

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No.	CV 20-4066-DMG (PVCx)✓ CV 20-4107-DMG (PVCx) CV 20-4172-DMG (PVCx) CV 20-5190-DMG (PVCx)	Date	July 17, 2020
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Title	<i>Christina Diaz v. University of Southern California</i> ✓ <i>Latisha Watson v. University of Southern California, et al.</i> <i>J. Julia Greenberg v. University of Southern California, et al.</i> <i>Justin Kerendian v. University of Southern California, et al.</i>	Page	1 of 11
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Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN  
Deputy Clerk

NOT REPORTED  
Court Reporter

Attorneys Present for Plaintiff(s)  
None Present

Attorneys Present for Defendant(s)  
None Present

**Proceedings: IN CHAMBERS—ORDER RE PLAINTIFF CHRISTINA DIAZ’S  
MOTION TO STAY OR CONSOLIDATE [18] AND PLAINTIFFS  
LATISHA WATSON AND J. JULIA GREENBERG’S JOINT MOTION TO  
CONSOLIDATE [30]<sup>1</sup>**

On May 4, 2020, Plaintiff Christina Diaz filed a Class Action Complaint against Defendant University of Southern California (“USC”) asserting claims relating to USC’s changes to its spring and summer 2020 student programs due to the COVID-19 pandemic. [Doc. #1.] Within three days, Plaintiffs Latisha Watson and J. Julia Greenberg (then known as “Jane Doe”) filed separate Class Action Complaints asserting similar claims against USC and its Board of Trustees (together, the “USC Defendants”), and Plaintiff Justin Kerendian filed a Class Action Complaint asserting similar claims in Los Angeles County Superior Court that was later removed to this Court. *See Watson*, CV 20-4107 [Doc. # 1]; *Greenberg*, CV 20-4172 [Doc. # 1]; *Kerendian*, CV 20-5190 [Doc. # 1].

On June 1, 2020, Diaz filed a Motion to Stay or Consolidate, with Diaz’s counsel appointed as interim class counsel if the cases were consolidated [Doc. # 18], and on June 19, 2020, Watson and Greenberg filed a Joint Motion to Consolidate with their attorneys as interim

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<sup>1</sup> Because Watson and Greenberg’s Joint Motion to Consolidate is filed in the lowest-number related case, *Diaz*, CV 20-4066, the Court refers to docket numbers for all documents, including the Joint Motion and briefing related thereto, on the *Diaz* docket, unless otherwise stated.

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co-class counsel [Doc. # 30].<sup>2</sup> The USC Defendants oppose Diaz’s Motion for a Stay of later-filed cases but support consolidation of all four cases.<sup>3</sup> [Doc. # 25.] Kerendian, as an interested party, opposes solely the appointment of interim class counsel at this time. [Doc. # 38.] The Court held a hearing on both motions on July 17, 2020. For the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** Diaz’s motion and **GRANTS** Watson and Greenberg’s Joint Motion.

**I.**  
**FACTUAL AND PROCEDURAL BACKGROUND**

USC is a private educational institution in Los Angeles, California governed by its Board of Trustees. Diaz Compl. at ¶ 7; Watson Compl. at ¶ 18. Due to the COVID-19 pandemic and the State of California’s shelter-in-place orders, USC shut down all its campus facilities, discontinued all live in-classroom instruction of any courses at any of USC’s campuses and schools, and moved all instruction to remote online media in March 2020. Diaz Compl. at ¶ 1; Watson Compl. at ¶ 6. USC has continued holding all of its students liable for the full pre-shutdown tuition and fee obligations. Diaz Compl. at ¶¶ 1, 15.

Christina Diaz is an undergraduate student at USC scheduled to graduate in 2021. Diaz Compl. at ¶ 6. Her annual tuition is \$57,256, and additional fees total \$1,863. *Id.* Diaz also paid additional funds to attend USC’s School of Architecture Study Abroad program, which was to take place in Italy and was replaced with online classes, without any refund. *Id.* Latisha Watson is a graduate student studying social work at USC who is scheduled to graduate in May 2021. Watson Compl. at ¶ 17. Watson paid \$21,886.38 in tuition and fees for the Spring 2020 semester and took out loans in order to do so. *Id.* at ¶¶ 27-28. Greenberg is a full-time student at USC who did not specify her program or tuition amount. Greenberg Compl. at ¶ 7. Kerendian is an undergraduate student at USC who paid \$29,185.17 for Spring 2020 tuition and fees.

<sup>2</sup> The Joint Motion to Consolidate is also filed in *Watson*, CV 20-4107 [Doc. # 26] and *Greenberg*, 20-4172 [Doc. # 38].

<sup>3</sup> A fifth case, *Injune David Choi v. The University of Southern California*, CV 20-5573, was filed on June 23, 2020, and has been transferred to this Court as a related case pursuant to Local Rule 83-1.3.1. *See Choi*, CV 20-5573 [Doc. # 17].

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Kerendian Compl. at ¶¶ 18-19. Undergraduate students are expected to incur approximately \$200,000 or more in tuition and fees during their undergraduate enrollment at USC. Diaz Compl. at ¶ 11.

Diaz’s Complaint focuses on USC’s marketing and recruitment materials, which highlight the benefits of USC’s campus and in-person opportunities now unavailable to students due to the pandemic-related shutdown. Diaz Compl. at ¶¶ 12-14, 17-36. “[O]n behalf of herself and all other similarly situated students enrolled at USC who pay or are obligated to pay any tuition or fees and any students enrolled at USC in any future summer session or semester in which USC does not provide access to its campus facilities or on-campus instruction yet continues to charge full tuition and fees without any proration,” Diaz seeks money damages and restitution and asserts the following causes of action: (1) breach of contract, (2) unjust enrichment, (3) money had and received, and (4) violation of California’s Unfair Competition Law (“UCL”). *Id.* at ¶¶ 43, 53-84.

Greenberg defines the class she seeks to represent similarly as “[a]ll persons enrolled at USC for the Spring 2020 term who paid USC, in whole or in part, tuition, fees, and/or room and board for in-person instruction and use of campus facilities, but were denied use of and/or access to in-person instruction and/or campus facilities by USC.” Greenberg Compl. at ¶ 64. Greenberg brings claims for (1) breach of contract, (2) unjust enrichment, (3) conversion, and (4) violation of the UCL. *Id.* at ¶¶ 43, 77-96.

In addition to similar facts as alleged in Diaz’s Complaint, Watson’s Complaint describes issues specific to her Master of Social Work (“MSW”) program, such as not being given access to courses on a more sophisticated online educational interface that USC’s online MSW program uses. Watson Compl. at ¶¶ 35-47. Watson also alleges that she has not been refunded mandatory fees for USC’s on-campus meal plan and student programming. *Id.* at ¶¶ 48-50. Watson describes the class she seeks to represent as “[a]ll persons who paid the University of Southern California tuition and/or fees for in person education and/or who paid for unused and unrefunded meal plans to the University of Southern California for the Spring 2020 semester” and asserts claims for (1) breach of contract, (2) restitution based on quasi-contract, (3) conversion, and (4) violation of the UCL. *Id.* at ¶¶ 56, 62-93.

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Kerendian, similarly to Watson, defines the class he seeks to represent as “[a]ll persons who paid tuition and/or fees for students enrolled in classes at USC for the Spring 2020 semester.” Kerendian Compl. at ¶ 22. He asserts claims for (1) breach of contract, (2) unjust enrichment, (3) conversion, and (4) violation of the UCL. *Id.* at ¶¶ 56, 26-57.

## II. DISCUSSION

### A. Motion to Stay

“A district court has inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254–55 (1936); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (same). For this reason, a district court has discretion to stay proceedings pending before it. The Supreme Court has emphasized that “[a] stay is not a matter of right, even if irreparable injury might otherwise result” but “is instead an exercise of judicial discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.*

Diaz argues that all later-filed cases should be stayed pending the resolution of her case because the cases are virtually identical, so resolution of her case would resolve and dispose of the claims in the later-filed cases. Mot. to Stay at 10-11. She also argues that granting a stay would relieve the Court of having to resolve any motions regarding the appointment of interim class counsel. Reply to Mot. to Stay at 23-24.

When “even a fair possibility” of harm may result from a stay, the proponent of the stay “must make out a clear case of hardship or inequity in being required to go forward. . . . Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299 U.S. at 255. While Diaz is correct that it would be inefficient and duplicative for all four cases to proceed independently, she fails to make out a clear case of hardship or inequity resulting from consolidation. By contrast, Watson and Greenberg, in their Joint Opposition to the Motion to

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Stay, argue that because there are differences between the Complaints in each action, the most fair and efficient way to protect the interests of all parties is consolidation, not a stay. Joint Opposition at 8 [Doc. # 25]. Differences include the fact that Watson and Greenberg’s Complaints name the Board of Trustees as a Defendant alongside USC, and Watson, Greenberg, and Kerendian assert conversion claims instead of money had and received. Moreover, Diaz and Greenberg define the class they each seek to represent as USC students or persons enrolled at USC, while Watson and Kerendian include in their class definitions any person who paid tuition, which may include parents or other non-students. In addition, Diaz is the only Plaintiff who seeks to represent a class that may pay tuition for any Summer 2020 session or future semester in which students cannot access in-person classes or facilities but are still charged full tuition, while the other Plaintiffs seek refunds solely for the Spring 2020 session.

Weighing competing interest such as “possible damage which might result from the granting of the stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complication of issues, proof, and questions of law which could be expected to result from a stay,” the Court finds that greater damage would ensue from granting a stay than from consolidating the cases, given the slightly different claims, parties, and classes. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX*, 300 F.2d at 268). The Court thus declines to stay all later-filed cases while *Diaz* proceeds.

## B. Motion to Consolidate

A court may consolidate actions pending before it if they “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). District courts have broad discretion whether or not to consolidate actions. *Pierce v. County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008) (citing *Investor’s Research Co. v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989)). In determining whether consolidation is appropriate, courts weigh “the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause.” *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984).

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No party opposes consolidation, and the Court finds the interest in judicial economy in consolidating nearly identical actions outweighs any potential delay or confusion caused by consolidation. *See Huene*, 743 F.2d at 704. Moreover, given the early stage of this litigation, consolidation and filing a Consolidated Amended Class Complaint is unlikely to result in any prejudice to class members. Accordingly, these actions and any later-filed tuition refund actions against the USC Defendants shall be consolidated under the caption *In re University of Southern California Tuition and Fees COVID-19 Refund Litigation*, Case No. 20-4066-DMG (PVCx).

### C. Appointment of Interim Class Counsel

Under Rule 23, a court may designate interim counsel to act on behalf of a putative class, and if “more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.” Fed. R. Civ. P. 23(g)(2), (3). To select interim class counsel, the Court looks to the factors set forth in Rule 23(g)(1) for the appointment of class counsel after class certification:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law;
- and (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A); *see, e.g., In re 5-Hour Energy Mktg. v. Innovation Ventures, LLC*, No. CV 13-4001-PSG (PLAx), 2013 WL 12134144, at \*2 (C.D. Cal. Nov. 8, 2013). The Court also “may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). The commentary to Rule 23 notes that although precertification work is ordinarily handled by the lawyer who filed the action, “[i]n some cases . . . there may be rivalry or uncertainty that makes formal designation of interim counsel appropriate.” Fed. R. Civ. P. 23 advisory committee’s note, 2003 amend.

Diaz asserts that her attorneys should be appointed the interim class counsel and rejected Watson’s and Greenberg’s attorneys’ offers of a tripartite leadership structure, with one firm from each case working cooperatively as interim class counsel. Joint Mot. to Consolidate at 6.

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Watson and Greenberg now assert that their attorneys should be co-interim class counsel, while Kerendian’s attorney argues that appointment of any interim class counsel is premature. *Id.*; Kerendian Response to Joint Mot. at 4 [Doc. # 38].

Despite Kerendian’s assertion to the contrary, the Court finds appointment of interim class counsel is necessary to ensure class members’ interests are protected and multiple counsels’ efforts are not “overlapping, duplicative, or competing.” *White v. TransUnion, LLC*, 239 F.R.D. 681, 683 (C.D. Cal. 2006). Kerendian cites to cases in which no duplicative lawsuits had been filed and consolidated, thus there was no risk of competition or rivalry between different law firms. *See* Kerendian Response to Joint Mot. at 5 (citing *Eashoo v. Iovate Health Scis. U.S.A., Inc.*, No. CV 15-01726-BRO (PjWx), 2015 WL 12696036, at \*10 (C.D. Cal. May 26, 2015) and *In re Seagate Tech. LLC Litig.*, No. 16-CV-00523-RMW, 2016 WL 3401989, at \*2 (N.D. Cal. June 21, 2016)). This case in fact involves “competing lawsuits pending in district court that may be consolidated in the near future” and “a gaggle of law firms jockeying to be appointed class counsel,” rendering appointment of interim class counsel appropriate at this time. *In re Seagate Tech. LLC Litig.*, 2016 WL 3401989, at \*3 (citation and internal quotation marks omitted). For the same reasons, the Court also rejects Kerendian’s suggestion that all five firms can serve as joint lead counsels. *See* Kerendian Response to Joint Mdot. at 7.

Committees of counsel “are most commonly needed when group members’ interests and positions are sufficiently dissimilar to justify giving them representation in decision making.” Manual for Complex Litigation (Fourth) § 10.221 (2004). Here, Plaintiffs have presented the Court with the option of two different pairs of counsel to be co-interim class counsel: (1) the Katriel Law Firm and Kalfayan Law Firm representing Diaz, and (2) Berger Montague PC (“Berger Montague”) and Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) representing Watson and Greenberg.<sup>4</sup> The parties also seem amenable to a tripartite leadership structure, with

<sup>4</sup> The Parris Law Firm, representing Kerendian, does not argue that it should be sole interim class counsel in this matter. Kerendian Response to Joint Mot. at 7 [Doc. # 38]. Moreover, though experienced and reputable, The Parris Law Firm does not have specific experience litigating class actions in the higher education or COVID-19 context and has not provided as much detail regarding the attorneys and resources it plans to expend on this case. *Id.* at 6-9; Parris Decl. [Doc. # 38-1]. Kerendian’s Complaint is also far less detailed and reflects less work done

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one firm from each case working cooperatively as interim class counsel. Joint Mot. to Consolidate at 6; *Diaz* Response to Joint Mot. at p. 13 [Doc. # 49] (“If, contrary to *Diaz*’s counsel’s assessment, the Court were to conclude that a multiple firm co-lead structure was best, *Diaz*’s counsel have no objection to working with any and all firms.”).

At this juncture, the Court will not gainsay counsels’ apparent desire to share the burden of litigation between multiple firms. Should a motion for class certification be filed, the Court will consider “matters pertinent to counsel’s ability to fairly and adequately represent the interests of the class,” including duplicative work and costs, to revisit whether the appointment of co-interim class counsel has worked effectively and should be maintained. Fed. R. Civ. P. 23(g)(1)(B).

The Court thus examines the factors set forth in Rule 23(g)(1)(A) as they relate to the Katriel Law Firm, the Kalfayan Law Firm, Berger Montague, and Hagens Berman.

**1. Work counsel has performed in this action**

The *Diaz* and *Watson* Complaints are particularly well-researched and detailed. *Diaz*’s counsel have researched and produced a lead plaintiff seeking refund of summer school fees on top of Spring 2020 tuition and fees (and potentially future fees if the pandemic continues past the summer), and *Watson*’s counsel Berger Montague has developed *Watson*’s case based on the alleged availability of a higher-quality online MSW program. Both pairs of firms have served discovery requests on USC and consulted with experts. *Diaz* Opp. to Joint Mot. at 9-10 [Doc. # 49]; Joint Reply at 13 [Doc. # 50]. *Greenberg*’s Complaint is the least well-developed.

**2. Counsels’ experience and knowledge of applicable law**

This factor favors appointment of Berger Montague and Hagens Berman. Berger Montague has specific expertise representing plaintiffs against higher education institutions. *See* Joint Mot. at 15. In addition, Hagens Berman is the only law firm of the four that has secured a

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investigating this case than the other Plaintiffs’ Complaints. *See* Fed. R. Civ. P. 23(g)(1)(A)(i). Accordingly, the Court declines to appoint The Parris Law Firm as interim class counsel.

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large settlement in another class action against USC, albeit in a sexual harassment case, not a contract or UCL case.<sup>5</sup> Berger Montague and Hagens Berman are together litigating over two dozen COVID-19 higher education cases, as well as other numerous other COVID-19 related cases. *See* Mot. to Stay at 17; Joint Mot. at 13 n.5; *id.* at 17. Berger Montague’s and Hagens Berman’s detailed track records in class actions show great depth of experience in bringing plaintiffs’ class actions for similar claims, and the specific partners committed by both firms, as well as their deep benches of associates, have proven track records of success.<sup>6</sup>

In Diaz’s counsel’s favor, Roy Katriel is an experienced class action litigator who filed the first class action bringing similar claims against the Regents of the University of California, *see Stoeffel v. The Regents of The Univ. of California*, No. 20STCV149991 (Los Angeles Superior Ct. filed Apr. 16, 2020), and his law firm and the Kalfayan Law Firm are cooperating as co-counsel in another similar tuition refund class action now pending in the Southern District of New York against New York University. *See Zagoria v. New York University*, No. CV 20-3610 (S.D.N.Y. May 8, 2020). But Ralph Kalfayan and Veneeta Jaswal of the the Kalfayan Law Firm appear to have less class action experience, and the Kalfayan Law Firm did not provide significant information about “special counsel” Shaun Martin or senior associate Andrew Kubik, rendering it more difficult for the Court to ascertain their experience and knowledge. *See* Diaz Response at 23-24.

<sup>5</sup> Diaz’s counsel are correct that this Court and others have had some critiques of Hagens Berman and Berger Montague’s work. *See* Mot. to Stay at 19 (quoting *Johnson v. SmithKline Beecham Corp.*, 2018 WL 9536806, at \*1 (E.D. Pa. Feb. 26, 2018) (describing events leading to repeated sanctions finding against Hagens Berman); *Corron v. Reeve*, 258 F.3d 86, 89-91 (2d Cir. 2001) (upholding sanctions against Berger Montague for filing a frivolous claim)); Diaz Reply at 13-16 (citing *Bentley v. United of Omaha*, No. CV 15-7870-DMG (reducing Hagens Berman’s attorneys’ fees due to potential duplicative billing and some omissions). The Court does not find that these criticisms, particularly the decades-old sanction against Berger Montague, preclude either firm from being the best able to represent the interests of the class.

<sup>6</sup> Diaz’s counsel argues that the Complaints in *Watson* and *Greenberg* state faulty claims, but Berger Montague and Hagens Berman appear to have rebutted those legal arguments. *See* Diaz Opp. to Joint Mot. at 11-12; Joint Reply at 16-17. The Court will not decide legal arguments regarding the pleadings at this stage and does not opine on which sides’ position reflects greater knowledge of applicable law.

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### 3. Resources to be committed

This factor weighs in favor of Berger Montague and Hagens Berman, which collectively employ 142 attorneys, many of whom specialize in class actions and complex litigation on behalf of plaintiffs, and hundreds of full-time professional staff. The firms are also cognizant that this case, like some of their prior class actions, may require out-of-pocket expenditures in the millions of dollars. Joint. Mot. at 23. By contrast, the Katriel Law Firm appears to employ just one attorney, and the Kalfayan Firm only several attorneys, and it is unclear what support staff, capital, or other resources those firms may supply.

### 4. Conclusion

The Court's review of the Rule 23 factors indicates that Berger Montague and Hagens Berman attorneys bring more resources to bear in representing the putative class in this consolidated action, but Diaz's counsel—particularly, the Katriel Law Firm—brings specific experience and in-depth research to the specifics of this case and putative class. Moreover, on a practical level, the fact that the Katriel Law Firm is located in Southern California and purports to have a good working relationship with Defendants' counsel in ongoing litigation before another court also weighs in its favor. Accordingly, the Court finds that the tripartite co-interim class counsel structure initially proposed by Watson's and Greenberg's attorneys to Diaz's counsel permits the attorneys who are best situated to represent the class to continue to do so at this time. The Katriel Law Firm will serve as the third co-lead interim class counsel, along with Berger Montague and Hagens Berman. The parties may decide for themselves which firm will serve as lead communications counsel, as Defendants suggest. *See* USC Opposition to Joint Mot. at 7 [Doc. # 44].

## IV. CONCLUSION

For the foregoing reasons, Diaz's Motion to Stay or Consolidate is **DENIED in part and GRANTED in part**. [Doc. # 18.] Watson and Greenberg's Joint Motion to Consolidate and to appoint their counsel as co-interim class counsel is **GRANTED**. [Doc. # 30.] The above-

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captioned cases are hereby consolidated under the caption *In re University of Southern California Tuition and Fees COVID-19 Refund Litigation*, case number CV 20-4066-DMG (PVCx). The following cases will be administratively closed: *Watson*, CV 20-4107; *Greenberg*, CV 20-4172; and *Kerendian*, CV 20-5190. Any material documents filed in those closed cases will be deemed to have been filed in the consolidated case.

Plaintiffs shall file a Consolidated Amended Class Action Complaint by August 14, 2020, and Defendants shall respond to the Consolidated Complaint within 28 days after its filing.

If any other cases raising similar claims against USC are filed and are deemed related to this case, the Court will issue an Order to Show Cause why those cases should not be subsumed within the consolidated action.

**IT IS SO ORDERED.**