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25 *Counsel for Plaintiff and the Putative Class*

26 **UNITED STATES DISTRICT COURT**

27 **SOUTHERN DISTRICT OF CALIFORNIA**

28 EDGAR CHAVARRIA, on behalf of himself and
all others similarly situated,

PLAINTIFF,

- AGAINST -

UNIVERSITY OF SAN DIEGO,

DEFENDANT.

Case No. **'20CV2215 DMS RBB**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Edgar Chavarria (“Plaintiff”), by and through the undersigned counsel, brings this
2 class action against Defendant University of San Diego (“USD,” the “University,” or
3 “Defendant”), and alleges as follows based upon information and belief, except as to the
4 allegations specifically pertaining to him, which are based on personal knowledge.
5

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit on behalf of all persons who paid tuition and/or fees
8 to attend University of San Diego for an in person, hands-on educational services and experiences
9 for the semesters or terms affected by Coronavirus Disease 2019 (“COVID-19”), including the
10 Spring 2020 semester, and had their course work moved to online only learning.
11

12 2. Such individuals paid all or part of the tuition for the Spring 2020 semester that was
13 around \$25,225.00 for undergraduate students, including mandatory fees of \$125.00 as a student
14 fee, a \$170.00 student wellness fee, and a \$7.00 media fee (“Mandatory Fees”). Defendant also
15 charged and assessed approximately \$4,970.00 for room and board, \$140 for parking fees, and \$70
16 for student life pavilion fees, and provide some prorated refunds to students.
17

18 3. However, USD has not refunded any amount of the tuition or any of the
19 Mandatory Fees, even though it announced on March 12, 2020 that classes would be canceled for
20 one week starting in or around March 14, 2020 and it would implement online only distance
21 learning starting in or around March 23, 2020.

22 4. Because of the University’s response to the COVID-19 pandemic, on or about
23 March 14, 2020, the University also stopped providing services or facilities the Mandatory Fees
24 were intended to cover.
25

26 5. The University’s failure to provide the services for which tuition and the
27 Mandatory Fees were intended to cover since approximately March 14, 2020 is a breach of the
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1 contracts between the University and Plaintiff and the members of the Class and is unjust.

2 6. In short, Plaintiff and the members of the Class have paid for tuition for a first-rate
3 education and an on-campus, in person educational experiences, with all the appurtenant benefits
4 offered by a first-rate University, and were provided a materially deficient and insufficient
5 alternative, which constitutes a breach of the contracts entered into by Plaintiff with the University.
6

7 7. As to the Mandatory Fees, Plaintiff and the Class have paid fees for services and
8 facilities which are simply not provided.

9 8. This failure also constitutes a breach of the contracts entered into by Plaintiff with
10 the University.

11 9. Plaintiff seeks, for himself and Class members, the University's disgorgement and
12 return of the pro-rated portion of its tuition and Mandatory Fees, proportionate to the amount of
13 time in the respective semesters when the University closed and switched to online only learning.
14 The return of such amounts would compensate Plaintiff and the Class members for damages
15 sustained by way of Defendant's breach.
16

17 10. Plaintiff seeks for himself and Class members protections including injunctive and
18 declaratory relief protecting Class Members from paying the full cost of tuition and fees during
19 the pendency of the pandemic in light of the educational services, opportunities, and experiences
20 Defendant can actually safely provide.
21

22 **PARTIES**

23 11. Plaintiff Edgar Chavarria was an undergraduate student during the Spring 2020
24 semesters and graduated in May 2020. In the Spring 2020 semester, USD charged Plaintiff
25 approximately \$25,225.00 in tuition and at least \$298.00 in Mandatory Fees, including \$170.00 in
26 health services fees, \$121.00 in student association fees, and \$7.00 in media fees. Additionally,
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28

1 Plaintiff was charged \$80.00 for a Course fee.

2 12. Plaintiff Chavarria is a citizen of Lafayette, Colorado.

3 13. Plaintiff Chavarria paid tuition and fees for in-person educational services,
4 experiences, opportunities, and other related collegiate services. Plaintiff Chavarria has not been
5 provided a pro-rated refund of the tuition for his in-person classes that were discontinued and
6 moved online, or the Mandatory Fees he paid after the University's facilities were closed and
7 events were cancelled.
8

9 14. Plaintiff Chavarria was also charged the \$70.00 student life pavilion fee and
10 \$140.00 parking fee, but was provided a 60% prorated refund during late March 2020. Whereby,
11 the University acknowledges that certain services were not provided in accordance with prior
12 arrangements and students like Plaintiffs did not receive all of the benefits of their bargain.
13

14 15. Defendant USD is a private University in San Diego, California that was founded
15 in 1949 as two separate institutions and merged into the University of San Diego in 1972. The
16 University offers numerous major fields for undergraduate students, as well as a number of
17 graduate programs.
18

19 16. Defendant's undergraduate and graduate programs includes students from many, if
20 not all, of the states in the country. Defendant is a citizen of California.

21 **JURISDICTION AND VENUE**

22 17. This Court has original jurisdiction under the Class Action Fairness Act, 28 U.S.C.
23 § 1332(d)(2)(A), because the matter in controversy exceeds the sum or value of \$5,000,000,
24 exclusive of interests and costs, and is a class action in which one or more of the other Class
25 members are citizens of a State different from the Defendant.
26

27 18. This Court has personal jurisdiction over Defendant because it resides in this
28

1 District.

2 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), because
3 Defendant resides in this District and is a resident of the state in which the District is located.

4 **FACTUAL ALLEGATIONS.**

5
6 20. Plaintiff and Class Members paid to attend USD's Spring 2020 semester including
7 tuition and the Mandatory Fees. The Spring 2020 semester started on January 27, 2020 and ended
8 on or around May 21, 2020.

9
10 21. Tuition at the University was approximately \$25,225.00 for undergraduate
11 students, and mandatory fees for the semester of approximately \$125.00 for undergraduate
12 associated student fee, \$170.00 student wellness fee, \$70 student life pavilion fee, and a \$7.00
13 media fee, and similar such charges for graduate students. The only fee that was provided a
14 prorated refund was the student life pavilion fee.

15
16 22. Plaintiff and the members of the Class paid tuition for the benefit of on-campus live
17 interactive instruction and an on-campus educational experience throughout the semesters.

18
19 23. Throughout March 2020, the University made public announcements adjusting
20 educational services and opportunities that affected Plaintiff.

21
22 24. The University has not held any in-person classes since March 14, 2020 for
23 undergraduate students. All classes since March 23, 2020 have only been offered in a remote
24 online format with no in-person instruction or interaction.

25
26 25. Most of the services for which the Mandatory Fees were assessed were also
27 terminated or cancelled at or about this time, such as access to University health and wellness
28 facilities, programs or services; fitness facilities; student events or sports; and an in-person
commencement.

1 26. Despite these actions, USD has not provided reimbursement or refund information
2 regarding tuition or the Mandatory Fees.

3 27. Students attending USD’s Spring 2020 semester did not choose to attend an online
4 only institution of higher learning, but instead chose to enroll in the University’s in-person
5 educational programs – with the understanding that USD would provide in person educational
6 opportunities, services, and experiences.

7 28. On its website, USD markets the University’s on-campus experience and
8 opportunities as a benefit to students.

9 29. The University uses its website, promotional materials, circulars, admission papers,
10 and publications to tout the benefit of being on campus and the education students will receive in
11 its facilities.

12 30. The online learning options being offered to USD’s students are sub-par in
13 practically every aspect as compared to what the educational experience afforded Plaintiff and the
14 members of the Class once was. During the online portion of the Spring 2020 semesters, USD
15 used programs by which previously recorded lectures were posted online for students to view on
16 their own or by virtual Zoom meetings. Therefore, there was a lack of classroom interaction among
17 teachers and students, and among students that is instrumental in educational development and
18 instruction.

19 31. The online formats being used by USD do not require memorization or the
20 development of strong study skills given the absence of any possibility of being called on in class
21 and the ability to consult books and other materials when taking exams. Further, the ability to
22 receive a Pass-Fail grade rather than a letter grade provides educational leniency that the students
23 would not otherwise have with the in-person letter grading education that was paid for and
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1 expected.

2 32. Students, like Plaintiff, have been deprived of the opportunity for collaborative
3 learning and in-person dialogue, feedback, and critique.

4 33. Access to facilities such as libraries, laboratories, computer labs, recitations, and
5 study rooms, are integral to a university education.

6 34. Access to activities offered by campus life fosters intellectual and academic
7 development and independence, and networking for future careers.

8 35. USD priced the tuition and Mandatory Fees based on the in person educational
9 services, opportunities and experiences it was providing on campus.

10 36. The University has not made any refund of any portion of the tuition Plaintiff and
11 the members of the Class paid for the semesters affected by Covid-19.

12 37. The University has not refunded any portion of the Mandatory Fees it collected
13 from Plaintiff and the members of the Class for the affected semester even though it closed or
14 ceased operating the services and facilities for which the Mandatory Fees were intended to pay.

15 38. Plaintiff and the Class members are therefore entitled to a pro-rated refund of the
16 tuition and Mandatory Fee they paid for the Spring 2020 semester for the remaining days of that
17 semester after classes moved from in-person to online and facilities were closed, and for the future
18 semesters where in-person classes are cancelled and moved online.

19 39. Defendant's practice of failing to provide reimbursements for tuition and
20 Mandatory Fees despite the diminished value of the education and other experiences that it
21 provided, and the reduced benefits associated with the fees, as alleged herein, violates generally
22 accepted principles of business conduct.

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CLASS ACTION ALLEGATIONS

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2 40. Plaintiff brings this case individually and, pursuant to FRCP 23, on behalf of the
3 class defined as:

4 All persons who paid, or will pay, tuition and/or the Mandatory Fees for a
5 student to attend in-person class(es) during the Spring 2020 or any other
6 semester affected by Covid-19 at USD but had their educational experiences
7 and class(es) moved to online only learning (the “Class”).

8 41. Plaintiff reserves the right to modify or amend the definition of the proposed Class
9 if necessary, before this Court determines whether certification is appropriate.

10 42. This action has been brought and may properly be maintained on behalf of the Class
11 proposed herein under the criteria of FRCP 23 and other statutes and case law regarding class
12 action litigation in California State Court.

13 43. The Class is so numerous that joinder of all members is impracticable. Although
14 the precise number of Class members is unknown to Plaintiff, the University has reported that an
15 aggregate of 9,180 or more undergraduate and graduate students were enrolled for the 2019-2020
16 school year. The names and addresses of all such students are known to the University and can be
17 identified through the University’s records. Class members may be notified of the pendency of this
18 action by recognized, Court-approved notice dissemination methods, which may include U.S.
19 Mail, electronic mail, Internet postings, and/or published notice.
20

21
22 44. The questions here are ones of common or general interest such that there is a well-
23 defined community of interest among the class members. These questions predominate over
24 questions that may affect only individual members of the classes because USD has acted on
25 grounds generally applicable to the classes. Such common legal or factual questions include, but
26 are not limited to:

27 a. Whether the University accepted money from Plaintiff and the Class members in
28

1 exchange for the promise to provide an in-person and on-campus live education, as
2 well as certain facilities and services throughout the semesters affected by Covid-
3 19;

4
5 b. Whether Defendant breached its contracts with Plaintiff and the members of the
6 Class by failing to provide them with an in-person and on-campus live education
7 after March 13, 2020;

8
9 c. Whether Defendant breached its contracts with Plaintiff and the Class by failing to
10 provide the services and facilities to which the Mandatory Fees pertained after mid-
11 March 2020; and

12
13 d. Whether Defendant breached the covenant of good faith and fair dealing with
14 Plaintiff and the members of the Class by failing to provide them with an in-person
15 and on-campus live education after March 13, 2020;

16
17 e. Whether Defendant breached the covenant of good faith and fair dealing with
18 Plaintiff and the members of the Class by failing to provide the services and
19 facilities to which the Mandatory Fees pertained after mid-March 2020;

20
21 f. Whether Defendant is unjustly enriched by retaining all of the tuition and
22 Mandatory Fees during the time when the University has been closed, and Plaintiff
23 and the members of the Class have been denied an in-person and on-campus live
24 education and access and the services and facilities for which the Mandatory Fees
25 were paid;

26
27 g. Whether Defendant intentionally interfered with the rights of the Plaintiff and the
28 Class when it cancelled all in-person classes and only provided a remote online
format, cancelled all on-campus events, strongly encouraged students to stay away

1 from campus, and discontinued services for which the Mandatory Fees were
2 intended to pay, all while retaining the tuition and Mandatory Fees paid by Plaintiff
3 and the Class; and

- 4
5 h. The amount of damages and other relief to be awarded to Plaintiff and the Class
6 members.

7 45. Plaintiff's claims are typical of the claims of the members of the Class because
8 Plaintiff and the other Class members each contracted with Defendant for it to provide an in-person
9 and on-campus live education for the tuition they paid and the services and facilities for the
10 Mandatory Fee that they paid, that the University stopped providing in mid-March.

11
12 46. Plaintiff is a more than adequate class representative. In particular:

- 13 a) Plaintiff is committed to the vigorous prosecution of this action on behalf of himself
14 and all others similarly situated and has retained competent counsel experienced in
15 the prosecution of class actions and, in particular, class action litigation;
16
17 b) Because his interests do not conflict with the interests of the other Class members
18 who he seeks to represent;
19
20 c) no difficulty is anticipated in the management of this litigation as a class action;
21 and
22
23 d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial
24 costs and legal issues associated with this type of litigation.

25 47. Class members' interests will be fairly and adequately protected by Plaintiff and
26 his counsel.

27 48. It is impracticable to bring members of the Class's individual claims before the
28 Court. Class treatment permits a large number of similarly situated persons or entities to prosecute
their common claims in a single forum simultaneously, efficiently, and without the unnecessary
duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory

1 judgments that numerous individual actions would engender. The benefits of the class mechanism,
2 including providing injured persons or entities with a method for obtaining redress on claims that
3 might not be practicable to pursue individually, substantially outweigh any difficulties that may
4 arise in the management of this class action. A class action is superior to other available methods
5 for the fair and efficient adjudication of this litigation. The damages or financial detriment suffered
6 by individual Class members are relatively small compared to the burden and expense of individual
7 litigation of their claims against the University. It would, thus, be virtually impossible for the
8 Class, on an individual basis, to obtain effective redress for the wrongs committed against them.
9 Furthermore, individualized litigation would create the danger of inconsistent or contradictory
10 judgments arising from the same set of facts. Individualized litigation would also increase the
11 delay and expense to all parties and the court system from the issues raised by this action. By
12 contrast, the class action device provides the benefits of adjudication of these issues in a single
13 proceeding, economies of scale, and comprehensive supervision by a single court, and presents no
14 unusual management difficulties under the circumstances.
15
16

17 49. Plaintiff also seeks class certification for injunctive and declaratory relief under
18 FRCP 23(b)(2) and (b)(3), at the appropriate juncture.
19

20 **FIRST CLAIM FOR RELIEF**
21 **BREACH OF CONTRACT**
22 **(On Behalf of Plaintiff and the Class)**

23 50. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged
24 herein, including those made in paragraphs 1 through 48 above.

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

26 52. By paying the University tuition and the Mandatory Fees for the Spring 2020
27 semester, the University agreed to, among other things, provide an in-person and on-campus live
28

1 education as well as the services and facilities to which the Mandatory Fees that were paid
2 pertained to throughout those semesters. As a result, Plaintiff and each member of the Class
3 entered into a binding contract with the University.

4
5 53. USD has held that its in-person educational opportunities, experiences, and services
6 are of substantial value.

7 54. USD has agreed to provide in-person educational opportunities, experiences, and
8 services to enrolled students.

9 55. USD has promoted its in-person educational services as being valuable to students'
10 educational experiences and their development.

11 56. In marketing materials and other documents provided to the Named Plaintiff,
12 Defendant promoted the value of the in-person education experiences, opportunities, and services
13 that Defendant provided.

14 57. Defendant provided Plaintiff with an acceptance letter that the Named Plaintiff
15 accepted based on the promise of in-person educational experiences, opportunities, and services
16 that Defendant would provide.

17 58. The University has breached its contract with Plaintiff and the Class by failing to
18 provide the promised in-person and on-campus live education as well as the services and facilities
19 to which the Mandatory Fees pertained throughout the semesters affected by Covid-19, yet has
20 retained monies paid by Plaintiff and the Class for a live in-person education and access to these
21 services and facilities during these semesters.

22 59. Plaintiff and the members of the Class have therefore been denied the benefit of
23 their bargain.

24 60. Plaintiff and members of the Class have performed all of the obligations on them
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1 pursuant to their agreement – including by making such payments or securing student loans or
2 scholarships to pay for such education.

3 61. Plaintiff and the members of the Class have suffered damage as a direct and
4 proximate result of the University’s breach in the amount of the prorated portion of the tuition and
5 Mandatory Fee they each paid during the portion of time the semesters affected by Covid-19 in
6 which in-person classes were discontinued and facilities were closed by the University.
7

8 62. The University should return such portions of the tuition and Mandatory Fee to
9 Plaintiff and each Class Member.

10 **SECOND CLAIM FOR RELIEF**
11 **UNJUST ENRICHMENT**
12 **(On Behalf of Plaintiff and the Class)**

13 63. Plaintiff incorporates the allegations by reference as if fully set forth herein,
14 including those made in paragraphs 1 through 61 above.

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

16 65. By paying the University tuition and the Mandatory Fees for the Spring semester,
17 the University agreed to, among other things, provide an in-person and on-campus live education
18 as well as the services and facilities to which the Mandatory Fees that were paid pertained to
19 throughout the semester.
20

21 66. Defendant has retained the benefits of the amount of tuition and fees that Plaintiff
22 has provided – without providing the benefits that Plaintiff is owed.

23 67. For example, Defendant failed to provide Plaintiff and Class Members access to
24 any on-campus facility after March 13, 2020. Yet Defendant assessed Plaintiff with tuition and
25 fees that covered the cost of upkeep and maintenance of such facilities, services, costs, and
26 expenses.
27
28

1 68. Plaintiff was not able to access such facilities or services remotely.

2 69. Plaintiff paid tuition and fees with the expressed understanding that such costs
3 included the in-person classes, services, opportunities, and experiences that USD have previously
4 marketed, promoted, or made available prior to Covid-19.
5

6 70. Defendant has been unjustly enriched by Plaintiff's payment of tuition and fees.

7 71. Despite not being able to provide such services, USD failed to provide
8 reimbursements for tuition and fees despite the diminished value of the education and other
9 experiences that it provided, and the reduced benefits associated with the fees.
10

11 72. Plaintiff and members of the Class have sustained monetary damages as a result of
12 each of Defendant's breaches of the covenant of good faith and fair dealing.

13 73. Defendant's act was unjust for them to keep money for services they did not render.

14 **THIRD CAUSE OF ACTION**
15 **CONVERSION & TAKING OF PROPERTY**
16 **(On Behalf of Plaintiff and the Class)**

17 74. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged
18 herein, including those made in paragraphs 1 through 72 above.

19 75. In the alternative to the First Claim for Relief, Plaintiff brings this claim
20 individually and on behalf of the members of the Class.

21 76. Plaintiff and members of the Class provided the University with property in the
22 form of funds (tuition and Mandatory Fees), to be in exchange for in person on campus services,
23 facilities and face to face instruction.
24

25 77. The University exercises control over Plaintiff's and Class members' property.

26 78. The University intentionally interfered with Plaintiff's and the Class members'
27 property when it unilaterally moved all in-person classes to a remote online format, cancelled all
28

1 on-campus events, strongly encouraged students to stay away from campus, and discontinued
2 services for which the Mandatory Fees were intended to pay, all while retaining the tuition and
3 Mandatory Fees paid by Plaintiff and the Class.

4
5 79. Class members demanded the return of their property proportionate to the reduction
6 in benefit for education and services during the Spring 2020 semester when in-person and on-
7 campus live education, and access to the University's services and facilities were unavailable.

8 80. The University's retention of the tuition and Mandatory Fees paid by Plaintiff and
9 the Class without providing the services for which they paid, deprived Plaintiff and Class of the
10 benefits for which the tuition and Mandatory Fees were paid, and of their funds paid for those
11 benefits.

12
13 81. Plaintiff and the Class members are entitled to the return of the pro-rated amounts
14 of tuition and Mandatory Fees each paid equal to the reduction in benefit for education and services
15 during the Spring 2020 semester when in-person and on-campus live education, and access to the
16 University's services and facilities were unavailable.

17
18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff
21 and the Class against Defendant as follows:

- 22 (a) For an order certifying the Class under the FRCP and naming Plaintiff as
23 representative of the Class and Plaintiff's attorneys as Class Counsel to
24 represent the Class;
25
26 (b) For an order finding in favor of Plaintiff and the Class on all counts asserted
27 herein;

- (c) For compensatory damages in an amount to be determined by the trier of fact;
- (d) For an order compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;
- (e) For an order of restitution and all other forms of equitable monetary relief;
- (f) For an order awarding Plaintiff’s reasonable attorneys’ fees, costs, and expenses;
- (g) For an order awarding pre- and post-judgment interest on any amounts awarded; and,
- (h) For an order awarding such other and further relief as may be just and proper, including injunctive relief and declaratory relief.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: November 13, 2020

Respectfully submitted,

SHOOP | APLC

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