

1 David J. McGlothlin, Esq. (SBN 026059)
2 david@kazlg.com
3 **Kazerouni Law Group, APC**
4 2633 E. Indian School Road, Ste 460
5 Phoenix, AZ 85016
6 Phone: 800-400-6808
7 Fax: 800-520-5523

8 *Attorneys for Plaintiff*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

11 Chloe Diaz, on behalf of herself and
12 other individuals similarly situated,

13 Plaintiff,

14 vs.

15 Arizona Board of Regents,

16 Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR:

BREACH OF CONTRACT
CONVERSION; AND
COMMON LAW UNJUST
ENRICHMENT

DEMAND FOR JURY TRIAL

1 Named Plaintiff Chloe Diaz (hereinafter “Plaintiff”), individually and on
2 behalf of all others similarly situated, by her attorneys, alleges the following upon
3 information and belief, except for those allegations pertaining to Plaintiff, which
4 are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This class action is brought on behalf of Named Plaintiff Chloe Diaz
7 and those similarly situated who paid tuition and fees for the Spring 2020
8 semester at Arizona State University and Sandra Day O’Connor College of Law.
9 As a result of Defendants’ response to the Novel Coronavirus Disease 2019,
10 (“COVID-19”) Plaintiffs did not receive the benefit and services for which they
11 bargained for when they provided payment for tuition and various fees.

12 2. Plaintiffs and Defendants entered into a contract where Plaintiffs
13 would provide payment in the form of tuition and fees and Defendants would
14 provide in-person educational services, experiences, opportunities, and other
15 related services.

16 3. On or around March 16, 2020, Arizona State University canceled all
17 in-person education and transitioned to complete online education, following
18 Spring Break recess.

19 4. Based on these closures Defendants have failed to uphold their end of
20 the contract to provide in-person educational services and other related collegiate
21 experiences and services.

22 5. Despite Defendants’ failure to provide the services and experiences
23 as bargained for, Defendants have not offered any refund of the tuition and fees
24 that Plaintiff and the Class had paid.

25 **FACTS**

26 6. Plaintiff and Class Members are individuals that paid tuition and
27 fees for the Spring Semester 2020 at Arizona State University.

28 7. Defendants accepted Plaintiff’s and Class Members’ payments in

1 exchange for educational services, experiences, and opportunities as detailed in
2 Defendants marketing, advertisements, and other public representations.

3 8. Based on the academic schedule, the Spring 2020 semester at
4 Arizona State University commenced on or around January 13, 2020, and was
5 scheduled to conclude on or around May 9, 2020.

6 9. Plaintiff Chloe Diaz was a law student at Sandra Day O'Connor
7 College of Law during the Spring 2020 semester. Sandra Day O'Connor College
8 of Law is a graduate school in the Arizona State University system. Sandra Day
9 O'Connor College of Law charged plaintiff approximately \$23,207.00 in tuition
10 during the Spring 2020 semester. Additionally, Plaintiff paid a total of
11 approximately \$23,651 inclusive of tuition and other various fees for the Spring
12 2020 semester.

13 10. Plaintiffs paid tuition and fees for in-person educational services,
14 experiences, opportunities, and other related collegiate services for the entire
15 period beginning in or around January 2020 through mid-May 2020.

16 11. According to publicly available information, the average tuition cost
17 for in-state resident for the Spring 2020 semester at Arizona State University is
18 approximately \$10,710.00. Students also pay a total of approximately \$22,854.00-
19 \$31,912.00 inclusive of various fees, room and board, meal plan, books, and other
20 expenses, depending on the campus. The average tuition cost for out-of-state
21 residents for the Spring 2020 semester at Arizona State University is
22 approximately \$10,368.00-\$28,800.00, depending on the campus. Students also
23 pay a total of approximately \$26,796.00-\$50,752 inclusive of various fees, room
24 and board, meal plan, books, and other expenses, depending on the campus. The
25 average tuition and fee cost for a resident Sandra Day O'Connor College of Law
26 student for the Spring 2020 semester is approximately \$28,058.00, and
27 approximately \$22,714.00 in fees, room and board, books, and other costs. The
28 average tuition and fee cost for a non-resident Sandra Day O'Connor College of

1 Law student for the Spring 2020 semester is approximately \$47,302.00 and
2 approximately \$22,714.00 in fees, room and board, books, and other costs.

3 12. On or around March 11, 2020, Arizona State University announced
4 that because of COVID-19 they would suspend all in-person classes for the
5 remainder of the Spring Semester 2020 beginning on or around March 16, 2020
6 (following Spring Break recess) and that all learning would transition to online.

7 13. Defendants were unable to provide in-person educational
8 experiences, services, and opportunities for approximately 45% of the Spring
9 2020 semester.

10 14. Prior to the suspension of in-person classes for the Spring 2020
11 semester, Plaintiff attended campus events and was involved in student activities
12 and clubs.

13 15. As a result of Defendants' closure, Defendants have not complied
14 with their obligation to provide in-person educational services along with other
15 experiences, opportunities, and services Plaintiff and the Class paid for.

16 16. Plaintiff and the Class did not enter into an agreement with
17 Defendants for online education, but rather sought to receive in-person education
18 from Defendants institution.

19 17. Therefore, Plaintiff and Class Members are entitled to a pro-rata
20 refund of the tuition and fees they paid to Defendants for in-person educational
21 services as well as other marketed collegiate experiences and services that were
22 not provided.

23 **JURISDICTION AND VENUE**

24 18. This Court has jurisdiction over the action pursuant to 28 U.S.C. §
25 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at
26 least one member of the Class, as defined below, is a citizen of a different state
27 than Defendants, there are more than 100 members of the Class, and the aggregate
28 amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

1 19. This court has personal jurisdiction over Defendants because
2 Defendants maintains its principal place of business in this District.

3 20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
4 Defendants' operate their primary campus within this district.

5 **PARTIES**

6 21. Plaintiff Chloe Diaz is a student and a resident of Rosharon, Texas
7 77583. Plaintiff was enrolled as a full-time law student at Sandra Day O'Connor
8 College of Law during the Spring 2020 semester. Plaintiff has not received a
9 refund of tuition and fees paid to Defendants, despite the fact that the University
10 has been shut down since on or about March 16, 2020.

11 22. Defendant Arizona Board of Regents ("Board of Regents") is the
12 governing board for Arizona's public universities whose principal place of
13 business is located in Phoenix, Arizona.

14 **CLASS ALLEGATIONS**

15 23. Plaintiff brings this matter on behalf of herself and those similarly
16 situated. As detailed in this Complaint, Defendants failed to provide the in-person
17 education services the Plaintiffs paid tuition and fees to receive during the Spring
18 Semester 2020.

19 24. Plaintiffs were impacted by and damaged by this misconduct.

20 25. Accordingly, this action is ideally situated for class-wide resolution.

21 26. The Class is defined as all individuals who paid tuition and fees to
22 Arizona State University to receive in-person educational services, experiences,
23 and opportunities during the Spring Semester 2020. ("Class").

24 27. The Class is properly brought and should be maintained as a class
25 action under FRCP 23 satisfying the class action prerequisites of numerosity,
26 commonality, typicality, and adequacy because:

27 28. Numerosity: Class Members are so numerous that joinder of all
28 members is impracticable. Plaintiff believes that there are thousands of

1 individuals who are Class Members described above who have been damaged by
2 Defendants' breach of contract.

3 29. Commonality: The questions of law and fact common to the Class
4 Members which predominate over any questions which may affect individual
5 Class Members include, but are not limited to:

- 6 a. Whether Defendants accepted money from Plaintiff and
7 Class Members in exchange for a promise to provide
8 services;
- 9 b. Whether Defendants provided those services as bargained
10 for;
- 11 c. Whether Plaintiff and the Class Members are entitled to a
12 pro-rata portion of the tuition and fees paid for services
13 that were not provided.;
- 14 d. Whether Defendants were unjustly enriched;
- 15 e. Whether Defendants converted money from the Plaintiff
16 and Class Members.

17 30. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are
18 typical of the claims of each Class Member in that every member of the Class was
19 subject to Defendants' breach of contract, unjust enrichment and conversion.
20 Plaintiff is entitled to relief under the same causes of action as the other Class
21 Members.

22 31. Adequacy: Plaintiff is an adequate Class representative because her
23 interests do not conflict with the interests of the Class Members she seeks to
24 represent; her claims are common to all members of the Class and she has a strong
25 interest in vindicating her rights; she has retained counsel competent and
26 experienced in complex class action litigation and they intend to vigorously
27 prosecute this action. Plaintiff has no interests which conflict with those of the
28 Class. The Class Members' interests will be fairly and adequately protected by

1 Plaintiff and her counsel. Defendants have acted in a manner generally applicable
2 to the Class, making relief appropriate with respect to Plaintiff and the Class
3 Members. The prosecution of separate actions by individual Class Members
4 would create a risk of inconsistent and varying adjudications.

5 32. The Class is properly brought and should be maintained as a class
6 action under FRCP 23 because a class action is superior to traditional litigation of
7 this controversy. Common issues of law and fact predominate over any other
8 questions affecting only individual members of the Class. The Class issues fully
9 predominate over any individual issue because no inquiry into individual conduct
10 is necessary; all that is required is a narrow focus on Defendants' deceptive and
11 misleading practices.

12 33. In addition, this Class is superior to other methods for fair and
13 efficient adjudication of this controversy because, *inter alia*:

14 34. Superiority: A class action is superior to the other available
15 methods for the fair and efficient adjudication of this controversy because:

- 16 a. The joinder of thousands of individual Class
17 Members is impracticable, cumbersome, unduly
18 burdensome, and a waste of judicial and/or litigation
19 resources;
- 20 b. The individual claims of the Class Members may be
21 relatively modest compared with the expense of
22 litigating the claim, thereby making it impracticable,
23 unduly burdensome, and expensive-if not totally
24 impossible-to justify individual actions;
- 25 c. When Defendants' liability has been adjudicated, all
26 Class Members' claims can be determined by the
27 Class and administered efficiently in a manner far
28 less burdensome and expensive than if it were

1 attempted through filing, discovery, and trial of all
2 individual cases;

3 d. This class action will promote orderly, efficient,
4 expeditious, and appropriate adjudication and
5 administration of Class claims;

6 e. Plaintiff knows of no difficulty to be encountered in
7 the management of this action that would preclude its
8 maintenance as a class action;

9 f. This class action will assure uniformity of decisions
10 among Class Members;

11 g. The Class is readily definable and prosecution of this
12 action as a class action will eliminate the possibility
13 of repetitious litigation;

14 h. Class Members' interests in individually controlling
15 the prosecution of separate actions are outweighed by
16 their interest in efficient resolution by single class
17 action; and

18 i. It would be desirable to concentrate in this single
19 venue the litigation of all plaintiffs who were induced
20 by Defendants' deceptive and discriminatory
21 consumer practices.

22 35. Accordingly, this Class is properly brought and should be
23 maintained as a class action under FRCP 23 because questions of law or fact
24 common to Class Members predominate over any questions affecting only
25 individual members, and because a class action is superior to other available
26 methods for fairly and efficiently adjudicating this controversy.

27 36. Plaintiff and the Class can maintain this action as a class action
28 under FRCP 23(b)(1), (2), and (3).

1 **FIRST CAUSE OF ACTION**

2 **BREACH OF CONTRACT**

3 **(On Behalf of Plaintiff and All Class Members)**

4 37. Plaintiff, on behalf of herself and other members of the class, brings
5 a common law claim for Breach of Contract.

6 38. By accepting payment, Defendants entered into contractual
7 arrangements with Plaintiff and Class Members to provide educational services,
8 experiences, opportunities, and related services for the Spring Semester 2020.

9 39. Plaintiff and Class Members' payment of tuition and fees were
10 intended to cover in-person education, experiences, and services from January
11 through May 2020.

12 40. Defendants received and retained the benefits without providing
13 those benefits to Plaintiff and Class Members.

14 41. As a direct and proximate result of Defendants breach of contract
15 Plaintiff and Class Members have been harmed by not receiving the educational
16 experiences, opportunities, and services they paid for during the Spring Semester
17 2020.

18 42. Defendants are required to perform under the contract and COVID-
19 19 does not excuse such performance. Therefore, Defendants should be required
20 to return pro-rata shares of the tuition and fees paid by Plaintiff and Class
21 Members that related to services that were not provided for after Arizona State
22 University shut down on or around March 16, 2020.

23 **SECOND CAUSE OF ACTION**

24 **CONVERSION**

25 **(On Behalf of Plaintiff and All Class Members)**

26 43. Plaintiff, on behalf of herself and other members of the Class, brings
27 a common law claim for Conversion.

28 44. Plaintiff and Class Members have an ownership right to the in-

1 person educational services based on their payment of tuition and fees for the
2 Spring Semester 2020.

3 45. Defendants intentionally interfered with Plaintiff and the Class
4 Members' ownership right when they canceled in-person instructions for the
5 remainder of the Spring Semester 2020.

6 46. Plaintiff and the Class Members were damaged by Defendants
7 interference as they paid for educational experiences, services, and opportunities
8 for the entirety of the Spring Semester 2020 which were not provided.

9 47. Plaintiff and the Class Members are entitled to a pro-rata share of the
10 tuition and fees they paid for but were not provided resulting from Defendants
11 interference.

12 **THIRD CAUSE OF ACTION**

13 **COMMON LAW UNJUST ENRICHMENT**

14 **(On Behalf of Plaintiff and All Class Members in the Alternative)**

15 48. Plaintiff, on behalf of herself and other members of the class, brings
16 a common law claim for unjust enrichment.

17 49. Plaintiff and Class Members conferred financial benefits and paid
18 substantial tuition and fees to Defendants for educational and related services for
19 the Spring Semester 2020. As bargained for these tuition and fee payments were
20 intended to cover in-person education throughout the entire Spring Semester 2020
21 of January through May 2020.

22 50. Defendants accepted the obligation to provide such services when
23 they accepted payment.

24 51. Defendants retained these payments, despite Defendants failing to
25 provide the bargained for educational, experiences, and services for which the
26 tuition and fees were collected to cover. Defendants should be required to return a
27 pro-rated share of any Spring Semester 2020 tuition and fees, of which services
28 were not provided as bargained for, since Arizona State University shut down on

1 or around March 16, 2020.

2 52. Under common law principles of unjust enrichment, it is inequitable
3 for Defendants to retain the benefits conferred by Plaintiff's and Class Members'
4 overpayments.

5 53. Plaintiff and Class Members seek disgorgement of all profits
6 resulting from such overpayments and establishment of a constructive trust from
7 which Plaintiff and Class Members may seek restitution.

8 **DEMANDS FOR RELIEF**

9 54. Plaintiff demands a trial by jury on all issues.

10 **WHEREFORE**, Plaintiff, on behalf of herself and the Class, pray for judgment
11 as follows:

- 12 (a) Declaring this action to be a proper class action and
13 certifying Plaintiff as the representative of the Class under
14 FRCP 23;
- 15 (b) Awarding monetary damages, including damages;
- 16 (c) Awarding punitive and treble damages;
- 17 (d) Awarding Plaintiff and Class Members their costs and expenses
18 incurred in this action, including a reasonable allowance of
19 attorney's fees for Plaintiff's attorneys and experts, and
20 reimbursement of Plaintiff's expenses; and
- 21 (f) Granting such other and further relief as the Court may deem just
22 and proper.

23 Respectfully Submitted this 8th Day of June, 2020

24
25 **KAZEROUNI LAW GROUP, APC**

26 By: /s/ David J. McGlothlin
27 David J. McGlothlin, Esq.
28 *Counsel for Plaintiff and the Proposed Class*

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Chloe Diaz, on behalf of herself and other individuals similarly situated**

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

David J. McGlothlin
Kazerouni Law Group
2633 E. Indian School Road, Suite 460
Phoenix, Arizona 85016
602-265-3332

Defendant(s): Arizona Board of Regents

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

190 Other Contract

VI. Cause of Action:

28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/David J. McGlothlin

Date: 06/04/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014