow the student to pursue an area of academic interest not adequately covered by the regular course structure. The experience shall involve an academic product that is consistent with the student's program of study.

Prior to enrolling in an undergraduate independent study course, a student must complete an Independent Study Contract (AS-6). The approval of the instructor, advisor, department chair, and student's dean is required. Students then present their approved copy to the Office of the University Registrar before registering for the course. Only students who take independent study as part of their major or minor or cognate program may receive grade-point credit for independent study. All other students will receive Pass-Fail credit. Students who take independent study on a Pass-Fail basis cannot later receive grade points, even if the student transfers to another major, minor, or cognate otherwise qualifying the course work as appropriate for grade points. This ruling is not reversible by petition.

A grade point average of 2.50 or greater is required to enroll in independent study courses. The amount of credit for independent study per semester is limited to 6 hours. Independent study credits applied toward any undergraduate degree may account for no more than 10 percent of the total required credit hours for that degree.

Repetition of Course Work

When a course is repeated, both grades will be entered on the student's permanent academic record and included in the grade point average, unless the grade forgiveness policy is applied. Course credit toward graduation will be given only once, unless otherwise stipulated in the course description. Many academic programs restrict the number of times a course may be repeated. Consult the college and department section of the bulletin for such restrictions.

International Courses (INTL) / Study Abroad

- 501 — Study Abroad—USC Exchange. (1-16) This course keeps a USC student active while on a pre-approved USC exchange program.
- 502 — Study Abroad—Non-USC Program. (1-16) This course keeps a USC student active while on a pre-approved non-USC study abroad program.
- 503 — Study Abroad—Through Another U.S. Institution. (1-16) This course keeps a USC student active while on a pre-approved non-USC study abroad program through another U.S. institution of higher education.

Senior Privilege - Enrollment in Graduate Courses

A special provision to earn graduate credit is available for USC undergraduate seniors in their final semester who need less than a normal course load to complete baccalaureate requirements. Overload enrollment that includes one or more courses under senior privilege is not allowed. Courses for graduate credit under senior privilege cannot be used toward undergraduate degree requirements. For senior privilege consideration, undergraduate seniors with a 3.00 GPA should submit to The Graduate School, for the graduate dean's approval, form GS19 endorsed by the student's advisor, the chair of the department offering the course, and the academic dean for that department. This action should be taken before registration.

Accelerated Degree Programs

Certain academic units offer accelerated programs whereby an undergraduate student with a GPA of 3.40 and 90 or more hours toward the baccalaureate degree may apply graduate credits to a baccalaureate program. Admission can be requested by students in consultation with their academic advisor, their undergraduate dean, and the graduate director of the proposed master's program. An application form and associated guidelines may be obtained from The Graduate School.

Several of the University's colleges and schools are involved with a variety of accelerated degree programs. For more information, contact the Office of Undergraduate Admissions, USC, Columbia, SC 29208, phone 803-777-7700.

Registration Policies

Registration

To be officially enrolled in the University students must be academically eligible, complete the registration process with the Office of the University Registrar, and possess a receipt issued by the Office of Financial Services for payment of current academic fees.

Students are expected to complete registration (including the payment of all required fees) by the dates prescribed in the registration calendars on the registrar's Web site to avoid cancellation of classes and payment of a late registration fee of \$5 per day (\$350 maximum).

Changes in Enrollment

Adding a course, changing from credit to audit or audit to credit, changing from one section to another, and changing the number of credits in any variable credit course must be completed by the last day to change course schedule or drop without a grade of W being recorded, as published in the academic and refund calendars on the registrar's Web site. Electing or revoking the Pass-Fail option must be completed no later than the last day for dropping a course with a grade of W, as published in the academic and refund calendars on the registrar's Web site.

Dropping Courses and Withdrawal

Free Drop/Add Period: During the Free Drop/Add period, undergraduate students have the ability to add and remove courses from their schedule through Self Service Carolina. For each course, the Free Drop/Add period begins during the official first day of the course and extends to a minimum of 6% of the Part of Term* in which the course is scheduled. Courses removed during the Free Drop/Add period will not be recorded on a student's transcript. Details regarding Free Drop/Add dates can be found on the Self Service Carolina log-in page under the "Academics" sections: <https://my.sc.edu/codes/>

Students are prevented from dropping or adding courses during the Free Drop/Add Period if they have an active registration hold on their record.

**Part of Term: Each course is associated with a specific part of the term for the semester or a specific date range in which the course is held. For example, Part of Term can refer to Full Term courses that run the full major semester (fall or spring) or Half Term courses that run only half of a major semester. Each Part of Term has specific drop/add, withdrawal, and withdrawal fail dates. Details regarding Part of Term dates can be found on the Self Service Carolina log-in page under the "Academics" sections.*

Course Withdrawal Period: During the Withdrawal Period, undergraduate students have the ability to withdraw from a course with no grade penalty through Self Service Carolina. For each course, the Withdrawal Period begins after the Free Drop/Add Period and extends to a minimum of 72% of the Part of Term* in which the course is scheduled. Courses from which a student withdraws during this period are recorded on a student's transcript as a W; however, the semester hours will not be calculated in the computation of grade point average, count towards earned hours, or count towards graded hours. Courses that have a recorded grade of W will count towards attempted hours. Details regarding course Withdrawal dates can be found on the Self Service Carolina log-in page under the "Academics" sections: <https://my.sc.edu/codes/>

Students are prevented from withdrawing from courses during the Withdrawal Period if they have an active registration hold on their record.

Course Withdrawal Fail Period: During the Withdrawal Fail Period, undergraduate students have the ability to withdraw from a course with a penalty grade through Self Service Carolina. For each course, the Withdrawal Fail Period begins after the Withdrawal Period and extends up to 100% of the Part of Term* in which the course is scheduled. Courses from which a student withdraws with a grade of WF during this period are treated as an F in the evaluation of academic standing, computation of grade point average, and graded hours. Details regarding course Withdrawal Fail dates can be found on the Self Service Carolina log-in page under the "Academics" sections: <https://my.sc.edu/codes/>

Students are prevented from withdrawing from courses during the Withdrawal Fail Period if they have an active registration hold on their record.

Hardship Withdrawal

During and after the Withdrawal Fail Period, it may be necessary for a student to withdraw from all courses for the semester due to a significant personal hardship (e.g., medical or family emergency, prolonged illness, other medical or traumatic event). In these situations, students are able to petition for a Hardship Withdrawal from courses through the Office of the Dean of

Students or the Hardship Withdrawal Committee. Each Palmetto College Campus has an equivalent hardship withdrawal process for managing petitions from students enrolled on their campus.

Hardship Withdrawal petitions, including verified documentation of hardship, submitted during the Withdrawal Fall Period until the last day of courses for the semester will be reviewed by the Office of the Dean of Students. Approved petitions will be submitted to the Office of the Registrar for grade assignments of W for all courses that semester on the student's transcript.

The Office of the Dean of Students will notify the student's instructors and their home college of the withdrawal.

Hardship Withdrawal petitions, including verified documentation of hardship, submitted after the last day of courses for the semester will be reviewed by the Hardship Withdrawal Committee that must include faculty and college/school representation. Approved petitions will be submitted to the Office of the Registrar for grade assignments of W for all courses that semester on the student's transcript.

Prior to a Hardship Withdrawal decision being made, all documentation is subject to verification by the Office of the Dean of Students and/or the Hardship Withdrawal Committee, including but not limited to class attendance, class participation, or supporting documentation. If false documentation or misrepresented information is submitted, students will be referred for alleged violation of the USC Honor Code and the Hardship Withdrawal request will be denied.

A Hardship Withdrawal to selectively withdraw from some courses, while remaining enrolled in other courses, will be permitted only under exceptional circumstances and must be approved by the Office of the Dean of Students in consultation with appropriate colleges/schools. The Office of the Dean of Students will submit a report of selective withdrawal decisions for verification to the Hardship Withdrawal Committee at the end of each semester.

Information regarding the University's Withdrawal Refund Appeals procedures can be found in the Fees and Refunds section of the bulletin.

Title IX Obligations

Information contained in Hardship Withdrawal petitions is private and not shared with instructors, departments, or colleges/schools outside of the Hardship Withdrawal Committee. However, in accordance with the provisions of Title IX of the Education Amendments Act of 1972 and University policy, if sexual misconduct information is included in a student's petition, the Office of the Dean of Students and/or the Hardship Withdrawal Committee is obligated to report the matter to USC's Title IX coordinator.

Withdrawing via Self-Service Carolina: Students can withdraw for the semester by withdrawing from all courses on Self Service Carolina. Students are encouraged to consider the Hardship Withdrawal Process if they are withdrawing during the Withdrawal Fall Period.

Active Duty Military Withdrawal

Students in the National Guard or armed forces reserves who are placed on active duty by order of the president of the United States or the governor of their state should pursue withdrawal from courses according to the provisions of the University's policy titled "Withdrawal of Students Called to Active Military Service" (ACAP 3.05). Active duty military personnel who are reassigned during an academic term may also invoke the provisions of this policy.

<http://www.sc.edu/policies/ppm/acaf305.pdf>

Course Drop and Withdrawal Chart

Name	Minimum Percentage of Class Time (Specific dates for each Part of Term may be found on the Office of the Registrar website)	Grade	Considerations
Free Drop/Add Period	0-6% of classes	No Grade	- Financial Aid - Enrollment status - Housing
Withdrawal Period	7-72% of classes	W grade will be recorded on transcript.	Financial Aid

		W grade is not calculated in GPA.	• Progression towards degree • Satisfactory Academic Progress
Withdrawal Fail Period	73-100% of classes	WF grade will be recorded on transcript. WF grade is calculated as an F in GPA.	• Financial Aid • Progression towards degree • Academic Standing
Hardship Withdrawal Period	73-100% of classes	W grades will be recorded for all courses for approved petitions Petitions are subject to review by the Office of the Dean of Students	• Financial Aid • Refund Appeals Process
	After 100% of classes	W grades will be recorded for all courses for approved petitions. Petitions are subject to review by the Hardship Withdrawal Committee	

Indebtedness

It is expected that students will discharge any indebtedness to the University as quickly as possible. No diploma, certificate, enrollment verification, or transcript will be issued to or for students who have not made satisfactory settlement with the Office of Financial Services for all of their indebtedness to the University.

Attendance Policy

Class Attendance

Students are obligated to complete all assigned work promptly, to attend class regularly, and to participate in whatever class discussion may occur.

Absence from more than 10 percent of the scheduled class sessions, whether excused or unexcused, is excessive and the instructor may choose to exact a grade penalty for such absences. It is of particular importance that a student who anticipates absences in excess of 10 percent of the scheduled class sessions receives prior approval from the instructor before the last day to change schedule as published in the academic and refund calendars on the registrar's Web site (<http://registrar.sc.edu/>).

It must be emphasized that the "10 percent rule" stated above applies to both excused and unexcused absences. Faculty members should notify classes, specifically in the course syllabi, of the attendance policy which they intend to follow in each class, but it cannot be more restrictive than the "10 percent rule." It is also recommended that the faculty include a policy statement in their syllabi requesting students to meet with the instructor early in the semester to discuss the consequences of potential excessive absences due to participation in University-sponsored events.

Faculty should consider the following events or circumstances as potentially excusable absences:

- participation in an authorized University activity (such as musical performances, academic competitions, or varsity athletic events in which the student plays a formal role in a University sanctioned event)
- required participation in military duties
- mandatory admission interviews for professional or graduate school which cannot be rescheduled
- participation in legal proceedings or administrative duties that require a student's presence

- death or major illness in a student's immediate family
- illness of a dependent family member
- religious holy day if listed on www.interfaithcalendar.org
- illness that is too severe or contagious for the student to attend class
- weather-related emergencies

The Student Ombudsperson in the Division of Student Affairs is available to assist faculty members with obtaining or verifying documentation when necessary. The faculty member has complete discretion regarding the specific nature of any accommodation offered in the event of an excused absence. Students should notify faculty members at least two weeks prior to the absence when possible. In all cases, students must contact the faculty member to request an accommodation upon return to class.

Examination Policies

Final Examinations

Final examinations for spring and fall semesters are held during a seven-day period at the close of each semester. Summer examinations are held during a two-day period at the close of each session. Semester examination schedules are published on the registrar's Web site under the "Calendar" link. The results of these examinations, combined with the grades for class performance, determine the reports given at the end of the semester. No final examination may be held outside of the stated time without the special permission of the dean of the college concerned. Reading Day is specified in the University calendar and no exams, quizzes or required class attendance may be scheduled for that day.

In any course or laboratory which meets two or three times per week, no quiz, test, or examination may be given during the last two class meetings prior to the regularly scheduled examination period. In any course or laboratory which meets once a week, no quiz, test, or examination may be given during the last class meeting prior to the regular examination period. In any course or laboratory which meets more than three times per week, no quiz, test, or examination may be given during the last three class meetings prior to the regular examination period. Self-paced courses are exempt from this regulation.

If an instructor teaches more than one section of the same course, students may transfer from one examination section to another with the instructor's permission.

Students who are absent from any final examination will be given the grade of F on the course if they have not offered an excuse acceptable to the instructor. If excused, they will be assigned a grade of I (see "I" entry under "Grading System"), and may complete the course under the conditions specified by the instructor in the "Assignment of Incomplete Grade" form.

Re-examinations for the purpose of removing an F or raising a grade are not permitted.

Graduating Seniors

No early examinations are given for graduating seniors. Students who have submitted a degree application may attend the graduation ceremony. Diplomas are mailed after final examinations and after a student's dean has verified that all degree requirements have been met.

Deferred Examinations

A student with excused absences from final examinations in one semester has the privilege of deferred or special examinations and may take the deferred examination at the next regular examination period, with credit for semester standing, provided the examination is taken at the convenience of the professor. The examination must be taken within one calendar year from the time that the absence was incurred. Deferred examinations will be granted only in case of absence verified as unavoidable because of sickness or other cause, rendering attendance at final examinations impossible.

Grading Policies

Grading System

Enrollment in a course obligates the student not only for prompt completion of all work assigned but also for punctual and regular attendance and for participation in whatever class discussion may occur. It is the student's responsibility to keep informed concerning all assignments made. Absences, whether excused or unexcused, do not absolve the student from this responsibility.

Students' grades in their courses are determined by class standing and examination grade, combined in such proportion as the professor may decide.

Class standing is determined by the quality of a student's work and the regularity of attendance in lectures and laboratory sessions or other exercises of the course. Grading systems in graduate and professional schools are described in the appropriate bulletins.

A, B, C, D represent passing grades in order from highest to lowest. **B+, C+, D+** may also be recorded. **F** represents failing performance.

S and **U** indicate, respectively, satisfactory (passing) and unsatisfactory (failing) performance in courses carried under the Pass-Fail option. The S/U designation is used also for some research courses, workshops, and seminars in which the regular academic grades are not used. The use of the Pass-Fail grading option in such courses is indicated in their bulletin descriptions. No course carried under the Pass-Fail option will affect a student's grade point average or the evaluation of suspension conditions.

FN (Failure-Non Attendance) and **UN** (Unsatisfactory-Non Attendance) grades are assigned to students who never attended or have stopped attending class but have not officially dropped or withdrawn. Faculty are required to provide a last date of attendance when assigning this grade. The grade and the last date of attendance are used in determining the recalculation of awarded funds for financial aid recipients. Reporting the last date of attendance is critical to avoid potential financial liability for the institution.

FN and **UN** grades are displayed and calculated as **F** and **U** grades on the official transcript.

WF is assigned for student withdrawal from a course after the penalty deadline prescribed in the academic and refund calendars on the registrar's Web site. (See section on "[Dropping A Course](#).") The grade of **WF** is treated as an **F** in the evaluation of suspension conditions and grade point average computation.

W is assigned for student withdrawal from a course after the late registration period but before the penalty date. Courses dropped during the late registration period (as published in the academic and refund calendars on the registrar's Web site) will not be recorded on a student's permanent record. In exceptional cases, the grade **W** will be used after the first seven weeks of a semester, primarily in cases of withdrawal from the University or from a course for medical reasons. (See section on "[Dropping A Course](#).") A grade of **W** will not enter into the evaluation of suspension conditions or in grade point average computation but will be recorded on a student's permanent record.

I, Incomplete, is assigned at the discretion of the instructor when, in the instructor's judgment, a student is unable to complete some portion of the assigned work in a course because of an unanticipated illness, accident, work-related responsibility, family hardship, or verified learning disability. The grade of **I** is not intended to give students additional time to complete course assignments unless there is some indication that the specified condition or event prevented the student from completing course assignments on time. By arrangement with the instructor, the student will have up to 12 months in which to complete the work before a permanent grade is recorded. Re-enrolling in the course will not make up an Incomplete. An Assignment of Incomplete Grade form (AS-5) must be completed by the instructor and submitted to the Office of the University Registrar explaining the reason for the **I** and conditions for make-up. A grade of **I** is not computed in calculating a student's grade point average. After 12 months an **I** that has not been made up is changed to a grade of **F** or to the back-up grade indicated by the faculty member on the Assignment of Incomplete Grade form.

T, a Graduate School symbol, is assigned to indicate enrollment in Thesis Preparation (799) and Dissertation Preparation (899). Courses with this symbol will be counted as hours attempted and hours earned only. Grade points will not be awarded. For unsatisfactory work the grade of **U** should be assigned. The grade of **I** cannot be assigned in courses numbered 799 and 899.

AUD indicates a course was carried on an audit basis. (See section on "[Auditing](#)" for more information.)

NR, No Record, is assigned in the event that the grade is not available at the time final grades are submitted. It is a temporary mark on the transcript and must be replaced by a grade. If replacement does not occur before the last week of the spring or fall semester following the term for which the grade was recorded, a grade of **F** will be assigned. The **NR** is ignored in computing the GPA.

Academic Honor Code Violation

A manuscript notation on the graded course in which the violation occurred denotes "Honor Code Violation."

Pass-Fail Grading

The Pass-Fail program is designed to encourage students to investigate fields outside of their major curriculum in which they have a specific personal interest without affecting their grade point average. The only grades assigned on courses taken under the Pass-Fail option are S and U; a grade of S indicates satisfactory performance, a grade of U indicates unsatisfactory progress. A student will be given credit for courses in which the grade of S is earned, but these courses will not affect the computation of the grade point average.

Specific provisions of the Pass-Fail program are as follows:

1. The Pass-Fail grading system is in effect for an indefinite period of time, subject to periodic review.
2. The Pass-Fail option is not available to undergraduate students whose semester or cumulative GPA is less than 2.00.
3. Students are permitted to exercise the Pass-Fail option only on free elective courses.
4. Students are permitted to take no more than eight courses on a Pass-Fail basis during their undergraduate career.
5. A student wishing to exercise the option must have the permission of the dean of the college and the student's academic advisor. The Pass-Fail Option form (AS-20) is used for this purpose.
6. The option may be elected or revoked by the student no later than the last date for withdrawing from the course without a penalty.
7. Normal prerequisites may be waived for students taking a course on a Pass-Fail basis.
8. Courses taken under this option will be excluded from the calculation of the grade point average.
9. A grade of S will be entered by the Office of the University Registrar for a regularly assigned passing grade; a failing grade will be registered as U.
10. No course carried on a Pass-Fail basis will be counted toward the hours required for either the President's or the Dean's Honor List.
11. A verified learning-disabled student may take on a Pass-Fail basis an elective or required course which is not in the major if the academic advisory plan so recommends the Pass-Fail option for that course. A student who desires use of this option must apply to the dean of the college at the beginning of the semester. With the approval of the academic dean, learning-disabled students may meet specific degree requirements with a satisfactory grade.

Spring 2020 Undergraduate Pass-Fail Grading

Approved by the USC Faculty Senate on April 1, 2020

To address complications presented by the COVID19 pandemic, the Faculty Senate Steering Committee approved the following grading accommodations for undergraduate students enrolled in Spring 2020.

- All courses will be graded as originally planned according to grading criteria in course syllabi. After grades are submitted at the end of the semester, undergraduates can choose, on a course-by-course basis, to request a pass/fail grade for the Spring 2020 semester with the exception of Graduate or professional school courses, which can be taken as pass/fail only when deemed appropriate by the program or school Dean.
- The following pass/fail scale will be used: Earned grades of A, B+, B, C+, and C will be replaced with S+, earned grades of D+ and D will be replaced with S, and an earned grade of F will be replaced with U.
- If students select the S+/S/U grading scale for a course, points will not be factored into the GPA. Courses with S+ and S will count towards earned semester hours.
- Courses graded with the S+/S/U scale, under this exception for Spring 2020, will count towards applicable curricular, major, continuation, and graduation requirements. For example, if a course requires a C or better in a prerequisite, students selecting this alternative grading scale would need an S+ in the prerequisite course.
- Faculty members will not be aware of students who select the pass/fail grading option when entering final grades. Grades will be entered in the format for which the course was approved.
- Students who previously decided to take a course on a pass/fail basis will continue on a pass/fail basis using the University's established S/U system (e.g., S is earned if the grade is D or above and U is earned for grades below D).
- For the Spring 2020 semester, undergraduate students who choose to replace a course letter grade with the S+/S/U option must do so no later than July 1, 2020.
- This process will occur through the Office of the University Registrar. A form will be available on the University Registrar website for the student to request that a letter grade be replaced with the S+/S/U scale.
- UofSC will include a transcript note on all academic records, regardless of grading basis, indicating the extraordinary circumstances of the global public health emergency during Spring 2020.
- Because some graduate and professional programs require letter grades to be reflected on transcripts, when necessary, students will be able to request an official letter attesting to the letter grade earned in any classes that were converted to S+/S/U. This letter would attest only to grades, not to GPA. We will ensure that those who need evidence of your academic achievements this spring will be able to get it. A form will be available on the University's website for students to request these letters.

- Students will be allowed to retake undergraduate courses in which they earned an S+, S, or I during Spring 2020. Any undergraduate courses retaken under this provision will not count towards the number of courses currently allowed by the current course grade forgiveness policy. In addition, students who were retaking a class for grade forgiveness in Spring 2020 can retake the class another semester, without penalty.

Grade Point Average

The grade point average is computed on the basis of all semester hours attempted for credit, except for credit hours earned under the Pass-Fail or audit options. Courses in which a grade of S, U, AUD, T, or W was earned are not considered in computing the GPA.

The grade points earned in any course carried with a passing grade (A, B+, B, C-, C, D+, D) are computed by multiplying the number of semester hour credits assigned to the course by a factor determined by the grade. For courses in which the grade of A was earned, the factor is 4; for B+, 3.5; for B, 3; for C+, 2.5; for C, 2; for D+, 1.5; for D, 1. The grade point average is determined by dividing the total number of semester grade points earned by the total number of semester hours attempted for credit (excepting hours carried on a Pass-Fail or audit basis). No grade points are assigned to the symbols F, S, U, WF, W, I, AUD, T, or NR.

Course Grade Forgiveness

It is the policy of the University of South Carolina that every currently enrolled, fully admitted, degree-seeking undergraduate earning a D+, D, F, or WF in a University course may take up to two undergraduate courses for a second time for the purpose of grade forgiveness. Both the first and second grades shall appear on the University permanent record, but only the second grade will be used in computing the University of South Carolina cumulative grade point average. An explanatory notice will appear on the record. Once grade forgiveness is applied to a repeated course, the action may not be revoked.

An eligible student wishing to apply the course grade forgiveness policy to a course enrollment may do so at any time during his/her undergraduate enrollment, but no applications will be honored after the degree is awarded. Grade forgiveness can only be applied once per course for a maximum of two courses (not to exceed 8 credits) on a student's undergraduate academic record, without regard to the number of degrees sought. Under the grade forgiveness policy, the forgiven and repeated class must be taken at the University of South Carolina-Columbia campus or a Regional campus. Courses transferred from other institutions are excluded from this policy.

This policy does not preclude students from repeating classes multiple times, in accordance with program requirements, but only the second attempt at the class may forgive the original grade of D+, D, F, or WF. Only a regular letter grade can replace a forgiven grade. Grades of W, I, S, U, or AUDIT may not replace previous grades. Grades carrying an honor code violation sanction of X are not eligible for grade forgiveness.

Established requirements for repeating classes, admission to, or progression in, specific academic programs of the University take precedence over the grade forgiveness policy. Program or progression grade point averages are not affected by this policy. Refer to the guidelines for each program for specific requirements. Courses intended to be repeated for additional credit, such as research or applied music, are not eligible for grade forgiveness. Semester honors (dean's or president's honor list), or academic standing (scholastic deficiency, probation, suspension), or previous grade point totals will not change retroactively as a result of applying this policy.

Students who have been granted academic forgiveness to reset the grade point average after readmission are not eligible for course grade forgiveness. Please refer to the bulletin entry titled Academic Forgiveness for Former USC Students with Less Than a 2.00 Cumulative GPA.

An eligible student wishing to apply the grade forgiveness policy may begin the process by reading the criteria which must be met and completing the necessary documentation in order to apply grade forgiveness. The criteria and documentation can be found at http://www.sc.edu/about/offices_and_divisions/registrar/transcripts_and_records/grade_forgiveness/index.php.

Note that Academic Forgiveness is not the same as Grade Forgiveness. Please refer to the bulletin entry titled Academic Forgiveness for Former USC Students with Less Than a 2.00 Cumulative GPA.

Grade Reports

Students' grades are reported on Self Service Carolina. Students can also access grade reports in person at the Office of the University Registrar.

Grade Change Policy

Grade changes based on transcription or computation errors shall be reported directly to the Office of the University Registrar on the appropriate grade change form signed by the instructor and the head of the student's academic unit. Any request for a grade change must be submitted by the instructor no later than one calendar year from the date on which the grade was reported. Beyond this period, grade changes will be considered only in exceptional circumstances and must be handled through the petition procedure of the student's college. Any other grade change request resulting from enrollment discrepancies, medical withdrawals, or perceived administrative errors (changes to W, WF, audit, credit, S/U, or to I) must be submitted on the appropriate forms with signatures and documentation to the dean of the student's college for review through the petition procedure. This does not apply to the routine makeup and extension of an I (incomplete) and posting of a permanent grade to replace the recorded NR mark. An I turns into a grade of F after one year; an NR turns into a grade of F after one semester. Special makeup work or examinations to change grades already recorded are not permitted.

Academic Standards Policies

Academic Standards

The following standards for continuing at the Columbia and regional campuses of the University of South Carolina apply to all undergraduate students who first enroll at the Columbia and regional campuses of the University in the fall 2008 semester or thereafter, are admitted to the Columbia and regional campuses of the University in an undergraduate degree program in the fall 2008 or thereafter, or are enrolled in the fall 2010 semester or thereafter, regardless of when first enrolled at the University. Administration of these regulations is the responsibility of the academic deans, who are not empowered to waive any of the provisions.

Academic Review

The record of every undergraduate student will be reviewed at the end of each fall and spring semester. Many of the individual colleges of the University have higher academic requirements for students to continue in their degree programs. However, no student will be suspended academically from the University unless he/she fails to meet the standards specified here.

Academic Standing

A student's academic standing is based on his/her "Total Institutional GPA" and "Total Institutional GPA Hours" which can be viewed in Self Service Carolina at the end of a student's "Unofficial Academic Transcript" under the heading, "Transcript Totals (Undergraduate)."

Academic Probation

When a student's Total Institutional GPA at the end of any semester is less than a 2.00, he or she is placed on academic probation.

First-year Freshmen Academic Recovery Program

First-year freshmen who have less than a 2.00 Total Institutional GPA at the end of their first semester of collegiate enrollment are considered at risk. During the first six weeks of their second semester, these students must participate in an academic coaching session before being eligible to register for courses for the third semester. These sessions will provide students with assistance in academic planning, general advisement, major exploration, degree audit, self-assessments, and success strategies. This requirement is in addition to any made by the student's college, school, or academic program.

Removal from Academic Probation

When a student's Total Institutional GPA at the end of any semester is a 2.00 or above, he or she is not on academic probation.

Continuing on Academic Probation

Any student who is on probation at the beginning of a fall or spring semester must achieve a certain Total Institutional GPA at the end of that semester in order to avoid suspension. A student may also continue on probation and avoid suspension if the semester grade point average is 2.50 or greater. Standards for continuing on probation are based on the cumulative grade hours the student has attempted at USC. The chart below shows the grade point averages required in order to avoid suspension.

Probation Chart

Total Institutional GPA Hours	Placed on probation	Continue on probation (avoid suspension)	Removed from probation
12-35	below 2.00 Total Institutional GPA	1.500 or higher Total Institutional GPA	2.00 or higher Total Institutional GPA
36-71	below 2.00 Total Institutional GPA	1.800 or higher Total Institutional GPA	2.00 or higher Total Institutional GPA
72+	below 2.00 Total Institutional GPA	only with semester reprieve (see below) or by college petition	2.00 or higher Total Institutional GPA
SEMESTER RETRIEVE: Regardless of the Total Institutional GPA, a student may continue on probation and avoid suspension if the Current Term grade point average is 2.50 or greater.			

First Suspension

Students unable to meet the standards shown above are suspended from the University of South Carolina for one fall or spring semester and the contiguous summer (approximately eight months). Students have the right to appeal their suspension to the petitions committee of the college or school in which they were enrolled when suspended.

Returning After First Suspension

After the suspension has been served, a student will be considered for readmission by the college or school to which the student is seeking admission. A student readmitted following suspension continues on probation and is reviewed for suspension at the end of each fall and spring semester. A Current Term grade point average of 2.50 or higher must be achieved each semester until the Total Institutional GPA reaches the level above which suspension would occur (see chart).

During the first six weeks after returning from a first suspension, students must participate in an academic coaching session before being eligible to register for courses for the following semester. These sessions will provide students with the resources they need to meet their academic goals.

Returning after Subsequent Suspension

The duration of the second suspension is indefinite, and the student can be considered for readmission only after being approved for reinstatement by action of the petitions committee of the college or school to which the student is seeking admission. A favorable decision by the committee is unlikely within two years of the suspension.

Earning Academic Credit While on Suspension

A student on suspension is given an opportunity to reorder priorities and reassess his or her situation before returning. While serving suspension, a student may not be admitted to, or continue in, any academic program of the University. Credit earned at any other institution while a student is on suspension from the University may not be applied toward a degree from USC, unless approved by the Standards and Petitions Committee of the college to which the student is readmitted. Prior approvals for transient study will be revoked for suspended students.

Retention in Degree Programs

Students are reminded that the above regulations are for all undergraduate students in the University. Many colleges and schools offer degree programs that have more stringent requirements for retention in those programs. Failure to meet the academic requirements of those degree programs may result in the student being asked to leave that program. Students should consult the colleges and schools section of the Academic Bulletin to review the specific degree retention requirements.

Academic Progression and Program Dismissal

Students dismissed from a program for failing to meet academic progression requirements will be reassigned to Undergraduate Studies and will be advised by the University Advising Center. Students assigned to Undergraduate Studies will have a maximum of two semesters before declaring a new program of study. At the conclusion of two semesters enrolled at full-

time status, students who have not declared a major/program within a degree-granting college will have a registration hold placed and will be unable to enroll in coursework.

Petition Procedures

In addition to previously specified provisions by which a student may petition to waive the application of this suspension policy, a student suspended by this policy has the right to petition to the appropriate college scholastic standards and petitions committee to waive the application of the suspension rule at any time. Students placed on first suspension who wish to petition for a waiver of the suspension rule may petition only the committee of the college in which they were enrolled at the time of suspension.

Academic Forgiveness Policy

Academic Forgiveness for Former USC Students with Less than a 2.00 Cumulative GPA

Under certain conditions undergraduate students may apply for academic forgiveness. Academic forgiveness allows for a recalculation of the GPA to permit a student to graduate or pursue a specific academic program. In order to apply for academic forgiveness all of the following conditions must be met:

1. The student has not been enrolled at any campus of the University of South Carolina for at least 48 months.
2. The student must have been readmitted to a degree program at the University of South Carolina and must have completed at least 24 hours of approved graded course work prior to applying for academic forgiveness.
3. After readmission the student must have earned a cumulative GPA of at least 2.00 and met the progression requirements of the degree program.
4. The student must never before have been granted academic forgiveness.

A student who has met these conditions and desires academic forgiveness must submit a written request for academic forgiveness to the dean of the college in which the student is enrolled. After verification of the student's eligibility, the dean shall inform the registrar that academic forgiveness has been granted to the student.

Once academic forgiveness has been granted, the following apply to the student's academic record:

1. All curriculum requirements will be in accordance with those in force at the time of or subsequent to the student's readmission.
2. The student may not receive Academic Honors upon graduation.
3. The student's grade point average is recalculated beginning with the semester in which the student was readmitted to the University. All academic hours attempted at USC will be calculated toward the GPA. The student's GPA will be recalculated using the GPA after readmission and a 2.00 on all grade hours taken prior to readmission.
4. Courses in which the student received a passing grade prior to readmission may, at the discretion of the dean, be applied toward the degree.
5. The following statement shall appear on the academic record and transcript of any student granted academic forgiveness: "This student was granted academic forgiveness under the University of South Carolina Academic Forgiveness Program. The GPA has been recalculated under the criteria of this program to allow for eligibility for graduation."
6. The permanent academic record will remain an unmodified record of all work attempted at the University of South Carolina.

Academic Honors Policies

Honor Lists

Each semester academic achievement is recognized by entering on the President's Honor List or the Dean's Honor List the names of students who, at the end of the previous semester, attained the following standards:

President's Honor List: a grade point average of 4.00 earned on a minimum of 12 credited semester hours.

Dean's Honor List: a grade point average of 3.50 or higher earned on a minimum of 12 credited semester hours.

No course carried on a Pass-Fail basis, by examination, correspondence, or exemption will be counted toward the 12 hours required for either the President's or Dean's Honor List.

Graduation with Honors

Graduation with honors will be based on a student's Total Institutional GPA. Honors designators are determined at the time of graduation and may not be applied retroactively.

To graduate with such honors, a student must have earned at least 60 credit hours applicable toward the degree in residence at the University, 30 credit hours for an associate degree.

The following designations indicate a consistently high level of academic achievement at USC:

Baccalaureate Degree Designations

Summa Cum Laude: a cumulative GPA of 3.95-4.00

Magna Cum Laude: a cumulative GPA of 3.75-3.949

Cum Laude: a cumulative GPA of 3.50-3.749

Associate Degree Designations

Highest Honors: a cumulative GPA of 3.95-4.00

High Honors: a cumulative GPA of 3.75-3.949

Honors: a cumulative GPA of 3.50-3.749

With Honors from South Carolina Honors College: Any student who completes the requirements of the Honors College, regardless of the major or undergraduate degree, is awarded that degree "With Honors from South Carolina Honors College."

With Distinction: Any student who earns an undergraduate degree and completes the appropriate requirements will be awarded graduation "With Distinction in [that major]." For details, refer to the degree requirements of specific majors.

With Leadership Distinction: Any undergraduate student who completes Leadership Distinction requirements in community service, diversity and social advocacy, global learning, professional and civic engagement, and/or research as specified by the Provost's Office, regardless of the major or undergraduate degree, is awarded that degree "With Leadership Distinction in [that track]." For further details, contact the Office of USC Connect.

Degree Conferral and Graduation Policies

In-residence Requirement

The last 25% of a student's degree must be completed in residence at the University, and at least half of the hours in the student's major courses and in the student's minor courses (if applicable) must be taken at the University.

The chart below shows the minimum number of hours required to be completed in residence based on the total number of hours required for a degree.

In-residence Chart

Total Number of Hours Required for Degree	Minimum Number of In-residence Hours
60 Hours (Associate Degree)	15 Hours
70 Hours (Associate Degree)	18 Hours
120 Hours	30 Hours
121-124 Hours	31 Hours
125-128 Hours	32 Hours
129-132 Hours	33 Hours
133-136 Hours	34 Hours
137-140 Hours	35 Hours
141-144 Hours	36 Hours

Some programs impose greater student residence and/or major requirements.

Regardless of when students enter the University, they must complete the last 25% of the degree before graduation enrolled in classes approved by the appropriate dean of the college, school, or campus from which the degree will be granted. In addition, all degree applicants are urged to confer with the deans of their respective colleges about their programs and degree requirements prior to the beginning of their last semester of residence at the University.

"In residence" means that the student was regularly enrolled at USC; completed courses offered by Columbia or one of the other campuses of the University; was a member of a class which was supervised by a regular faculty member of USC; attended classes on a regular, pre-established schedule; and in other ways conformed to the requirements which are normally connoted by the term "in residence." In-residence requirements may not be met by courses for which credit is earned by exemption or exam, courses taken by correspondence, or courses for which transfer credit was awarded. Courses taken under the Pass-Fail option meet in-residence requirements. If the student has not established credit for the prescribed number of hours in residence, then the student is not eligible either for graduation with honors or for graduation on the basis of having completed 25% of the degree during the final semesters at the University.

Application Process

All candidates for degrees and certificates must file formal applications during the last academic term before graduation with the deans of their respective colleges on forms obtained at the Office of the University Registrar or the appropriate dean's office. Applications must be filed by the third week of the fall or spring semester in which the degree is to be awarded or within the first 10 days of the first summer session. If the student is not enrolled during the first summer session, the application must be filed within the first week of the second summer session for the student to graduate at the summer commencement.

Graduation Requirements

In order to be eligible for graduation, students must meet all course requirements, be in good academic standing, meet any departmental or program requirements, and have a cumulative GPA of at least 2.00 on all work attempted at USC.

Second Baccalaureate Degree

At times the University confers a second baccalaureate degree upon candidates who have completed requirements for the second degree.

The following specifications for a second baccalaureate degree apply:

1. The student must meet admission and progression requirements for the second degree, and must have received formal approval to pursue the second degree from both deans.
2. All requirements for the second degree must be fulfilled.
3. The additional requirements for the second degree must include a minimum of 24 semester hours beyond those required for the first degree.
4. No course that satisfies a general education, major, minor, cognate, or requirement other than a free elective for the first degree may be applied to the major field of the second degree.
5. The student must file a separate degree application for the second degree with the appropriate college or school.

Under this policy a student may apply for two degrees at one time or separately. In either case, the student receives two diplomas. It should be noted that a second major does not by itself lead to the conferral of a second degree.

Students who submit two degree applications for the same degree in the same college for a double major will receive one diploma.

Second Major

In some degree programs, a student may elect a second major. Normally, second majors are possible only in degree programs with similar general education requirements. The second major option is not available in all colleges.

1. The student must meet admission and progression requirements for the second major.
2. The student must have received approval from both deans for a second major.
3. All requirements for the second major must be fulfilled.
4. All general education and special departmental requirements normally associated with the second major must be fulfilled.
5. In cases where the first major and the second major lead to different degrees, the student must designate one as the official degree of record. A second major eliminates the cognate requirement; however, special departmental requirements normally completed as part of the cognate are not waived.

Fulfillment of the requirements for a second major are indicated on the student's official transcript upon graduation. No notation for a second major is placed on the official transcript for course work completed after graduation.

Students who submit two degree applications for the same degree in the same college for a double major will receive one diploma*

Indebtedness

It is expected that students will discharge any indebtedness to the University as quickly as possible. No diploma, certificate, enrollment verification, or transcript will be issued to or for students who have not made satisfactory settlement with the Office of Financial Services for all of their indebtedness to the University.

Records, Transcript, and Enrollment Certification Policies

Change of Name or Address

It is the obligation of every student to notify the Office of the University Registrar of any change in name or address (including electronic address). Failure to do so can cause serious delay in the handling of student records and in notification of emergencies. Change of name may only be accomplished by presenting proper legal documentation.

Transcripts

A transcript of a student's record carries the following information: current status; a detailed statement of the scholastic record showing courses pursued with semester hours earned, semester hours earned, grades, grade points, grade point average, and system of grading; a permanent record of all failures, incomplete grades, and penalties (such as suspension); cumulative USC grade totals; and references to other college or universities attended, dates attended, and the total transfer credits accepted by the University of South Carolina.

Any student who needs a transcript or a certified copy of the end-of-semester grade report may complete a Transcript Request form or send a signed and dated letter containing all pertinent identifying information to the Office of the University Registrar. Official transcripts may also be requested online through [Self Service Carolina](#). With the exception of copies made for internal use, no copy of a student's permanent record (transcript) will be released to anyone without the student's written consent. In addition to the written consent, each transcript request should include full name or names used, student number, current mailing address, dates of attendance, location of attendance, and date of birth to assure proper identification of the record requested.

No transcript will be issued to a student who is indebted to the University.

No partial transcript will be issued.

The nonrefundable transcript processing fee is \$12.

Enrollment Certification

Certification of enrollment is based upon the total number of credit hours for which a student is registered at the time of the certification request. Beginning and ending dates reported in enrollment certification conform to the official USC academic calendar dates for the term requested.

Indebtedness

It is expected that students will discharge any indebtedness to the University as quickly as possible. No diploma, certificate, enrollment verification, or transcript will be issued to or for students who have not made satisfactory settlement with the Office of Financial Services for all of their indebtedness to the University.

Notification of Student Rights under FERPA

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. These rights include:

1. The right to inspect and review the student's education records within 45 days of the day the University receives a request for access.

A student should submit to the registrar, dean, head of the academic department, or other appropriate official, a written request that identifies the record(s) the student wishes to inspect. The University official will make

arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

2. The right to request the amendment of the student's education records that the student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

A student who wishes to ask the University to amend a record should write the University official responsible for the record, clearly identify the part of the record the student wants changed, and specify why it should be changed.

If the University decides not to amend the record as requested, the University will notify the student in writing of the decision and the student's right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

3. The right to provide written consent before the University discloses personally identifiable information from the student's education records, except to the extent that FERPA authorizes disclosure without consent

a. The University discloses education records without a student's prior written consent under the FERPA exception for disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position; a person or company with whom the University has contracted as its agent to provide a service instead of using University employees or officials (such as an attorney, auditor, service provider or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the University.

- b. To officials of other institutions in which the student seeks or intends to enroll provided that the student had previously requested a release of his/her record;
- c. To authorized representatives of the U.S. Department of Education, U.S. Department of Defense (Solomon Amendment), U.S. Attorney General, the Comptroller General of the United States, state education authorities, organizations conducting studies for or on behalf of the University, and accrediting organizations; to the Department of Homeland Security (DHS) and its Immigration and Customs Enforcement Bureau (ICE) in order to comply with the requirements of SEVIS;
- d. In connection with a student's application for, and receipt of, financial aid;
- e. To comply with a judicial order or lawfully issued subpoena;
- f. To parents of dependent students as defined by the Internal Revenue Code, Section 152;
- g. To appropriate parties in a health or safety emergency; or
- h. To the alleged victim of any crime of violence or the results of any disciplinary proceedings conducted by the University;
- i. The University may disclose the result of a disciplinary proceeding to a parent or guardian so long as the student is under the age of 21 at the time of the incident and the proceeding has resulted in a violation of University drug or alcohol policies, or any federal, state, or local law;
- j. To students currently registered in a particular class, the names and email addresses of others on the roster may be disclosed in order to participate in class discussion.

The University of South Carolina has designated the following items as Directory Information: a student's name, electronic mail address, local and permanent mailing addresses and telephone numbers, semesters of attendance, enrollment status (full- or part-time), date of admission, date of expected or actual graduation, school, major and minor fields of study, whether or not currently enrolled, classification (freshman, etc.), type of degree being pursued, degrees, honors, and awards received (including scholarships and fellowships), weight

and height of members of athletic teams, and whether the student has participated in officially recognized activities and sports sponsored by the University.

The University may disclose any of these items without prior written consent, unless the student has submitted a written request to the Office of the University Registrar not to release directory information pertaining to them. Requests will be processed within 24 hours after receipt.

Telephone directories are published during the summer; students eligible to enroll for the upcoming fall term are listed in the printed directory unless the Office of the University Registrar is notified by May 31. The electronic directory is updated each weekend; requests for non-disclosure will be honored with the next update after the request is processed by the staff of the Office of the University Registrar.

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the University of South Carolina to comply with the requirements of FERPA.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-5901

Academic Assessment Policy

Assessment, in a university or college setting, can be interpreted to mean several things. Assessment can be the process of evaluating the success of a university in meeting its mission and goals (institutional assessment), or it can be the processes associated with evaluating student outcomes in relation to stated program goals (program assessment), or it can be course-embedded assessment techniques used to deliver information and/or evaluate student learning by observing students' skills and abilities.

The University of South Carolina is committed to offering programs and activities that encourage students to develop both academically and socially. In order to evaluate the effectiveness of our efforts, faculty, administrators, and staff conduct ongoing assessments. The Office of Institutional Planning and Assessment assists the faculty, administration, and other staff in gathering and analyzing assessment data. Assessment, therefore, is the ongoing process of self-improvement through analyzing and evaluating all of our functions and activities.

Students, faculty, and staff play critical roles in the assessment process. Consequently, participation in assessment activities is a University priority and responsibility. The information gleaned from assessment activities is used for planning and program improvement. Many of the University's assessment activities are mandated by external agencies. Therefore, all students wishing to receive a degree from the University of South Carolina must complete procedures required for the assessment of general education and those required by their major and/or area of concentration. If a student fails to participate in a required assessment activity, a hold may be placed on the student's records.

Primary responsibility for the assessment of academic programs within the major or area of concentration is with the faculty of each academic unit. Information pertinent to assessment of the major or area of concentration is provided to students by the department from which the degree will be granted.

Primary responsibility for coordinating the assessment of general education is with the Office of Institutional Assessment and Compliance. The faculty is actively involved in planning assessment and using the results of assessment to evaluate the effectiveness of general education. The assessment of general education is administered through the use of exams, interviews, surveys, questionnaires, or other instruments as developed by the faculty and Office of Institutional Assessment and Compliance.

The results of any activities used for program or general education assessment may not be used for promotion and/or tenure files or for annual performance evaluations or for the evaluation of any student's progress in a course or progress toward a degree. Assessment activities, however, are integral to the processes of teaching and learning.

For more information contact the Office of Institutional Assessment and Compliance.

EXHIBIT O

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

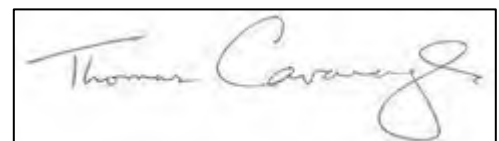
A handwritten signature in black ink, reading "Thomas Cavanagh", enclosed within a black rectangular border.

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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 McKeeever 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
2017-Present
2013-2017
2009-2012

University of Central Florida
Vice Provost for Digital Learning
Associate Vice President of Distributed Learning
Assistant Vice President of Distributed Learning

www.ucf.edu

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 in 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)**

Previously: Director of Operations, Design Services Manager, Senior Instructional Designer, Project Manager (company's former name: Analysis & Technology, Inc.)

- 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**

*Education /
Training*

Work for numerous clients on a freelance basis.

- Florida Center for Instructional Technology; MasterCard University; IBM; Siemens; Nickelodeon/ MTV Networks (*Writer of a series that won the Christa MacAuliffe award for Space Education*); Sea World / Anheuser Busch Entertainment Group (*Writer of Emmy-nominated children's educational series*); Olive Garden Restaurants; Skydog Productions; Florida Association of Realtors

Entertainment

- Nickelodeon / MTV Networks (*Work on 3 Cable Ace Award nominees - 2 as Head Writer*); The Disney Channel; Walt Disney Television Animation; Longbow Productions; Reeves Entertainment Group; RAE Media Productions

*Promotion/
Marketing*

- 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 Bouchey, 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/jiitoc.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 Pfieffer-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 Hoeppner. 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 P



Casey Kelly
6 May 2020 · 🧑

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Yesterday, I finished my last final exam as a student at USC, and in honor of that moment I am thrilled to announce that I will be working at Qualcomm this summer as a Brand & Marketing Intern at their San Diego office! I am looking forward to this incredible opportunity to further my professional career.

Thank you to all of my friends, peers, professors and most importantly my amazing parents for supporting and encouraging me every step of the way. [Peter Kelly](#) & [Terry Kelly](#), this ones for you! 🥰



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EXHIBIT Q

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
David L. Thomas,	)	Civil Action No. 2015-CP-40-07269
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING STATE'S
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

This matter has come before the Court pursuant to the State's Motion to Dismiss the Amended Complaint in this case. The parties filed memoranda regarding the Motion and appeared for argument of the Motion on March 1. After carefully considering the memoranda and the arguments at the hearing, this Court has decided to grant this Motion.

BACKGROUND

Procedural history

This proceeding was initiated by Plaintiff with a complaint filed December 4, 2015, alleging breach of contract by the State. The issue in the less than two pages of allegations is whether the Plaintiff had a contract for the State to procure life insurance for his wife following his Senate retirement and, if so, whether the State breached such a contract.

By Order dated December 5, 2016, the Honorable G. Thomas Cooper, Circuit Court Judge, dismissed this case as a sanction for "the repeated failures of Plaintiff to comply with discovery and the Orders of this Court" to provide discovery responses. The Order outlined a history of the discovery problems dating back to Plaintiff's May, 2016, Motion to Compel responses to the State's discovery served February 22, 2016.

The case was later restored by Consent Order filed April 3, 2018, because Plaintiff had,

by then, provided much of the requested documentation sought in discovery. The Order allowed Plaintiff sixty days to provide the missing documentation requested in discovery.

By Order dated December 20, 2018, the Court granted Plaintiff's Motion to Amend the Complaint. Plaintiff filed that pleading the same day.

Allegations in Complaint

The allegations below from the Complaint are background for the purposes of the Court's consideration of this Motion. The State has not filed an Answer admitting them.

4. Mr. Thomas married Fran Thressia Bauman . . . on September 15, 1984 and was elected to the South Carolina State Senate District 8 that same year after serving on Greenville City Council for 5 years and two years as Mayor Pro Tempore for the City of Greenville..

* * *

9. In 2012 after 28 years of service to the State of South Carolina Mr. Thomas left his State employment.
10. In or about December of 2012, for good and valuable consideration and as required by the laws of the State, Mr. Thomas applied to continue the policy of life insurance on his wife with Mr. Thomas as the named beneficiary.
11. The amount to continue the dependent insurance for Fran was \$58.40 per month.
12. On or about June 18, 2012 Mr. Thomas executed a continuation of group optional life form indicating that he wished to continue Fran's life insurance coverage. . . .
14. The State Benefits Administrator who was an employee and/or agent of the State signed and acknowledged the State's agreement to continue that coverage.
15. Unknown to Mr. Thomas, an employee and/or agent of the State marked through

the section for continuation of coverage of Fran.

16. That change was not initialed nor agreed to by Mr. Thomas.
17. On November 8, 2012 the State confirmed that the policy was in effect.
18. Mr. Thomas paid all premiums requested to be paid for continuation of policy coverages.
19. Mr. Thomas had no reason to believe Fran's policy was not being continued.
20. On June 26, 2014 Fran passed away from her cancer.
21. Mr. Thomas applied for the benefits of his wife's life insurance policy and was informed that the policy had not been continued by the State as requested by Mr. Thomas.

The Amended Complaint expands the allegations in the original complaint to include alleged causes of action for breach of fiduciary duty, negligence, negligent misrepresentation and promissory estoppel as well as breach of contract.

ANALYSIS

Plaintiff has sued a party, the State that is immune from suit in contract for the Plaintiff's contract claim, is immune from suit under the Tort Claims Act for the other claims Plaintiff asserts and is not authorized by the General Assembly to provide any relief for any of Plaintiff's claims. Neither the Courts nor the legislature have authorized this suit against the State of South Carolina as an entity for any relief for the claims Plaintiff asserts. The overarching problem with Plaintiff's case is that he has sued no party with authority to provide him with relief in this case. Appropriations are made to the agencies of the State (Attachment A to State's Reply, Appropriations Act, Act No 264, 2018 S.C. Acts) not to the State as a whole. Even if, *arguendo*, Plaintiff obtained a judgment, no one is named in the suit who could write a check for

it. The State as a collective whole cannot write checks for this action.

Standard For Granting Motion

A claim may be dismissed when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRCP. We review the grant of dismissal according to the same standard applied by the circuit court. See *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001). A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 378–79, 635 S.E.2d 538, 538 (2006).

Disabato v. S.C. Ass'n of Sch. Adm'rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). This Motion meets this standard in that the State is immune from suit for this matter and provides no remedy for the alleged claims. Numerous Supreme Court decisions have affirmed the dismissal of cases or causes of actions in lawsuits pursuant to motions to dismiss. See, eg., *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012); *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 125, 678 S.E.2d 430, 435 (2009); *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); *Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 595, 646 S.E.2d 866, 870 (2007); *Williams v. S.C. Dep't of Corr.*, 372 S.C. 255, 257, 641 S.E.2d 885, 886 (2007).

The Legislature Has Provided No Relief For The Claims In This Case

The Complaint does not specify any statutes passed by the General Assembly for life insurance coverage for spouses of retired employees nor do any such provisions appear to exist. As the Complaint acknowledges, insureds pay for their own coverage. No provisions exist for remedies against the State for claims for failure to provide coverage as alleged in the Complaint.

No authority exists under State law requiring the State to provide damages for any alleged life insurance. Under S.C. Const. art X § 10 and art. XVII § 2 the “General Assembly

may direct, by law, in what manner claims against the State may be established and adjusted, ” The Supreme Court has concluded that “art. X, § 10, simply limits claims against the State to those allowed by the legislature.” *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001), but no legislation provides for relief for the claims in this case.

“The General Assembly has, beyond question, the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent.” *State ex rel. McLeod v. McInnis*, 295 S.E.2d 633, 637, 278 S.C. 307, 313–14 (1982)¹. No appropriations have been made for the relief Plaintiff requests or for life insurance for dependents of retired employees, and such appropriations cannot be compelled.² Shifting monies from other sources is

¹ As stated in *McInnis*:

[I]n writing the appropriations bill, [the General Assembly] attempts as best it can to predict the needs of the various departments of state government. . . . A report of the Legislative Audit Council in the record shows that various executive agencies were supplementing their state appropriations with millions of dollars in grants of which the General Assembly was not always aware. The effect of all this brought about a result obviously inconsistent with the right and duty of the legislature to determine the appropriations of agencies and the programs undertaken. . . The net effect was that the Assembly was not, in the last analysis, determining the total amount of money expended by state agencies.

² Any damages or other monetary relief would require an appropriation by the General Assembly which cannot be judicially compelled, particularly when the General Assembly directs how claims may be adjusted against the State. *Culbertson v. Blatt*, 9 S.E.2d 218, 220 (1940)(“it is not within the power of this court to impinge upon the exercise by the Legislature of a power vested in that body. . . .”); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 415 S.E.2d 801, 805, 307 S.C. 449, 455 (1992) (“Our tripartite system of government traditionally precludes the judicial branch from impinging on the legislature’s exercise of a power vested in that body.”). Plaintiff quotes from *Georgetown Cty. v. Davis & Floyd, Inc.*, No. 2017-000234, 2019 WL 575898, at *3 (S.C. Ct. App. Feb. 13, 2019) “[p]olitical subdivisions of the state have no ancestor other than the state and its citizens. . . .”) but the quote simply meant that the County is part of the State and derives its powers from the State.

impermissible in that “[i]t shall be unlawful for any monies to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.” S.C. Code Ann. § 11-9-10. As stated in *State ex rel. Condon v. Hodges*, 349 S.C. 232, 245, 562 S.E.2d 623, 630 (2002), “there is no provision in the South Carolina Code or Constitution which provides that the members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money. In fact, there is clear legislative intent that the ability to transfer appropriated money will lie only with the General Assembly.”

Plaintiff contends that relief can be obtained against the State although no relief has been funded by the legislature. He mistakenly relies on several cases that do not involve damage or contract claims except *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006) which, unlike the instant case, involved a statutory contract. Those cases are discussed in the State’s Reply to the Plaintiff’s Response to its Motion to Dismiss and all are inapposite, but a 2017 Order in *Abbeville Cnty. Sch. Dist. v. State*, Appellate Case No. 2007-065159 (Attached to State’s Reply) is instructive. The Court vacated its jurisdiction of the case and dismissed it stating “[u]nderstandably, the plaintiff school districts want this Court to keep its thumb on the scale of legislative power, especially the power of the purse. That, we will not countenance.. . . To continue to exercise jurisdiction over the Legislative and Executive Branches under these circumstances would be a gross overreach of judicial power and violate separation of powers.” Order, November 17, 2017. The 2017 Order also included this quote which is fitting here: “The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated: The judiciary, on the contrary, has no influence over either

the sword or the purse” Order at n. 1 quoting The Federalist No. 78, at 575 (Alexander Hamilton) (John C. Hamilton ed, 1866). Here, the legislature commands the purse, and has provided no relief for this claim from its former employee, Plaintiff Thomas.

The legislature is in charge of claims against the State under S.C. Const. art X § 10. It has made no provision for the claim and issue and set up absolutely no right of contract with the State for life insurance coverage for spouses of retirees. Plaintiff has failed to show any authority permitting suit against the State for the matters at issue, and as discussed below, the Courts have not waived sovereign immunity as it applies here.

Therefore, with the absence of a remedy, no justiciable controversy is presented and no subject matter jurisdiction exists for this case. “A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character.” *Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). No such case or controversy exists here because no damage remedy is available. The Supreme Court has referred to “redressable injury sufficient to meet the requirements of Art. III” and “the Art. III requirement of actual or threatened injury amenable to judicial remedy.” *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982). Because no justiciable controversy exists, no subject matter jurisdiction exists. *See, State v. Boswell*, 391 S.C. 592, 599, 707 S.E.2d 265, 268 (2011) citing *Smith v. Commonwealth*, 56 Va.App. 351, 693 S.E.2d 765, 769 (2010) as “recognizing that subject matter jurisdiction is the authority granted through the constitution or statute to adjudicate a class of cases or controversies” *See also, Tourism Expenditure Review Committee v. City of Myrtle Beach*, 742 S.E.2d 371, 373, 403 S.C. 76, 81 (2013) (“the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory

judgment in the absence of an actual justiciable controversy.”). For these same reasons, Plaintiff has also failed to state a cause of action.

Immunity From Suit In Contract

Unisys, supra, makes clear that State sovereign immunity is in place for contract claims except where waived and no statute waives the State’s immunity here.³ That case overruled *Kinsey Const. Co. v. S.C. Dep’t of Mental Health*, 272 S.C. 168, 172, 249 S.E.2d 900, 903 (1978) which held 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.” Finding that *Kinsey* conflicted with authority that S.C. Code Ann. §15-77-50 is not a general waiver of sovereign immunity, *Unisys* held that “the decision in *Kinsey* conflicts with the basic principle that a statute waiving the State's immunity from suit, being in derogation of sovereignty, must be strictly construed.” 551 S.E.2d at 268. Because no statute waives the State’s immunity from suit, this suit is barred by sovereign immunity.

“[B]ecause a statute waiving the State's immunity must be strictly construed, the State can be sued only in the manner and upon the terms and conditions prescribed by the statute. *Jeff Hunt Mach. Co. v. South Carolina State Highway Dep’t, supra*.” *Unisys*, 551 S.E.2d at 270. Plaintiff claims “mis-advice” in the citation of *Jeff Hunt* which was overruled by *McCall v. Batson*, 329 S.E.2d 741, 285 S.C. 243 (1984) to the extent provided in that case, but overlooks that the *Jeff Hunt* citation was in a quotation from the Supreme Court’s Opinion in the more recent *Unisys* case. The Supreme Court did not, of course, misadvise in citing *Jeff Hunt*. *Jeff Hunt*’s conclusion is of guidance here. Because no statutory waiver exists, the State is immune

³ Contrary to the Plaintiff’s allegations, the State did not assert Federal Eleventh Amendment immunity.

from suit for the claims in this case, and Plaintiff has failed to state a cause of action.

Plaintiff misreads *Unisys* in suggesting that the State was a party to that case. The State was dismissed. In both *Unisys* and the instant case, the State was sued, but in *Unisys*, the State counterclaimed against the Plaintiff. The *Unisys* trial court dismissed both the Plaintiff's claims and the State's counterclaim, and the Supreme Court affirmed. Accordingly, the Court in the instant case will dismiss the Plaintiff's claims.

**The State Is Immune From Suit For The Negligence Claims
Including Breach Of Fiduciary Duty**

Plaintiff alleges causes of action for negligence and negligent misrepresentation. He also alleges a cause of action for breach of fiduciary duty which also "sounds in tort." *Moore v. Moore*, 360 S.C. 241, 256, 599 S.E.2d 467, 475 (Ct. App. 2004). The State of South Carolina as an entity named in this action is immune from such claims because the Tort Claims Act authorizes no action against the State as an entity.

Under the Tort Claims Act, "[t]he General Assembly . . . grant[s] the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20. Plaintiff cites general language in the Tort Claims Act referring to the State while overlooking the express language of § 15-78-70 which states, subject to certain exceptions for naming the employee not pertinent here, "a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting" (emphasis added). The Plaintiff has named no agency as a party to this case. As such, the immunity of the State as an entity has not been waived and these claims are barred by sovereign immunity. This application of §15-78-70

is consistent with §15-78-20(f) that expressly states that the “provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” (emphasis added).

The late Circuit Court Judge, the Honorable Tonya Gee referenced the same conclusion as follows:

[T]he Plaintiff must name the appropriate state agency or political subdivision as the defendant in place of the State of South Carolina pursuant to S.C. CODE ANN. § 15-78-70 . . .

The Act defines “agency” as the following:

the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

S.C. CODE ANN. § 15-78-30(a). The Act further defines “political subdivision” as the following:

the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

S.C. CODE ANN. § 15-78-30(h).

Consequently, because the State of South Carolina is neither an “agency” nor a “political subdivision” as defined by the Act, Defendant State is improperly named as a party in this action and must be dismissed. (emphasis added)

Brown v State, No. 2015-CP-40-4012, 2015 WL 10574321, at *2–3 (S.C.Com.Pl. Oct. 13, 2015). (Attachment C to State’s Reply Memorandum).

Accordingly, the State is immune from the Tort Claims allegations. The State was under no duty to move to substitute another agency. Real party of interest case law refers to

the naming of the Plaintiff not the Defendant. *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 373 (1997). Instead, Plaintiff had the responsibility to determine which parties he should sue.

Plaintiff's Estoppel Claim Is Also Barred

This claim is foreclosed by *Ahrens v. State*, 392 S.C. 340, 352–53, 709 S.E.2d 54, 60 and 61 (2011) because no State agency or employee had statutory authorization to contract for life insurance coverage for Mrs. Thomas. As stated in that case:

an agency cannot convert a statutory right to a contractual right maintains in this case. Any other holding would permit an executive agency to usurp the essentially legislative function of amending laws by binding the legislature through contract where it had no intention of being bound. We cannot support such a result.

* * *

Generally, “estoppel will not lie against a governmental body for the unauthorized acts of its officers and agents.” *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 87, 221 S.E.2d 773, 776 (1976). However, under certain circumstances, the State can be subject to the estoppel doctrine. *Id.* When agents or officers of a governmental body act within the proper scope of their authority, the government “cannot escape liability on a contract within its power to make.” *Id.* Additionally, the government may be estopped in matters that do not affect the exercise of its police power or *353 the application of public policy. *Grant v. City of Folly Beach*, 346 S.C. 74, 81, 551 S.E.2d 229, 232 (2001).

* * *

even if this Court found that the Retirement Systems and its agents made representations that caused the Retirees to prejudicially rely, because this Court has ruled that the Working Retiree statute did not create a binding contractual right, estoppel cannot lie against the state, as these representations were made outside of the agency's authority.

Id. Here when no statute authorizes the State to contract with its employees for life insurance, the State cannot be estopped if an employee made representations regarding such insurance.

Plaintiff claims that he relied on representations of an agent of the State, but *Ahrens* makes expressly clear that the State cannot be estopped for the unauthorized acts of its agents. No statute authorizes the State to contract for life insurance. Therefore, under *Ahrens*, no

employee or agent of the State was authorized to enter such a contract. Even if the Court found that agents of the State made representations on which Plaintiff relied to his prejudice, “estoppel cannot lie against the state, as these representations were made outside of the agency's authority.” *Ahrens, supra*.

CONCLUSION

All of Plaintiffs’ causes of actions fail and this Court lacks subject matter jurisdiction over them. Accordingly, this COURT ORDERS THAT the State’s Motion be granted and that this action be dismissed with prejudice.

AND IT IS SO ORDERED.

[Electronic signature of L. Casey Manning,
Judge, Fifth Judicial Circuit to follow]



Richland Common Pleas

Case Caption: David L Thomas vs State Of South Carolina

Case Number: 2015CP4007269

Type: Order/Dismissal

So Ordered

s/L. Casey Manning, 2061

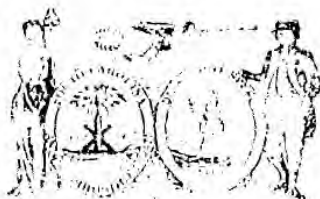
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EXHIBIT R

State of South Carolina

Executive Department



Office of the Governor

EXECUTIVE ORDER NO. 2020-21

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make \$45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

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WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)” —to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, 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, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging 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; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also “authorize[d] and direct[ed] any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or ‘suspend 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

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emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

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WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by 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, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is “supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State”; and

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 “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to “transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable,” and to “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if “the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official,” and “exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

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WHEREAS, as of April 6, 2020, public health officials have reported over 2,000 cases of COVID-19 in the State of South Carolina; and

WHEREAS, personal liberty comes great responsibility, and it is imperative that the people of the State of South Carolina do their part to slow the spread of COVID-19 and to minimize the resulting strain on healthcare providers and resources by remaining at home whenever possible, which will ultimately facilitate an earlier return to normal operations; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

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. Home or Work Order

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers and resources, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to avoid potential exposure to, and to slow the spread of, COVID-19, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice "social distancing" in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their home, place of residence, or current place of abode (collectively, "Residence"), except as allowed by this Order, for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein.

C. For purposes of this Order, Residence shall mean and include single-family and multi-family dwelling units, modular and mobile homes, hotels, motels, shared rental units, and any other similar dwelling facilities and structures, without regard to the duration or length of

occupancy. In the event of an emergency, or if a Residence is or becomes unsafe for any reason, individuals are authorized to leave their Residence and are permitted and encouraged to obtain shelter in a safe and secure alternate location. Individuals experiencing homelessness are urged to contact the appropriate governmental and other entities for assistance in identifying and obtaining safe shelter.

D. For purposes of this Order, Essential Business does not include the following businesses, venues, facilities, services, and activities, which were previously deemed “non-essential” and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18, which superseded, rescinded, and replaced Executive Order No. 2020-17:

1. Entertainment venues and facilities as follows:
 - (a) Night clubs
 - (b) Bowling alleys
 - (c) Arcades
 - (d) Concert venues
 - (e) Theaters, auditoriums, and performing arts centers
 - (f) Tourist attractions (including museums, aquariums, and planetariums)
 - (g) Racetracks
 - (h) Indoor children’s play areas, with the exception of licensed childcare facilities
 - (i) Adult entertainment venues
 - (j) Bingo halls
 - (k) Venues operated by social clubs
2. Recreational and athletic facilities and activities as follows:
 - (a) Fitness and exercise centers and commercial gyms
 - (b) Spas and public or commercial swimming pools
 - (c) Group exercise facilities, to include yoga, barre, and spin studios or facilities
 - (d) Spectator sports
 - (e) Sports that involve interaction in close proximity to and within less than six (6) feet of another person
 - (f) Activities that require the use of shared sporting apparatus and equipment
 - (g) Activities on commercial or public playground equipment
3. Close-contact service providers as follows:
 - (a) Barber shops
 - (b) Hair salons
 - (c) Waxing salons
 - (d) Threading salons
 - (e) Nail salons and spas
 - (f) Body-art facilities and tattoo services
 - (g) Tanning salons

- (h) Massage-therapy establishments and massage services
- 4. Retail stores as follows:
 - (a) Furniture and home-furnishings stores
 - (b) Clothing, shoe, and clothing-accessory stores
 - (c) Jewelry, luggage, and leather goods stores
 - (d) Department stores, with the exception of hardware and home-improvement stores
 - (e) Sporting goods stores
 - (f) Book, craft, and music stores
 - (g) Flea markets
 - (h) Florists and flower stores

E. For purposes of this Order, Essential Activities shall mean and include as follows:

1. Caring for or visiting a family member in another Residence or transporting or travelling with a family member, provided that such activity is conducted with appropriate consideration of, and adherence to, guidance issued by state and federal public health and safety officials, to include the CDC, with regard to "social distancing."

2. Obtaining necessary supplies and services for family or household members, such as food and supplies for household consumption and use, medical supplies or medication, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence. Preference should be given to online ordering, home delivery, and curbside pick-up and delivery options and services wherever possible as opposed to in-store shopping.

3. Engaging in activities essential for the health and safety of family or household members, such as seeking medical, behavioral health, or emergency services.

4. Caring for pets, provided that such activity is conducted with appropriate consideration of, and adherence to, guidance issued by state and federal public health and safety officials, to include the CDC, with regard to "social distancing."

5. Engaging in outdoor exercise or recreational activities, provided that a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same Residence.

6. Attending religious services conducted in churches, synagogues, or other houses of worship.

7. Travelling as required by law, to include attending any court proceedings and transporting children as required by court order or custody agreement.

Any individual leaving his or her Residence as authorized herein shall take reasonable steps to maintain six (6) feet of separation from any other person.

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F. For purposes of this Order, Critical Infrastructure Operations shall mean and include as follows:

1. Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.

2. Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability.

G. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by the South Carolina Department of Commerce ("Department"), as authorized by and in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18.

H. Subject to the emergency rules and restrictions set forth below, this Section does not prohibit the continued operation of retail stores, as set forth above, for the limited purpose of fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective "social distancing" and is consistent with any applicable guidance issued by state and federal public health and safety officials.

I. I hereby order and direct that effective Tuesday, April 7, 2020, at 5:00 p.m., any retail business not identified by general description above, or authorized to continue operations pursuant to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by the Department, as authorized by and in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18, shall be subject to the following emergency rules and restrictions in addition to any other applicable provisions of this Order or any prior Order:

1. Emergency Maximum Occupancy Rate. The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.

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2. Social Distancing Practices. The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.

3. Sanitation. The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.

J. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.

K. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

L. For purposes of this Order, the foregoing definitions do not repeal, by implication or otherwise, the terms and provisions of Executive Order No. 2020-10, as extended by Executive Order No. 2020-15, which directed, *inter alia*, that any and all restaurants or other food-service establishments (collectively, "Restaurants"), as defined and set forth therein, that prepare, produce, or otherwise offer or sell food or beverages of any kind for on-premises consumption in the State of South Carolina, shall suspend services for, and may not permit, on-premises or dine-in consumption.

M. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the Department to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order No. 2020-18. To this end, I further authorize and direct the Department, in consultation with the Office of the Attorney General of South Carolina ("Attorney General"), to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order and to provide clarification, as necessary and appropriate and in accordance with the process set forth in Section 2 of Executive Order No. 2020-18, regarding whether a specific business, venue, facility, service, or activity is required to close or is prohibited from taking place pursuant to this Order, Executive Order No. 2020-18, or both. I further expressly authorize the Office of the Governor ("Office") to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

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N. This Section does not apply to essential or emergency meetings of state or local government bodies or gatherings of government officials or employees or other personnel that may be required in connection with the performance of emergency or essential government functions. However, to the extent possible, state or local government bodies should utilize any available technology or other reasonable procedures to conduct such meetings and accommodate public participation via virtual or other remote or alternate means.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs,

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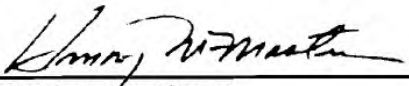
subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. 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 orally 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 6th DAY OF
APRIL, 2020.


HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State

ELECTRONICALLY FILED - 2023 Oct 12 4:55 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002330

EXHIBIT S

State of South Carolina

Executive Department



Office of the Governor

EXECUTIVE ORDER NO. 2020-42

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in coping with and mitigating the significant public health threat and other impacts associated with the 2019 Novel Coronavirus (“COVID-19”), and in doing so, the State must remain flexible to account for the evolving nature of the ongoing emergency, while simultaneously continuing to focus on facilitating and encouraging economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in furtherance of the foregoing, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee (“PHEPC”), activated the South Carolina Emergency Operations Plan (“Plan”), and regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control (“DHEC”), and the South Carolina Emergency Management Division (“EMD”); and

WHEREAS, in addition to the aforementioned actions, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (“Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, 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, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging 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; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)” —to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also “authorize[d] and direct[ed] any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or ‘suspend 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,’ in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law”; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate “social distancing” practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned’s request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual’s presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina and extending certain provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps,

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and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 7, 2020, the undersigned issued Executive Order No. 2020-22, authorizing and directing the South Carolina Department of Employment and Workforce to take certain actions to allow employers to provide COVID-19 Support Payments to furloughed employees, while still allowing such individuals to qualify for unemployment benefits if they are otherwise eligible for the same; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, the undersigned issued Executive Order No. 2020-28, amending prior emergency restrictions related to public beaches and waters and initiating certain modifications to prior “non-essential” business closures—specifically, “retail stores,” as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on April 27, 2020, the undersigned issued Executive Order No. 2020-29, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 1, 2020, the undersigned issued Executive Order No. 2020-30, rescinding Executive Order Nos. 2020-14 and 2020-19, as amended, which imposed the aforementioned mandatory self-quarantine and lodging and travel restrictions for individuals entering South Carolina from high-risk areas; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-33, ordering that any election postponed pursuant to the provisions of Executive Order Nos. 2020-09 and 2020-29 shall be held on Tuesday, July 14, 2020; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 12, 2020, the undersigned issued Executive Order No. 2020-35, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of

COVID-19, the disproportionate impact of COVID-19 on the State's elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 15, 2020, upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-36, amending certain prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, “close-contact service providers” and specific “recreational and athletic facilities and activities,” as identified by general description and further defined therein—and continue the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 18, 2020, the undersigned signed H. 3411, R-140, Act No. 135 of 2020, as passed by the General Assembly and ratified on May 12, 2020, which acknowledged “the public health emergency associated with the 2019 Novel Coronavirus (COVID-19)” and recognized that “given the extraordinary challenges facing our State, our nation, and the world due to COVID-19, it is necessary to take emergency measures to combat the spread of this deadly virus”; and

WHEREAS, on May 21, 2020, upon further consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-37, amending prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, certain categories of entertainment venues and facilities and recreational and athletic facilities and activities, as identified by general description and further defined therein—as part of the ongoing process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 27, 2020, the undersigned issued Executive Order No. 2020-38, declaring an additional, distinct State of Emergency—based on new circumstances and the continued need to, *inter alia*, control the spread of COVID-19, mitigate the impacts associated with the same on certain portions of the State's population, deploy enhanced testing and tracing, and coordinate additional intergovernmental and interagency resources and response efforts—and implementing additional extraordinary measures, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on June 11, 2020, the undersigned issued Executive Order No. 2020-40, declaring a separate and distinct State of Emergency—based on new facts and circumstances, including the continued spread of COVID-19 and the emergence of new “hot spots” in certain areas of the State—and implementing additional extraordinary measures, while also modifying specific directives and extending certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, while the foregoing emergency measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an ongoing and 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 current public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that “[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists”; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to “declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation”; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a “public health emergency” exists when there is an “occurrence or imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; 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

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is “supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State”; and

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 “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to “suspend 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, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws authorizes the undersigned, during a declared emergency, to “transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable,” and to “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in the context of a public health emergency, section 25-1-440 of the South Carolina Code of Laws also “authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in issuing Executive Order No. 2020-08 and declaring an initial State of Emergency in connection with COVID-19, the undersigned’s determination was made in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, and based on the “imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, the public health threat posed by COVID-19 subsequently evolved from one that presented the “imminent risk of a qualifying health condition” to one that involved an actual

Executive Order No. 2020-42
Page 9
June 26, 2020

and widespread “occurrence” of a “qualifying health condition,” pursuant to section 44-4-130 of the South Carolina Code of Laws; and

WHEREAS, due to the aforementioned evolution of COVID-19 from an “imminent risk of a qualifying health condition,” to an actual “occurrence” of a “qualifying health condition” or “pandemic,” and with confirmed cases of COVID-19 in over eighty-five percent (85%) of South Carolina’s forty-six (46) counties, the undersigned issued Executive Order No. 2020-15 on March 28, 2020, finding, concluding, and declaring that COVID-19 presented a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, the State of South Carolina subsequently transitioned from the investigation, recognition, and initiation phases of the COVID-19 pandemic to the acceleration phase, with DHEC reporting cases of COVID-19 in each of the State’s forty-six (46) counties; and

WHEREAS, based on the aforementioned transition and the accelerated, statewide spread of COVID-19, which presented different and additional risks and dangers, the undersigned issued Executive Order No. 2020-23 on April 12, 2020, declaring a new and distinct State of Emergency and initiating additional proactive action and directing the implementation and enforcement of further extraordinary measures; and

WHEREAS, the undersigned thereafter issued Executive Order No. 2020-29 on April 27, 2020, declaring a separate and distinct State of Emergency in response to, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State, as well as the State’s ongoing recovery operations and relief efforts associated with the severe storm system that moved across the southeastern region of the United States beginning on April 12, 2020; and

WHEREAS, based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19, the undersigned issued Executive Order No. 2020-35 on May 12, 2020, declaring an additional, distinct State of Emergency, which required the implementation of further extraordinary measures to respond to the same; and

WHEREAS, the undersigned subsequently issued Executive Order No. 2020-38 on May 27, 2020, declaring a separate and distinct State of Emergency based on new facts and circumstances and requiring the implementation of further extraordinary measures in an effort to, *inter alia*, control the spread of COVID-19, mitigate the impacts associated with the same on certain portions of the State’s population, deploy enhanced testing and tracing, and coordinate additional intergovernmental and interagency resources and response efforts; and

WHEREAS, based on, *inter alia*, the continued spread of COVID-19 and the emergence of “hot spots” in certain areas of the State, and the latest data related to the same, on June 11, 2020, the undersigned issued Executive Order No. 2020-40, declaring a new and distinct State of Emergency, which warranted additional proactive action and the implementation of further extraordinary measures; and

WHEREAS, the State of South Carolina has made significant progress to date in limiting and controlling the outbreak and continued spread of COVID-19, but the extraordinary circumstances and conditions that necessitated the undersigned's prior emergency declarations have since evolved to present different and additional threats, which must be dealt with on their own terms; and

WHEREAS, as of June 26, 2020, DHEC has identified at least 30,263 confirmed cases of COVID-19 in the State of South Carolina, including 694 deaths due to COVID-19, as well as a record number of individuals hospitalized related to COVID-19; and

WHEREAS, over the past several weeks, the State has significantly increased the availability of, and access to, COVID-19 testing, and although the expansion of testing capability and capacity was expected to produce higher daily numbers of confirmed cases of COVID-19, DHEC has also noted sizable increases in the rate or percentage of positive cases, as well as the number of individuals hospitalized related to COVID-19; and

WHEREAS, as a result of South Carolina's enhanced testing and tracing initiatives, DHEC has also identified the additional "hot spots" in certain areas of the State, which warrants the implementation of further targeted outreach efforts to control the spread of COVID-19; and

WHEREAS, due to the continued spread of COVID-19 and recent increases in the number of individuals hospitalized in connection with the same, the State of South Carolina must continue to take any and all necessary and appropriate steps to address and minimize the resulting strain on healthcare resources; and

WHEREAS, the State of South Carolina must take additional proactive action to control the spread of COVID-19 and mitigate the impacts associated with the same, particularly on certain portions of the State's population, to include the continued deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19; and

WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the different and additional public health threats posed by COVID-19, as well as the continued need to deploy widespread testing and tracing and other initiatives to address the same, "require the exercise of extraordinary government functions . . . to respond, rapidly and effectively" to the evolving emergency currently facing the entire State; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize extraordinary measures and deploy substantial resources to meet the unprecedented threat posed by COVID-19 and the evolving nature and scope of this public health emergency, and in order to promptly and effectively do so, the State must take any and all necessary and appropriate steps to coordinate additional intergovernmental and interagency resources and response efforts to address the current and anticipated circumstances; and

WHEREAS, in addition to the foregoing, in further proactively preparing for and promptly responding to the continued spread of COVID-19, the State of South Carolina must simultaneously confront the significant economic impacts and other consequences associated with COVID-19, to

include stabilizing and reinvigorating the State's economy by addressing issues related to unemployment, facilitating the reopening of businesses and industries, permitting economic flexibility by reducing regulations, and accessing and utilizing federal funds and resources to assist with emergency operations; and

WHEREAS, as part of the ongoing process of facilitating economic recovery and revitalization in a safe, strategic, and incremental manner, the State of South Carolina must also continue to encourage effective "social distancing" practices and implement additional narrowly tailored measures to combat and control the spread of COVID-19; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined—based on recent developments, updated data, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the ongoing COVID-19 pandemic, including the different, additional, and intensifying threats cited herein, represents and requires a new and distinct emergency, which warrants further proactive action by the State of South Carolina and the implementation and enforcement of additional extraordinary measures to address the same.

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 declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

To prepare for and respond to the ongoing and evolving public health threat posed by the COVID-19 pandemic and to mitigate the other significant impacts associated with the same, including the resulting strain on healthcare resources, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for, respond to, and address the ongoing and evolving public health threat posed by the COVID-19 pandemic, to include the continued utilization and coordination of intergovernmental and interagency resources, operations, and response efforts.

B. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the COVID-19 pandemic and the significant economic impacts and other consequences associated with the same. I further direct the continued utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

C. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South

Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.”

D. I hereby direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate. I further direct DHEC to develop guidelines for nursing homes and assisted living facilities to allow for or facilitate limited visitation for immediate family members and to communicate the same to such facilities.

E. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

F. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

G. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division (“SLED”) to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

H. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

I. I hereby declare that the provisions of the following Orders shall remain in full force and effect for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by prior or future Order: Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-16, 2020-18, 2020-21, 2020-22, 2020-25, 2020-28, 2020-30, 2020-31, 2020-33, 2020-34, 2020-36, and 2020-37.

Section 2. Protection of First Responders

To ensure the uninterrupted performance and provision of emergency services and to maintain peace and good order during the State of Emergency, while simultaneously undertaking

additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders who risk potential exposure to COVID-19 while providing emergency and other essential services during the State of Emergency.

B. I hereby authorize and direct any and all 911 operators or other emergency dispatchers to ask any individual placing a call for service whether such individual or any member of their household has tested positive for COVID-19 or is exhibiting symptoms consistent with the same.

C. I hereby authorize and instruct DHEC, upon consultation with SLED, to provide any necessary and appropriate additional or supplemental guidance regarding the interpretation, application, or enforcement of this Section.

Section 3. Transportation Waivers

To expedite the State of South Carolina's continued preparation for and response to the ongoing and evolving emergency conditions related to COVID-19 and to facilitate the prompt transportation and delivery of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby suspend certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended.

B. I hereby authorize and direct the South Carolina Department of Transportation ("DOT") and the South Carolina Department of Public Safety ("DPS"), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the Federal Motor Carrier Safety Administration's May 13, 2020 Extension of Expanded Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; responding to the declared emergency in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; or otherwise assisting with the public health threat posed by COVID-19, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any

necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

C. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, “a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location.” Likewise, this Section shall not be construed as an exemption from the applicable controlled substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver’s license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein.

D. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law. Notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

1. Weight, height, length, and width for any such vehicle on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.
2. Posted bridges may not be crossed.
3. All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.
4. Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.
5. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

E. This Section is effective immediately and shall remain in effect for thirty (30) days or the duration of the State of Emergency, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70(D) of the South Carolina Code of Laws, except that requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility

vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, pursuant to the provisions of section 56-5-70(A) of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.

Section 4. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,” or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.”

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.”

Section 5. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise expressly stated herein or modified, amended, or rescinded by subsequent Order. 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 orally 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 26th DAY OF
JUNE, 2020.**

A handwritten signature in blue ink, reading "Henry McMaster", is written over a horizontal line.

HENRY MCMASTER
Governor

ATTEST:
A handwritten signature in blue ink, reading "Mark Hammond", is written over a horizontal line.
MARK HAMMOND
Secretary of State

EXHIBIT T



South Carolina

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: 03-17-2021 13:03:36

CHARGES	ACCOUNT INFORMATION ***	CREDITS/ANTICIPATED CREDITS
COL Parking Covid Adj	-22.00	Fed Direct Unsubsidized Loan 990.00
COL Technology Fee	200.00	Federal Direct Subsidized Loan 2,720.00
COL UG Resident Tuition	6,144.00	Federal Pell Grant 2,972.00
Electronic Refund	2,161.00	USC Achievement Schlp 1,000.00
		UofSC CARES Federal Grant 800.00
*** Account Information is real-time		8,483.00
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

USC_00000027

EXHIBIT U

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>
	)	<u>JOSEPH DERRICK</u>
vs.	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

I, Joseph Derrick, 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 Director of the Office of Student Financial Aid and Scholarships at the University of South Carolina (the "University"). I have held this position at all times relevant to this litigation, including during the 2019-2020 academic year. In my position, I am familiar with the University's management and distribution of federal, state, and institutional financial aid.
3. I make the following statements based upon my personal knowledge and review of the University's records and applicable state and federal policies.
4. The University offers three federal grants, all of which have different criteria and require that students complete the Free Application for Federal Student Aid ("FAFSA") to be considered. The Federal Pell Grant is the largest federally funded grant program and serves as the foundation upon which all other undergraduate need-based aid is awarded.
5. Federal Pell Grants are generally awarded only to undergraduate students who demonstrate exceptional financial need. Funds from Federal Pell Grants are sent directly to the

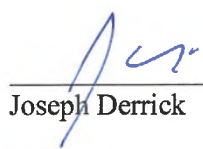
University and applied to a student's account for any unpaid tuition and fees. Any remaining balance of funds is then refunded to the student.

6. For the 2019-2020 academic year, the maximum Federal Pell Grant award was \$6,195 for eligible students without any expected family contribution. A Federal Pell Grant, unlike a loan, does not have to be repaid.

7. The University also offers several merit scholarships, including the University of South Carolina Achievement Scholarship ("Achievement Scholarship"). The Achievement Scholarship is awarded annually to select undergraduate senior students who have demonstrated superb academic achievement and have not previously received scholarship assistance from the University. The Achievement Scholarship is awarded to the student for their senior year and consists of \$1,000 per semester.

8. Because every student's financial needs are different, students receive varying amounts of federal, state, and institutional financial aid administered by the University. As a result, no two students enrolled with the University during the Spring 2020 semester were alike in terms of financial aid received.

FURTHER AFFIANT SAYETH NOT


Joseph Derrick

SWORN to and subscribed before me
this 11 day of May, 2023

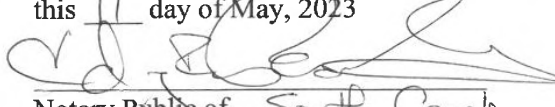

Cindy E. Peasey

Notary Public of South Carolina
My Commission Expires: 3/31/2026

EXHIBIT V



UNIVERSITY OF
SOUTH CAROLINA

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

Term: Spring 2020

USC ID: H50038436

Name: Davia E. Bunch

Accepted Date: 10-31-2019 12:21:59 PM

Date: 03-17-2021 01:03:57 PM

UNIVERSITY OF SOUTH CAROLINA
STUDENT STATEMENT OF FINANCIAL RESPONSIBILITY
SPRING 2020

The University of South Carolina requires all students acknowledge the financial arrangement between the student and the University. By submitting course registration I am entering into a financial arrangement with the University of South Carolina and I accept the responsibility for all charges billed to my account.

I understand that my USC bill will be posted online in Self-Service Carolina (SSC) and that all billing notices will be sent to my USC assigned email address and that it is my responsibility to review and pay my bill by the due date.

I understand that accounts not paid when due are subject to a late fee and that current and/or future registration may be cancelled. Delinquent accounts will result in a financial hold on my account that prevents registration and access to grades and transcripts, and release of diplomas and certificates. Seriously delinquent accounts with balances past due for more than 180 days may be placed with an outside collection agency and/or reported to the National Credit Bureau system and/or may be deducted from state income tax refunds. I agree to pay all late payment fees, collection agency fees (which may be based on a percentage at a maximum of 40% of the debt), attorney fees, interest and any other costs and charges necessary for the collection of any amount not paid when due. I understand that if I give consent to an authorized user to make payments or a payment arrangement on my behalf, I am held to the subject matter mentioned above.

I understand that the University may contact me at the telephone number(s) provided in SSC. By providing the telephone numbers, I understand, agree and give express consent that the University of South Carolina or anyone working on the University's behalf, including third party vendors, may contact me at the number(s) provided by manually dialing the number or by using automated dialing technology.

Dishonored Checks/eChecks/Credit Cards

A check, payment card, or an electronic payment processed as a payment for University expenses that is returned unpaid by the bank immediately creates indebtedness to the University. A \$30 returned item charge will be assessed for each returned item in accordance with state laws. I understand that use of dishonored checks to pay my tuition and fees may result in the cancellation of current/and or future registrations if not remedied within 10 days of notification.

I understand that all disputes about registration or payment will be governed by South Carolina law and subject to the jurisdiction of the courts in South Carolina. I also understand that if I have more than three returned checks, I may be prohibited from processing checks on my account in the future.

I authorize the University of South Carolina, and their respective agents and contractors to contact me regarding my student receivable balance or my institutional loan(s), including repayment of my student receivable or loans(s), at the current or any future number that I provide for my cellular phone or other wireless device using automated dialing equipment or artificial or pre-recorded voice or text messages.

EXHIBIT W

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:

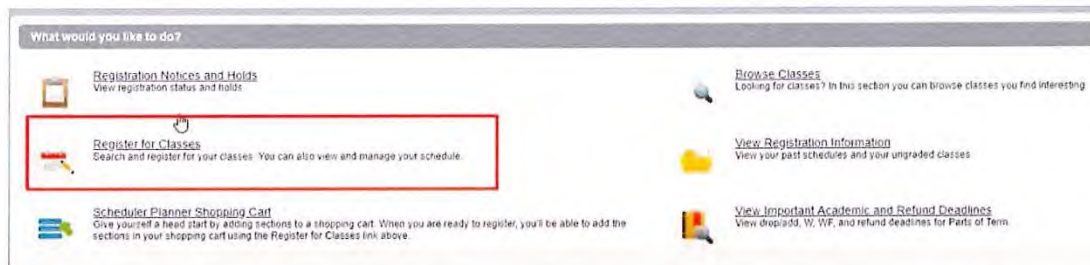
1. I am over 18 years of age, of sound mind, capable of making this affidavit, and am personally acquainted with the facts herein stated.
2. I am the University System Registrar and Assistant Vice President for Enrollment Management at the University of South Carolina (the "University"). At all times 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 Call Schedule and Options

Search Results — 325 Classes

Term: Fall 2019 * Campus: USC Columbia * Subject: ENGL - English

Term & Options

CRN	Subject	Course	Section	Title	Hours	Instructor	Days/Time/Location	Seat Availability	Attribute	Part of Term	
10039	ENGL	101	001	Critical Reading and Composition	3	Beatty, Elise (Primary) Dault, Scott	1 10:35 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem.	CMN Communication/Writing		35	<a>Add
10014	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	<a>Add
10010	ENGL	101	003	Critical Reading and Composition	3		1 10:20 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem.	CMN Communication/Writing		30	<a>Add
10052	ENGL	101	004	Critical Reading and Composition	3		1 10:35 AM - 09:20 AM Type: Class Build: 19 of 19 seats rem.	CMN Communication/Writing		30	<a>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	<a>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	<a>Add
10100	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	<a>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	<a>Add
10110	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	<a>Add
10111	ENGL	101	014	Critical Reading and Composition	3		1 10:50 AM - 11:40 AM Type: Class Build: 19 of 19 seats rem.	CMN Communication/Writing		30	<a>Add

Page 1 of 33 10 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.

SSes

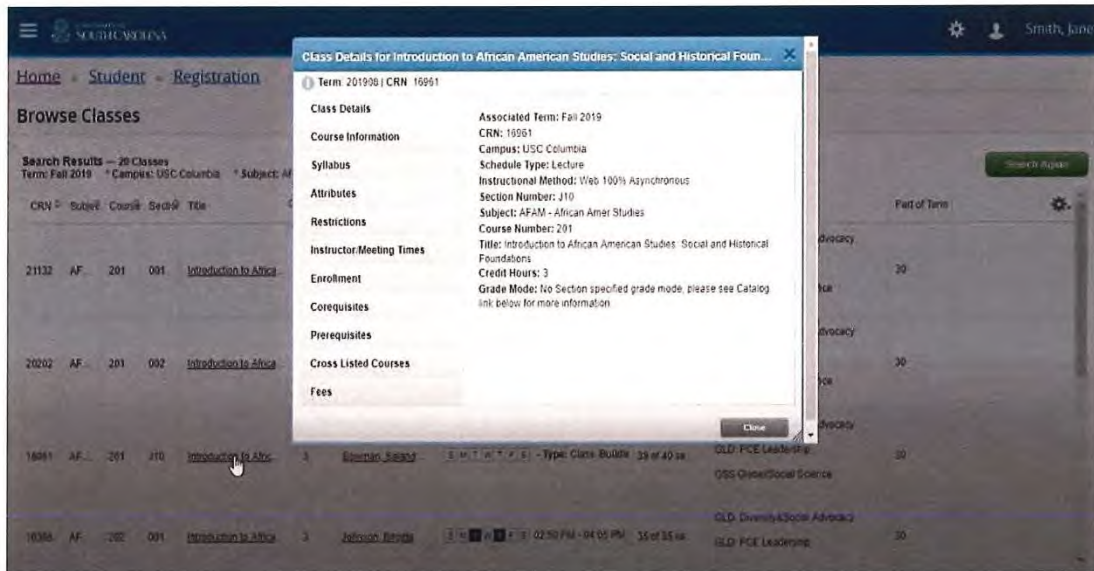
CPH Shopping Cart Schedule and Options

Classes

sem: USC Columbia * Subject: ENGL - English

Course	Section	Title	Hours	Instructor	Days/Times/Location	Seat Availability	Attribute	Part of Term
101	001	Critical Reading and Composition	3	Belinsky, Elan (Primary) Quinn, Egan	3 M - T - F 8:30 AM - 9:20 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	002	Critical Reading and Composition	3		3 M - T - F 8:30 AM - 9:20 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	003	Critical Reading and Composition	3		3 M - T - F 8:30 AM - 9:20 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	004	Critical Reading and Composition	3		3 M - T - F 8:30 AM - 9:20 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	005	Critical Reading and Composition	3		3 M - T - F 8:30 AM - 9:20 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	006	Critical Reading and Composition	3		3 M - T - F 9:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	011	Critical Reading and Composition	3		3 M - T - F 9:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	012	Critical Reading and Composition	3		3 M - T - F 9:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	013	Critical Reading and Composition	3		3 M - T - F 9:40 AM - 10:30 AM Type: Class Build: 19 of 19 seats rem	CMW Communication/Writing	30	
101	014	Critical Reading and Composition	3		3 M - T - F 10:50 AM - 11:40 AM Type: Class Build: 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 screenshot shows two side-by-side screenshots of the University of South Carolina's Schedule Planner interface. The left screenshot is titled "Select Term" and shows a dropdown menu with "Summer 2019" and "Fall 2019" (selected). Below the dropdown is a "Save and Continue" button. The right screenshot is titled "Select Campus" and shows a list of campuses: USC Aiken, USC Beaufort, USC Columbia (selected), USC Lancaster, USC Salkehatchie, USC Sumter, USC Union, and USC Upstate. Below the list is a "Save and Continue" button. A notification bar at the top of the right screenshot says "Term changed to Fall 2019".

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" screen in the University of South Carolina's Schedule Planner. At the top, a notification bar says "Added ENGL 101 - Critical Reading and Composition". Below this, there are two tabs: "By Subject" (selected) and "Search By Section Attribute". Under "By Subject", there are two dropdown menus: "Subject" with "ENGL - English" selected, and "Course" with "101 Critical Reading and Composition" selected. Below these dropdowns are "Done" and "+ Add Course" buttons. To the right, under the "Courses" heading, the added course is listed: "ENGL 101 Critical Reading and Composition". Below the course list, there is a description: "Instruction in strategies for critically reading and analyzing literature and non-literary texts; structured, sustained practice in composing expository and analytical essays." and "Carolina Core: CMW".

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.

✓ Added PSYC 101 - Introduction to Psychology

Add Course

By Subject Search By Section Attribute

Subject PSYC - Psychology

Course 101 Introduction to Psychology

Done **+ Add Course**

Courses

- ENGL 101 Critical Reading and Composition
- HIST 108 Science and Technology in World History
- MATH 122 Calculus for Business Administration and Social Sciences
- PSYC 101 Introduction to Psychology
- SPAN 121 Elementary Spanish

PSYC - Psychology 101 - Introduction to Psychology

An introduction to and survey of the basic concepts and findings within the field of psychology

Carolina Core: GSS

FS: 09/11/2013

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.

Courses **+ Add Course**

- ENGL 101 Critical Reading and Composition
- HIST 108 Science and Technology in World History
- MATH 122 Calculus for Business Administration and Social Sciences
- PSYC 101 Introduction to Psychology
- SPAN 121 Elementary Spanish

Options **Options** **Options** **Options** **Options**

Breaks **+ Add Break**

Add times during the day you do not wish to take classes.

Schedules

Generate Schedules

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

☒		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	Irel, 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 - SWGN 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
☐		ADT	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

☒		C01	Lecture	19	Ntube, 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	Ntube, 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.

Courses + Add Course

- ENGL 101
Critical Reading and Composition
- HIST 108
Science and Technology in World History
- MATH 122
Calculus for Business Administration and Social Sciences
- PSYC 101
Introduction to Psychology
- SPAN 121
Elementary Spanish

Breaks + Add Break

! Add times during the day you do not wish to take classes.

Schedules

Generate Schedules

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.

Schedules

Generate Schedules

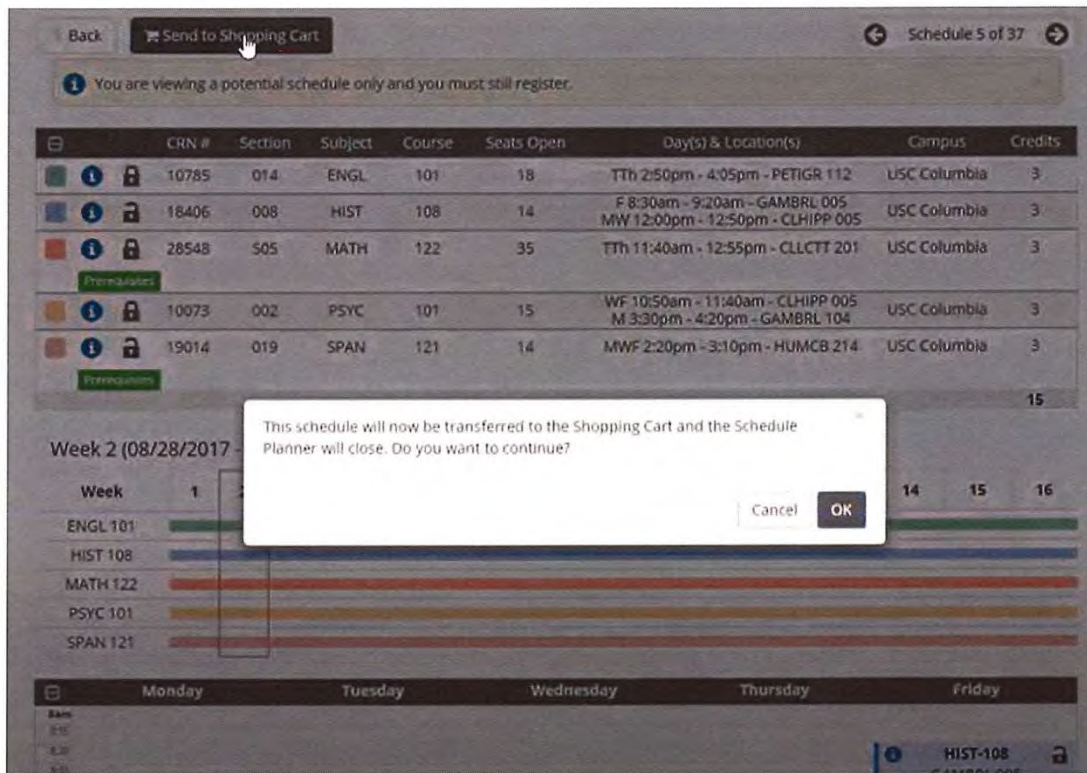
! Generated **1000+** Schedules

View 1	ENGL-101-006, HIST-108-Y01, MATH-122-001, PSYC-101-002, SPAN-121-001
View 2	ENGL-101-009, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001
View 3	ENGL-101-010, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001
View 4	ENGL-101-011, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001
View 5	ENGL-101-012, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001
View 6	ENGL-101-013, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001
View 7	ENGL-101-014, HIST-108-Y01, MATH-122-S05, PSYC-101-002, SPAN-121-001

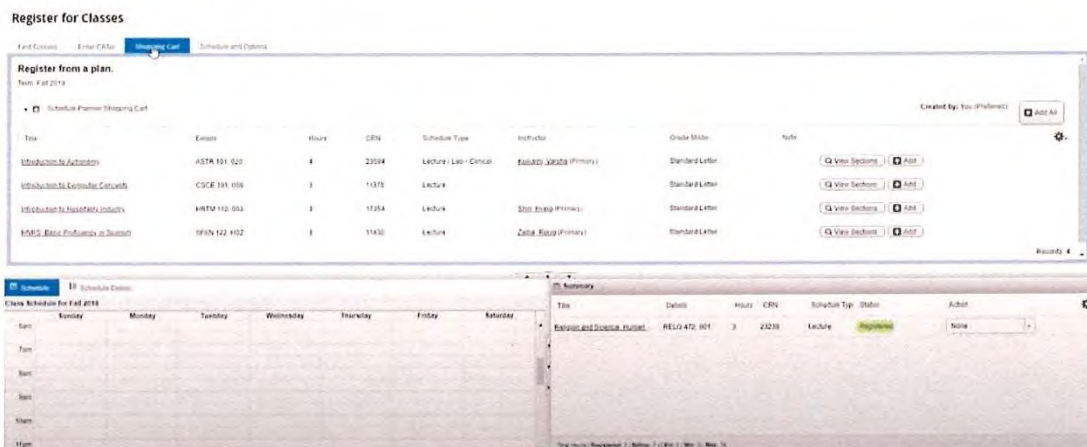
26. From here, the student could review all of the information pertaining to each of the classes in their schedule, as shown in the below screenshot from the Schedule Planner Video. This page did not include information showing the “Instructional Method” for the courses offered.

	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	505	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
HNRS: Basic Proficiency in Sc	SPAN 122, H02	3	11430	Lecture	Pending	Web Registered
Introduction to Hospitality Indu	HRTM 110, 003	3	17354	Lecture	Pending	Web Registered
Introduction to Computer Conc	CSCE 101, 008	3	11376	Lecture	Pending	Web Registered
Introduction to Astronomy	ASTR 101, 020	4	23594	Lecture / L...	Pending	Web Registered
Religion and Science: Human	RELG 472, 001	3	23238	Lecture	Registered	None

Total Hours | Registered: 3 | Billing: 2 | CEU: 0 | Min: 0 | Max: 16

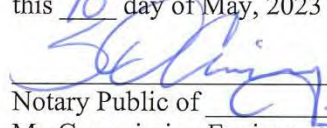
Submit

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

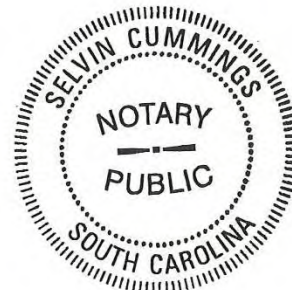


EXHIBIT X

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>
	)	<u>SANDRA KELLY</u>
vs.	)	
	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA,	)	
	)	
Defendant.	)	

I, Sandra Kelly, 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 Vice Provost, Dean of Undergraduate Studies, and Director of Global Carolina 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 Vice Provost and Dean of Undergraduate Studies. I make the following statements based upon my personal knowledge and review of the University's records.

3. In my position as Director of Global Carolina, I am familiar with the University's international programs, including student exchange.

4. The University accepts students attending foreign institutions to study on exchange at its Columbia campus. Exchange students may enroll in most undergraduate courses listed in the University's course catalog, provided that each student meets all necessary pre-requisites and there is space in the course. Exchange students are required to take a minimum of 12 and a maximum

of 16 credit hours per semester, and course registration occurs on campus after the students participate in orientation.

5. One hundred and twenty-three exchange students attended the University during the Spring 2020 semester, including fifty students who attended the University for the entire 2019-2020 academic year and seventy-three students who were enrolled for only the Spring 2020 semester.

6. Students attending the University through an exchange program continue to pay tuition to their home institution and do not pay any tuition to the University. Exchange students are responsible, however, for any departmental fees that are not covered by the exchange tuition waiver.

7. In my position as Vice Provost and Dean of Undergraduate Studies, I am familiar with the University's academic programs and registration process and policies.

8. While most students registered for classes for the Spring 2020 semester through Self Service Carolina, certain cohorts of students were automatically placed into classes by their department, school, and/or advisor. Medical students and first-year law students, for example, were enrolled into classes by their respective schools.

9. Similarly, students attending the College of Pharmacy were automatically registered into specific courses, including, for example, pharmacy laboratory courses, introductory pharmacy practice experience courses, advanced pharmacy practice experience courses, and the clinical seminar courses.

10. Students attending the University's Honors College were registered for Honors College classes during advising appointments with their Honors College advisors. Honors College

students who met with their Honors College advisor and their Undergraduate Academic Advisor/Major Advisor could register for non-Honors classes during priority registration.

FURTHER AFFIANT SAYETH NOT

Sandra Kelly
Sandra Kelly

SWORN to and subscribed before me Selvin Cummings
this 12 day of May, 2023

Selvin Cummings
Notary Public of South Carolina
My Commission Expires: June 30 31



EXHIBIT Y

Page 1

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,

Plaintiffs,

vs. Civil Action No. 2020-CP-40-02330
THE UNIVERSITY OF SOUTH CAROLINA,
Defendant.

VIDEOTAPED WEB CONFERENCE

30(b)(6)

DEPOSITION OF: UNIVERSITY OF SOUTH CAROLINA'S
CORPORATE REPRESENTATIVE NICOLE
PRESSLEY

DATE: Wednesday, September 7, 2022

TIME: 12:10 p.m.

TIME ENDED: 2:13 p.m.

LOCATION: Nelson, Mullins, Riley &
Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina

REPORTED BY: YVONNE R. THURSTON-BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS

3 DAVIA BUNCH and CASEY KELLY, individually
4 and on behalf of others similarly situated:

5 KABAT CHAPMAN & OZMER LLP

6 BY: NATHAN D. CHAPMAN

7 171 17th Street Northwest, Suite 1550

8 Atlanta, Georgia 30363

9 (404) 400-7303

10 (404) 400-7333 - FAX

11 nchapman@kcozlaw.com

12 ATTORNEYS FOR THE DEFENDANT

13 THE UNIVERSITY OF SOUTH CAROLINA:

14 NELSON, MULLINS, RILEY & SCARBOROUGH, LLP

15 BY: ROBERT H. BRUNSON

16 Post Office Box 1806 (29402)

17 151 Meeting Street, Sixth Floor

18 Charleston, South Carolina 29401

19 (843) 534-4226

20 (843) 722-8700 - FAX

21 robert.brunson@nelsonmullins.com

22 BY VIDEO TELECONFERENCE: GINA I. HORSEMAN

23 (843) 534-4801

24 gina.horseman@nelsonmullins.com

25 ALSO PRESENT:

Alan Metts, Videographer

(INDEX AT REAR OF TRANSCRIPT)

1 been test -- designated to testify as to the --
2 this Statement of Financial Responsibility to whom
3 it was delivered, is there anyone at the University
4 of South Carolina that would not receive the
5 Statement of Re -- Financial Responsibility if they
6 registered for classes?

7 A. I know that there are certain cohorts
8 of students that are not registered through
9 Self-Service Carolina, and so if they did not
10 register through Self-Service Carolina, they would
11 not have been presented with the statement.

12 Q. Ever?

13 A. Probably not. The only -- the only
14 time that statement is presented is through
15 Self-Service Carolina.

16 Q. How many students -- what percentage of
17 the students don't register through Self-Service
18 Carolina?

19 A. Honestly I don't know.

20 Q. Which students don't register through
21 Self-Service Carolina?

22 A. I don't know all the cohorts, but I
23 think the medical students. I know at least at one
24 point they were being registered by their
25 department. And I don't think high school students

1 taking dual enrolled classes registered through
2 Self-Service, but I'm not a hundred percent sure of
3 every cohort that wasn't.

4 Q. Understood.

5 And sitting here today you don't know
6 whether this Statement of Financial Responsibility
7 is presented to the medical students as part of
8 their registration process, do you?

9 A. No.

10 Q. All right. All right. So other than
11 medical students and high school students who are
12 taking dual enrolment classes, are there -- is
13 there any other category of student who would not
14 utilize the Self-Service Carolina function to
15 enroll in classes that you're aware of?

16 A. Not that I'm aware of.

17 Q. All right. So for students who use
18 Self-Service Carolina, walk me through how they
19 would -- is there something that they have to click
20 on during that process that brings them to the
21 Statement of Financial Responsibility? How does
22 that work?

23 A. If I'm not mistaken, I think there is
24 a -- like a check box that they have to select to
25 say that they agree to the statement and before

EXHIBIT Z



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 Oct 12 4:55 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.

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						
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		

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 AA

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: HuCI 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 y 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 festivos 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.	Presentation 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 BB

Message

From: KELLY, CASEY A [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6EE6D84B12D74FACB72CC54632850183-CAKELLY]
Sent: 3/28/2020 11:54:25 AM
To: STEIMER, LAUREN [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ee7d94b5e574da094c3aec26af0b589-LSTEIMER]
Subject: Re: FAMS 363 & FAMS 308

Hi Lauren,

Sorry for the late response.

Thank you! I also wanted to just thank you for all you've been doing lately and wanted to let you know I've been thinking about you & really appreciate all you're doing for us. It's not going unnoticed!

Best,
Casey

Get Outlook for iOS

From: STEIMER, LAUREN <LSTEIMER@mailbox.sc.edu>
Sent: Wednesday, March 25, 2020 8:01:28 PM
To: KELLY, CASEY A <cakelly@email.sc.edu>
Subject: Re: FAMS 363 & FAMS 308

Hi Casey,
 I also hope that you are well and that your migraines have not been bothering you lately.
 Yes. You are correct. Right now, all you have is:
 - FAMS 363: Week 11 Lecture Quiz due March 30 at 5 pm & Screening Quiz (also due March 30 at 5 pm?)
 You can get the screening quiz done by Tuesday if you need to.
 - FAMS 308: Week 11 Lecture Quiz & Methods Worksheet due March 30 at 5 pm
 Best,
 Lauren

On Mar 25, 2020, at 7:13 PM, KELLY, CASEY A <cakelly@email.sc.edu> wrote:

Good Evening Lauren,

I hope you are well and are home with your family. I am emailing you in regards to our FAMS 308 & 363 class. I am getting several duplicate emails for both classes so I am getting a bit confused. I just wanted to clarify with you, to make sure I am not missing anything for class...

As of right now:

I do not plan on doing the paper/presentation for either classes, so all I have on my plate right now should be...

- FAMS 363: Week 11 Lecture Quiz due March 30 at 5 pm & Screening Quiz (also due March 30 at 5 pm?)
- FAMS 308: Week 11 Lecture Quiz & Methods Worksheet due March 30 at 5 pm

Does this sound right? Sorry if this is a silly question, my mind has been all over the map the past week!

USC_00047916

All the best,
Casey Kelly

USC_00047917

EXHIBIT CC



University Registrar

2019-20 Official Academic Calendar

The University Registrar establishes the official calendar followed by the University of South Carolina system. Access the full current and upcoming semester academic calendars to find key dates and information including holidays, registration dates, payment deadlines, drop or add dates, exams and commencement for each term.

Expand all

Fall 2019



Spring 2020



Event	Date
Classes Begin	Jan. 13, Monday
Dr. Martin Luther King, Jr. Service Day (no classes)	Jan. 20, Monday
Last day to change/drop a course without a grade of "W" being recorded (Part of Term 30)	Jan. 21, Tuesday
Last day to apply for May graduation	<u>Graduation Application Deadline</u>
Midpoint in Semester	March 2, Monday
Spring Break (no classes)	March 8 – 15, Sunday – Sunday
Last day to drop a course or withdraw without a grade of "WF" being recorded (Part of Term 30)	April 6, Monday
Awards Day	April 16, Thursday
Last Day of Classes	April 27, Monday
Reading Day	April 28, Tuesday
Final Examinations (includes exams on Saturday)	April 29 – May 6, Wednesday -

Event

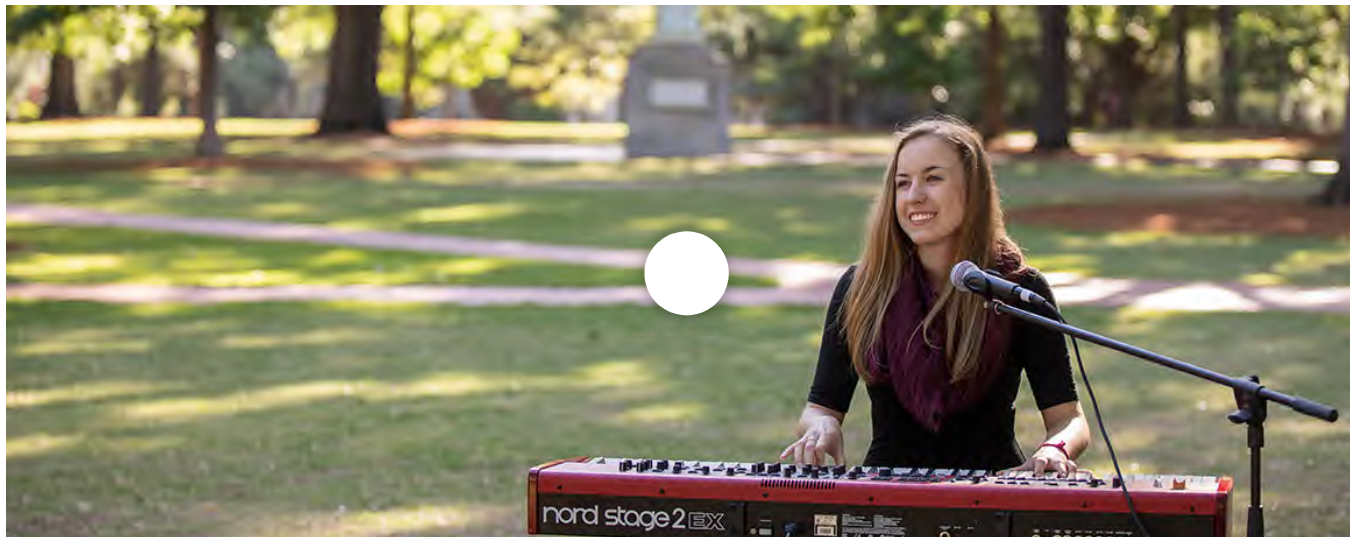
Date

000072

	Wednesday
Virtual Commencement	To Be Announced

Summer 2020**Spring 2020 Registration Dates: Columbia Campus****Summer 2020 Registration Dates: Columbia Campus****Fall 2020 Registration Dates: Columbia Campus****Payment Deadlines****Drop / Add / Refund Dates****Holidays 2019-20****Final Exams: Columbia Campus**

EXHIBIT DD



Undergraduate Education

At South Carolina, you'll learn to lead and lead to learn. Leadership is at our very core, woven into the classes that form the basis of our educational requirements. As you experience new things and share your experiences with others, you will form powerful connections both in the classroom and beyond.



Start with the Carolina Core

All majors start with general education classes where you learn to demonstrate problem-solving skills, to understand world cultures, history and languages and to create or interpret some form of art. These are the skills that will help you in your major courses and lead to a well-rounded life. We call this the **Carolina Core** ([/web/20190330212710/https://www.sc.edu/carolinacore/](https://web.archive.org/web/20190330212710/https://www.sc.edu/carolinacore/)), and these classes will include students from all majors bringing a richness of perspectives to your classroom discussions.



Connect to the Real World

Choosing the right experiences outside the classroom can help you connect what you learn in class to the real world. As you plan your experiences, **USC Connect** (https://web.archive.org/web/20190330212710/https://www.sc.edu/about/initiatives/usc_connect/index.php) helps you reflect on what you've learned, understand how you've changed and demonstrate how these experiences will influence your future. Finally, when you share your experiences to impact others, you can earn special recognition and graduate with leadership distinction.



Graduate On Your Time

You will want to take advantage of all the opportunities we offer for out-of-the-classroom experiences. But we know that you also want to graduate on time, even if you spend a semester abroad. Now with our **On Your Time** (<https://web.archive.org/web/20190330212710/http://summer.sc.edu/>) program, expanded summer courses and online offerings allow you to finish your degree on your time and on your terms. You also can add a minor to your degree or explore a new discipline without getting behind.

19:1

student to faculty ratio

Jaime: Leadership

"When I came to USC, I was impatient. But I learned that leadership is working with people, not how to boss them around. True leadership is motivating and inspiring. True leadership is leading by example."



(<https://web.archive.org/web/20190330212710/https://www.youtube.com/>rel=0)

Majors and Degrees at South Carolina

([/web/20190330212710/https://www.sc.edu/study/majors_and_degrees/](https://web.archive.org/web/20190330212710/https://www.sc.edu/study/majors_and_degrees/))

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EXHIBIT EE

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

ANTHONY CORDERO, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

MONTANA STATE UNIVERSITY,

Defendant.

Cause No.: BDV-2020-1975

**ORDER ON PENDING
MOTIONS**

Before the Court is Montana State University's (MSU) April 13, 2023 summary judgment motion. Anthony Cordero (Cordero) opposes the motion. MSU's motion is fully briefed. On August 22, 2023, at MSU's request, oral argument on its motion was held.

In addition, Cordero's class certification motion is before the Court. MSU opposes the motion. Cordero's motion is fully briefed. No party requested oral argument.

For the reasons stated below, the Court **GRANTS** MSU's

summary judgment motion and **DENIES** Cordero's class certification motion.

UNDISPUTED MATERIAL FACTS

1. On January 12, 2015, Cordero signed an MSU application that provided, in part:

If my application for admission is approved, I agree to abide by the present and future rules and regulations, both academic and nonacademic, and the scholastic standards of [MSU], including, but not limited to, those rules, regulations, and standards stated in the undergraduate/graduate catalog. I further acknowledge that if I fail to adhere to these regulations or meet these requirements, my registration may be canceled. If I enroll at [MSU], I agree to pay all tuition, fees, fines and debts to the university that I may incur....If I fail to pay any tuition or fees when due, I understand the university will treat any unpaid amount as an educational loan extended to finance my education.

2. MSU's rules, regulations, academic, and nonacademic standards are found, inter alia, in its Course Catalog, Student Bill of Rights, and Student Handbook.

3. In the 2020 Spring, Cordero attended MSU as an in-person student.

4. He registered for Introduction to Feedback Controls and Electrical Engineering Design II.

5. Cordero paid \$6,585.22 for his Spring 2020 semester MSU tuition. According to his Amended Complaint, he also paid "an activity fee of \$40.00, a student building fee of \$22.50, a non-res building fee of \$73.50, a PE building fee of \$4.20, a building renewal and replacement fee of \$15.20, a bus fee of \$5.25, an equipment fee of \$23.22, an intramural fee of \$23.70, an information technology fee of \$46.10, an outdoor recreation fee of \$8.31, a recreational facility fee of \$13.38, a student facilities enhancement fee of \$27.90,

1 a student leadership fee of \$6.37, a student organization fee of \$9.89, a student
2 press fee of \$2.70, and several other fees.”

3 6. Cordero had until February 3, 2020, the 15th day of
4 instruction, to request a tuition/fee refund if he withdrew from MSU or dropped
5 either or both of his two Spring 2020 semester classes.

6 7. In mid-March 2020, in response to the emerging COVID
7 pandemic, Governor Bullock issued Executive Order 2-2020, declaring a state of
8 emergency, and Executive Order 3-2020 amending the declaration to run
9 concurrently with the United States President’s emergency declaration.¹

10 8. On March 26, Governor Bullock issued a directive²
11 implementing the executive orders, and directing everyone in Montana “to stay at
12 home or at their place of residence to the greatest extent possible and requiring
13 all but essential businesses to “cease all activities within the State except
14 Minimum Basic Operations.”

15 9. In mid-March 2020, following the Governor’s orders and
16 directives from the Commissioner of Higher Education, MSU transitioned to
17 online or other remote teaching modalities.

21 ¹ The March 12 Executive Order 2-2020 titled “*Executive Order Declaring A State Of Emergency To Exist Within*
22 *The State Of Montana Related To The Communicable Disease Covid-19 Novel Corona Virus*” is available at
[https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-02-2020_COVID-](https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-02-2020_COVID-19%20Emergency%20Declaration.pdf)
23 [19%20Emergency%20Declaration.pdf](https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-02-2020_COVID-19%20Emergency%20Declaration.pdf)

24 The March 13 Executive Order 3-2020 titled “*Executive Order Amending Executive Order 2-2020 And Providing*
25 *That The State Of Emergency Runs Concurrent With The President’s Emergency Declaration*” is available at
[https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-03-2020_Amending%20COVID-](https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-03-2020_Amending%20COVID-19%20Emergency%20Declaration.pdf)
[19%20Emergency%20Declaration.pdf](https://formergovernors.mt.gov/bullock/docs/2020EOs/EO-03-2020_Amending%20COVID-19%20Emergency%20Declaration.pdf)

² The March 26 “*Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at*
home and designating certain essential functions” is available at
https://covid19.mt.gov/_docs/Stay%20at%20Home%20Directive.pdf

1 10. After this transition, MSU kept its campus open and
2 operational and continued to offer services to all students for the remainder of the
3 Spring 2020 semester.

4 11. Even though the Margo Hoseaus Fitness Center and fitness
5 domes were temporarily unavailable to students, MSU continued to maintain and
6 support the fitness center and domes.

7 12. While intramural activities were stopped for the remainder
8 of the Spring 2020 semester, practice fields remained accessible to students.

9 13. In mid-March 2020, Cordero moved to California and lived
10 there for the rest of the semester.

11 14. While he was in California, Cordero recalls that "the
12 professor would record the lectures and then post them on the class website for
13 [the students] to view at [their] own time."

14 15. Cordero also continued to work on his capstone project.

15 16. Cordero never attempted to contact his professors to have a
16 Zoom or Facetime conversation, and he does not recall whether his professors
17 had office hours.

18 17. Cordero graduated from MSU at the end of the Spring 2020
19 semester with a computer engineering degree.

20 18. Cordero did not enroll at MSU for any semester after the
21 Spring 2020 semester.

22 19. Cordero "infer[red]" that from the documents he reviewed,
23 MSU would provide him with access to campus, its facilities, and its educational
24 services including classroom instruction, face-to-face learning, and other
25 campus-based services.

1 20. The Spring 2020 MSU Registration Handbook neither
2 promised any tuition or fees refund after the 15th day of instruction, nor that
3 MSU would provide in-person, on-campus education, services, experiences, or
4 opportunities.

5 21. For his Spring 2020 semester, no express contract existed
6 between MSU and Cordero wherein MSU agreed to provide Cordero with in-
7 person educational services, experiences, opportunities, and other related
8 services.

9 22. For his Spring 2020 semester, MSU did not promise
10 Cordero any tuition or fees refund after the 15th instruction day.

11 23. MSU did not refund the tuition and fees it collected from
12 students for the Spring 2020 Semester except for some housing refunds.

13 SUMMARY JUDGMENT STANDARD

14 Summary judgment should never be a substitute for trial when
15 there is an issue of material fact. *McDonald v. Anderson*, 261 Mont. 268, 272,
16 862 P.2d 402, 404 (1993). It is “an extreme remedy and should never be
17 substituted for a trial if a material fact controversy exists.” *Clark v. Eagle Sys.*,
18 279 Mont. 279, 283, 927 P.2d 995, 997 (1996). All reasonable inferences that
19 might be drawn from the offered evidence should be drawn in favor of the party
20 opposing summary judgment. *Heiat v. Eastern Mont. College*, 275 Mont. 322,
21 327, 912 P.2d 787, 791 (1996). Summary judgment is not to be utilized to deny
22 the parties an opportunity to try their cases before a jury. *Brohman v. State*,
23 230 Mont. 198, 202, 749 P.2d 67, 70 (1988). If there is any doubt as to the
24 propriety of a motion for summary judgment, it should be denied. *Rogers v.*
25 *Swingley*, 206 Mont. 306, 670 P.2d 1386 (1983); *Cheyenne W. Bank v. Young*,

1 179 Mont. 492, 587 P.2d 401 (1978); *Kober v. Stewart*, 148 Mont. 117, 122,
2 417 P.2d 476, 479 (1966).

3 Summary judgment is proper when no genuine issues of material
4 fact exist, and the moving party is entitled to judgment as a matter of law. Mont.
5 R. Civ. P. 56(c)(3). It is appropriate when “the pleadings, the discovery and
6 disclosure materials on file, and any affidavits show that there is no genuine issue
7 as to any material fact and that the movant is entitled to judgment as a matter of
8 law.” Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment must
9 establish the absence of any genuine issue of material fact and the party is
10 entitled to judgment as a matter of law. *Tin Cup County Water &/or Sewer Dist.*
11 *v. Garden City Plumbing*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200 P.3d 60.
12 Once the moving party has met its burden, the party opposing summary judgment
13 must present affidavits or other testimony containing material facts which raise a
14 genuine issue as to one or more elements of its case. *Id.*, ¶ 54 (citing *Klock v.*
15 *Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997)).

16 Disputed issues of fact are considered material if they concern the
17 elements of the claim or the defenses to such claim to an extent that requires
18 resolution by the jury. *State Medical Oxygen & Supply v. American Medical*
19 *Oxygen Co.*, 267 Mont. 340, 344, 883 P.2d 1241, 1243 (1994) (citation omitted).
20 If the trial court determines that no genuine issue of material fact exists, it then
21 must determine whether the moving party is entitled to judgment as a matter of
22 law. *Willden v. Neumann*, 2008 MT 236, ¶ 13, 344 Mont. 407, 189 P.3d 610. It
23 is universally recognized that “[t]he purpose of summary judgment is to
24 encourage judicial economy through the elimination of any unnecessary trial.”
25 *Payne Realty & Hous. v. First Sec. Bank*, 256 Mont. 19, 24, 844 P.2d 90,

93 (1992).

DISCUSSION

It is undisputed that in response to the nationally declared COVID pandemic and subsequent Montana-mandated shutdown of non-essential businesses that MSU transitioned to online instruction and limited access to its campus facilities and services. Moreover, it is undisputed that during MSU's online instruction, Cordero and other MSU students' college education went uninterrupted so that they were able to timely complete their coursework to earn credits toward their respective degrees. Furthermore, it is undisputed that MSU chose not to refund any portion of the students' tuition or fees except for some housing funds. Like many similarly situated college students throughout America, Cordero was disgruntled and sued MSU on a variety of legal theories of which only two (Counts I and VI) remain in this lawsuit.

Count I – Breach of Express Contract

As to Count I, Cordero alleged, in relevant part, that:

6. [he] and the members of the Class have paid for tuition for a first-rate education and an on-campus, in person educational experience, with all the appurtenant benefits offered by a first-rate university, like MSU.

7. Instead of receiving such benefits, Plaintiffs were provided a materially different alternative, and that alternative constitutes a breach of the contracts entered into by Cordero and the Class Members with [MSU].

8. As to the Mandatory Fees, Cordero and the Class Members have paid fees for services and facilities which are simply not being provided; this failure also constitutes a breach of the contracts entered into by Cordero and the Class Members with Defendants.

1 9. [Cordero] does not challenge [MSU's] compliance with the
2 Covid-19 orders that were in place in the State of Montana. Rather,
3 [he] challenges [MSU's] decision to retain monies paid by students
4 like [him] and refusal to offer any refunds, provide any discounts, or
5 apply any credit to [Cordero] and Class Members' accounts when
6 [MSU] failed to provide the in-person and on-campus services.

64. Cordero and the Class members entered into binding contracts
with MSU by accepting MSU's offer to register for on-campus
classes in accordance with the terms of the Catalogs, MSU's
publications, and MSU's usual and customary practice of providing
on-campus courses.

65. The nature of the agreement between Plaintiff and Defendants
was established throughout the application process, the admission
process, the enrollment process, the registration process, and the
payment process, including through numerous documents utilized
and presented in those stages.

66. The language on MSU's website, Catalogs, and in other
materials made available to students promising in-person instruction,
campus facilities, services, and resources became terms of the
contract. That is, at the time of contract, the parties had the
reasonable expectation that, in exchange for tuition and fee
payments, MSU would provide Cordero and Class Members with an
on-campus education. The nature of the instruction provided by the
MSU at the time Cordero and Class Members enrolled (i.e., in-
person classroom instruction) as well as the facilities and resources
offered by MSU across its schools and campuses were and are
material terms of the bargain and contractual relationship between
students and MSU.

67. Under their contracts with MSU, and per MSU's usual and
customary practice of providing on-campus courses, Cordero and
Class Members registered for on-campus courses and paid MSU
tuition and/or fees for MSU to provide in-person instruction and
access to MSU's facilities.

1 68. Examples of the consideration that Plaintiff bargained for,
2 contract for, and paid for "right to a living and learning environment
3 ... ", (2) the ability to express opinions on "campus and in the
4 classroom", (3) the right to "student meetings", (4) the right to visit
5 "regularly scheduled office hours" and "prearranged appointments,"
6 and (5) the rights associated with a "classroom community".

7 70. In MSU's "Welcome to MSU" page, the school promises that
8 "Students learn through hands-on research and creative experiences,
9 engage with community and service learning projects and make
10 discoveries with the guidance of expert professors."

11 71. MSU touts its "Academic Excellence" on its "MSU at a
12 Glance" webpage, including its "hands-on learning opportunities:"

13 72. MSU also promises in its "Welcome to MSU" page that:
14 "MSU's low student to faculty ratio means accessible professors and
15 hands-on learning opportunities. Working alongside world-class
16 faculty mentors, students discover new knowledge that helps to
17 improve the quality of life around the globe. This supportive and
18 collaborative learning environment helps students succeed in
19 competing for national and international scholarships and awards ... "

20 73. Cordero and Class Members have fulfilled all requirements of
21 their mutually agreed contracts, having followed the Catalogs'
22 policies, procedures, and requirements for admission, acceptance,
23 enrollment, registration, and payment for on-campus courses and
24 access to on-campus facilities and services. Cordero and Class
25 members have paid MSU for all financial assessments starting in the
Spring 2020 semester.

74. By ceasing in-person instruction, relegating Cordero and Class
members exclusively to remote instruction, and shutting down
campus facilities and services to Cordero and the Class, MSU failed
to provide the services for which Cordero and Class Members
bargained, contracted, and paid for when they entered into their
contractual relationship with MSU.

1 75. MSU's failure to provide in-person instruction and shutdown of
2 campus facilities amounts to a material breach of the contract.

3 76. The tuition, fees, and other costs that Cordero and the proposed
4 Class paid were intended to cover in-person educational and
5 extracurricular services. MSU, however, has failed and continues to
6 fail to provide the education and services due under the contracts, yet
7 has improperly retained the funds Cordero and the other Class
8 Members paid or agreed to pay.

9 77. Cordero and members of the Class have suffered damages as a
10 direct and proximate result of MSU's breach, including being
11 deprived of the education, experience, and services that they were
12 promised and reasonably expected to obtain, and for which they have
13 paid.

14 78. Cordero and Class Members are entitled to an award of money
15 damages or partial restitution in an amount to be determined at trial
16 as redress for MSU's breach, including but not limited to prorated
17 reimbursement of the tuition, fees, and other expenses for services
18 that MSU failed and continues to fail to deliver fully.

19 79. MSU's performance under the contracts is not excused because
20 of COVID-19. Even if performance were excused or impossible,
21 MSU would nevertheless be required to return the funds received for
22 services and/or goods that it did not provide.

23 As Cordero and MSU are aware, in Montana a contract's essential
24 elements are: (1) identifiable parties capable of contracting; (2) their consent; (3)
25 a lawful object; and (4) a sufficient cause or consideration. Mont. Code Ann. §
28-2-102 (2021). "An express contract is one the terms of which are stated in
words." Mont. Code Ann. § 28-2-103 (2021).

The *Peretti* Court correctly indicated that, as to the relationship
between a public post-secondary educational institution and a student, "[t]here

1 seems to be almost no dissent from the proposition that the relationship is
2 contractual in nature.” *Peretti v. Montana*, 464 F. Supp. 784, 786 (D. Mont.
3 1979) (*rev’d on other grounds*). It summarized the nature of such a “contract” by
4 reference:

5 This contract is conceived of as one by which the student agrees to
6 pay all required fees, maintain the prescribed level of academic
7 achievement, and observe the school’s disciplinary regulations, in
8 return for which the school agrees to allow the student to pursue his
9 course of studies and be granted a diploma upon the successful
10 completion thereof. Since a formal contract is rarely prepared, the
11 general nature and terms of the agreement are usually implied, with
specific terms to be found in the university bulletin and other
publications; custom and usages can also become specific terms by
implication.

12 *Id.* (quoting Note, *Expulsion of College and Professional Students Rights and*
13 *Remedies*, 38 Notre Dame L.J. 174, 183 (1962)). This Court relied upon *Peretti*
14 in denying MSU’s dismissal motion as to Count I. At this summary judgment
15 stage, Cordero has not established an express contract with MSU that supports
16 Counts I.

17 It appears that Cordero ignores that “[c]ontract obligations are
18 based on the manifested intention of the parties to a [bargained] transaction ...”.
19 *Dewey v. Stringer*, 2014 MT 136, ¶ 22, 375 Mont. 176, 325 P.3d 1236 (internal
20 quotations and citations omitted). His express contract breach claim against MSU
21 relies upon his unilateral and self-serving inferred patchwork of various MSU
22 catalogs, marketing or promotional materials, publications, web pages and other
23 materials. Contrary to Cordero’s position, these sources do not constitute an
24 express contract for MSU to provide, at all times, in-person educational services.
25 There is nothing in this record of an actual bargained agreement between Cordero

1 and MSU wherein it agreed to provide, at all times, in-person instruction and
2 open access to campus facilities and services.

3 This Court agrees with MSU that Cordero has failed to point to an
4 identifiable and specific contractual promise that MSU bargained for and
5 thereafter failed to honor. Cordero has failed to cite to any language from his
6 self-serving and inferred patchwork work of documents or any other MSU
7 publication that limited MSU's authority to make the absolutely necessary
8 COVID related academic and campus transition adjustments during the Spring
9 2020 semester. The same is true as to Cordero's tuition and fee reimbursement
10 claim. During the Spring 2020 semester, MSU did not promise Cordero to
11 refund his tuition or fees after the fifteenth instruction day. It is undisputed that
12 the COVID transition occurred after the fifteenth instruction day.

13 Cordero's contract breach claim against MSU fails as a matter of
14 law because he has failed to establish any specific contractual promise that MSU
15 allegedly breached with respect to in-person instruction, tuition, fees, or any
16 other costs. He has failed to identify a specific and bargained for promise made
17 by MSU that it breached during the Spring 2020 semester COVID educational
18 and campus transition.

19 Accordingly, the Court concludes that MSU is entitled to summary
20 judgment as a matter of law on Cordero's Count I.

21 **Count VI – Inverse Condemnation**

22 Cordero's second remaining claim against MSU is Inverse
23 Condemnation. He alleged, in relevant part, that:

24 125. Article 2, Section 29 of the Montana Constitution provides that
25 "[p]rivate property shall not be taken or damaged for public use without

1 just compensation to the full extent of the loss having been first made to
2 or paid into court for the owner."

3 126. By retaining Cordero and the Class Members' full tuition and fees
4 for Spring 2020 semester, MSU has deliberately taken private personal
5 property for public use.

6 127. Cordero and the Class Members have been damaged because MSU
7 has taken their private personal property.

8 128. The damages to Cordero and the Class Members were proximately
9 caused by MSU's failure to refund portions of tuition and fees for Spring
10 2020 semester.

11 129. Pursuant to Section 29, Article II of the Montana Constitution,
12 Cordero and the Class Members are entitled to just compensation for
13 MSU's inverse condemnation of their personal property.

14 The *Kafka* Court noted the "critical distinction between what might
15 be considered property for purposes of due process, and what types of interests
16 are considered compensable under the Fifth Amendment or Article II, Section 29.
17 ... 'Care . . . must be exercised not to analogize what is 'property' for purposes of
18 the Takings Clause and what might be viewed as a 'property interest' under the
19 Due Process Clause, as the two concepts are dissimilar.'" *Kafka v. Mont. Dep't of*
20 *Fish, Wildlife & Parks*, 2008 MT 460, ¶ 40, 348 Mont. 80, 201 P.3d 8.

21 "To establish a violation of the [United States Constitution's 5th
22 Amendment] Takings Clause, [Plaintiff] must first demonstrate he has a property
23 interest that is constitutionally protected." *Ward v. Ryan*, 623 F.3d 807, 810 (9th
24 Cir. 2010). Likewise, "the protection against a 'taking' of private property under
25 Article II, Section 29 [of the Montana Constitution] is coextensive with the
protection given under the Fifth Amendment. In other words, a takings analysis
based on federal law under *Penn Central* or *Lucas* is to be applied to takings

1 claims whether brought under the U.S. or Montana Constitutions.” *Buhmann v.*
2 *State*, 2008 MT 465, ¶ 64, 348 Mont. 205, 201 P.3d 70 (citing *Kafka*).

3 After the fifteenth instruction day, the Court agrees with MSU that
4 Cordero had no compensable property interest in the tuition and fees he
5 voluntarily paid for his Spring 2020 MSU semester. “The ownership of a thing is
6 the right of one or more persons to possess and use it to the exclusion of others.
7 In this code, the thing of which there may be ownership is called property.”
8 Mont. Code Ann. § 70-1-101 (2021). After the fifteenth instruction day, Cordero
9 did not have the right to use or possess his Spring 2020 tuition/fee voluntary
10 payment to MSU. Moreover, after the fifteenth instruction day, Cordero had no
11 right to exclude anyone from his voluntary Spring 2020 semester tuition/fees
12 payment. Thereafter, it was the Montana Board of Regents’ property. See Mont.
13 Code Ann. § 20-25-422 (2021). The Board of Regents manages and has general
14 control over the Montana University system which includes MSU. See Mont.
15 Code Ann. § 20-25-301 (2021). This includes “general control of all receipts and
16 disbursements.” Mont. Code Ann. § 20-25-301(8) (2021).

17 Accordingly, the Court further agrees with MSU that no additional
18 analysis relative to the *Member* criteria is necessary or warranted as to his
19 voluntary Spring 2020 semester tuition/fees payment.

20 As to Cordero’s conclusory, inferred, and speculative “contracted-
21 for-services” taking claim, the Court also agrees with MSU. In this regard,
22 Cordero had no property right or interest in such “services.” He did not have the
23 right to transfer such services. He did not have the exclusive or sole control over
24 such services or to exclude others. There is no material factual dispute whether
25 MSU had the right to deliver online educational services. It certainly did under

1 the circumstances. The Court absolutely agrees with MSU’s argument that its
2 “transition to online instruction and social distancing measures was at most
3 merely an infringement on Cordero's enjoyment, which does not constitute a
4 taking. Second, even if MSU's actions were more than an infringement, no
5 compensation is owed because MSU acted to protect the health and safety of
6 students and employees.” “No credible claim can be made that protection of
7 public health—including the protection of [MSU students and employees]—is
8 not an important public policy.” *State v. Mountain Chief*, 2023 MT 147, ¶ 30,
9 413 Mont. 131, __ P.3d __.

10 Accordingly, the Court concludes that MSU is entitled to summary
11 judgment as a matter of law on Cordero’s Count VI.

12 ORDER

13 For the reasons stated above, **IT IS HEREBY ORDERED,**
14 **ADJUDGED, and DECREED** that MSU’s summary judgment motion as to
15 Counts I and VI is **GRANTED**. These claims are **DISMISSED with**
16 **prejudice**.

17 **IT IS FURTHER ORDERED** that Cordero’s Class Certification
18 Motion is **DENIED** as Moot since this proceeding is **DISMISSED with**
19 **prejudice**.

20 ELECTRONICALLY SIGNED AND DATED BELOW

21 cc: Adrian A. Miller / Michelle M. Sullivan
22 Michael Tompkins
23 Dale R. Cockrell / Eric M. Brooks /Braden S. Murphy

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