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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

By JAME THOMAS
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

14 JONATHAN RECINOS, HANS YU, ROBIN
 15 HEINONEN, HAREE AKKALA, NEELANSH
 JAIN, and DANIEL ROIZEN, individually and
 16 on behalf of all other persons similarly situated,

Case No. **RG19038659**

CLASS ACTION

COMPLAINT

Plaintiffs,

v.

19 THE REGENTS OF THE UNIVERSITY OF
 20 CALIFORNIA,

Defendant.

COMPLAINT

Filed By Fax

1 Plaintiffs, individually and on behalf of all others similarly situated, make the following
2 allegations upon information and belief, except as to allegations specifically pertaining to
3 Plaintiffs, which are based on their personal knowledge.

4 **NATURE OF THE ACTION**

5 1. Defendant The Regents of the University of California (hereafter, “Defendant,” the
6 “Regents”, or the “University”) oversees California’s public university system and its ten
7 University campuses: UC Berkeley, UC Davis, UC Irvine, UCLA, UC Merced, UC Riverside, UC
8 San Diego, UC San Francisco, UC Santa Barbara, and UC Santa Cruz. Although the University is
9 a public institution, it takes advantage of its students by charging exorbitant and unlawful late
10 charges to increase revenue and profit margins.

11 2. Defendant charges its students late fees pursuant to “Enrollment Contracts.”
12 Students that enroll for classes at the University and pay tuition are bound by the Enrollment
13 Contracts by virtue of their enrollment. The Enrollment Contracts remain in effect as of the date of
14 the Complaint. The late charges Defendant imposes on its California students pursuant to the
15 Enrollment Contracts are hereinafter referred to as the “Late Fees.”

16 3. As is set forth more particularly below, Plaintiffs and the members of the proposed
17 plaintiff Class are individuals who are or were Defendant’s students in California, and who paid or
18 were charged Late Fees in connection with Defendant’s services rendered in the State of
19 California.

20 4. The Late Fees have generated substantial revenues and profits for Defendant and its
21 affiliates. By this complaint, Plaintiffs seek, *inter alia*, to permanently enjoin the enforcement and
22 threat of collection of the Late Fees and to recover as damages and/or restitution all Late Fees
23 heretofore paid by members of the plaintiff class.

24 5. The Late Fees constitute unlawful penalties that are void and unenforceable under
25 California Civil Code § 1671 (“§ 1671”); unlawful and unfair under California’s Unfair
26 Competition Law, Bus. & Prof. Code § 17200 *et seq.* (the “UCL”); and unconscionable under
27 California Civil Code § 1750 *et seq.*, the Consumers Legal Remedies Act (the “CLRA”).
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1 6. Plaintiffs therefore seek, as alleged with greater particularity below, to (a)
2 permanently enjoin Defendant from collecting the Late Fees; (b) impose constructive trusts on all
3 amounts by which Defendant was unjustly enriched as a result of collecting the Late Fees; (c)
4 recover as damages and/or restitution all Late Fees heretofore paid by members of the plaintiff
5 classes; and (d) obtain all such other relief to which they may be entitled pursuant to Civil Code §
6 1671, the UCL or any other applicable provision of California law, including, without limitation,
7 disgorgement, actual damages and restitution.

8 7. On August 2, 2019, Plaintiffs notified Defendant in writing via certified mail, with
9 return receipt requested, of the particular violations of law alleged in this complaint, and demanded
10 that they, and each of them, rectify the problems associated with the practices and policies as set
11 forth herein. A copy of the August 2, 2019 letter (which was served on Defendant on August 5,
12 2019), is attached hereto as Exhibit 1. Defendant was advised that in the event that the relief
13 requested had not been provided within thirty (30 days), Plaintiffs would bring an action for
14 damages pursuant to the CLRA. Wherefore, Plaintiffs seek damages, individually and on behalf of
15 all others similarly situated, including punitive damages, restitution, and injunctive relief for these
16 violations of the CLRA.

THE PARTIES

17
18 8. Plaintiff Jonathan Recinos is a resident of Oakland, California. Plaintiff Recinos is
19 a recent graduate of UC Berkeley. Plaintiff Recinos has been charged/and or paid the following
20 Late Fees pursuant to the Enrollment Contract: a \$25 Late Fee for the “Spring 2018” term,
21 described on his student statement simply as “Late Fee.” On information and belief, the Late Fee
22 Plaintiff Recinos paid was for being late to register for classes. As a result thereof, Plaintiff
23 Recinos suffered an injury in fact resulting in the loss of money and/or property.

24 9. Plaintiff Hans Yu is a resident of San Diego, California. Plaintiff Yu is a student at
25 UC San Diego. Plaintiff Yu has been charged and/or paid the following Late Fees pursuant to the
26 Enrollment Contract: (1) a \$50.00 Late Registration Fee in October 2018, (2) a \$50.00 Late
27 Enrollment Fee in October 2018, (3) a \$50.00 Late Registration fee in December 2018, (4) a
28

1 \$50.00 Late Enrollment Fee in December 2018, (5) a \$50.00 Late Enrollment Fee in March 2019,
2 and (6) a \$50.00 Late Registration Fee in March 2019. As a result thereof, Plaintiff Yu suffered an
3 injury in fact resulting in the loss of money and/or property.

4 10. Plaintiff Robin Heinonen is a resident of San Diego, California. Plaintiff Heinonen
5 is a student at UC San Diego. Plaintiff Heinonen has been charged and/or paid the following Late
6 Fees pursuant to the Enrollment Contract: (1) a \$50.00 Late Registration Fee in September 2018,
7 and (2) a \$50.00 Late Enrollment Fee in September 2018. As a result thereof, Plaintiff Heinonen
8 suffered an injury in fact resulting in the loss of money and/or property.

9 11. Plaintiff Haree Akkala is a resident of Davis, California. Plaintiff Akkala is a
10 student at UC Davis. Plaintiff Akkala has been charged and/or paid the following Late Fees
11 pursuant to the Enrollment Contract: (1) a \$110.00 Late Registration Fee in September 2018, (2) a
12 \$110.00 Late Registration Fee in December 2018, and (3) a \$110.00 fee billed as a “Summer
13 Session Late Fee” (presumed to be for late registration) in June 2019. As a result thereof, Plaintiff
14 Akkala suffered an injury in fact resulting in the loss of money and/or property.

15 12. Plaintiff Neelansh Jain is a resident of Los Gatos, California. Plaintiff Jain is a
16 student at UC Santa Cruz. Plaintiff Jain has been charged and/or paid the following Late Fees
17 pursuant to the Enrollment Contract: (1) a Late Registration Fee of \$50.00 in September 2016, (2) a
18 Delinquent Account Fee of \$17.50 in September 2016, (3) a “Housing Late Fee” of \$25.00 in
19 January 2017, (4) a second “Housing Late Fee” of \$25.00 in January 2017, (5) a “Housing Late
20 Fee” of \$25.00 in February 2017, (6) a Late Registration Fee of \$50.00 in March 2017, (7) a
21 “Housing Late Fee” of \$25.00 in March 2017, (8) a Delinquent Account Fee of \$17.50 in May
22 2017, (9) a “Late Payment” Fee of \$17.50 in June 2017, (10) a Late Registration Fee of \$50.00 in
23 September 2018, (11) a Late Registration Fee of \$50.00 in January 2019, (12) a Late Registration
24 Fee of \$50.00 in March 2019, (13) a Delinquent Account Fee of \$22.00 in August 2019, and (14) a
25 Delinquent Account Fee of \$22.00¹ in September 2019. As a result thereof, Plaintiff Jain suffered
26 an injury in fact resulting in the loss of money and/or property.

27 ¹ UC Santa Cruz increased its Delinquent Account Fee from \$17.50 to \$22.00 in September 2018.
28 See <https://sbs.ucsc.edu/latefees.html> (last accessed 10/3/2019) (“Important Notice: Beginning with

1 17. Federal court subject matter jurisdiction over this action does not exist. Diversity of
2 citizenship does not exist. Plaintiffs assert no federal question or violations of federal law in this
3 Complaint. Plaintiffs' individual claims do not exceed \$75,000.

4 FACTUAL ALLEGATIONS

5 18. According to binding California law, a student's acceptance of an offer of admission
6 from the University creates a binding contract. The Complaint refers to the contract as the
7 "Enrollment Agreement." The University imposes many general fees pursuant to the Enrollment
8 Agreement, including tuition and student activity fees. Relevant here, the University also imposes
9 Late Fees pursuant to the Enrollment Agreement. The precise amount of the Late Fees is posted on
10 the respective campuses' website.²

11 19. Plaintiffs are all either current students at Defendant's member schools (or recent
12 graduates) subject to the Enrollment Agreement. Defendant sets all Late Fees at issue here
13 unilaterally, and the Late Fees are not subject to modification or negotiation and are presented to
14 prospective students on a "take it or leave it" basis.

15 20. The term "Late Fees" refers to each of the following Late Fees charged by
16 Defendant at each of its members schools: late fees charged for late payment of tuition, late fees
17 charged for late registration (also referred to as "Late Registration Fees"), late fees charged for late
18 enrollment (also referred to as "Late Enrollment Fees"), late fees charged for changing class lists
19 after the relevant deadline or fail to enroll on time and thus must pay a fee for the generation of a
20 study list (also referred to as "Late Study List Fees"), late fees charged for being late to declare
21 candidacy (also referred to as "Late Declare Candidacy Fees"), late fees charged for being late to
22 make student housing payments (also referred to as "Housing Late Fees"), and late fees charged for
23 being late to make any outstanding campus charges on a student's account (referred to as
24 "Delinquent Account Fees").

25 _____
26 ² See, e.g., <https://studentbilling.berkeley.edu/billing/delinquent-accounts> (last accessed 10/3/2019)
27 (UC Berkeley's \$50 Delinquent Account Fees); <https://sbs.ucsc.edu/latefees.html> (last accessed
28 10/3/2019) (UC Santa Cruz Late Registration Fee listed as \$50.00 per quarter);
<https://students.ucsd.edu/finances/fees/registration/late-fees.html> (last accessed 10/3/2019) (listing
UC San Diego's Late Enrollment Fees as \$50).

1 21. Although the specific amounts of the Late Fees vary from school to school, they are
2 applied uniformly within each member school. Thus, for example, if a student's account becomes
3 delinquent because the student has not paid outstanding campus charges on time, the Late Fee (in
4 this case, a Delinquent Account Fee) that the student will be charged is a concrete and certain sum
5 that is capable of immediate determination. In another example, whenever a student is late to
6 timely pay for housing at UC Santa Cruz, Defendant charges the student a set \$25.00.³

7 22. Defendant has charged and collected Late Fees from, Plaintiffs and other members
8 of the proposed class. This has been Defendant's consistent policy during the last four years, at
9 least. Defendant has collected significant revenues from imposing Late Fees on Plaintiffs and the
10 members of the proposed class.

11 23. If and to the extent that Defendant suffers, would suffer or has suffered any damage
12 upon the occurrence of the condition that triggers the Late Fees (*e.g.*, being late to make a
13 payment), it is neither impracticable nor extremely difficult to fix the actual damage. Furthermore,
14 if and to the extent that Defendant suffers, would suffer, or has suffered any damage upon the
15 condition that triggers the Late Fees, the Late Fees are not a reasonable measure or approximation
16 of such damages and do not provide fair average compensation therefor. Moreover, they are – and
17 under the circumstances existing at the time the Enrollment Agreement was made, were –
18 unreasonable. On information and belief, Defendant did not conduct a reasonable endeavor to fix
19 fair average compensation for losses, if any, that it incurs, would incur or has incurred by virtue of
20 any of the conditions that trigger the Late Fees. The Late Fees were not negotiated or discussed
21 with Plaintiffs or the members of the proposed class.

22 24. The Late Fees imposed by Defendant are unconscionable, void and unenforceable
23 under Civil Code §§ 1670.5, 1671(b) and/or 1671(d), constitute an unlawful, unfair and deceptive
24 practice under the UCL, and violate the CLRA, including without limitation Civil Code §§
25 1770(a)(14) and 1770(a)(19).

26 _____
27 ³ "Late Fees are assessed if payment is not in your university billing account by the established due
28 dates. Each housing late fee is \$25." See <https://housing.ucsc.edu/billing/index.html> (last accessed 10/3/2019).

1 **CLASS ACTION ALLEGATIONS**

2 25. Plaintiffs bring this action on their own behalf and on behalf of all other persons
3 similarly situated pursuant to the provision of Code of Civil Procedure § 382 and Civil Code
4 § 1781. Plaintiffs seek certification of the following class (the “Class”):

5 All current or former students at Defendant’s California campuses who
6 reside in California and paid or were charged one or more Late Fees
7 imposed by Defendant pursuant to the Enrollment Contract within the past
8 four years. Any judicial officer to whom the Action is assigned is excluded
9 from the Class.

10 26. Numerosity of the Class: The Class is composed of at least thousands of individuals,
11 the joinder of which in one action would be impracticable. The disposition of their claims through
12 this class action will benefit both the parties and the Court. The identities of individual members of
13 the Class are ascertainable through Defendant’s billing records.

14 27. Existence and Predominance of Common Questions of Fact and Law: There is a
15 well-defined community of interest in the questions of law and fact involved affecting the members
16 of the proposed Class. The questions of law and fact common to the proposed Class predominate
17 over questions affecting only individual class members.

18 28. Such questions include, but are not limited to, the following:

- 19 a. Whether the Defendant’s Late Fees are illegal, void and unenforceable contractual
20 penalties pursuant to Civil Code § 1671(d);
- 21 b. Whether damages are extremely difficult or impracticable to determine;
- 22 c. Whether Defendant conducted a reasonable endeavor, prior to imposing the Late
23 Fees or including them in the Enrollment Agreement, to fix fair average
24 compensation for losses, if any, that it suffers upon the occurrence of the condition
25 that triggers the Late Fees, and if so, whether the Late Fees reflect the results of
26 such a reasonable endeavor.
- 27 d. Whether Defendant’s Late Fees are unconscionable;
- 28 e. Whether Defendant’s Late Fees violate the UCL;
- f. Whether Defendant’s Late Fees violate the CLRA;

- 1 g. Whether Plaintiffs and the proposed Class members are entitled to restitution of
2 Late Fees paid to Defendant;
- 3 h. Whether Plaintiffs and the proposed Class members are entitled to an award of
4 reasonable attorneys' fees, pre-judgment interest and costs of this suit; and
- 5 i. Whether Defendant should be enjoined from collecting Late Fees and/or from
6 enforcing the Late Fee provision in their existing contracts.

7 29. Typicality: Plaintiffs are asserting claims that are typical of the proposed Class
8 members' claims, having paid Late Fees to Defendant pursuant to the Enrollment Agreement.
9 Plaintiffs and the proposed Class members have similarly suffered harm arising from Defendant's
10 violations of the law, as alleged herein.

11 30. Adequacy: Plaintiffs are adequate representatives of the proposed Class. Their
12 interests do not conflict with, and are not antagonistic to, the interests of the members of that Class.
13 They will fairly and adequately represent and protect the interests of the Class.

14 31. Superiority: A class action is superior to other available means for the fair and
15 efficient adjudication of Plaintiffs' and the proposed Class members' claims. Plaintiffs and the
16 members of the proposed Class have suffered irreparable harm as a result of Defendant's unfair,
17 unlawful, and unconscionable conduct. Because of the size of the individual Class members'
18 claims, few, if any, proposed Class members could afford to seek legal redress for the wrongs
19 complained of herein. Absent the class action, the proposed Class members will continue to suffer
20 losses and the violations of law described herein will continue without remedy, and Defendant will
21 be permitted to retain the proceeds of their misdeeds. Defendant continues to engage in the
22 unlawful, unfair, and unconscionable conduct that is the subject of this Complaint.

23 **FIRST CAUSE OF ACTION**

24 **Violation of California Civil Code § 1671(d)**

25 32. Plaintiffs incorporates herein by reference the allegations contained in all preceding
26 paragraphs of this complaint.

1 33. Plaintiffs bring this claim individually and on behalf of the members of the Class
2 against Defendant.

3 34. The Late Fees are impermissible liquidated damages provisions under California
4 law. The Late Fees themselves, the contractual provisions that provide for them and their
5 imposition and collection by Defendant violate Civil Code § 1671(d) and are unlawful, void and
6 unenforceable under that statute.

7 35. Civil Code § 1671(d) states that a contractual provision, in a contract for the retail
8 purchase or rental of personal property or services primarily for the party's personal, family, or
9 household purposes, liquidating damages for the breach of the contract, is void except that the
10 parties to such a contract may agree therein on an amount that shall be presumed to be the amount
11 of the damage sustained by a breach thereof, when, from the nature of the cause, it would be
12 impracticable or extremely difficult to fix that actual damage. The Enrollment Agreement is a
13 contract for the purchase of services primarily for personal, family or household use of Plaintiffs
14 and the members of the Class.

15 36. If and to the extent that Defendant suffers, would suffer or has suffered any
16 damages upon the occurrence of the condition that triggers the Late Fees, it would not be
17 impracticable, nor would it be extremely difficult, to determine them with certainty. Furthermore,
18 the liquidated damages in the Enrollment Agreement do not reflect a reasonable endeavor by
19 Defendant to fix fair average compensation for any harm that Defendant would suffer, may suffer
20 or have suffered, if any, upon the occurrence of the condition that triggers the Late Fees. The
21 Enrollment Agreement is a contract of adhesion drafted by Defendant and/or its parents,
22 subsidiaries or affiliates and presented to prospective students on a "take it or leave it" basis with
23 no opportunity for any prospective member to negotiate any of its terms and conditions. The Late
24 Fees provisions in the Enrollment Agreement are liquidated damages provisions that fail to comply
25 with the standards set forth in Civil Code § 1671(d), and therefore constitute impermissible
26 contractual penalties. Defendant's imposition of Late Fees on Plaintiffs and the members of the
27 Class violates, and at all times relevant here to has violated, § 1671(d). Defendant's collection of
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1 Late Fees from Plaintiffs and the members of the Class likewise violates, and at all times relevant
2 hereto has violated, Civil Code § 1671(d).

3 37. Plaintiffs and the members of the Class have suffered an injury in fact resulting in
4 the loss of money and/or property as a proximate result of the violations of law and wrongful
5 conduct of Defendant alleged herein. Pursuant to Civil Code § 1671(d), Plaintiffs, individually and
6 on behalf of the members of the Class, seek an order of this Court preliminarily and permanently
7 enjoining Defendant from further enforcement and collection of Late Fees as alleged herein.

8 Plaintiffs also seeks an order:

- 9 a. Requiring Defendant to cease their unlawful acts and practices;
- 10 b. Directing Defendant to make full restitution of all monies wrongfully obtained;
- 11 c. Forcing Defendant to disgorge all ill-gotten revenues and/or profits; and
- 12 d. Providing such other and further relief as may be just and proper.

13 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

14 **SECOND CAUSE OF ACTION**

15 **Violation of the Consumers Legal Remedies Act,**

16 **California Civil Code §§ 1750 et seq.**

17 38. Plaintiffs incorporate herein by reference the allegations contained in all preceding
18 paragraphs of this complaint.

19 39. Plaintiffs bring this claim individually and on behalf of the members of the Class
20 against Defendant.

21 40. Defendant has engaged in deceptive practices, unlawful methods of
22 competition and/or unfair acts as defined by Civil Code § 1750, et seq., to the detriment of
23 Plaintiffs and the members of the Class. Plaintiffs and the members of the Class have suffered
24 harm as a proximate result of the violations of law and wrongful conduct of Defendant alleged
25 herein.

26 41. Defendant intentionally, knowingly, and unlawfully perpetrated harm upon
27 Plaintiffs and the Class members by inserting unconscionable, unenforceable and illegal provisions
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1 in their Agreements with Plaintiffs and the Class members in violation of Civil Code §
2 1770(a)(19), and by enforcing those provisions. By inserting an unconscionable, unenforceable
3 and void Late Fees provisions in the Enrollment Agreement, and then enforcing those provisions
4 by imposing and collecting Late Fees, Defendant also violated Civil Code § 1770(a)(14), which
5 prohibits them from representing that a transaction confers or involves rights, remedies, or
6 obligations which it does not have or involve, or which are prohibited by law.

7 42. Defendant's policy and practice with respect to their inclusion of Late Fees in their
8 Enrollment Agreement and their collection of Late Fees is unlawful, unethical, oppressive,
9 fraudulent and malicious. The gravity of the harm to all students from Defendant's policies and
10 practices far outweighs any purported utility those policies and practices have.

11 43. Plaintiffs and the members of the Class have suffered harm as a proximate result of
12 the violations of law and wrongful conduct of Defendant alleged herein and will continue to suffer
13 such harm if Defendant's illegal practices are not abated.

14 44. Prior to the filing of this complaint, a CLRA notice letter was served on Defendant
15 which complies in all respects with California Civil Code § 1782(a). A true and correct copy of
16 Plaintiffs' letter is attached as Exhibit 1. Defendant was advised that in the event that the relief
17 requested had not been provided within thirty (30) days, Plaintiffs would bring an action for
18 damages pursuant to the CLRA. Wherefore, Plaintiffs seek all available relief available under the
19 CLRA, including damages, punitive damages, restitution, attorneys' fees and costs, and injunctive
20 relief for this violation of the CLRA.

21 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

22 **THIRD CAUSE OF ACTION**

23 **Unlawful Business Practices in Violation of the Unfair Competition Law**

24 **California Business and Professions Code §§ 17200 et seq.**

25 45. Plaintiffs incorporate herein by reference the allegations contained in all preceding
26 paragraphs of this complaint.

1 46. Plaintiffs bring this claim individually and on behalf of the members of the Class
2 against Defendant.

3 47. Defendant's continuing imposition, enforcement and collection of unlawful,
4 unconscionable and unenforceable Late Fees constitutes an unlawful business practice in violation
5 of Bus. & Prof. Code §§ 17200 et seq. Plaintiffs and the members of the Class have suffered harm
6 as a proximate result of the violations of law and wrongful conduct of Defendant alleged herein.

7 48. Civil Code § 1671(d) states that a provision in a contract liquidating damages for the
8 breach of the contract is void except that the parties to such a contract may agree therein on an
9 amount that shall be presumed to be the amount of the damage sustained by a breach thereof,
10 when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual
11 damage.

12 49. The Late Fees charged by Defendant to, and collected by Defendant from, Plaintiffs
13 and the members of the Class are unlawful liquidated damages provisions under Civil Code §
14 1671(d) for the reasons set forth above. As a result of their inclusion of the Late Fees provisions in
15 the Enrollment Agreement, and their imposition and collection of the Late Fees, Defendant has
16 violated Civil Code § 1671(d).

17 50. The inclusion of the Late Fees provision in the Enrollment Agreement, and
18 Defendant's imposition of the Late Fees on, and collection of the Late Fees from, Plaintiffs and the
19 members of the Class also violate Civil Code § 1670.5 because the Late Fees are unconscionable.
20 Prospective students have no meaningful choice with respect to the inclusion of the Late Fees in
21 the Enrollment Agreement nor in the amount of the Late Fees. The Enrollment Agreement is
22 drafted by Defendant and presented to prospective members on a "take it or leave it" basis with no
23 opportunity or possibility of negotiating any different terms and conditions with Defendant.
24 Moreover, the amounts of the Late Fees are hidden in separate documents online that are difficult
25 for students to find. The Late Fees provisions in the Enrollment Agreement are therefore
26 procedurally unconscionable.

1 51. The Late Fees are unreasonably favorable to Defendant and unduly harsh with
2 respect to Defendant's students, and therefore, are substantively unconscionable. For example, the
3 Late Fees have no relationship whatsoever to any damages incurred by Defendant, if any, upon the
4 occurrence of the condition that triggers the Late Fees.

5 52. The Late Fees charged to Plaintiffs and the members of the Class also violate the
6 Consumers Legal Remedies Act, Civil Code § 1750 et seq., as they are unconscionable,
7 unenforceable and illegal provisions in violation of Civil Code §§ 1770(a)(14) and 1770(a)(19).

8 53. Plaintiffs and the members of the Class have suffered an injury in fact resulting in
9 the loss of money or property as a result of having paid the Late Fees.

10 54. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs seek an order of this Court
11 permanently enjoining Defendant from continuing to engage in their unfair and unlawful conduct
12 as alleged herein. Plaintiffs also seek all available relief under the UCL, including, inter alia, an
13 order requiring Defendant to:

- 14 a. Immediately cease their unlawful acts and practices;
15 b. Make full restitution of all monies wrongfully obtained; and
16 c. Disgorge all ill-gotten revenues and/or profits.

17 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

18 **FOURTH CAUSE OF ACTION**

19 **Unfair Business Practices in Violation of Business and Professions Code**

20 **§§ 17200 et seq.**

21 55. Plaintiffs incorporate herein by reference the allegations contained in all preceding
22 paragraphs of this complaint.

23 56. Plaintiffs bring this claim individually and on behalf of the members of the Class
24 against Defendant.

25 57. The conduct of Defendant, as herein alleged, constitutes an unfair business practice
26 within the meaning of Bus. & Prof. Code §§ 17200, et seq.
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1 58. Defendant violated the “unfair” prong of the UCL by requiring students to enter into
2 contracts of adhesion that include the Late Fees provision, by enforcing the contractual provisions
3 that provide for the imposition of the Late Fees and by imposing and collecting the Late Fees.

4 59. Defendant’s said practices with respect to Late Fees violate the “unfair” prong of
5 the UCL because the Late Fees: (1) constitute unfair and wrongful penalties inconsistent with the
6 language and policy of Civil Code § 1671; and (2) constitute unconscionable provisions, in
7 violation of various laws and policies recognized by the California Legislature and the California
8 courts, including without limitation Civil Code § 1670.5 and the CLRA.

9 60. Defendant’s said practices with respect to the Late Fees also violate the “unfair”
10 prong of the UCL because the utility of the Late Fees is significantly outweighed by the gravity of
11 the harm that they impose on students. The Late Fees have limited or no utility as compared with
12 alternatives that would more fairly measure the harm (if any) incurred by Defendant upon the
13 occurrence of the condition that triggers the Late Fees. The gravity of the harm that the Late Fees
14 impose on students is substantial in that they exceed the actual amount of harm (if any) incurred by
15 Defendant upon the occurrence of the condition that triggers the Late Fees. Through their
16 imposition and collection of the Late Fees from the members of the Class, Defendant has been
17 massively and unjustly enriched. Defendant’s Late Fees also violate the “unfair” prong of the UCL
18 because their inclusion in the Agreements, imposition and collection are and at all times relevant
19 hereto have been oppressive, unscrupulous or substantially injurious to consumers.

20 61. Defendant’s said practices with respect to the Late Fees also violate the “unfair”
21 prong of the UCL because the Late Fees, the provision of the Enrollment Agreement imposing the
22 Late Fees, and Defendant’s enforcement of them through the imposition and collection thereof
23 cause substantial harm that is not outweighed by countervailing benefits to students or competition,
24 and students could not reasonably have avoided the harm.

25 62. Defendant’s practices with respect to the Late Fees also violate the “unfair” prong
26 of the UCL for the reasons set forth in the Third Cause of Action, above.

1 63. Plaintiffs and the members of the Class have suffered an injury in fact resulting in
2 the loss of money or property as a result, inter alia, of having paid the Late Fees.

3 64. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs seek an order of this Court
4 permanently enjoining Defendant from continuing to engage in their unfair and unlawful conduct
5 as alleged herein. Plaintiffs seek all available relief under the UCL, including, inter alia, an order
6 requiring Defendant to:

- 7 a. Immediately cease their unlawful acts and practices;
8 b. Make full restitution of all monies wrongfully obtained; and
9 c. Disgorge all ill-gotten revenues and /or profits.

10 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf of the members of the Class, pray:

- 13 A. For an order certifying the Class and appointing Plaintiffs and the undersigned
14 counsel of record to represent the Class;
- 15 B. For a permanent injunction enjoining Defendant, its partners, joint ventures,
16 subsidiaries, agents, servants, and employees, and all persons acting under, in concert with them
17 directly or indirectly, or in any manner, from in any way engaging in the unfair and unlawful
18 practices and violations set forth herein;
- 19 C. For compensatory damages and/or full restitution of all funds acquired from
20 Defendant's unfair business practices and other violations of law, including disgorgement of
21 profits;
- 22 D. For imposition of a constructive trust upon all monies and assets Defendant has
23 acquired as a result of their unfair practices;
- 24 E. For damages according to proof;
- 25 F. For a judicial declaration regarding the validity of Defendant's Late Fees;
- 26 G. For costs of suit herein;
- 27 H. For both pre- and post-judgment interest on any amounts awarded;
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- I. For payment of reasonable attorneys' fees; and
- J. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: October 7, 2019

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