

1 Steve W. Berman (*Pro Hac Vice*)
2 *steve@hbsslaw.com*
3 HAGENS BERMAN SOBOL SHAPIRO LLP
4 1301 Second Avenue, Suite 2000
5 Seattle, WA 98101
6 T: (206) 623-7292

7 Christopher R. Pitoun (SBN 290235)
8 *christopherp@hbsslaw.com*
9 HAGENS BERMAN SOBOL SHAPIRO LLP
10 301 North Lake Avenue, Suite 203
11 Pasadena, CA 91101
12 T: (213) 330-7150

13 Carney R. Shegerian, State Bar No. 150461
14 *CShegerian@Shegerianlaw.com*
15 Anthony Nguyen, State Bar No. 259154
16 *ANguyen@Shegerianlaw.com*
17 Cheryl A. Kenner, State Bar No. 305758
18 *CKenner@Shegerianlaw.com*
19 SHEGERIAN & ASSOCIATES, INC.
20 145 South Spring Street, Suite 400
21 Los Angeles, California 90012
22 T: (310) 860-0770

23 [Additional Counsel listed on signature page]
24 *Interim Co-Lead Counsel for Plaintiffs*

25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 *In re Pepperdine University Tuition and*
28 *Fees Covid-19 Refund Litigation*

No. 2:20-cv-04928-DMG-KS(x)

**CONSOLIDATED CLASS ACTION
COMPLAINT**

- (1) BREACH OF CONTRACT;**
- (2) BREACH OF IMPLIED CONTRACT;**
- (3) RESTITUTION BASED ON QUASI-CONTRACT; and**
- (4) UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, et seq.**

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Page

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

I. NATURE OF ACTION..... 1

II. JURISDICTION AND VENUE..... 3

III. PARTIES..... 3

IV. FACTS..... 5

 A. Background 5

 B. Pepperdine contracted to provide in-person education and access to facilities and resources. 8

 C. Pepperdine’s transition exclusively to remote learning and shut down of Pepperdine’s campuses, facilities, and activities..... 17

 D. Pepperdine’s refusal to issue refunds for tuition and fees after the March 2020 emergency remote conversion and campus closure. 18

V. CLASS ACTION ALLEGATIONS..... 22

VI. FIRST CAUSE OF ACTION - BREACH OF CONTRACT 25

VII. SECOND CAUSE OF ACTION - BREACH OF IMPLIED CONTRACT.... 27

VIII. THIRD CAUSE OF ACTION - RESTITUTION BASED ON QUASI-CONTRACT..... 28

IX. FOURTH CAUSE OF ACTION - CAL. BUS. & PROF. CODE § 17200, *ET SEQ.* – UNFAIR CONDUCT..... 29

PRAYER FOR RELIEF 30

JURY DEMAND..... 31

1 Plaintiffs JOSEPH PINZON and MATHEW REZVANI (collectively
2 “Plaintiffs”), individually, and on behalf of all others similarly situated, for their
3 Consolidated Class Action Complaint (“Complaint”) against Defendant
4 PEPPERDINE UNIVERSITY (“Pepperdine”), based upon personal knowledge as to
5 their own actions and based upon the investigation of counsel regarding all other
6 matters, allege as follows:

7 **I. NATURE OF ACTION**

8 1. This Consolidated Class Action Complaint comes during a time of
9 hardship for so many Americans, with each day bringing different news regarding the
10 novel coronavirus COVID-19. Social distancing, shelter-in-place orders, and efforts to
11 ‘flatten the curve’ prompted colleges and universities across the country to shut down
12 their campuses, evict students from campus residence halls, and switch to online
13 “distance” learning during the Spring 2020 semester.

14 2. Despite sending students home, transitioning to online instruction, and
15 closing its campuses, Pepperdine continued to charge for tuition and fees as if nothing
16 had changed, continued to reap the financial benefit of millions of dollars from
17 students. Pepperdine did so despite students’ complete inability to continue school as
18 normal, occupy campus buildings and dormitories, or avail themselves of school
19 programs and events. So while students enrolled and paid Pepperdine for an in-person,
20 on-campus academic experience, Pepperdine instead offered Plaintiffs and other Class
21 members something far less: an online experience presented by Google or Zoom, void
22 of face-to-face faculty and peer interaction, separated from program resources, and
23 barred from facilities vital to study. Plaintiffs and Class members did not bargain for
24 such an experience.

25 3. In response to COVID-19, on or about March 11, 2020, Pepperdine
26 informed Plaintiffs and Class members that classes would transition to online-only
27
28

1 classes starting the week of March 16, 2020. Courses would be conducted online for
2 the remainder of the Spring 2020 semester. All on-campus events were cancelled.

3 4. Despite the provision of an entirely remote undergraduate and graduate
4 studies experience, Pepperdine refuses to refund or reimburse Plaintiffs and similarly
5 situated Pepperdine students and their families the tuition and fees they paid for the
6 promised on-campus instruction, services they were not provided, events they could
7 not attend, and programs and activities that were curtailed, discontinued, or closed.

8 5. This case is not about educational “quality,” nor is it about Pepperdine’s
9 decisions regarding individual academic performance or qualifications. Instead, this
10 case seeks to provide remedies to students who paid Pepperdine for in-person
11 instruction that was no longer available to them, access to buildings they could not
12 enter, technology, programs, and services that Pepperdine did not provide, and
13 activities that were no longer available. Pepperdine is thus profiting from COVID-19
14 while further burdening students—many of whom have been laid-off, become ill, lost
15 loved ones, or are otherwise bearing the brunt of the COVID-19 pandemic. The result
16 is an enormous windfall to Pepperdine. Both contract and equity demand that
17 Pepperdine disgorge its ill-gotten funds.

18 6. Pepperdine’s actions have financially damaged Plaintiffs and Class
19 members. Plaintiffs bring this action because Plaintiffs and Class members did not
20 receive the full value of the services paid; they did not receive the benefits of in-
21 person instruction and/or experiences. They lost the benefit of their bargain and/or
22 suffered out-of-pocket loss, and are entitled to recover compensatory damages, and
23 attorney fees and costs. This lawsuit seeks disgorgement and monetary damages in the
24 amount of prorated, unused amounts of tuition, room and board, and fees that
25 Plaintiffs and the other Class members paid, the benefits of which will not be provided
26 by Pepperdine.

1 **II. JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over the subject matter presented by this
3 Complaint because it is a class action arising under the Class Action Fairness Act of
4 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for
5 the original jurisdiction of the Federal Courts of any class action in which any member
6 of the Class is a citizen of a State different from any Pepperdine, and in which the
7 matter in controversy exceeds in the aggregate sum of \$5,000,000.00, exclusive of
8 interest and costs. Plaintiffs allege that the total claims of individual Class members in
9 this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and
10 costs, as required by 28 U.S.C. §§ 1332(d)(2) and (6). Plaintiff Pinzon is a citizen of
11 Texas and Plaintiff Rezvani is a citizen of California, whereas Pepperdine is a citizen
12 of California for purposes of diversity. Therefore, diversity of citizenship exists under
13 CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore, Plaintiffs allege that
14 less than two-thirds of all the members of the proposed Class in the aggregate are
15 citizens of California, where this action is originally being filed, and that the total
16 number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. §
17 1332(d)(5)(B).

18 8. Venue is appropriate in this District because Pepperdine is located within
19 the Central District of California. And on information and belief, events and
20 transactions causing the claims herein, including Pepperdine’s decision-making
21 regarding its refund policy challenged in this lawsuit, has occurred within this judicial
22 district.

23 **III. PARTIES**

24 9. Plaintiff Joseph Pinzon is a citizen and resident of the State of Texas.
25 Plaintiff is a current Pepperdine graduate student who paid tuition and fees for the
26 Spring 2020 academic term at Pepperdine.

27 10. Plaintiff Mathew Rezvani is a citizen and resident of the State of
28

1 California. Plaintiff was a Pepperdine law student that paid tuition and fees for the
2 Spring 2020 academic term at Pepperdine. He graduated in December 2020.

3 11. Plaintiffs are in good financial standing at Pepperdine, having paid in
4 whole or in combination tuition, fees, costs, and/or room and board charges assessed
5 and demanded by Pepperdine for the Spring 2020 term.

6 12. Plaintiffs began the Spring 2020 academic term in-person until
7 Pepperdine cancelled in-person instruction and experiences.

8 13. Plaintiffs paid Pepperdine for opportunities and services they did not
9 receive, including on-campus education, facilities, services, and activities.

10 14. While Plaintiffs could have pursued their degrees online (whether in
11 whole or in part), they instead specifically selected an on-campus experience for the
12 variety of educational and extracurricular opportunities and benefits that only an in-
13 person program can provide.

14 15. Plaintiffs thus contracted for and paid Pepperdine for on-campus
15 instruction, opportunities, facilities, and services for the Spring 2020 semester.

16 16. Plaintiffs enrolled at Pepperdine to obtain the full experience of live, in-
17 person courses and direct interactions with instructors and students, facilitated by
18 small class sizes. Plaintiffs chose Pepperdine due to the campus location, accessibility
19 of professors, and camaraderie with classmates in both the classroom and on-campus.

20 17. With Pepperdine's campus closure, cancellation of campus events,
21 suspension of many campus services and programs, and transition to exclusively
22 online instruction during the Spring 2020 semester, Plaintiffs lost access to the on-
23 campus instruction, opportunities, facilities, and services for which Plaintiffs had
24 bargained for by selecting—and paying tuition and fees for—in-person courses and
25 experiences.

26 18. For example, Plaintiffs lost vital library access and special tools and
27 resources available only physically in the library, which Pepperdine cannot and/or has
28

1 been unable to make available to students online.

2 19. While Plaintiffs paid Pepperdine for an in-class experience that would
3 enable them to communicate directly with their professors, attend office hours, and
4 provide access to resources unique to their in-person programs, such experiences were
5 non-existent following Pepperdine’s campus closure. Such a transition has also made
6 it difficult to connect with professors and staff, a critical component to the bargained-
7 for experience.

8 20. As a result, while Plaintiffs and other students paid for in-person access
9 to faculty mentorship as an important component of the Pepperdine experience,
10 Pepperdine excluded students from such access for the Spring 2020 term.

11 21. Pepperdine is an institution of higher learning located in Malibu,
12 California. Pepperdine provides Class members with campus facilities, in-person
13 classes, as well as a variety of other facilities and experiences for which Pepperdine
14 charges Plaintiffs and Class members.

15 **IV. FACTS**

16 **A. Background**

17 22. Founded in 1937, Pepperdine has a current enrollment of approximately
18 8,824 undergraduate and graduate students, across five schools and colleges.

19 23. A significant focus of Pepperdine’s efforts to obtain and recruit students
20 and justify its high costs pertains to the campus experience it offers along with face-to-
21 face, personal interaction with skilled and renowned faculty and staff, a wide array of
22 in-person services, opportunities, and extra-curricular activities, state-of-the-art
23 facilities, and much more.

24 24. A few examples of such efforts to promote that experience follow.

25 25. Pepperdine attracts students by describing its facilities as “located in the
26 coastal community of Malibu, California, the Pepperdine University 830-acre campus
27
28

1 has been ranked the most beautiful campus in the nation by *The Princeton Review*.”¹
2 In advertising its law school, Pepperdine describes it as “located on the university’s
3 graduate campus and boasts a 40,000 square-foot law library with ocean views as well
4 as conference rooms, classrooms, a dining hall, ample technology services, and on-
5 campus housing.”²

6 26. Additionally, Pepperdine promises the following: “These are some of the
7 experiences you will have as a Pepperdine student: participate in a diverse class of 15
8 students where everyone knows your name; bond with your professor over a shared
9 interest; cheer for a Pepperdine Waves team along with your new friends; walk to
10 class with an inspiring ocean view spread out before you; and discuss your exciting
11 career path with a mentor.”³

12 27. Pepperdine describes its campus as “[n]estled in the rolling foothills of
13 the Santa Monica Mountains, Pepperdine University’s Malibu campus commands a
14 majestic view of the Pacific Ocean. The winding seashore, the rugged beauty of
15 Malibu Canyon, and the clean ocean air enhance the towering campus location.”⁴

16 28. And, Pepperdine’s advertising materials boast having “1,000+ on-campus
17 events each semester.”⁵

18 29. Pepperdine also promotes its on-campus recreation facilities and
19 “moderate seaside climate” for “year-round outdoor activities,” noting “students have
20 access to nearby beaches with opportunities for surfing, fishing, and boating.”⁶

21 30. Pepperdine also promotes its Malibu campus as developing “the next
22 generation of leaders through rigorous academics, faculty mentorship, and a robust
23

24 ¹ <https://law.pepperdine.edu/about/our-campus/>.

25 ² <https://law.pepperdine.edu/about/our-campus/>.

26 ³ <https://www.pepperdine.edu/academics/programs/undergraduate/>.

27 ⁴ <https://www.pepperdine.edu/about/locations/malibu/>.

28 ⁵ <https://seaver.pepperdine.edu/about/at-a-glance/>.

⁶ <https://www.pepperdine.edu/about/locations/malibu/>.

1 campus life.”⁷ Pepperdine highlights “small classes, a nurturing campus environment,
2 opportunities for diverse social interaction, and individual attention from these
3 teacher-mentors” in the administration, faculty, and staff.⁸

4 31. Pepperdine’s graduate programs are “recognized as among the best in
5 higher education” and boast distinguished faculty that is “committed to the challenge
6 of nurturing the intellectual growth of students through meaningful scholarship.”⁹

7 32. Pepperdine recognizes its campus life as integral to student learning
8 experiences: “Living on campus in Malibu—required for Seaver College freshmen
9 and sophomores—is the best way to experience all the transformational academic,
10 social, and spiritual growth that a college lifestyle has to offer. The relationships and
11 sense of community developed during these years are crucial to the college
12 experience, particularly within a dynamic environment that promotes fellowship and
13 unity through social events, mentorship programs, service projects, and other group
14 activities.”¹⁰

15 33. Further, “[s]ince there is a significant correlation between the degree of
16 individual student involvement in the life of the college and success in effecting
17 student development” Pepperdine makes a “concerted effort . . . to maximize the
18 involvement of each student in the larger life of the college.”¹¹

19 34. However, Pepperdine did not provide these on-campus experiences and
20 in-person courses, and refuses to refund Plaintiffs and Class members for their losses
21 due to the campus-wide transition to online-only learning during the Spring 2020
22 semester.

23
24
25 ⁷ <https://seaver.pepperdine.edu/about/>.

26 ⁸ <https://seaver.pepperdine.edu/about/our-story/seaver-mission/>.

27 ⁹ <https://www.pepperdine.edu/academics/programs/graduate/>.

28 ¹⁰ <https://www.pepperdine.edu/about/locations/malibu/>.

¹¹ <https://seaver.pepperdine.edu/about/our-story/seaver-mission/>.

1 **B. Pepperdine contracted to provide in-person education and access to**
2 **facilities and resources.**

3 35. For the Spring 2020 semester, Plaintiffs contracted with Pepperdine—and
4 paid a premium—specifically for *on-campus* courses and programs.

5 36. Indeed, for the 2019–2020 academic year, Pepperdine assessed the
6 following:

- 7 a. For undergraduate students: \$55,640 for annual tuition (\$27,820
8 per semester), \$15,670 for room and board (based on double
9 occupancy room), and \$252 for annual “Campus Life Fees;”¹²
- 10 b. For Juris Doctor students: \$57,500 for annual tuition;¹³
- 11 c. For Masters of Dispute Resolution: \$67,680 for annual tuition;¹⁴
- 12 d. For Masters of Business Administration: \$50,940 for annual
13 tuition;¹⁵
- 14 e. For Masters of Law: \$54,990 for annual tuition.¹⁶

15 37. Pepperdine’s enrollment materials obligated it to provide Plaintiffs and
16 Class members the same in-person education, on-campus housing, sports, resources,
17 and facilities that it highlighted in the promotional marketing materials.

18 38. Pepperdine’s 2019–2020 Academic Catalogs for the undergraduate and
19 graduate schools, as well as its publications, advertisements, and other promotional
20 materials, lay out the terms of the contract between Pepperdine and Plaintiffs and
21 Class members, and are also informed by custom, practice, and objectively reasonable
22 expectations at the time of contracting.

23
24 ¹² <https://seaver.pepperdine.edu/admission/financial-aid/undergraduate/costs/budget-costs.htm>.

25 ¹³ <https://law.pepperdine.edu/admissions/tuition/>.

26 ¹⁴ *Id.*

27 ¹⁵ <https://bschool.pepperdine.edu/admission/tuition/>.

28 ¹⁶ *Id.*

1 39. The 2019–2020 Academic Catalog for Plaintiff Pinzon’s school,
2 Pepperdine’s Graduate School of Education and Psychology (“GESP Catalog”) is
3 attached as Exhibit A.

4 40. The GESP Catalog establishes the responsibility of Pepperdine to provide
5 students the use of campus facilities by noting the specific facilities for graduate
6 students including “three on-campus counseling clinics,” located at the West Los
7 Angeles Graduate Campus, Irvine Graduate Campus, and Encino Graduate Campus.¹⁷
8 The West Los Angeles Graduate Campus provides “classrooms, faculty and
9 administrative offices, a library, academic computing facilities, a bookstore, and the
10 Psychological and Educational Clinic” as well as additional facilities available at the
11 Calabasas, Encino, Irvine, and Malibu campuses.¹⁸

12 41. The GESP Catalog distinguishes between on-campus students and
13 courses and their online counterparts. Pepperdine’s Graduate School of Education and
14 Psychology offers three Master’s programs in an online format. Students must
15 specifically choose to enroll in the online-only programs: “[t]he online and on-campus
16 programs are separate, and students enrolled in one program are not eligible to take
17 courses in the other.”¹⁹

18 42. The GESP Catalog further establishes that students in the on-campus
19 programs and the online-only programs have unique academic calendars, deferment
20 procedures, and withdrawal refund schedules.²⁰ Additionally, the GESP Catalog notes
21 differences in scholarship eligibility as “100 percent online students are not eligible
22 for scholarships.”²¹

23
24
25 ¹⁷ Ex. A at 16.

26 ¹⁸ *Id.*

27 ¹⁹ *Id.* at 169, 189, 207.

28 ²⁰ *Id.* at 6, 24, 39.

²¹ *Id.* at 169.

1 43. The 2019–2020 Academic Catalog for Plaintiff Rezvani’s school,
2 Pepperdine’s Caruso School of Law (“Law Catalog”) is attached as Exhibit B.

3 44. As with other of its programs, the Law Catalog similarly confirms that
4 Pepperdine would provide students the use of campus facilities by noting the specific
5 facilities for law students at the “Odell McConnell Law Center, located on the
6 university’s 830-acre campus overlooking the Pacific University in Malibu,
7 California,” including a variety of libraries, courtrooms, auditoriums, conference
8 centers, and student lounges among other facilities.²²

9 45. Indeed, the Dean of Pepperdine’s law school went so far as to quote
10 *Hamilton* in the Law Catalog, further confirming the parties’ bargained for in-person
11 instruction and experiences occurring on-campus:

12 When I saw the play *Hamilton*, I was struck how these
13 verses from one of the songs perfectly capture the
excitement at Pepperdine:

14 *Look around, look around at how lucky we are to be*
15 *alive right now. History is happening in Manhattan*
16 *and we just happen to be in the greatest city in the*
world!

17 We are in an epochal moment in legal education and in the
18 legal profession, and we all feel lucky to be making history
at Pepperdine *on the most beautiful law school campus in*
*the world.*²³

19 46. Pepperdine further offers various clinics, externships, and practicums
20 purported to “provide real-world, hands-on experience to refine practice ready
21 skills.”²⁴

22 47. For example, externships at Pepperdine in particular involve field
23 placements in a variety of sectors within the legal profession, an “experience” which
24 “offers students a unique and valuable perspective on the practice of law and the role
25

26 ²² *Id.* at 22.

27 ²³ Ex. B, at 14.

28 ²⁴ *Id.* at 33 (emphasis added).

1 of lawyers in society.”²⁵

2 48. And Pepperdine’s practicums ordinarily “provide intensive experience in
3 specialized field placement with expert faculty guidance.”²⁶

4 49. Moreover, law students ordinarily may avail themselves of other
5 university facilities, with Pepperdine noting that “[t]he university’s Olympic-sized
6 swimming pool, gymnasium, tennis courts, and other recreational facilities are
7 available for law student use.”²⁷

8 50. And while Pepperdine offers various law degrees online at the Masters of
9 Legal Studies level,²⁸ Pepperdine did not offer any such options for the juris doctor
10 program, and in any event neither Plaintiff Rezvani nor Class members enrolled in any
11 online programs.

12 51. The Pepperdine 2019–2020 Academic Catalog for Seaver College of
13 Letters, Arts, and Sciences (“Seaver Catalog”), attached as Exhibit C, similarly
14 illustrates courses provided on-campus and offers students advantages and
15 opportunities that are only available through on-campus, in-person study.

16 52. Perhaps because it has long taken pride in—and marketed—its unique on-
17 campus academic experience, Pepperdine concedes that online courses are not the
18 same as in-person courses by only offering a limited number of online courses and
19 limiting the number of online courses that may count toward a Pepperdine degree. The
20 Seaver Catalog notes after “initial enrollment at Seaver College, a maximum of 18
21 total units of hybrid or online courses may act in fulfillment of the 128 units required
22 for graduation.”²⁹

23
24 ²⁵ *Id.* at 26.

25 ²⁶ *Id.* at 26.

26 ²⁷ *Id.* at 23.

27 ²⁸ *Id.* at 54. Pre-pandemic, online programs are not at issue in this litigation as
Pepperdine and the students in those programs bargained for an online experience.

28 ²⁹ Ex. C, at 76.

1 53. The Seaver Catalog repeatedly describes the on-campus course
2 experience: “the arts at Pepperdine are regarded as essential elements in a liberal arts
3 education, with the courses, performances, and exhibits on campus providing the
4 cultural nourishment and avenues of expression all students need,”³⁰ “hands-on
5 experience” and use of specialized equipment and campus facilities,³¹ and
6 opportunities for internship, experiential, and service learning requiring reporting to
7 instructors on-campus.³²

8 54. The Seaver Catalog contains numerous references to the benefits of
9 Pepperdine’s on-campus experience: “Overlooking the Pacific Ocean, Seaver College
10 occupies a beautiful stretch of the Malibu coastline nestled in the Santa Monica
11 Mountains. The winding seashore and rugged beauty of surrounding foothills provide
12 an inspirational setting for academic enrichment and personal growth. The moderate
13 seaside climate permits year-round outdoor activities, and in addition to the recreation
14 facilities on campus, students have access to nearby beaches with opportunities for
15 surfing, fishing, and boating.”³³

16 55. Moreover, the Seaver Catalog establishes students’ right to participate in
17 student activities, organizations, and service projects as integral to student life:
18 “Seaver College is known for both high academic standards, as well as vibrant student
19 life. Numerous student activities and services work to build the campus community
20 while challenging all students, faculty, and staff to value learning and faith, citizenship
21 and community, diversity and inclusiveness, and the value of a global world.”³⁴

22 56. Further, the Seaver Catalog establishes Pepperdine’s responsibility to
23

24 ³⁰ *Id.* at 174.

25 ³¹ *Id.* at 98, 134, 169, 175, 189, 191, 238, 337, 349, 350.

26 ³² *Id.* at 151, 152, 158, 162, 165, 172, 177, 192, 210, 236, 250, 341, 422, 424.

27 ³³ *Id.* at 14.

28 ³⁴ *Id.* at 14.

1 provide students with opportunities to live on-campus: “In the belief that students
2 benefit greatly from living on-campus, all new students are required to live in
3 Pepperdine housing and carry a meal plan for four semesters.”³⁵

4 57. Additionally, the Seaver Catalog highlights Pepperdine’s obligation to
5 provide students the use of campus facilities such as libraries,³⁶ laboratories,³⁷ and
6 recreational facilities.³⁸

7 58. The Seaver Catalog also establishes Pepperdine’s responsibility to
8 provide students with opportunities to interact with faculty outside of the classroom:
9 “students at Seaver College have the unique opportunity of establishing close,
10 professional mentoring relationships with their professors.”³⁹

11 59. Pepperdine’s Spring 2020 course listings further confirms Pepperdine’s
12 obligation to provide on-campus courses. In particular, Pepperdine’s course search
13 feature shows that courses would be held in Pepperdine buildings and facilities on-
14 campus, not remotely.⁴⁰

15 60. By way of example, the sample screenshots below show in-person
16 graduate classes at the West Los Angeles Graduate Campus Room 202 and 333 and
17 undergraduate classes at the Malibu Campus in the Black Family Plaza and Elkins
18 Auditorium:

19 ///

20 ///

21 ///

23 ³⁵ *Id.* at 19.

24 ³⁶ *Id.* at 82.

25 ³⁷ *Id.* at 63.

26 ³⁸ *Id.* at 14.


27 ³⁹ *Id.* at 14.

28 ⁴⁰ https://sis.pepperdine.edu/psp/PPUN1J/EMPLOYEE/SA/c/ZP_CS_OVERRIDE.CLASS_SEARCH.GBL./; *see also* sample search attached as Exhibit D.

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

PSY 607 - 20 Social Psychology
Pepperdine University | Spring 2020 | Lecture

[View Search Results](#)


Class Details			
Status	Open		
Class Number	2794		Career Graduate
Session	Education & Psychology 1		Dates 1/6/2020 - 4/17/2020
Units	3 units		Grading Grad Grade Basis
Instruction Mode	In Person		Location WLA Graduate Campus
Class Components	Lecture Required		Campus Pepperdine University

Meeting Information			
Days & Times	Room	Instructor	Meeting Dates
Tu 4:15PM - 7:00PM	West LA Grad Campus 202	Carlos Vazquez	01/07/2020 - 04/14/2020

Enrollment Information	
Enrollment Requirements	This class section is limited to students enrolled in the traditional in-class general psychology program only.

PSY 667 - 20 Industrial/Organizational Psychology
Pepperdine University | Spring 2020 | Lecture

[View Search Results](#)

Class Details			
Status	Open		
Class Number	2834		Career Graduate
Session	Education & Psychology 1		Dates 1/6/2020 - 4/17/2020
Units	3 units		Grading Grad Grade Basis
Instruction Mode	In Person		Location WLA Graduate Campus
Class Components	Lecture Required		Campus Pepperdine University

Meeting Information			
Days & Times	Room	Instructor	Meeting Dates
Th 4:15PM - 7:00PM	West LA Grad Campus 333	Christopher Norris	01/09/2020 - 04/16/2020


Enrollment Information	
Enrollment Requirements	This class section is reserved for students enrolled in the on-campus general psychology program only with program requirements for Fall 2018 or greater.

Search for Classes

Class Detail

ECON 211 - 01 Introduction to Macroeconomics
Pepperdine University | Spring 2020 | Lecture

[View Search Results](#)


Class Details			
Status	Open		
Class Number	1101		Career Undergraduate
Session	Regular Academic Session		Dates 1/13/2020 - 4/30/2020
Units	3 units		Grading Ugrd Grade Basis
Instruction Mode	In Person		Location Malibu
Class Components	Lecture Required		Campus Pepperdine University

Meeting Information			
Days & Times	Room	Instructor	Meeting Dates
TuFr 8:00AM - 9:30AM	PLAZA BPC 189	Gary Galles	01/13/2020 - 04/30/2020

Class Availability	
--------------------	--

PSYC 200 - 01 Introduction to Psychology
Pepperdine University | Spring 2020 | Lecture

[View Search Results](#)

Class Details			
Status	Open		
Class Number	1227		Career Undergraduate
Session	Regular Academic Session		Dates 1/13/2020 - 4/30/2020
Units	3 units		Grading Ugrd Grade Basis
Instruction Mode	In Person		Location Malibu
Class Components	Lecture Required		Campus Pepperdine University

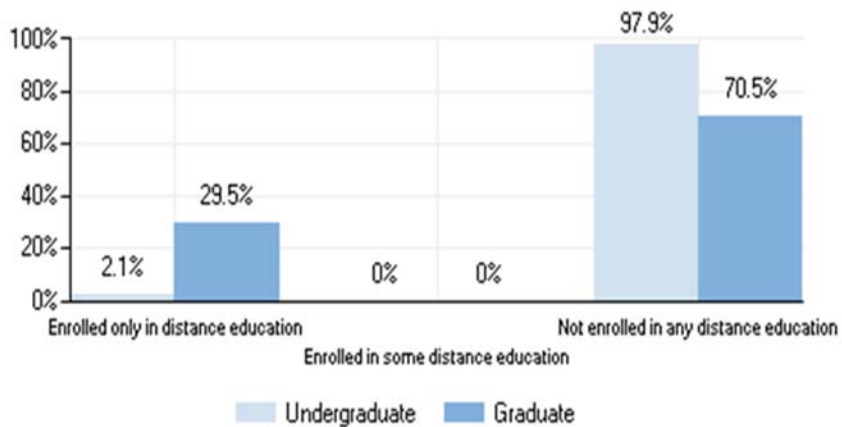
Meeting Information			
Days & Times	Room	Instructor	Meeting Dates
MoTh 8:00AM - 9:30AM	Elkins	Cindy Miller-Perrin	01/13/2020 - 04/30/2020

Class Availability	
--------------------	--

1 61. The graduate course listings note the in-person instruction in the specific
 2 classrooms at the West Los Angeles Graduate Campus are reserved for students
 3 enrolled in “traditional in-class” or “on-campus” instruction.⁴¹

4 62. In registering and paying Pepperdine tuition and fees, Plaintiffs and Class
 5 members bargained for and understood that instruction would be provided in-person
 6 by leading academics and on-campus, including in buildings with state-of-the-art
 7 resources.

8
 9 **Enrollment by distance education: Fall 2019**



10
 11
 12
 13
 14
 15
 16
 17 63. Pepperdine’s usual and customary practices when students register for
 18 on-campus courses and pay tuition for such courses is to provide on-campus
 19 instruction. Plaintiffs’ and Class members’ reasonable expectation when they
 20 registered for classes for the Spring 2020 semester was that those classes would be
 21 provided on-campus, consistent with Pepperdine’s usual and customary practice.

22 64. Plaintiffs and Class members had the reasonable expectation that
 23 Pepperdine would provide the in-person educational experience and use of its facilities
 24 provided in Pepperdine’s publications, including but not limited to the Catalogs,
 25 manuals, regulations, brochures, advertisements, and other promotional materials.
 26

27
 28 ⁴¹ *Id.*

1 65. Moreover, according to data reported by Pepperdine to the U.S.
2 Department of Education’s Integrated Postsecondary Education Data System, while
3 Pepperdine enrolled some undergraduate and graduate students only in education
4 courses prior to the pandemic, such programs were the exception and not the norm at
5 Pepperdine.⁴²

6 66. The combination of the express terms of the Catalogues, Pepperdine’s
7 publications and Pepperdine’s usual and customary practice constituted an offer to any
8 student attending Pepperdine to register for on-campus classes. If accepted by
9 Plaintiffs and Class members, who did in fact register for such on-campus classes, in
10 accordance with Pepperdine’s policies and procedures and usual custom and practice,
11 and who timely paid tuition for those on-campus classes, Pepperdine became
12 contractually obligated to provide on-campus classes to Plaintiffs and other Class
13 members.

14 67. In light of the terms laid out in the Catalogues, Pepperdine’s publications,
15 and Pepperdine’s usual and customary practice, Plaintiffs and Class members applied
16 to in-person programs at Pepperdine and registered for on-campus courses for the
17 Spring 2020 semester. Pepperdine accepted their registration as an on-campus student
18 taking on-campus courses and charged Plaintiffs and Class members.

19 68. Plaintiffs contracted with Pepperdine and agreed to pay the high cost of
20 Pepperdine’s on-campus tuition because the program offered access to opportunities
21 that were based on in-person classes and study.

22 69. Plaintiffs and Class members paid Pepperdine tuition and fees for on-
23 campus courses—and the benefits, services, opportunities, and facilities that came
24 with that—for the Spring 2020 semester. In registering and paying Pepperdine tuition
25 and fees for the Spring 2020 semester, Plaintiffs and Class members reasonably
26 understood—per the Catalogues, Pepperdine’s promotional materials, and
27

28 ⁴² <https://nces.ed.gov/ipeds/datacenter/institutionprofile.aspx?unitId=121150>.

1 Pepperdine’s usual and customary practice—that the classes they bargained and paid
2 for would be administered on-campus for the duration of the semester and that they
3 would get a full semester’s worth of access to on-campus facilities, services, and
4 resources.

5 70. However, as set forth further below, since March 2020, Plaintiffs and
6 Class members have been denied the benefit of their bargain. Plaintiffs and Class
7 members have lost the benefits of the in-person education, services, food, housing, and
8 other experiences that Pepperdine promised. Despite failing to fulfill its obligations,
9 Pepperdine is currently unlawfully retaining and refusing to fully or partially refund
10 Plaintiffs’ tuition and fees.

11 **C. Pepperdine’s transition exclusively to remote learning and shut down of**
12 **Pepperdine’s campuses, facilities, and activities**

13 71. On December 31, 2019, governmental entities in Wuhan, China
14 confirmed that health authorities were treating dozens of cases of a mysterious,
15 pneumonia-like illness. Days later, researchers in China identified a new virus that had
16 infected dozens of people in Asia, subsequently identified and referred to as the novel
17 coronavirus, or COVID-19.

18 72. By January 21, 2020, officials in the United States were confirming the
19 first known domestic infections of COVID-19.

20 73. Due to an influx of thousands of new cases in China, on January 30,
21 2020, the World Health Organization officially declared COVID-19 as a “public
22 health emergency of international concern.”

23 74. By March 11, 2020, the World Health Organization declared COVID-19
24 a pandemic.

25 75. On March 11, 2020, Pepperdine President James Gash sent a message to
26 the Pepperdine community announcing that the last day of in-person classes will be
27 March 13, 2020. Classes would transition online beginning the week of March 16 and
28

1 continue online for the remainder of the spring semester.⁴³ Residential students were
2 asked to move out of on-campus housing by 3:00 p.m. on March 15, 2020.⁴⁴

3 76. On or about March 15, 2020, Pepperdine decided to close its campus,
4 migrating all, or substantially all, classes online.

5 77. Though the reasons for such closures were justified, the fact remains that
6 such closures and cancellations presented significant loss to Plaintiffs and Class
7 members.

8 **D. Pepperdine’s refusal to issue refunds for tuition and fees after the March**
9 **2020 emergency remote conversion and campus closure.**

10 78. Given Pepperdine’s transition to online classes and COVID-19 concerns,
11 Pepperdine asked students to vacate student housing as soon as possible and no later
12 than March 15, 2020.

13 79. Plaintiffs and Class members paid for services they could not use because
14 those services were curtailed, eliminated, or because the student followed the
15 university’s instruction to leave campus and return home.

16 80. The online-only education provided by Pepperdine has not compared and
17 cannot compare to the live classes and access to facilities bargained for and paid for by
18 Plaintiffs and the other Class members that promised to be delivered by Pepperdine.

19 81. Plaintiffs and Class members were provided with an online substitute for
20 the hands-on, in-person coursework for which they contracted—and for which
21 Plaintiffs and Class members paid.

22 82. The emergency remote, online learning classes offered to Spring 2020
23 students since March deprived students of in-person learning from their peers and
24 school faculty. The move to these remote classes also deprived students of access to
25 the facilities, materials, and opportunities only offered on Pepperdine’s physical
26

27 ⁴³ <https://emergency.pepperdine.edu/page/4/>.

28 ⁴⁴ *Id.*

1 campus, including laboratory and research experience, use of on-campus facilities,
2 such as the gym and libraries, and use of on-campus services and events such as
3 sporting events, end-of-year programs, lectures, and various student services.

4 83. The online classes Plaintiffs and their peers were provided were not the
5 in-person, campus experience that Plaintiffs and other Pepperdine students chose for
6 their university education. The tuition and fees that Pepperdine charged were
7 predicated on access to—and constant interaction with—and feedback from peers,
8 mentors, professors, and guest lecturers; access to technology, libraries, and
9 laboratories; opportunities to attend or participate in spectator sports and athletic
10 programs; access to student government and health services; and participation in
11 extracurricular groups and learning, among other things.

12 84. Pepperdine students have offered apt descriptions of the loss they have
13 experienced as a result of the pandemic, highlighting the disparity between students’
14 bargained for in-person educational experience and the online experience that
15 Pepperdine provided.

16 85. As reflected in a Change.org petition, with over 1,500 supporters,
17 students at Pepperdine highlight the loss experienced by students:

18 “Due to COVID-19, Pepperdine, like many other
19 universities, has switched to a mainly remote system to
20 mitigate the spread of the virus. However, they are failing to
21 recognize that just because we have a ‘world class
22 education’ does not mean that remote learning is a substitute
23 for in-class learning and other on-campus services. What we
24 pay for as part of our tuition is to be taught by a professor in
25 a class setting where we can actively engage, ask questions,
26 and interact with our peers. How could the current decision
27 made not impact tuition if we cannot utilize resources to the
28 fullest extent?”

Trying to accommodate by providing students with more
online services is not nearly the same as the experience we
would have in-person. Just because we still have access to
the same professors and the same material does not mean
that the overall experience is equivalent to the price of in-
person education. Many students have an extra difficult time
learning remotely and do not reap any benefits. So why are

1 we still being asked to pay the same amount as if
2 everything's the same?⁴⁵

3 This petition was originally made to achieve one goal: to
4 lower tuition. I felt that after all the time, money, and energy
5 we put into being students there, none of it was taken under
6 consideration by Pepperdine. Clearly, discounting tuition is
7 the moral thing to do as a “Christian” University, but instead
8 they are choosing to profit from their students during a
9 national pandemic and economic crisis”⁴⁶

10 86. Students also posted comments explaining why they joined the petition,
11 highlighting the difference between the in-person education promised versus the
12 online-only education provided. One Pepperdine student wrote “. . . now that so much
13 of the extracurricular things will be taken away (clubs, friends, view, classroom
14 experience) how could they justify us paying the same amount of tuition for online
15 classes? We have wonderful professors and top notch education but going online half
16 way through [Spring 2020] semester proved that online classes are not the same and
17 should not cost nearly as much as they do for in-person instruction.”⁴⁷

18 87. *Graphic*, Pepperdine University’s newspaper reported that students and
19 professors recognized the difference between in-person and online instruction: “‘Zoom
20 is different,’ Professor Jeffrey Schultz wrote in an email. ‘Community is harder to
21 come by when so many layers of technology are between us.’”⁴⁸ Pepperdine junior
22 Michael Kadlick expressed, “The personal connections and classroom experience will
23 be less impactful [in an] online learning [format].”⁴⁹

24 88. Despite the fact that Pepperdine students also would not get what they

25 ⁴⁵ <https://www.change.org/p/pepperdine-university-reduce-pepperdine-university-s-tuition-for-remote-classes-2020-2021>.

26 ⁴⁶ <https://www.change.org/p/pepperdine-university-reduce-pepperdine-university-s-tuition-for-remote-classes-2020-2021/u/27373322>.

27 ⁴⁷ <https://www.change.org/p/pepperdine-university-reduce-pepperdine-university-s-tuition-for-remote-classes-2020-2021/c/799687260>.

28 ⁴⁸ <http://pepperdine-graphic.com/students-prepare-to-conquer-virtual-learning/>.

⁴⁹ *Id.*

1 bargained for in contracting for on-campus courses, opportunities, facilities, and
2 resources, Pepperdine has inexplicably refused to prorate or refund Plaintiffs and
3 Class members any of the tuition or mandatory fees they had paid for the Spring 2020
4 semester.

5 89. Such denial of tuition and fee refunds was reported in the Pepperdine
6 *Graphic* after a Virtual Town Hall hosted by Provost Rick Marrs, Vice President of
7 Student Affairs Connie Horton, President Jim Gash, and Seaver Dean Michael
8 Feltner.⁵⁰

9 90. Instead, Pepperdine announced tuition for Plaintiff Pinzon’s graduate
10 program will increase 3.8% for the Fall 2020 term.

11 91. Pepperdine does so notwithstanding its recognition that its
12 “unprecedented actions that have significantly impacted the academic experience for
13 many of our students.”⁵¹

14 92. And Pepperdine does so despite receiving substantial monetary federal
15 assistance from the CARES Act, Pepperdine has refused to reimburse Plaintiffs and
16 similarly situated students for failing to provide the in-person services and educational
17 opportunities paid for by the students. Pepperdine is thus financially benefitting from
18 the pandemic while further burdening students and families, many of whom have been
19 financially and/or physically impacted by COVID-19.

20 93. All the while, Pepperdine’s students graduate with significant student
21 loan debt to pay for an experience that nobody bargained for, with students averaging
22 \$25,000 in federal loan debt after graduation, with students taking out private loans
23 averaging \$18,722 in private loan debt at graduation.⁵²

24
25 ⁵⁰ <http://pepperdine-graphic.com/live-updates-pepperdine-administration-holds-virtual-town-hall-about-rest-of-the-semester/>.

26 ⁵¹ <https://emergency.pepperdine.edu/page/4/>.

27 ⁵² <https://www.usnews.com/best-colleges/pepperdine-university-1264/paying#:~:text=Student%20Loan%20Debt%20for%20Pepperdine%20University&text=At%20P>

V. CLASS ACTION ALLEGATIONS

94. Plaintiffs sue under Rule 23(a), (b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Class defined as follows:

All students who paid or were obligated to pay tuition, fees or other costs to Pepperdine University for the Spring 2020 academic term.

Excluded from the Class is Pepperdine, any entity in which Pepperdine has a controlling interest, and Pepperdine’s legal representatives, predecessors, successors, assigns, and non-student employees. Also excluded from the Class are students enrolled in programs that were exclusively online prior to March 2020. Further excluded from the Class is this Court and its employees. Plaintiffs reserve the right to modify or amend the Class definition including through the creation of sub-classes if necessary, as appropriate, during this litigation.

95. The definition of the Class is unambiguous. Plaintiffs are members of the Class Plaintiffs seek to represent. Class members can be notified of the class action through contact information and/or address lists maintained in the usual course of business by Pepperdine.

96. Per Rule 23(a)(1), Class members are so numerous and geographically dispersed that their individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiffs but may be ascertained from Pepperdine’s records. However, given the thousands of students enrolled at Pepperdine in a given year, that number greatly exceeds the number to make joinder possible. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

97. Pepperdine has acted or refused to act on grounds generally applicable to

Pepperdine%20University%2C%20the%20median,borrowers%20who%20graduated%200is%20%24259.

1 Plaintiffs and Class members, making appropriate final injunctive relief and
2 declaratory relief regarding the Class under Rule 23(b)(2).

3 98. Consistent with Rule 23(a)(2), Pepperdine engaged in a common course
4 of conduct giving rise to the legal rights sought to be enforced by Class members.
5 Similar or identical legal violations are involved. Individual questions pale by
6 comparison to the numerous common questions that predominate. The injuries
7 sustained by Class members flow, in each instance, from a common nucleus of
8 operative facts—Pepperdine’s campus closure and student evictions, its complete
9 transition to online classes, and Pepperdine’s refusal to fully refund tuition, fees,
10 and/or room and board.

11 99. Additionally, common questions of law and fact predominate over the
12 questions affecting only individual Class members under Rule 23(a)(2) and Rule
13 23(b)(3). Some of the common legal and factual questions include:

- 14 a. Whether Pepperdine engaged in the conduct alleged;
- 15 b. Whether Pepperdine has a policy and/or procedure of denying refunds,
16 in whole or in part, to Plaintiffs and Class members;
- 17 c. Whether Pepperdine breached identical contracts with Plaintiffs and
18 Class members;
- 19 d. Whether Pepperdine’s restitution based on quasi-contract should
20 occur;
- 21 e. Whether Pepperdine’s acts and practices complained of are “unfair”
22 under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
23 17200, *et seq.*; and
- 24 f. The nature and extent of damages and other remedies to which the
25 conduct of Pepperdine entitles Class members.

26 100. The Class members have been damaged by Pepperdine through its
27 practice of denying refunds to Class members.

28

1 101. Plaintiffs' claims are typical of the claims of the other Class members
2 under Rule 23(a)(3). Plaintiffs are students that enrolled at Pepperdine for the Spring
3 2020 term. Like other Class members, Plaintiffs were instructed to leave Pepperdine's
4 campus, forced to take online classes, and has been completely or partially denied a
5 refund for tuition, fees, and/or room and board.

6 102. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the
7 interests of the Class as required by Rule 23(a)(4). Plaintiffs are familiar with the basic
8 facts that form the bases of the Class members' claims. Plaintiffs' interests do not
9 conflict with the interests of the other Class members they seek to represent. Plaintiffs
10 have retained counsel competent and experienced in class action litigation and intend
11 to prosecute this action vigorously. Plaintiffs' counsel have successfully prosecuted
12 complex class actions, including consumer protection class actions. Plaintiffs and
13 Plaintiffs' counsel will fairly and adequately protect the interests of the Class
14 members.

15 103. The class action device is superior to other available means for the fair
16 and efficient adjudication of the claims of Plaintiffs and Class members under Rule
17 23(b)(3). The relief sought per individual members of the Class is small given the
18 burden and expense of individual prosecution of the potentially extensive litigation
19 necessitated by the conduct of Pepperdine. It would be virtually impossible for Class
20 members to seek redress individually. Even if Class members themselves could afford
21 such individual litigation, the court system could not.

22 104. In addition, under Rule 23(b)(3)(A), individual litigation of the legal and
23 factual issues raised by the conduct of Pepperdine would increase delay and expense
24 to all parties and to the court system. The class action device presents far fewer
25 management difficulties and provides the benefits of a single, uniform adjudication,
26 economies of scale, and comprehensive supervision by a single court.

27 105. Under Rule 23(b)(3)(C), it is desirable to concentrate the litigation of the
28

1 claims of Plaintiffs and Class members in this forum given that Pepperdine is located
2 within this judicial district and discovery of relevant evidence will occur within this
3 district.

4 106. Given the similar nature of the Class members' claims and the absence of
5 material differences in the state statutes and common laws upon which the Class
6 members' claims are based, a nationwide Class will be easily managed by the Court
7 and the parties per Rule 23(b)(3)(D).

8 **VI. FIRST CAUSE OF ACTION**
9 **BREACH OF CONTRACT**

10 107. Plaintiffs restate and reallege, and incorporate herein by reference, the
11 preceding paragraphs as if fully set forth herein.

12 108. Plaintiffs bring this claim individually and on behalf of the other
13 members of the Class.

14 109. Plaintiffs and Class members entered into identical, binding contracts
15 with Pepperdine by accepting Pepperdine's offer to register for on-campus classes in
16 accordance with the terms of the Catalogues, Pepperdine's publications, and
17 Pepperdine's usual and customary practice of providing on-campus courses.

18 110. The language on Pepperdine's website and in Pepperdine's Catalogues,
19 and other materials made available to students promising in-person instruction,
20 campus facilities, services, and resources became terms of the contract. That is, at the
21 time of contract, the parties had the reasonable expectation that, in exchange for
22 tuition and fee payments, Pepperdine would provide Plaintiffs and Class members
23 with an on-campus education. The nature of the instruction provided by Pepperdine at
24 the time Plaintiffs and Class members enrolled (i.e., in-person classroom instruction)
25 as well as the facilities and resources offered by Pepperdine across its schools and
26 campuses were and are material terms of the bargain and contractual relationship
27 between students and Pepperdine.

28

1 111. Under their contracts with Pepperdine, and Pepperdine’s usual and
2 customary practice of providing on-campus courses, Plaintiffs and Class members
3 registered for on-campus courses and paid Pepperdine tuition, fees, and/or room and
4 board charges for Pepperdine to provide in-person instruction, access to Pepperdine’s
5 facilities, and/or housing services.

6 112. Plaintiffs and Class members have fulfilled all requirements of their
7 mutually agreed contracts, having followed the Catalogue’s policies, procedures, and
8 requirements for registering and paying for on-campus courses and access to on-
9 campus facilities and services. Plaintiffs and Class members have paid Pepperdine for
10 all Spring 2020 term financial assessments.

11 113. By ceasing in-person instruction, relegating Plaintiffs and Class members
12 exclusively to remote instruction, and shutting down campus facilities and
13 opportunities to Plaintiffs and the Class, Pepperdine failed to provide the services for
14 which Plaintiffs and Class members bargained for when they entered into their
15 contractual relationship with Pepperdine.

16 114. Pepperdine’s failure to provide in-person instruction and shutdown of
17 campus facilities amounts to a material breach of the contract.

18 115. The tuition, fees, and other costs that Plaintiffs and the proposed Class
19 paid were intended to cover in-person educational and extracurricular services.
20 Pepperdine, however, has failed and continues to fail to provide the education and
21 services due under the contracts, yet has improperly retained the funds Plaintiffs and
22 the other Class members paid or agreed to pay.

23 116. Plaintiffs and members of the Class have suffered damages as a direct and
24 proximate result of Pepperdine’s breach, including being deprived of the education,
25 experience, and services that they were promised and reasonably expected to obtain,
26 and for which they have paid.

27 117. Plaintiffs and Class members are entitled to an award of money damages
28

1 or partial restitution in an amount to be determined at trial as redress for Pepperdine’s
2 breach, including but not limited to prorated reimbursement of the tuition, fees, and
3 other expenses for services that Pepperdine failed and continues to fail to deliver fully.

4 118. Pepperdine’s performance under the contracts is not excused because of
5 COVID-19. Even if performance were excused or impossible, Pepperdine would
6 nevertheless be required to return the funds received for services and/or goods that it
7 did not provide.

8 **VII. SECOND CAUSE OF ACTION**
9 **BREACH OF IMPLIED CONTRACT**

10 119. Plaintiffs restate and reallege, and incorporate herein by reference, the
11 preceding paragraphs as if fully set forth herein.

12 120. Plaintiffs plead this Count in the alternative to Count I.

13 121. Plaintiffs and Class members entered into an implied contract by
14 accepting Pepperdine’s offer to register for on-campus classes and for use of
15 Pepperdine’s facilities in accordance with Pepperdine’s usual and customary practice
16 of providing on-campus courses.

17 122. Under the implied contract, Plaintiffs and Class members registered for
18 on-campus courses.

19 123. It was the reasonable expectation of Plaintiffs and Class members that
20 Pepperdine would provide them with on-campus—as opposed to online—classes and
21 instruction and use of Pepperdine’s facilities as mutually agreed and intended in
22 accordance with Pepperdine’s publications including, brochures, advertisements, and
23 other promotional materials and Pepperdine’s usual and customary practice of
24 providing on-campus courses.

25 124. Plaintiffs and Class members accepted and intended to use and enjoy
26 Pepperdine’s on-campus classes and facilities.

27 125. Plaintiffs and Class members have fulfilled all expectations of their
28

1 mutual agreement, by registering and paying for on-campus courses and access to on-
2 campus facilities and services for the Spring 2020 semester. Plaintiffs and Class
3 members have paid Pepperdine for all Spring 2020 semester financial assessments.

4 126. However, Pepperdine breached the implied contract, failed to provide
5 those on-campus classes and/or services, and has not otherwise performed as obligated
6 and required by the implied-in-fact contract between Plaintiffs and Class members and
7 Pepperdine. Pepperdine moved all classes to online classes, restricted or eliminated
8 Class members' ability to access university facilities, and/or evicted Class members
9 from campus housing. In doing so, Pepperdine has deprived and continues to deprive
10 Plaintiffs and Class members from the benefit of their bargains with Pepperdine.

11 127. Plaintiffs and Class members have been damaged as a direct and
12 proximate result of Pepperdine's breach. The online classes provided by Pepperdine
13 are objectively different from the on-campus classes for which the parties entered into
14 an implied contract.

15 128. Plaintiffs and Class members are entitled to damages, including but not
16 limited to tuition refunds, fee refunds, and/or room and board refunds.

17 **VIII. THIRD CAUSE OF ACTION**

18 **RESTITUTION BASED ON QUASI-CONTRACT**

19 129. Plaintiffs restate and reallege, and incorporate herein by reference, the
20 preceding paragraphs as if fully set forth herein.

21 130. Plaintiffs bring this claim individually and on behalf of other members of
22 the Class in the alternative.

23 131. Plaintiffs and other members of the Class conferred a benefit or
24 enrichment upon Pepperdine by paying tuition and fees to Pepperdine, which were
25 beneficial to Pepperdine, at the expense of Plaintiffs and members of the Class.

26 132. Plaintiffs and members of the Class paid tuition and fees and did not
27 receive the full benefit of their bargain from Pepperdine, thus resulting in their
28

1 impoverishment.

2 133. Pepperdine has retained the benefit paid by Plaintiffs and the Class
3 despite their failure to provide the services for which the benefit was paid.

4 134. There is no justification or cause for Pepperdine’s failure to return the
5 portion of the tuition and fees that Pepperdine has unjustifiably kept for itself even
6 though it failed to complete the services for which Plaintiffs provided the funds to
7 Pepperdine.

8 135. Accordingly, Pepperdine has been unjustly enriched and should pay as
9 restitution a prorated portion of the funds for the Spring 2020 term that Plaintiffs and
10 the Class paid for tuition and fees.

11 **IX. FOURTH CAUSE OF ACTION**

12 **CAL. BUS. & PROF. CODE § 17200, *et seq.* – UNFAIR CONDUCT**

13 136. Plaintiffs restate and reallege, and incorporate herein by reference, the
14 preceding paragraphs as if fully set forth herein.

15 137. Plaintiffs bring this claim individually and on behalf of the other
16 members of the Class.

17 138. California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*
18 *seq.*, prohibits an “unlawful, unfair or fraudulent business act or practice.”

19 139. Pepperdine violated the Unfair Competition Law by committing an
20 “unfair” act by breaching its contracts with Plaintiffs and Class members, failing to
21 provide services paid for, including in-person instruction and access to Pepperdine’s
22 facilities, and failing to refund tuition, fees, and costs.

23 140. Pepperdine’s practices are unfair because Pepperdine represented it
24 would offer in-person instruction and access to Pepperdine’s facilities. Plaintiffs and
25 Class members paid for the Spring 2020 semester and college experience as
26 advertised. But Plaintiffs and Class members did not receive the services they paid
27 for— Pepperdine moved all classes online, restricted student access to university
28

1 facilities, and evicted Class members from campus housing.

2 141. Pepperdine continues to charge full tuition and fees as if full services and
3 facilities are being provided, collecting millions of dollars from students deprived of
4 the full benefit of their payments.

5 142. Pepperdine's practices are immoral, unethical, oppressive, unscrupulous,
6 or substantially injurious because it deprives Plaintiffs and Class members of their
7 bargained for educational experience, opportunities, and access to facilities, and forces
8 students and families to bear the burden of Pepperdine's COVID-19 related shutdown.

9 143. As a direct and proximate result of Pepperdine's unlawful and unfair
10 business acts and practices, Plaintiffs and Class members have suffered and will
11 continue to suffer economic injuries and actual damages.

12 144. Said economic injuries and actual damages occurred in California. For
13 example, Pepperdine's decision to refuse to provide Plaintiffs and Class members with
14 prorated tuition and fee refunds took place in California.

15 145. Plaintiffs and members of the Class are entitled to, and seek disgorgement
16 and restitution of, the benefits unjustly retained whether in whole or in part, including
17 through refunds for tuition, fees, and/or room and board.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs and Class members request that the Court enter an
20 order or judgment against Pepperdine including:

21 A. Certification of the action as a Class Action under Rules 23(b)(2) and
22 23(b)(3) of the Federal Rules of Civil Procedure, and appointment of Plaintiffs as
23 Class Representatives and their counsel of record as Class Counsel;

24 B. Damages in the amount of unrefunded tuition, fees, and/or room and
25 board;

26 C. Actual damages and all such other relief as provided under the law;

27 D. Pre-judgment and post-judgment interest on such monetary relief;

28

1 E. Other appropriate injunctive relief as permitted by law or equity,
2 including an order enjoining Pepperdine from retaining refunds for tuition, fees, and/or
3 room and board;

4 F. The cost of bringing this suit, including reasonable attorney fees; and

5 G. All other relief to which Plaintiffs and members of the Class may be
6 entitled by law or in equity.

7 **JURY DEMAND**

8 Plaintiffs demand trial by jury on their own behalf and on behalf of Class
9 members.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Respectfully submitted,

Dated: September 16, 2021

By: /s/ Daniel J. Kurowski

Christopher R. Pitoun (SBN 290235)
HAGENS BERMAN SOBOL SHAPIRO LLP
301 North Lake Avenue, Suite 203
Pasadena, CA 91101
T: (213) 330-7150
F: (213) 330-7152
christopherp@hbsslaw.com

Steve W. Berman (*Pro Hac Vice*)
steve@hbsslaw.com
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
T: (206) 623-7292

Daniel J. Kurowski (*Pro Hac Vice*)
dank@hbsslaw.com
Whitney K. Siehl (*Pro Hac Vice*)
whitneys@hbsslaw.com
HAGENS BERMAN SOBOL SHAPIRO LLP
455 N. Cityfront Plaza Dr., Suite 2410
Chicago, IL 60611
T: (708) 628-4949

Dated: September 16, 2021

By: /s/ Cheryl Kenner

Carney R. Shegerian, State Bar No. 150461
CShegerian@Shegerianlaw.com
Anthony Nguyen, State Bar No. 259154
ANguyen@Shegerianlaw.com
Cheryl A. Kenner, State Bar No. 305758
CKenner@Shegerianlaw.com
SHEGERIAN & ASSOCIATES, INC.
145 South Spring Street, Suite 400
Los Angeles, CA 90012
T: (310) 860-0770
F: (310) 860-0771

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

ECF ATTESTATION

Pursuant to Local Rule 5-4.3.4, the filer of this document, Daniel J. Kurowski, attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized this filing.

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