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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAQUELYN KLEINER, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

DIGITAL MEDIA ACADEMY CORP. d/b/a
DIGITAL MEDIA ACADEMY LP,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jaquelyn Kleiner, individually and on behalf of all others similarly situated, by and through counsel, brings this action against Defendant Digital Media Academy Corp. d/b/a Digital Media Academy LP (“DMA”). Plaintiff’s allegations herein are based upon personal knowledge and belief as to her own acts, upon the investigation of her counsel, and upon information and belief as to all other matters.

INTRODUCTION

1. Plaintiff brings this action on behalf of herself and a class of similarly situated persons who paid tuition and fees for their children to attend day and overnight camps owned and operated by DMA during the summer of 2020.

2. Due to the COVID-19 pandemic, however, DMA notified parents during approximately April and May 2020, on a rolling basis depending on individual camp locations, that it would not be offering its summer camps at most of its 11 locations in 2020.

FACTUAL ALLEGATIONS.

DMA's Summer Camps

21. DMA touts its summer camps as “the best place for students to get their start as designers, developers, programmers, engineers, animators, musicians, filmmakers, and creators.”¹

22. During 2020, DMA offered the ability to choose day camps located at 11 different colleges and universities spread across California, Illinois, Massachusetts, New York, North Carolina, Texas, Washington, and Washington, D.C., as well as two Canadian provinces.

23. Depending on the duration and location selected as well as individual options and courses, tuition for the camps began at approximately \$1,000 per week per child.

Summer 2020 Camp Cancellation

24. In approximately April and May 2020, as the impact of the COVID-19 pandemic was recognized, DMA notified parents, on a rolling basis depending on individual camp locations, that it would not be offering its summer camps at most of its 11 locations in 2020.

25. Plaintiff and other Class members have contacted DMA for refunds, but DMA has denied their requests.

26. Instead, on May 1, 2020, DMA posted on its website that: “Despite the fact that terms and conditions state that in case of acts of god or a health pandemic there will be no refund we have decided to provide full credit for summer 2021 for the entirety of a customer’s 2020 purchase.”²

27. As of June 25, 2020, however, DMA has continued to make one of its Canadian camps available along with refunds in the event of cancellation, informing parents that: “We are providing peace of mind for you and your family so that if you purchase Tech Camp on or after June 1, 2020, and DMA or UBC cancels the camp due to COVID-19 you will receive a 100% refund.”³

28. Plaintiff and the Class members, however, seek full refunds of tuition and fees paid to DMA for camps it has not, or will not, hold.

¹ <https://www.digitalmediaacademy.org/> (last visited June 8, 2020).

² <https://www.digitalmediaacademy.org/terms-and-conditions/> (last visited June 8, 2020).

³ <https://www.digitalmediaacademy.org/canada-tech-camps/university-of-british-columbia/> (last visited June 25, 2020).

DMA Camp Terms and Conditions

29. Upon information and belief, on or about August 13, 2018, DMA published, *inter alia*, the following terms and conditions on its website to which parents were required to agree:

If DMA cancels a Program, Participants may be enrolled in another Program. If one is not available at the same Program location at a time that is convenient for Participant, a refund will be issued for all monies paid to DMA for the cancelled Program.⁴

30. On or about June 15, 2020, DMA changed its terms and conditions to include, *inter alia*, the following:

Digital Media Academy may be forced to cancel classes due to an Act of God and in this case, it is not liable for any loss as a result of canceled classes. Digital Media Academy does not refund students for canceled classes due to Acts of God. Acts of God include but is not limited to earthquake, flood, war, government action, labor strike, severe weather conditions, flu pandemic, government legislation, civil disorder, terrorist acts or other acts of god.⁵

31. The terms and conditions in effect at the time of Plaintiff's and the Class Member's purchases obligates DMA to provide refunds for all monies paid to DMA. DMA's failure to do so constitutes a breach of its contract with Plaintiff and the Class Members.

CLASS ALLEGATIONS

32. Plaintiff brings this action individually and on behalf of a nationwide class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

Nationwide Class

All persons who paid tuition to DMA for its camps in 2020.

33. In the alternative, Plaintiff brings this class action on behalf of the following State Class:

Washington Class

All Washington residents who paid tuition to DMA for its camps in 2020.

34. Together, the National Class and the Washington Class shall be collectively referred to herein as the "Class."

35. Excluded from the Class are: (a) Defendant; (b) Defendant's affiliates, agents, employees, officers and directors; and (c) the judge assigned to this matter, the judge's staff, and any

⁴ <https://web.archive.org/web/20180813100342/https://www.digitalmediaacademy.org/terms-and-conditions/> (last visited June 26, 2020).

⁵ <https://www.digitalmediaacademy.org/terms-and-conditions/> (last visited June 26, 2020).

member of the judge's immediate family. Plaintiff reserves the right to modify, change, or expand the various class definitions set forth above based on discovery and further investigation

36. **Numerosity:** Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis alleges, that the Class consists of hundreds or thousands of people. The precise number of Class members can be determined based on DMA's records.

37. **Commonality:** Common questions of law and fact exist as to all members of each Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

- a. Whether DMA should be required to provide refunds for 2020 camp tuition and fees;
- b. Whether the contract between DMA and Plaintiff and the Class was breached by DMA's decision to cancel its camps and failure to issue refunds; and
- c. Whether DMA was unjustly enriched by its conduct.

38. **Typicality:** Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out of DMA's uniform conduct and statements.

39. **Adequacy:** Plaintiff has no interest that conflicts with the interests of the Class, and is committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and her counsel will fairly and adequately protect the interests of the Class.

40. **Superiority:** A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by DMA's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation

1 increases the delay and expense to all parties, and to the court system, presented by the complex legal
2 and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief
3 for similarly-situated individuals. By contrast, the class action device presents far fewer management
4 difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive
5 supervision by a single court.

6 **VIOLATIONS ALLEGED**

7 **COUNT I**

8 **CONVERSION**

9 **(On Behalf of the Nationwide Class or, in the alternative, the Washington Class)**

10 41. Plaintiff incorporates by reference each of the allegations contained in the foregoing
11 paragraphs as if fully set forth herein.

12 42. Plaintiff and the Class are entitled to a refund of monies paid in exchange for 2020 DMA
13 camp tuition and fees because the DMA camps have been cancelled.

14 43. Plaintiff and the Class have demanded that DMA return their property.

15 44. DMA has refused to issue refunds to Plaintiff and the Class, and thus has, unlawfully
16 and without authorization, assumed and exercised dominion and control over that property to the
17 exclusion of, or inconsistent with, the rights of Plaintiff and the Class.

18 45. DMA's conversion has damaged Plaintiff and the Class in the amount that they paid for
19 2020 DMA camp tuition and fees.

20 46. Plaintiff and the Class are entitled to recover the amount each paid to DMA for their
21 2020 DMA camp tuition and fees, as well as attorneys' fees, costs and interest.

22 **COUNT II**

23 **BREACH OF CONTRACT**

24 **(On Behalf of the Nationwide Class or, in the alternative, the Washington Class)**

25 47. Plaintiff incorporates by reference each of the allegations contained in the foregoing
26 paragraphs as if fully set forth herein.

48. A contract existed between Defendant and each class member which obligated Defendant to provide an in-person summer camp experience to the Plaintiff's and Class members' children in 2020.

49. In exchange for Defendant's obligation to provide an in-person summer camp experience, Plaintiff and Class members paid the amounts demanded by Defendant.

50. Upon information and belief, the contract in effect at the time that Plaintiffs and Class members paid tuition and fees to DMA provided that “[i]f DMA cancels a Program, Participants may be enrolled in another Program. If one is not available at the same Program location at a time that is convenient for Participant, a refund will be issued for all monies paid to DMA for the cancelled Program.”

51. By canceling its summer camps without issuing refunds to Plaintiff and Class members, Defendant has breached the contract between itself and Plaintiff and each Class member who have all suffered damages as a result of that breach.

COUNT III

ALTERNATIVE EQUITABLE CLAIM FOR UNJUST ENRICHMENT

(On Behalf of the Nationwide Class or, in the alternative, the Washington Class)

52. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs as if fully set forth herein.

53. Plaintiff and the Class conferred a direct benefit on DMA by paying tuition and fees for DMA camps that were scheduled for 2020.

54. DMA knowingly and willingly accepted and enjoyed the benefits conferred on it by Plaintiff and the Class.

55. DMA voluntarily accepted and retained these benefits, with full knowledge and awareness that, as a result of DMA's conduct, Plaintiff and the Class would not, and did not, receive the benefit of their bargain that had been represented by DMA and that reasonable consumers would expect.

56. DMA's retention of these benefits is unjust and inequitable.

57. As a direct and proximate result of DMA's unjust enrichment, Plaintiff and the Class are entitled to recover the amount each paid to DMA for their children's camp tuition and fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class(es) as defined above;
- B. Appoint Plaintiff as the representative of the Class and her counsel as Class Counsel;
- C. Award actual damages and equitable monetary relief to Plaintiff and the Class and/or order DMA to return to Plaintiff and the Class the amount each paid to DMA;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires DMA to issue refunds to any member of the class who requests a refund;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiff, on behalf of herself and the putative Class, demands a trial by jury on all issues so triable.

Dated: July 9, 2020

CARLSON LYNCH LLP

By: /s/Todd D. Carpenter

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The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

/s/ Todd D. Carpenter

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.