

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-21-000866  
Victoria Benavides

D-1-GN-21-000866

Cause No. \_\_\_\_\_

**ANISSA REYES, on behalf of herself and  
all others similarly situated,**

**Plaintiff,**

v.

**THE UNIVERSITY OF TEXAS AT AUSTIN,  
THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM, and  
KEVIN P. ELTIFE,**

**Defendants.**

§ **IN THE DISTRICT COURT**  
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§ **TRAVIS COUNTY, TEXAS**  
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§  
§ **250th**  
§ **\_\_\_\_\_ JUDICIAL DISTRICT**

**PLAINTIFF’S ORIGINAL CLASS ACTION PETITION**

Plaintiff, Anissa Reyes (“Plaintiff”), by and through her undersigned counsel, brings this action against Defendants, the University of Texas at Austin (the “University”), The Board of Regents of The University of Texas System (the “Regents”), and Kevin P. Eltife in his official capacity as Chairman of the Regents (collectively with the University and Regents, “Defendants”), and allege as follows based upon information and belief, except as to the allegations specifically pertaining to her, which are based on personal knowledge.

**DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**NATURE OF THE ACTION**

2. This is a class action lawsuit on behalf of all persons who paid or will pay tuition to attend The University of Texas at Austin for an in-person, hands-on education for semesters affected by Covid-19 starting in the Spring 2020 semester, and had their course work moved to remote online learning. Such persons paid all or part of the tuition for the semester that ranged

from approximately \$1,604 to \$20,642 for an undergraduate student and ranged from approximately \$1,177 to \$14,014 for a graduate student.

3. The University of Texas at Austin has not refunded any amount of the tuition even though it has cancelled in-person classes as of March 13, 2020.

4. Because of the Regents response to the Covid-19 pandemic, by mid-March, the University ceased or severely limited any of the educational services or facilities tuition was intended to cover.

5. As a result, the University's unlawfully seized and are in possession of property (funds) of the Plaintiff and Class members in the form of paid tuition.

6. Further, the University's failure to provide the services for which tuition was intended to cover since approximately mid-March is a constitutional taking under the U.S. and Texas Constitutions.

7. In short, as to tuition, Plaintiff and the members of the Class have paid tuition for a first-rate education and educational experience, with all the appurtenant benefits offered by a first-rate university, and were provided a materially different and insufficient product, which constitutes a breach of the contracts entered into by Plaintiff and the Class with the University. As said in New York Magazine, "*Universities are still in a period of consensual hallucination with each saying, 'We're going to maintain these prices for what has become, overnight, a dramatically less compelling product offering.'*"<sup>1</sup>

8. Plaintiff seeks, for herself and Class members, just compensation for the taking of the portion of tuition proportionate to the amount of time in the semesters affected by Covid-19

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<sup>1</sup> James D. Walsh, "The Coming Disruption," New York Magazine, May 11, 2020, available at [https://nymag.com/intelligencer/2020/05/scott-galloway-future-of-college.html?utm\\_source=fb](https://nymag.com/intelligencer/2020/05/scott-galloway-future-of-college.html?utm_source=fb) (site last visited June 9, 2020).

when the University switched to online distance learning, and injunctive relief enjoining Defendant from continuing to charge full tuition without providing the full benefits bargained for.

The Court further rejects Barry's materiality and damages arguments. Both arguments are predicated on the notion that, if a breach existed with respect to the transition to online teaching, it was de minimis, since Rosado would still earn credits toward a diploma. This is kind of like purchasing a Cadillac at full price and receiving an Oldsmobile. Although both are fine vehicles, surely it is no consolation to the Cadillac buyer that the "Olds" can also go from Point A to Point B. That is Barry's argument and the Court declines to consider it further.

*Rosado v. Barry Univ. Inc.*, No. 1:20-CV-21813, — F.Supp.3d —, —, 2020 WL 6438684, at \*3 (S.D. Fla. Oct. 30, 2020)

9. Plaintiff's counsel has sent a Freedom of Information Act (FOIA) requests to the University and Regents in order to, *inter alia*, gain access to the internal communications regarding issuing potential refunds and reimbursements to the students, and the ultimate denial of the same. If any information received proves relevant, Plaintiff shall amend the Complaint to incorporate.

### PARTIES

10. Plaintiff Anissa Reyes is a citizen of Texas. She paid to attend the Spring 2020 semester at the University as a full-time undergraduate student. Plaintiff paid tuition for the Spring 2020 semester to enable her to obtain an in-person, on-campus educational experience, and enable her to participate in the activities and to utilize the services traditionally accessible to students on campus. She has not been provided just compensation or a pro-rated refund of the tuition for her in-person classes that were discontinued and moved online or the diminution or cessation of educational enrichment experiences associated with her classes and college experience.

11. Defendant, The University of Texas at Austin, is a public research university in Austin, Texas, and is the flagship institution of the University of Texas System and is considered a state agency pursuant to Texas Education Code § 572.002(10)(B).

12. The University offers numerous major fields for undergraduate students, as well as a number of graduate programs. Defendant's undergraduate program includes students from many, if not all, of the states in the country.

13. The University's principal campus is located in Austin, Texas. Defendant is a citizen of Texas.

14. The Board of Regents of the University of Texas System is the governing body for The University of Texas System pursuant to Texas Education Code §65.11. The Board is composed of nine members who are appointed by the Governor of Texas and confirmed by the Senate.

15. The Regents are a constitutional corporate body operating within Travis County, Texas. The Regents is a citizen of Texas.

16. Defendant Kevin P. Eltife is the Chairman of the Board of Regents.

#### **JURISDICTION AND VENUE**

17. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff states: (a) the damages sought herein are within the jurisdictional limits of the Court, and (b) Plaintiff seeks monetary relief over \$1,000,000.

18. This Court has personal jurisdiction over Defendants because Defendants maintain their principal place of business in this district.

19. Venue is proper pursuant to Tx. Civ. Prac. & Rem. Code § 15.002, as this is the county in which a substantial part of the events or omissions giving rise to the claim occurred, and this is the court of Defendants' principal place of business.

**FACTUAL ALLEGATIONS.**

20. Plaintiff and Class Members paid tuition to attend classes and participate in enrichment activities at The University of Texas at Austin for the Spring 2020 semester.

21. The Spring 2020 semester at the University began on or about January 21, 2020 and ended on or around May 8, 2020.<sup>2</sup>

22. Tuition at the University for the Spring 2020 Semester for an undergraduate student was as follows:<sup>3</sup>

	Hours	Architecture	Business	Communication	Education	Engineering	Fine Arts	Geosciences	Liberal Arts	Nat. Sciences	Nursing	Social Work	UG Studies
Texas Resident	1	1,639	1,782	1,604	1,608	1,695	1,663	1,673	1,551	1,610	1,720	1,624	1,629
	2	2,021	2,197	1,977	1,980	2,090	2,047	2,062	1,913	1,984	2,119	2,001	2,007
	3	2,401	2,611	2,350	2,353	2,484	2,434	2,450	2,274	2,357	2,519	2,382	2,388
	4	2,782	3,024	2,722	2,725	2,877	2,820	2,839	2,634	2,732	2,919	2,757	2,764
	5	3,164	3,438	3,097	3,101	3,272	3,207	3,228	2,995	3,106	3,319	3,135	3,144
	6	3,543	3,854	3,468	3,473	3,665	3,595	3,617	3,354	3,479	3,718	3,513	3,524
	7	3,926	4,268	3,842	3,847	4,061	3,978	4,007	3,715	3,855	4,119	3,891	3,902
	8	4,361	4,742	4,268	4,274	4,510	4,421	4,451	4,127	4,281	4,576	4,322	4,334
	9	4,361	4,742	4,268	4,274	4,510	4,421	4,451	4,127	4,281	4,576	4,322	4,334
	10	4,361	4,742	4,268	4,274	4,510	4,421	4,451	4,127	4,281	4,576	4,322	4,334
	11	4,361	4,742	4,268	4,274	4,510	4,421	4,451	4,127	4,281	4,576	4,322	4,334
	12+	5,451	5,926	5,334	5,342	5,637	5,524	5,562	5,157	5,351	5,718	5,402	5,417
Nonresident	1	5,899	6,317	5,670	5,679	5,967	5,877	5,988	5,512	5,687	6,197	5,790	5,777
	2	7,275	7,790	6,989	7,004	7,357	7,245	7,381	6,796	7,013	7,642	7,139	7,122
	3	8,650	9,263	8,313	8,327	8,750	8,615	8,778	8,082	8,336	9,087	8,489	8,469
	4	10,024	10,734	9,633	9,652	10,138	9,983	10,173	9,365	9,667	10,529	9,837	9,815
	5	11,401	12,207	10,957	10,974	11,530	11,354	11,569	10,650	10,992	11,974	11,187	11,162
	6	12,774	13,678	12,275	12,297	12,920	12,722	12,963	11,934	12,318	13,420	12,537	12,506
	7	14,149	15,152	13,597	13,622	14,313	14,094	14,360	13,218	13,643	14,863	13,886	13,853
	8	15,721	16,833	15,106	15,137	15,901	15,656	15,956	14,687	15,156	16,514	15,428	15,393
	9	15,721	16,833	15,106	15,137	15,901	15,656	15,956	14,687	15,156	16,514	15,428	15,393
	10	15,721	16,833	15,106	15,137	15,901	15,656	15,956	14,687	15,156	16,514	15,428	15,393
	11	15,721	16,833	15,106	15,137	15,901	15,656	15,956	14,687	15,156	16,514	15,428	15,393
	12+	19,650	21,041	18,883	18,920	19,874	19,570	19,941	18,358	18,944	20,642	19,284	19,239

23. Tuition at the University for the Spring 2020 semester for a graduate student was as follows:<sup>4</sup>

<sup>2</sup> <https://registrar.utexas.edu/calendars/19-20>

<sup>3</sup> <https://utexas.app.box.com/v/ug-tuition-19-20-long>

<sup>4</sup> <https://utexas.app.box.com/v/grad-19-20-long>

	Hours	Architecture	Business	Communication	Education	Engineering	Fine Arts	Geosciences	Information	Liberal Arts	Nat. Sciences	Nursing	Pharmacy	Public Affairs	Social Work
<b>Texas Resident</b>															
1		1,412	1,177	1,955	1,257	1,429	1,404	1,310	1,469	1,210	1,248	1,418	1,362	1,934	1,400
2		1,985	1,653	1,903	1,766	2,008	1,973	1,841	2,066	1,701	1,755	1,992	1,915	1,876	1,969
3		2,296	1,915	2,202	2,042	2,326	2,284	2,132	2,391	1,968	2,031	2,307	2,216	2,172	2,280
4		2,974	2,477	2,852	2,645	3,011	2,956	2,758	3,094	2,546	2,630	2,985	2,867	2,810	2,951
5		3,547	2,954	3,400	3,155	3,590	3,526	3,288	3,689	3,036	3,135	3,560	3,421	3,352	3,517
6		3,807	3,171	3,650	3,386	3,855	3,784	3,530	3,962	3,259	3,365	3,820	3,673	3,598	3,776
7		4,276	3,561	4,099	3,803	4,329	4,250	3,966	4,450	3,659	3,780	4,290	4,123	4,040	4,242
8		5,004	4,168	4,797	4,452	5,067	4,976	4,641	5,207	4,284	4,424	5,024	4,827	4,728	4,963
9		5,213	4,342	4,998	4,637	5,277	5,183	4,834	5,424	4,464	4,608	5,233	5,029	4,927	5,170
10		5,675	4,725	5,441	5,047	5,746	5,642	5,262	5,906	4,857	5,014	5,697	5,472	5,362	5,629
11		5,981	4,981	5,736	5,320	6,059	5,946	5,549	6,226	5,119	5,288	6,005	5,771	5,654	5,934
12		6,239	5,194	5,980	5,549	6,318	6,202	5,785	6,493	5,340	5,514	6,262	6,016	5,896	6,188
13		6,599	5,493	6,326	5,867	6,680	6,561	6,119	6,868	5,647	5,830	6,624	6,363	6,234	6,545
14		6,855	5,707	6,571	6,096	6,942	6,816	6,357	7,136	5,866	6,057	6,882	6,612	6,477	6,800
15		7,112	5,919	6,818	6,323	7,202	7,071	6,594	7,401	6,084	6,284	7,139	6,858	6,719	7,054
<b>Nonresident</b>															
1		2,030	1,822	1,980	1,897	2,034	2,024	1,971	2,082	1,865	1,913	2,035	2,013	1,975	2,011
2		3,184	2,860	3,108	2,978	3,191	3,173	3,093	3,269	2,922	2,999	3,194	3,162	3,100	3,156
3		3,958	3,552	3,862	3,700	3,965	3,942	3,842	4,061	3,631	3,726	3,968	3,926	3,848	3,920
4		4,922	4,418	4,800	4,601	4,930	4,901	4,778	5,048	4,515	4,634	4,934	4,883	4,796	4,874
5		5,787	5,196	5,648	5,412	5,798	5,767	5,620	5,937	5,310	5,452	5,806	5,743	5,629	5,735
6		6,849	6,148	6,680	6,404	6,861	6,822	6,649	7,026	6,284	6,448	6,866	6,794	6,661	6,784
7		7,812	7,013	7,622	7,303	7,826	7,783	7,586	8,014	7,169	7,357	7,835	7,751	7,598	7,741
8		8,968	8,050	8,750	8,385	8,985	8,934	8,708	9,201	8,226	8,444	8,992	8,896	8,723	8,885
9		9,643	8,656	9,408	9,016	9,660	9,606	9,363	9,893	8,847	9,081	9,670	9,567	9,379	9,554
10		10,408	9,343	10,155	9,730	10,426	10,367	10,105	10,678	9,548	9,800	10,438	10,326	10,124	10,312
11		11,077	9,942	10,809	10,356	11,099	11,035	10,756	11,365	10,161	10,431	11,109	10,989	10,774	10,975
12		11,651	10,457	11,368	10,893	11,674	11,607	11,312	11,954	10,687	10,970	11,683	11,559	11,332	11,543
13		12,416	11,144	12,114	11,607	12,440	12,369	12,096	12,740	11,389	11,691	12,450	12,319	12,075	12,300
14		12,799	11,487	12,487	11,966	12,823	12,749	12,427	13,131	11,741	12,049	12,834	12,697	12,447	12,680
15		13,659	12,258	13,326	12,788	13,685	13,608	13,262	14,014	12,529	12,860	13,696	13,550	13,283	13,533

24. Plaintiff and the members of the Class paid all or part of the applicable tuition for the benefit of on-campus live interactive instruction and an on campus educational experience throughout the entire semester.

25. The University has retained the value of the tuition, while failing to provide the services for which they were paid.

26. Members of the Class have demanded discounts of tuition and have taken to an online petition to demand the same.<sup>5</sup>

27. Despite the demand from members of the Class, the University have not provided any refund or adequate discount of tuition, and continues to retain the monies paid by Plaintiff and the Class.

***In Response to COVID-19, the University Closed Campus, Preventing Access to its Facilities and Services, and Cancelled All In-Person Classes***

<sup>5</sup> <https://www.change.org/p/university-of-texas-at-austin-have-ut-austin-lower-fall-2020-semester-tuition>

28. In response to the COVID-19 pandemic, the University created a new section for its website to provide updates and answer frequently asked questions.<sup>6</sup>

29. On March 13, 2020, the University announced that it was closing campus operations and cancelling all in-person classes immediately.<sup>7</sup>

30. On March 15, 2020, the University announced that spring break was going to be extended by one week, that classes would start back on March 30, and that the University would teach as many classes as possible online. This announcement further advised that students who were unable to leave the campus must exercise social distancing at all times.<sup>8</sup>

31. On or about March 17, 2020, the University announced that they will be moving all classes to remote online learning starting on March 30, 2020. The University also required students to move out of the residence halls and to return home.<sup>9</sup>

32. In its March 17 announcement, the University also provided the following information regarding meetings and events on campus:<sup>10</sup>

### **Meetings and Events**

All on-campus programs, gatherings and events with more than 10 people through May 1 will be canceled, postponed or moved online. These include office or faculty meetings, student programs and religious or cultural celebrations in addition to all athletics events and public performances.

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<sup>6</sup> <https://coronavirus.utexas.edu/campus-announcements>

<sup>7</sup> <https://president.utexas.edu/messages-speeches-2020/covid19-identified-within-ut-community>

<sup>8</sup> <https://president.utexas.edu/messages-speeches-2020/ut-operations-update-march-15>

<sup>9</sup> <https://president.utexas.edu/messages-speeches-2020/moving-to-online-classes>

<sup>10</sup> *Id.*

33. In tacit acknowledgement that online remote learning, with limited to no enrichment activities, is a sub-par learning experience and is a “drastic change” from in-person education, the University posted the following: <sup>11</sup>

**Impact on teaching evaluations**

The drastic change in course delivery from face-to-face to online is expected to impact students’ learning and may, therefore, alter course and instructor evaluation results. **All faculty** are strongly encouraged to document the challenges you encounter and how you worked to find solutions. We also strongly encourage you to engage the help of peers many of whom are skilled in online and remote instruction. The FIC and LAITS offer **a number of resources** as do many of the College and Schools’ teaching and learning centers that will assist you as you prepare to move to distance instruction.

34. On March 20, 2020, the University closed all libraries on campus. <sup>12</sup>

35. On March 25, 2020, the University announced that commencement and graduation would be postponed, and that there will be plans to hold a virtual commencement. <sup>13</sup>

36. On March 27, 2020, the University announced that it was going to change the traditional in-person letter grading system to a Pass/Fail or Credit/No Credit system, stating <sup>14</sup>:

- Online Classes Grading Policies: Undergraduate students will have the option of taking all classes Pass/Fail, and graduate students will have the option of taking all classes Credit/No Credit. Students have until May 29 to make this choice.

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<sup>11</sup> <https://provost.utexas.edu/messages/covid-19-transition-online-instruction>

<sup>12</sup> <https://provost.utexas.edu/messages/update-faculty-resources-324>

<sup>13</sup> <https://coronavirus.utexas.edu/campus-announcements>

<sup>14</sup> <https://coronavirus.utexas.edu/campus-announcements>



37. On April 14, 2020, the University announced that it would be moving all summer classes to remote online learning instead of in-person. In tacit acknowledgment that online learning is a sub-par education experience, the University reduced tuition for the Summer 2020 semester, advising students that<sup>15</sup>:

To support your continued learning even through the COVID-19 crisis and help you remain on track to earn your degrees, the university will reduce tuition for undergraduate summer courses to 50 percent of the tuition rate for fall and spring semester courses. The summer rates had typically been 85 percent of those long-semester rates.

38. Though the University advised students that the reduction was to “support [their] continued learning,” in tacit acknowledgment that remote online learning is not as motivational, engaging or beneficial as in-person classes, the University advised faculty members that the tuition reduction was to “encourage undergraduate students to continue learning” in the following announcement<sup>16</sup>:

To encourage undergraduate students to continue learning even during the COVID-19 crisis and to remain on track to earn their degrees, the university will reduce tuition for 2020 undergraduate summer courses to 50 percent of the tuition rate for fall and spring semester courses. The summer rates had typically been 85 percent of those long-semester rates.

39. The University has not yet returned to normal operations, and in-person education and services have been ceased or severally limited since just before the commencement of its spring break in March 2020.

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<sup>15</sup> <https://president.utexas.edu/messages-speeches-2020/summer-instruction-and-other-mitigation-plans>

<sup>16</sup> <https://president.utexas.edu/messages-speeches-2020/mitigation-plans-during-covid-19-crisis>

40. The University has also unilaterally reduced the amount of education that the students paid tuition for by extending spring break by one week, consequently cancelling that week of education during the Spring 2020 semester.

41. Acknowledging that tuition is something that could be refundable, and further acknowledging that the decision regarding any such refund comes from the Regents, the University posted the following information<sup>17</sup>:

Tuition

The UT System administration has advised all UT institutions across Texas that there will be no reimbursement of tuition in the spring 2020 semester since coursework and instruction are continuing, and students who complete the courses will earn their full credit. UT System reviewed the state education code in making this determination.

***The University's Online Courses Are Subpar to In-Person Instruction, For Which Plaintiff and the Class Members Contracted with the University to Receive by Paying Tuition***

42. Plaintiff and members of the Class did not choose to attend an online institution of higher learning, but instead chose to enroll in the University's in-person educational program.

43. On their website, the University markets its on-campus experience as a benefit of enrollment by stating:

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<sup>17</sup> <https://coronavirus.utexas.edu/refunds-reimbursements#ac>

Spend just a minute on our campus and you'll quickly see how The University of Texas at Austin is an immense and beautiful world all its own. And with our dozens of museums, libraries, centers, institutes and special venues spread across the campus and the city, each with its own unique exhibits and programming, you'll never be bored. Designed to enhance the experience of not just current students, faculty, and staff but also community members and visitors from around the world, our many campus destinations will educate, delight and amaze.

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## Explore Your Passions

Thousands of events, from concerts and film screenings to readings and lectures. More than 1,100 student organizations. Incredible facilities and special attractions. And it's all set in the heart of one of the world's greatest cities. Welcome home.

19

Imagine a city bursting with an entrepreneurial spirit, a commitment to personal freedom and a passion for unearthing new discoveries. Add a vibrant, internationally renowned music, film and art scene, along with a thriving economy that leads the way in the technology, engineering and health care industries. Throw in a glittering lake running through the center of the city, big blue skies, gleaming Texas sunshine and the natural beauty of the surrounding Hill Country. Underline all of that with an open-minded sense of community, a serious commitment to breakfast tacos and a deep appreciation for all kinds of people and all kinds of dreams, and you've got Austin, Texas — one of the most amazing places in the world, and the city we're proud to call home.

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<sup>18</sup> <https://www.utexas.edu/campus-life/campus-destinations>

<sup>19</sup> *Id.*

<sup>20</sup> <https://www.utexas.edu/campus-life/life-in-austin>

44. The online learning options being offered to the University's students are drastically different in practically every aspect as compared to what the educational experience afforded Plaintiff and the members of the Class once was.

45. During the online portion semesters, the University offered some classes through Zoom. Other classes, however, stopped providing the students with any lectures at all and required that the students learn on their own and turn in assignments when due. Therefore, there was a significant lack of classroom interaction among teachers and students, and among individual students that is instrumental in interpersonal skill development and keeping the class entertaining.

46. The online formats being used by the University do not require memorization or the development of strong study skills given the absence of any possibility of being called on in class and the ability to consult books and other materials when taking exams.

47. Students have been deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique.

48. Access to facilities such as classrooms, libraries, laboratories, computer labs, and study rooms, are also integral to a college education, and access to the myriad activities offered by campus life fosters social development and independence, and networking for future careers, all substantial and materials parts of the basis upon which the University can charge the tuition it charges, but are not being provided.

49. Further, many of the "1,100 student organizations" – a substantial element of the on-campus academic experience offered by the University -- were substantially curtailed, cancelled, or effectively cancelled as a result of the closure.

50. The University has not made any refund of any portion of the tuition Plaintiff and the members of the Class paid for the semesters affected by Covid-19 for the period it moved to drastically different on-line distance learning.

51. Plaintiff and the Class members are therefore entitled to a pro-rated refund of the tuition they paid for the semesters affected by Covid-19 after classes moved from in-person to online and facilities were closed or severally limited.

52. Defendants are obligated to uphold the United States and Texas Constitutions.

53. By denying in-person learning and on-campus benefits and opportunities, Defendants have violated the Fifth and Fourteenth Amendments of the U.S. Constitution, and Article 1, §§ 17 and 19 of the Texas Constitution. Plaintiff and members of the Class are entitled to a pro-rated refund of tuition for the duration of the University's COVID-19 related closures for the in-person education and on-campus services and opportunities that Plaintiff and members of the Class have been denied.

#### **CLASS ACTION ALLEGATIONS**

54. Plaintiff brings this case individually and, pursuant to Rule 42 of the Texas Rules of Civil Procedure, on behalf of the class defined as:

All persons who paid or will pay tuition for a student to attend in-person class(es) during the semesters affected by Covid-19 at the University of Texas, and had their class(es) moved to online learning (the "Class").

55. Excluded from the Class are Defendants, their subsidiaries and affiliates, their officers, directors and members of their immediate families and any entity in which Defendants have a controlling interest, the legal representative, heirs, successors or assigns of any such

excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

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

57. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 42 of the Texas Rules of Civil Procedure.

58. The requirements of Rule 42(a)(1) have been met. The Class is so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Plaintiff, Plaintiff estimates there to have been approximately 52,000 students enrolled at the University for the Spring 2020 semester based on the most recent data provided by the University.<sup>21</sup> The number of Summer 2020 students and future semester enrollment is unknown at this time. The identity of all such students is known to the University and can be identified through the University's records. 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.

59. The requirements of Rule 42(a)(2) have been met. There are questions of law and fact common to the members of the Class including, without limitation:

a. Whether the University accepted money from Plaintiff and the Class members in exchange for the promise to provide an in-person and on-campus live education, as well as access to certain facilities and services throughout each semester;

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<sup>21</sup> <https://www.utexas.edu/about/facts-and-figures>

b. Whether Defendants complied with the Constitutional requirements for seizing and retaining Plaintiff's and the Class members' property without providing the services that the tuition was intended to cover;

c. Whether Defendants afforded Plaintiff and the other Class notice and due process before seizing and retaining their property; and

d. The amount of damages and other relief to be awarded to Plaintiff and the Class members.

60. The requirements of Rule 42(a)(3) have been met. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other Class members each contracted with Defendants for them to provide an in-person and on-campus live education for the tuition they paid, and each had their funds and contracted-for services unlawfully taken.

61. The requirements of Rule 42(a)(4) have been met. Plaintiff is an adequate class representative because his interests do not conflict with the interests of the other Class members who he seeks to represent, Plaintiff has retained competent counsel who are experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

62. Class certification of Plaintiff's claims is also appropriate pursuant to Rule 42(b)(3) because the above questions of law and fact that are common to the Class predominate over questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The damages or financial detriment suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of their claims against the University. It would, thus, be virtually impossible for the Class, on an individual basis, to obtain effective redress for the

wrongs committed against them. Furthermore, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

### **FIRST CLAIM FOR RELIEF**

#### **VIOLATION OF THE TAKINGS CLAUSE - 42 U.S.C. § 1983 (On Behalf of Plaintiff and the Class)**

63. Plaintiff repeats and re-alleges the factual allegations above as if fully alleged herein.

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

65. The Takings Clause of the Fifth Amendment provides property shall not “be taken for public use, without just compensation.” U.S. Const. amend. V. The Takings Clause is made applicable to the states through the Fourteenth Amendment. *See* U.S. Const. amend. XIV; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942, 198 L. Ed. 2d 497 (2017) (citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897)). Thus, the Takings Clause of the U.S. Constitutions prohibit states, and state agencies like the Defendants, from taking private property for public use without just compensation.

66. Takings claims may properly be brought against state agencies and are not barred by sovereign immunity.

67. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, the University received payments of tuition from private



citizens, as consideration for the benefit of receiving in-person course instruction and other on-campus benefits – the funds are thus private in nature but held by a public entity. Plaintiff and the members of the Class have a protected property right in all sums they paid to the University.<sup>22</sup>

68. Plaintiff and members of the Class also have a protected property interest in continued contracted for services with the University.

69. Defendants violated the Takings Clause by failing to provide the contracted for services and failing to return to Plaintiff and the other members of the Class that portion of the tuition for which they received nothing, or significantly less, than what they bargained for in return. Neither Plaintiff nor the other Class members have made a knowing and voluntary waiver of their constitutional right under the Fifth Amendment to be paid just compensation for the taking of their property right in those funds.

70. Thus, Plaintiff and the Class are entitled to injunctive relief preventing Defendants from charging full tuition while providing online distance learning and limited access to campus, and enjoining Defendants to return monies unlawfully withheld.

## **SECOND CLAIM FOR RELIEF**

### **DUE PROCESS – 42 U.S.C. § 1983**

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<sup>22</sup> Colleges and universities must be able to separately account for student payments, as well as financial aid received on an individual student’s behalf, as these institutions are frequently required to issue refunds to the government and the student for instances where the student enrolls, but does not complete classes for which the institution has received financial aid payments from the federal government. The Higher Education Act (“HEA”), Title IV, governs federally funded student financial aid programs for college and post-secondary vocational training. See 20 U.S.C. §§ 1070–1099 (1990 & 1992 Supp.). The HEA requires that when a student withdraws partway through the enrollment period, the institution must refund a certain portion of the charges to account for its reduced educational obligations toward the student. *Career Coll. Ass’n v. Riley*, 74 F.3d 1265, 1269 (D.C. Cir. 1996). Thus, it is beyond dispute that any college or university receiving any tuition payments through government-provided financial aid must be able to account for what was paid for each individual student. This means that each student’s tuition funds must be capable of being separately identified and sequestered, and a “takings” claim for of those funds can be properly sustained.

**(On Behalf of Plaintiff and the Class)**

71. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

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

73. Government actors must provide adequate due process procedures when depriving citizens of protected property interests. U.S. Const. amend. XIV; Tex. Const. Art I, § 19.

74. The due process clause of the U.S. and Texas Constitutions prohibits the State of Texas and the governmental agencies that it forms, such as the University and Regents, from depriving citizens of a protected property interest without due process of law.

75. Plaintiff and the Class members had a constitutionally protected property interest in the tuition they paid for in-person education and on-campus services and opportunities but were denied due to the COVID-19 pandemic. Defendants took action affecting Plaintiff and the other Class members' constitutionally protected property interest by retaining amounts from Plaintiff's and the other Class members' payment of tuition.

76. Defendants deprived Plaintiff and the other Class members of their protected property interests without due process of law by, for example:

- i. Failing to provide timely notice to Plaintiff and the other members of the Class, whose identity and contact information Defendants either knew, or by exercise or reasonable diligence should have known, of the refundable nature of tuition;
- ii. Failing to design and implement criteria by which the tuition can be refunded to Plaintiff and the other members of the Class in light of the action by

the University to cease or severely limit all on-campus, in-person classes and activities due to the COVID-19 pandemic; and

- iii. Failing to design and implement a mechanism by which Plaintiff and the other members of the Class can obtain a refund of the tuition in light of the action by the University to cease or severely limit all on-campus, in-person classes and activities due to the COVID-19 pandemic.

77. Defendants' failure to comply with the requirements of due process has resulted in substantial detriment to the Plaintiff and the Class.

### **THIRD CLAIM FOR RELIEF**

#### **INVERSE CONDEMNATION (On Behalf of Plaintiff and the Class)**

78. Plaintiff repeats and re-alleges the factual allegations above as if fully alleged herein.

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

80. Article 1 § 17 of the Texas Constitution provides that no person's property shall be taken without the payment of adequate compensation. Thus, the Texas Constitution prohibits the State of Texas, and state agencies like the Defendants, from taking private property for public use without just compensation.

81. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, the University received payments of tuition from private citizens, as consideration for the benefit of receiving in-person course instruction and other on-campus benefits – the funds are thus private in nature but held by a public entity. Plaintiff and the members of the Class have a protected property right in all sums they paid to the University.

82. Plaintiff and members of the Class also have a protected property interest in continued contracted for services with the University.

83. Defendants violated the Texas Constitution by failing to provide the contracted for services and failing to return to Plaintiff and the other members of the Class that portion of the tuition for which they received nothing, or significantly less, than what they bargained for in return. Neither Plaintiff nor the other Class members have made a knowing and voluntary waiver of their constitutional right under the Texas Constitution to be paid just compensation for the taking of their property right in those funds.

84. Thus, Plaintiff and the Class are entitled to just and reasonable compensation for the taking of their property.

#### **PRAYER FOR RELIEF**

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

(a) For an order certifying the Class under Rule 42 of the Texas Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class;

(b) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;

(c) For compensatory damages in an amount to be determined by the trier of fact;

(d) For an order of restitution and all other forms of equitable monetary relief;

(e) For injunctive relief;

(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.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff demands jury trial.

The jury fee required by law is being paid with the filing of this pleading.

Dated: February 26, 2021

Respectfully submitted,

By: /s/ Anthony K. Bruster

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