

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

MAKARI ROEHRKASSE, individually)
and on behalf of all others similarly situated,)
)
Plaintiff,)

v.)

Case No. CV420-116

SAVANNAH COLLEGE OF ART AND)
DESIGN, INC. d/b/a SAVANNAH)
COLLEGE OF ART AND DESIGN,)
)
Defendant.)
)

NOTICE OF REMOVAL

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION:**

COMES NOW Defendant SAVANNAH COLLEGE OF ART AND DESIGN (“SCAD”) and files this Notice of Removal of the above-captioned action from the Superior Court of Chatham County, Georgia, to the United States District Court for the Southern District of Georgia. In support of this removal, SCAD states as follows:

I. FACTUAL BACKGROUND

1. On April 28, 2020, Plaintiff Makari Roehrkasse (“Plaintiff”) filed a Class Action Complaint (“Complaint”) against SCAD in the Superior Court of Chatham County, Georgia in a case captioned Roehrkasse v. Savannah College of Art and Design, Inc., Case No. SPCV20-00377-MO (Ga. Super. Ct.). See Compl., Exhibit A hereto.

2. Plaintiff alleges that she is a senior at SCAD. See Compl. ¶ 8. She alleges that SCAD informed students on March 12, 2020 that classes for the upcoming Spring 2020 quarter, which was set to begin on March 30, 2020, would be taught online to protect the health and safety of students, faculty and staff in light of the global COVID-19 pandemic. See id. ¶ 20.

Plaintiff further alleges that SCAD then closed its physical facilities and moved “all classes to online learning for the Spring 2020 quarter.” See id. ¶ 2.

3. Notwithstanding that SCAD announced before the Spring 2020 quarter began that classes would be held online, Plaintiff claims that “SCAD students expected the benefit of in-person instruction when they enrolled in Spring quarter 2020 classes and agreed to pay tuition in exchange for in-person instruction.” See Compl. ¶ 54.

4. Plaintiff seeks to bring her claims against SCAD on behalf of herself as well as a proposed class of “[a]ll persons who were registered for in-person SCAD Spring quarter 2020 classes on March 12, 2020 and all persons who paid tuition for SCAD Spring quarter 2020.” See Compl. ¶ 84.

5. In her Complaint, Plaintiff sets forth claims for breach of contract as well as unjust enrichment. See Compl. ¶¶ 93-107. She alleges that SCAD purportedly breached contracts “which provided that in exchange for the promise of Plaintiff and the other Class members to pay tuition to [SCAD], [SCAD] would provide services and make available activities to students.” See id. ¶ 95. She further alleges that SCAD “has been unjustly enriched by retaining the tuition paid by Plaintiff and the other Class members for Spring quarter 2020 tuition while not providing services and activities for which those fees [were] paid.” See id. ¶ 107.

6. Plaintiff seeks actual damages, including the return of “the unused, prorated portion of tuition paid by Plaintiff and the other Class members,” declaratory and injunctive relief and fees and costs. See Compl. ¶ 107, p.26.

II. GROUNDS FOR REMOVAL

7. This case is removable, and this Court has jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1441 and 1453, because (1) this

case is a putative class action with more than 100 members in the proposed class, (2) there is minimal diversity, since SCAD and at least one member of the proposed class are citizens of different states and (3) the Complaint places into controversy an amount that exceeds \$5 million in the aggregate.

A. The Proposed Class Readily Exceeds 100 Members

8. For purposes of removal, CAFA requires that the proposed class consists of at least 100 persons. See 28 U.S.C. § 1332(d)(5). Plaintiff alleges that “the class consists of approximately 12,000 members,” and accordingly, this requirement is easily met here. See Compl. ¶ 87.

B. There Is Clearly Minimal Diversity Among The Parties

9. CAFA requires only that minimal diversity exists, and minimal diversity exists when either (1) at least one member of the proposed class is a citizen of a different state than the defendant (see 28 U.S.C. § 1332(d)(2)(A)) or (2) at least one member of the proposed class is a citizen or subject of a foreign state and the defendant is a citizen of a state (see 28 U.S.C. § 1332(d)(2)(B)). As addressed below, minimal diversity exists here under either of these bases.

10. SCAD is a non-profit corporation incorporated under the laws of the State of Georgia and has its principal place of business in Savannah, Georgia. See Compl. ¶ 10; Georgia Secretary of State Record, Exhibit B hereto. SCAD is deemed to be “a citizen of any [s]tate by which it has been incorporated . . . and where it has its principal place of business.” See 28 U.S.C. § 1332(c)(1). Therefore, SCAD is a citizen of the State of Georgia for purposes of diversity jurisdiction.

11. Plaintiff seeks to represent a class consisting of all individuals who were registered for in-person classes or paid tuition for SCAD’s Spring 2020 quarter. See Compl. ¶ 84. The SCAD Family Guide that Plaintiff references in the Complaint states that SCAD has

“students from more than 100 countries and all 50 states.” See SCAD Family Guide 2018-2019, Exhibit C hereto, at 30; Compl. ¶¶ 48, 53. Minimal diversity thus plainly exists under 28 U.S.C. § 1332(d)(2)(A) and 28 U.S.C. § 1332(d)(2)(B), because at least one member of the proposed class is a citizen of a state other than Georgia and, in the alternative, because at least one member of the proposed class is a citizen of a foreign state.

C. The Amount In Controversy Is Considerably More Than \$5 Million

12. CAFA requires that the amount in controversy exceed \$5 million for the entire proposed class in the aggregate, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2); 28 U.S.C. § 1332(d)(6). A defendant’s notice of removal under CAFA, however, “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” See Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 89 (2014).

13. Based on Plaintiff’s allegations and legal theories, the \$5 million amount in controversy requirement under CAFA is easily satisfied here. Plaintiff alleges that undergraduate tuition at SCAD is \$12,525 per student per quarter and that graduate tuition at SCAD is \$12,825 per student per quarter. See Compl. ¶¶ 30-31. Plaintiff further alleges that “the class consists of approximately 12,000 members,” and therefore, the total amount in controversy is alleged to be more than \$150 million. See id. ¶ 87.

III. COMPLIANCE WITH REMOVAL STATUTE

14. This notice of removal was properly filed in the United States District Court for the Southern District of Georgia, because the Superior Court of Chatham County, Georgia is located in this federal judicial district and division. See 28 U.S.C. § 1441(a); 28 U.S.C. § 90(c).

15. This notice of removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. See 28 U.S.C. § 1446(a).

16. The Complaint has not yet been served but was filed on April 28, 2020. Thus, this notice of removal is timely filed in accordance with 28 U.S.C. § 1446(b), as it is filed within 30 days of service.

17. Because the Complaint has not yet been served, SCAD has not been served with process, pleadings or orders. See 28 U.S.C. § 1446(a). A copy of the Complaint, however, is attached hereto as Exhibit A.

18. Pursuant to 28 U.S.C. § 1446(d), a copy of this notice of removal is being served on Plaintiff's counsel and a copy, along with a notice of filing of the notice of removal, is being filed with the Clerk of the Superior Court of Chatham County, Georgia.

IV. CONCLUSION

SCAD respectfully requests that this Court exercise jurisdiction over this action and enter orders and grant relief as may be necessary to secure removal and to prevent further proceedings in this matter in the Superior Court of Chatham County, Georgia.

SCAD further requests such other relief as the Court deems appropriate.

Date: May 28, 2020

Respectfully submitted,

/s/ Kirby G. Mason

Kirby G. Mason, Georgia Bar No. 302310
One of the Attorneys for Defendant
Savannah College of Art and Design

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing NOTICE OF REMOVAL on all parties to this matter by using the CM/ECF system which will send a notice of electronic filing to the following:

Paul W. Painter III
W. Andrew Bowen
Constance D. Cooper
BOWER PAINTER LLC
7302 Abercorn Street, Unit 3
Savannah, Georgia 31406
Telephone: (912) 335-1909
Facsimile: (912) 335-3537
Email: paul@bowenpainter.com
andrew@bowenpainter.com
constance@bowenpainter.com

Date: May 28, 2020

Respectfully submitted,

/s/ Kirby G. Mason

Kirby G. Mason, Georgia Bar No. 302310
One of the Attorneys for Defendant
Savannah College of Art and Design

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EXHIBIT A

(“COVID-19”) pandemic.¹ Defendant Savannah College of Art and Design, Inc. operates the Savannah College of Art and Design (hereinafter “SCAD”).

2.

On March 12, 2020, SCAD announced that it would be closing all classrooms, laboratories, studios, recreational facilities, gyms, student centers, and other facilities and would be moving all classes to online learning for the Spring 2020 quarter.

3.

As an art and design school, SCAD’s students rely heavily on the university’s physical resources and facilities for an effective education.

4.

Other higher education institutions across the United States that have also switched to e-learning and have requested or permitted students to leave campus have recognized the upheaval and financial harm to students and their families from these decisions and have provided appropriate refunds. These institutions recognize that because they are unable to provide the full slate of services for which the students paid, the institutions have no legal or ethical basis to retain the students’ money. SCAD, unfortunately, has taken the opposite approach.

5.

¹ To be clear, this Complaint does not seek to criticize SCAD’s decision to move classes online. Indeed, the Centers for Disease Control and Prevention recommends that everyone do the following to slow the spread of COVID-19: “stay at least 6 feet (2 meters) from other people, do not gather in groups, [and] stay out of crowded places and avoid going to mass gatherings.” See Social Distancing, Quarantine, and Isolation, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last accessed Apr. 24, 2020).

Accordingly, SCAD has improperly retained monies paid by Plaintiff and the other Class members for tuition, while Plaintiff and the other Class members can no longer obtain the value or benefit of the services for which they paid.

6.

Indeed, even if SCAD claims it had no choice, or that students could risk their health and decide whether to remain on campus, it nevertheless has improperly retained funds for services and activities it is not providing. No matter the excuse, SCAD's actions are unlawful and unfair, and both law and equity demand disgorgement of the tuition paid.

7.

Plaintiff, individually and on behalf of the other Class members, brings this class action for injunctive, declaratory, and equitable relief, and any other available remedies, resulting from SCAD's improper conduct, namely retaining the tuition paid by Plaintiff and the other Class members.

PARTIES, JURISDICITON, AND VENUE

8.

Plaintiff is a resident of Savannah, Chatham County, Georgia, and a senior SCAD student, due to graduate after the Spring 2020 quarter, majoring in illustration.

9.

Plaintiff paid tuition for the Spring 2020 quarter, the full benefits of which she will no longer receive, because SCAD transitioned all of its classes online, shut down on-campus services and activities, and made it so that Plaintiff has no reason to go on campus (and, in fact, it would be dangerous for Plaintiff to do so). Plaintiff has not been offered any refund of tuition paid for the Spring 2020 quarter.

10.

Defendant is a Georgia non-profit corporation formed in 1978 with its principal place of business at 516 Drayton Street, Savannah, Georgia 31401.

11.

Defendant operates as Savannah College of Art and Design, an accredited university based in Savannah, Georgia, with campuses in Atlanta, Georgia; Lacoste, France; and Hong Kong, China. Defendant also operates an equestrian center in Jasper County, South Carolina.

12.

Defendant may be served with process by delivering a Summons and copy of this Complaint to its registered agent for service of process, Hannah Yi Flower, 1600 Peachtree Street NW, Atlanta, GA 30309.

13.

Defendant is subject to the personal jurisdiction of this Court.

14.

This Court is the appropriate venue for this action because Defendant's headquarters is Savannah, Chatham County, Georgia.

15.

In addition or in the alternative, Defendant has an office and transacts business in Savannah, Chatham County, Georgia, and the contracts that form the basis for claims in this action were made or were performed in Savannah, Chatham County, Georgia, and the causes of action herein for torts, wrongs, or injuries done originated in Savannah, Chatham County, Georgia, pursuant to O.C.G.A. § 14-2-510(b)(2), (3) and O.C.G.A. § 14-11-1108(b).

16.

This Court has subject matter jurisdiction over this action pursuant to O.C.G.A. § 9-11-23.

17.

This matter is not subject to removal to federal court.

18.

Georgia statutory and common law applies to all claims asserted herein. Defendant's headquarters is in Georgia. Defendant's actions and failures to act alleged herein occurred within and/or emanated from Georgia.

STATEMENT OF FACTS

I. *SCAD closes its facilities; students are unable to obtain the full benefit of the classes for which they were registered.*

19.

At or about 6:35 AM on March 12, 2020, SCAD sent an email to all students informing them that “[c]ourses at all SCAD locations, including Lacoste [are] to be offered only on-line for spring quarter. More information to follow later today through SCAD email.”

20.

At or about 8:38 AM on March 12, 2020, SCAD sent another email that read as follows:

Given the continuing developments with the COVID-19 Coronavirus, we are reaching out at this time to share important information on the spring quarter at SCAD Atlanta, SCAD Lacoste and SCAD Savannah. But first, we share our hope that, given the circumstances, you are healthy and comfortable during this stressful time.

As you know, the university has made the difficult decision that out of concern for the health and well-being of our students, faculty and staff, and

in adherence with the most current guidelines from the World Health Organization and Centers for Disease Control, we will not hold regular, on-ground classes in Atlanta, Hong Kong, Savannah or Lacoste during the spring quarter, and all classes will be held online. In addition, spring break will be extended by one week, in order to help students who need to make travel arrangements. Spring classes will begin online on Monday, March 30, 2020 for students at all locations, and the spring quarter will be condensed in order to end on the original date, Thursday, May 28. Spring 2020 commencement ceremonies have been canceled at all SCAD locations. In addition, all spring activities like Sidewalk Arts Festival, Family and Alumni Weekend, and intercollegiate athletics have been canceled; more information will be forthcoming.

SCAD academic and administrative buildings will be closed to students beginning March 30; however, students will be allowed to collect items from studios and classrooms over the next two weeks. Residence halls will be open for those students who choose to remain in campus housing, but residents should be aware that only essential services will be provided, including security and limited dining and transportation. On-campus residents who wish to check out and return home for the spring quarter must do so no later than 5 p.m. on Friday, March 27. Students who opt to stay in their campus housing for the spring quarter will be asked to consolidate spaces, in order for some buildings to be closed altogether. Further information on residence life and check-out procedures will be provided in a separate email.

Students who have questions or concerns about their spring classes are encouraged to work with their success advisers, who will be available throughout the extended spring break. International students with visas will be receiving information from the international students services office regarding their immigration concerns.

Finally, we recognize that many of you will be disappointed in this decision, but we feel that we are acting in the best interests of our entire SCAD community. We will continue to provide updates today and in the coming days.

II. *SCAD students are unable to transfer to another university for the Spring 2020 quarter.*

21.

March 12, 2020 was the last date of SCAD's Winter 2020 quarter for Savannah, Atlanta, Hong Kong, and eLearning. March 6, 2020 was the last date of SCAD's Winter 2020 quarter for its Lacoste campus.

22.

Graduate registration for SCAD's Spring 2020 quarter began Feb. 10, 2020. Senior registration for SCAD's Spring 2020 quarter began Feb. 11, 2020. Junior registration for SCAD's Spring 2020 quarter began Feb. 13, 2020. Freshman registration for SCAD's Spring 2020 quarter began Feb. 19, 2020.

23.

Approximately ninety-five (95) percent of United States schools operate on a semester system, rather than a quarter system. *See* The Semester vs. Quarter System in College, Best Colleges, <https://www.bestcolleges.com/blog/semester-vs-quarter-system/> (last accessed Apr. 24, 2020).

24.

SCAD's March 12, 2020 notice to students did not allow students to reasonably make alternate plans for their education during the Spring 2020 quarter.²

25.

SCAD's operation of a quarter, rather than a semester, system, makes it not reasonably practical for students to transfer to another educational institution.

26.

Plaintiff and the other Class members had secured housing for the Spring 2020 quarter on March 12, 2020, making transfer to another educational not reasonably practical.

27.

² Spring 2020 is Plaintiff's last quarter before graduation from SCAD.

On March 12, 2020, universities throughout the United States, including SCAD, were cancelling in-person classes.

28.

Even if Plaintiff and the other Class members *had* been able to transfer to another educational institution on March 12, 2020, Plaintiff and the other Class members would not have been able to attend in-person classes.

29.

Plaintiff and the other Class members have not obtained the benefit for which they bargained when they registered for SCAD Spring 2020 classes, promising to pay tuition in exchange for SCAD's promise to provide in-person instruction, access to facilities, access to physical resources, on-campus activities, and in-person networking opportunities.

III. SCAD shortens quarter by a week, retains full ten-week tuition payments.

30.

Undergraduate tuition at SCAD costs \$12,525 for a ten-week quarter, which comes to \$1,252.50 per week. Tuition and Fees, SCAD Website, <https://www.scad.edu/admission/tuition-and-fees> (last accessed Apr. 27, 2020).

31.

Graduate tuition at SCAD costs \$12,825 for a ten-week quarter, which comes to \$1,282.50 per week. *Id*

32.

SCAD's ten-week Spring 2020 quarter became a nine-week quarter after the school announced on March 12, 2020 that it would be switching to online-only learning.

33.

Despite eliminating a quarter of instruction, SCAD has retained the entire amount of students' ten-week quarterly tuition.

IV. *Unlike other universities, SCAD does not charge separately for tuition and fees. SCAD has retained tuition payments for activities and services it is not providing during the Spring 2020 quarter.*

34.

Unlike other universities, both within the University System of Georgia and private colleges, SCAD does not charge fees for student services separately from tuition. *Id. Contra* the University of Georgia, which charges \$9,790 per academic year for tuition, plus \$2,290 in fees, and Emory University, which charges \$55,200 per academic year for tuition, plus \$798 in fees. Costs, University of Georgia Website, <https://osfa.uga.edu/costs/> (last accessed Apr. 27, 2020); Total Cost 2020-2021, Emory Website, <https://studentaid.emory.edu/undergraduate/apply/cost/emory-oxford.html> (last accessed Apr. 27, 2020).

35.

SCAD advertised its on-campus experience as a benefit of education at the university.

36.

SCAD students expected the benefit of on-campus activities and services when they enrolled in Spring quarter 2020 classes and agreed to pay tuition in exchange for on-campus activities and services.

37.

SCAD students have not received the benefit of on-campus activities and services.

38.

Nonetheless, SCAD has retained the full amount of students' tuition.

39.

SCAD hosts in-person events that help students launch their careers.

40.

SCADstyle is an event that helps students launch their careers.

41.

SCAD FASHWKND is an event that helps students launch their careers.

42.

Employer visits at SCAD help students launch their careers.

43.

SCAD students have not received the benefit of in-person events that help students launch their careers.

44.

SCADstyle 2020 was cancelled.

45.

SCAD FASHWKND 2020 was cancelled.

46.

SCAD employer visits were cancelled.

47.

SCAD students expected the benefit of in-person events to help launch their careers when they enrolled in Spring quarter 2020 classes and agreed to pay tuition.

48.

SCAD advertised the benefit of in-person events to help students launch their careers as an incentive of enrollment. SCAD Savannah Family Guide 2018–2019, <https://www.scad.edu/sites/default/files/PDF/SCAD-Savannah-Family-Guide-2018-2019.pdf> (last accessed Apr. 27, 2020).

49.

SCAD students have not received the benefit of in-person events to help launch their careers.

50.

Nonetheless, SCAD has retained the full amount of students' tuition.

51.

SCAD recognizes the importance of in-person instruction.

52.

SCAD's recognition of the importance of in-person instruction is reflected in its attendance policy.

53.

SCAD's attendance policy is reflected in the following excerpt from its 2018-2019 Family Guide:

ATTENDANCE

Students are expected to attend and participate in all scheduled classes and examination periods. SCAD operates on a 10-week quarter system, and all regular classes meet 20 times each quarter. Classes meet twice each week for 2 1/2 hours per class session, for a total of 50 contact hours (five credit hours).

Absences in excess of four class periods per quarter, or 20 percent of the course, result in the student receiving a failing grade for the course. Tardiness, early departure or other time away from class in excess of 15 minutes per class session is considered absence for that class session. There are no excused absences.

Classes missed due to late registration are included in the overall absences permitted for the class.

SCAD Savannah Family Guide 2018–2019,

<https://www.scad.edu/sites/default/files/PDF/SCAD-Savannah-Family-Guide-2018-2019.pdf> (last accessed Apr. 27, 2020).

- V. ***SCAD students are not obtaining the benefit of an in-person, on-campus education. Despite this, SCAD is retaining all Spring quarter 2020 tuition payments.***

54.

SCAD students expected the benefit of in-person instruction when they enrolled in Spring quarter 2020 classes and agreed to pay tuition in exchange for in-person instruction.

55.

SCAD students have not received the benefit of in-person instruction.

56.

Nonetheless, SCAD has retained the full amount of students' tuition.

57.

SCAD offered some of its classes via online remote learning prior to the onset of COVID-19.

58.

Plaintiff and other Class members chose to register for on-campus classes offering in-person, hands-on curriculum.

59.

Plaintiff and the other Class members have been and will be deprived of the benefits of on-campus learning, including, but not limited to, access to SCAD's physical resources which are critical in pursuing an education in art and design.

VI. *Equity will not brook SCAD retaining the full amount of students Spring 2020 tuition payment in light of (1) the school's receipt of federal COVID-19 funds, (2) the school's extensive real estate holdings and (2) the amount of compensation the school's president receives.*

60.

SCAD has refused to refund Ms. Roehrkasse and the other Class Members any portion of their Spring 2020 tuition, despite requests made through telephone, email, and online channels.

61.

SCAD provides the following justifications for this refusal on the Coronavirus Frequently Asked Questions portion of its website:

As with all colleges and universities, SCAD tuition primarily funds the salaries of professors (and the staff members who support instruction). All SCAD faculty members will be teaching this spring and will be supported by SCAD staff members...

SCAD is channeling additional resources (and extending software licenses) to its online education platform to strengthen capacity, enhance user experience, and add functionality and software tools to ensure an excellent teaching and learning experience for all SCAD students this spring. Discussions with vendors are in progress. More information to follow.

Creative colleges and universities across the country are also maintaining tuition rates during this time because of increased technology costs. At SCAD such costs include video capability for all faculty and additional support staff to help produce and share virtual content.

COVID-19 (Coronavirus) SCAD Information and Message Center, SCAD website, <https://www.scad.edu/coronavirus/frequently-asked-questions> (last accessed Apr. 24, 2020).

62.

On April 14, SCAD President Paula Wallace notified students via email that the university is receiving a grant of \$8.2 in federal COVID-19 stimulus funds designed to help students.

63.

It would be inequitable for SCAD to retain the value of these stimulus funds while, at the same time, ceasing to provide services to students and not returning the full, pro-rated amounts that students and their families paid for these services.

64.

Harvard University was granted slightly more than SCAD, \$8.6 million, in federal COVID-19 stimulus funds.

65.

Under pressure for taking taxpayer money when Harvard has a sizeable university endowment, Harvard University chose not to take the funds. Anemona Hartocollis, *After Trump's Criticism, Harvard Turns Down Federal Relief Money*, New York Times, Apr. 22, 2020, <https://www.nytimes.com/2020/04/22/us/harvard-trump-coronavirus.html>.

66.

SCAD has extensive financial resources in the form of real estate holdings.

67.

With the announced closure of SCAD's Hong Kong campus, valuable SCAD real estate holdings soon will be liquidated.

68.

A review of Chatham County property records shows that SCAD currently owns Savannah real estate with an appraised tax value of \$276,016,200.

69.

SCAD has obtained educational exemptions to pay \$0 annually in city, county, and schools property taxes on \$261,955,600 of its Savannah properties.

70.

A review of Fulton County property records shows that SCAD currently owns real estate in Atlanta with an appraised tax value of \$100,681,500.

71.

SCAD has obtained educational exemptions to pay \$0 annually in city, county, and schools property taxes on \$23,913,900 of its Atlanta properties.

72.

74.

Hong Kong is the most expensive office property market in the world. Michael Gerrity, *Hong Kong Tops London as World's Most Expensive Office Market in 2019*, World Property Journal, June 14, 2019, 9:08 AM, <https://www.worldpropertyjournal.com/real-estate-news/hong-kong/2019-global-prime-office-occupancy-costs-report-by-cbre-global-office-rent-data-most-expensive-office-markets-in-the-world-commercial-real-estate-news-11451.php>.

75.

Hong Kong is the most expensive housing market in the world. Alicia Adamcyk, *This is the Most Unaffordable City in the World to Buy a Home*, CNBC Website, Oct. 3, 2019, 1:26 PM, <https://www.cnbc.com/2019/10/03/hong-kong-is-the-most-unaffordable-city-in-the-world-to-buy-a-home.html>.

76.

Plaintiff does not currently have access to the value of SCAD's Hong Kong holdings.

77.

According to SCAD's website, SCAD's Hong Kong Gold Coast Residences consists of a complex of buildings twenty-seven stories in height, with a gym, swimming pool, tennis, and squash courts. Gold Coast Residences, SCAD Website, <https://www.scad.edu/life/buildings-and-facilities/hong-kong-gold-coast-residences> (last accessed Apr. 24, 2020).

78.

This is an image of SCAD's Hong Kong Gold Coast Residences taken from SCAD's website:



Id.

79.

According to SCAD's website, "SCAD revitalized the historic North Kowloon Magistracy Building in Kowloon after the Hong Kong Development Bureau entrusted it to SCAD in 2009." SCAD Hong Kong, SCAD Website, <https://www.scad.edu/life/buildings-and-facilities/scad-hong-kong> (last accessed Apr. 24, 2020).

80.

The below image of SCAD's Hong Kong campus was taken from SCAD's website:



Id.

81.

Equity will not tolerate SCAD retaining the full value of tuition payments made by students when (1) those students are not receiving the value of education for which they paid tuition and (2) SCAD has the financial resources to reimburse those students.

82.

SCAD's compensation of the school's president further justifies disgorgement of tuition payments wrongfully retained.

83.

SCAD compensates the school's president at a rate many times higher than other university presidents are compensated. Alan Judd, *How SCAD Sells a Dream*, Atlanta

Journal-Constitution, Dec. 9, 2017, <https://www.ajc.com/news/special-reports/how-scad-sells-dream/VVfRSVilHliyrTe9LAd5hN/>.

CLASS ALLEGATIONS

I. Class Definition.

84.

Plaintiff brings this action on her behalf and as a class action pursuant to O.C.G.A. § 9-11-23, seeking damages as representative of a class of similarly situated individuals, defined as follows:

All persons who were registered for in-person SCAD Spring quarter 2020 classes on March 12, 2020 and all persons who paid tuition for SCAD Spring quarter 2020.

85.

Plaintiff hereby reserves the right to amend or modify the class definition with greater specificity or division after having had an opportunity to conduct discovery.

86.

The Class meets the criteria for certification set forth in O.C.G.A. § 9-11-23, as follows:

II. Numerosity: O.C.G.A. § 9-11-23(a)(1).

87.

The class is so numerous that the individual joinder of all class members as parties to this action would be impractical. While the exact number and identities of class members is unknown at this time, and can be ascertained only through appropriate discovery, Plaintiff alleges that the class consists of approximately 12,000 members.

88.

Class members are readily ascertainable and may be identified through objective means. 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.

III. Commonality: O.C.G.A. § 9-11-23(a)(2) and § 9-11-23(a)(2).

89.

Common questions of law and fact predominate over any questions affecting only individual class members, including, but not limited to:

- a. Whether Defendant accepted the promise to provide money from Class members in exchange for the promise to provide services;
- b. Whether Defendant has provided the services for which the Class members contracted;
- c. Whether Class members had any reasonable alternative to their contract with Defendant on March 12, 2020; and
- d. Whether the putative Class members are entitled to a refund for that portion of the tuition that was contracted for the services that Defendant has not provided.

IV. Typicality: O.C.G.A. § 9-11-23(a)(3).

90.

Plaintiff's claims are typical of the claims of the class. Plaintiff registered for in-person SCAD Spring 2020 classes on March 12, 2020, paid tuition for Spring 2020 quarter classes, and relied on Defendant's representation that she would obtain the benefit of in-person classes, access to facilities, access to physical resources, on-campus activities, and in-person networking opportunities. Plaintiff's injuries and damages are

consistent with those suffered by the Class members, and she seeks relief consistent with the relief available to the Class members.

V. Adequacy: O.C.G.A. § 9-11-23(a)(4).

91.

Plaintiff will fairly and adequately protect the interests of the Class because Plaintiff is a member of the Class and is committed to pursuing this matter against Defendant to obtain relief for the Class. Plaintiff has no conflicts of interest with the Class. Plaintiff's counsel is competent and experienced in litigating class actions. Plaintiff intends to prosecute this case vigorously and will protect the Class's interests fairly and adequately.

VI. Superiority: O.C.G.A. § 9-11-23(b).

92.

A class action is superior to other available methods for fair and efficient adjudication of this controversy.

- a. Consistent with O.C.G.A. § 9-11-23(b)(1), prosecution of separate actions by each of the estimated 12,000 Class members would create the potential for inconsistent or varying adjudications that would establish incompatible standards of conduct for SCAD and/or would as a practical matter be dispositive of the interests of the other Class members not party to the individual adjudications, including but not limited to the declaratory and injunctive relief sought herein.
- b. Under O.C.G.A. § 9-11-23(b)(2), a class action is appropriate because Defendant's actions and failures to act alleged above is generally applicable to the Class as a

whole, as is the relief sought, including but not limited to declaratory and injunctive relief.

- c. Consistent with O.C.G.A. § 9-11-23(b)(3), issues of law and fact common to the Class members predominate over those affecting only individual members. No unusual difficulties are likely to be encountered in the management of this class action.
- d. The quintessential purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual Plaintiffs may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiffs and the Class are relatively small compared to the burden and expense required to litigate their claims against Defendants individually; thus, individual litigation would be impracticable.
- e. A class action will concentrate the numerous Class members' claims in a single forum, promote efficient management of the litigation, and prompt resolution of Class members' claims, reduce delay and expense to all parties and the court system, provide for economies of scale, and avoid inconsistent rulings between individual Class members.

CAUSES OF ACTION

First Claim for Relief: Breach of Contract

93.

Plaintiff repeats and alleges the allegations in Paragraphs 1-92, above, as if fully alleged herein.

94.

Plaintiff brings this claim individually and on behalf of the other Class members.

95.

Plaintiff and the other Class members entered into contracts with Defendant which provided that in exchange for the promise of Plaintiff and the other Class members to pay tuition to Defendant, Defendant would provide services and make available activities to students.

96.

Plaintiff and the other Class members fulfilled their end of the bargain when they registered for Spring quarter 2020 in-person classes at SCAD.

97.

Defendant breached the contract when it moved classes online and stopped providing services and activities for which Plaintiff and the other Class members promised to pay when they registered for Spring quarter 2020 in-person classes at SCAD.

98.

Plaintiff and the other Class members had no reasonable alternative to their contract with Defendant.

99.

Plaintiff and the other Class members therefore fulfilled their promise to pay Defendant tuition for Spring quarter 2020 classes.

100.

Defendant has retained moneys paid by Plaintiff and the other Class members without providing them the benefit of their bargain.

101.

Plaintiff and the other Class members have been damaged—in an amount to be proven at trial—in that they have been deprived of the value of the services and activities their tuition was intended to cover, while Defendant retained those fees.

Second Claim for Relief: Unjust Enrichment

102.

Plaintiff repeats and alleges the allegations in Paragraphs 1-92, above, as if fully alleged herein.

103.

Plaintiff brings this claim individually and on behalf of the other Class members, and in the alternative to the breach of contract claim (First Claim for Relief), set forth above.

104.

Plaintiff and the other Class members paid tuition to Defendant which were intended to cover services and activities for the Spring 2020 quarter. In exchange, students were entitled to receive those services and activities.

105.

On March 12, 2020, Defendant moved classes online and stopped providing services and activities tuition was intended to cover.

106.

Defendant has retained fees paid by Plaintiff and other Class members, without providing the services and activities for which they paid and, as such, has been enriched.

107.

Defendant has been unjustly enriched by retaining the tuition paid by Plaintiff and the other Class members for Spring quarter 2020 tuition while not providing

services and activities for which those fees paid. Equity requires Defendant to return the unused, prorated portion of tuition paid by Plaintiff and the other Class members.

PRAYER FOR RELIEF

WEREFORÉ, Plaintiff, individually and on behalf of the other members of the Class, respectfully requests that the Court enter a judgment in their favor against Defendant as follows:

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

A JURY TRIAL IS HEREBY DEMANDED.

Respectfully submitted this 28th day of April, 2020.

[SIGNATURE ON THE FOLLOWING PAGE.]

BOWEN PAINTER LLC

s/ W. Andrew Bowen

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***Attorneys for Plaintiff
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