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6 CASE #: 20-2-13924-6 SEA

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR KING COUNTY

9 ALEXANDER BARRY, individually and
10 on behalf of all others similarly situated,
11 Plaintiff,

12 v.

13 UNIVERSITY OF WASHINGTON,
14 WILLIAM S. AYER, JOEL BENOLIEL,
15 JOANNE HARRELL, JEREMY JAECH,
16 LIBBY MACPHEE, CONSTANCE RICE,
17 ROGELIO RIOJAS, BLANE TAMAKI,
18 DAVID ZEEK, and, ANA MARI CAUCE,

19 Defendants.

No. 20-2-13924-6-SEA

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

JURY TRIAL DEMANDED

1 **TABLE OF CONTENTS**

2 **Page**

3 I. NATURE OF ACTION 1

4 II. PARTIES 3

5 III. JURISDICTION AND VENUE 5

6 IV. FACTS 5

7 A. Background 5

8 B. Defendants contracted to provide in-person education, housing,
9 dining, and access to facilities and resources 9

10 C. Defendants’ transition exclusively to remote learning and closure
11 of the University of Washington’s campuses, facilities, and
12 activities 13

13 D. Defendants’ refusal to issue tuition and fee refunds after the March
14 2020 remote conversion and campus closures 14

15 V. CLASS ACTION ALLEGATIONS 19

16 VI. CAUSES OF ACTION 22

17 COUNT I BREACH OF CONTRACT 22

18 COUNT II BREACH OF IMPLIED CONTRACT 24

19 COUNT III UNJUST ENRICHMENT 25

20 COUNT IV VIOLATION OF THE TAKINGS CLAUSE—42 U.S.C. §
21 1983 26

22 COUNT VI DUE PROCESS—42 U.S.C. § 1983 29

23 PRAYER FOR RELIEF 30

24 JURY DEMAND 30

25

26

27

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1 Plaintiff, Alexander Barry, individually and on behalf of all others similarly situated, for
2 his First Amended Class Action Complaint (“Complaint”) against Defendants University of
3 Washington, including all branch and campus locations, William S. Ayer, Joel Benoliel, Joanne
4 Harrell, Jeremy Jaech, Libby Macphee, Constance Rice, Rogelio Riojas, Blane Tamaki, David
5 Zeek, in their capacities as members of the Board of Regents and, Ana Mari Cauce, in her
6 capacity as University President, based upon personal knowledge as to his own actions and based
7 upon the investigation of counsel regarding all other matters, complains as follows:

8 I. NATURE OF ACTION

9 1. This First Amended Class Action Complaint comes during a time of hardship for
10 so many Americans, with each day bringing different news regarding the Novel Coronavirus
11 Disease (“COVID-19”). Social distancing, shelter-in-place orders, and efforts to “flatten the
12 curve” prompted colleges and universities across the country to shut down their campuses, evict
13 students from campus residence halls, and switch to online “distance” learning.

14 2. Despite sending students home, transitioning to online instruction, and closing its
15 campuses, the University of Washington continued to charge for tuition, and/or fees as if nothing
16 changed, continuing to reap the financial benefit of millions of dollars from students.¹ The
17 University of Washington did so despite students’ complete inability to continue school as
18 normal, occupy campus buildings and dormitories, or avail themselves of school programs and
19 events. So while students enrolled and paid Defendants for a comprehensive on-campus
20 academic experience, Defendants instead provided Plaintiff and other Class members something
21 far less: a limited online experience presented by Google or Zoom, devoid of face-to-face faculty
22 and peer interaction, separated from program resources, and barred from facilities vital to study.
23 Plaintiff and Class members did not bargain for such an experience.

24 3. In response to COVID-19, on or about March 6, 2020, Defendants informed
25 Plaintiff and Class members that classes and finals for the Winter Quarter 2020 would not be
26

27 ¹ Defendants charge tuition in two components, (1) an “operating fee,” which covers
28 instruction-related expenses, and (2) a “building fee.” See <https://www.washington.edu/opb/tuition-fees/required-student-fees/>.

1 held in person starting March 9, 2020.² And just days later, on March 18, 2020, Defendants
2 informed Plaintiff and Class members that the Spring Quarter 2020 would not be held in person
3 either.³ All non-essential on-campus events were cancelled.

4 4. Despite the provision of an entirely remote experience, Defendants refuse to
5 refund or reimburse Plaintiff and similarly situated University of Washington students and their
6 families the tuition and fees they paid for the promised on-campus instruction, services they are
7 not being provided, events they cannot attend, and programs and activities that have been
8 curtailed, discontinued, or closed.

9 5. Essentially, students and their families have paid the University of Washington
10 for in-person instruction that is no longer available to them, access to buildings they can no
11 longer enter, technology, programs, and services that the University of Washington is no longer
12 providing, and activities that are no longer available.

13 6. The University of Washington is thus benefiting from COVID-19 while further
14 burdening students and their families—many of whom have been laid-off, become ill, lost loved
15 ones, or are otherwise bearing the brunt of the COVID-19 pandemic.

16 7. Defendant's actions have financially damaged Plaintiff and Class members.
17 Plaintiff brings this action because Plaintiff and Class members did not receive the full value of
18 the services paid, and they did not receive the benefits of in-person instruction. They have lost
19 the benefit of their bargain and/or suffered out-of-pocket loss, and are entitled to recover
20 compensatory damages and attorney's fees and costs. This lawsuit seeks injunctive relief and
21 disgorgement and monetary damages in the amount of prorated, unused amounts of tuition and
22 fees that Plaintiff and the other Class members paid, the benefits of which will not be provided
23 by Defendant.

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² [https://www.washington.edu/coronavirus/2020/03/06/beginning-march-9-classes-and-
27 finals-will-not-be-held-in-person-message-to-faculty-and-staff/](https://www.washington.edu/coronavirus/2020/03/06/beginning-march-9-classes-and-finals-will-not-be-held-in-person-message-to-faculty-and-staff/).

28 ³ [https://www.washington.edu/coronavirus/2020/03/18/uw-spring-quarter-classes-will-be-
held-remotely-message-to-students/](https://www.washington.edu/coronavirus/2020/03/18/uw-spring-quarter-classes-will-be-held-remotely-message-to-students/).

1 **II. PARTIES**

2 8. Plaintiff Alexander Barry is a citizen and resident of the State of Washington.
3 Plaintiff is a full-time graduate student and paid tuition and fees for the Winter Quarter 2020,
4 Spring Quarter 2020, and Fall Quarter 2020 academic terms at Defendant University of
5 Washington.

6 9. Plaintiff is in good financial standing with the University of Washington, having
7 paid in whole or in combination tuition, fees, costs and/or charges assessed and demanded by
8 Defendants in the Winter Quarter 2020 and the subsequent quarters at issue in this lawsuit.

9 10. Plaintiff paid the University of Washington for opportunities and services that he
10 did not receive, including on-campus education, facilities, services, and activities.

11 11. While Plaintiff could have pursued his degree exclusively online, he instead
12 specifically selected an on-campus experience for the variety of educational and extracurricular
13 opportunities and benefits that only an in-person program can provide. Based on his reasonable
14 expectations arising from the University’s publications and its usual and customary practice,
15 Plaintiff applied to the University and accepted its offer of admission understanding that it
16 constituted an offer for in-person classes for the duration of the graduate period for which he was
17 offered enrollment.

18 12. Plaintiff thus contracted for and paid the University of Washington for on-campus
19 instruction, opportunities, facilities, and services for the Winter Quarter 2020, Spring Quarter
20 2020, and Fall Quarter 2020.

21 13. Plaintiff enrolled at the University of Washington to obtain the full experience of
22 live, in-person courses and direct interactions with instructors and students, facilitated by small
23 class sizes. Plaintiff chose the University of Washington due to the campus location, accessibility
24 of professors, and camaraderie with classmates both in the classroom and on campus.

25 14. With the University of Washington’s effective campus closure, cancellation of
26 campus events, suspension of many campus services and programs, and transition to exclusively
27 online instruction starting in the Winter Quarter 2020 and continuing in the Spring Quarter 2020
28 and beyond (events directed, implemented and/or approved in whole or in part by the President

1 and Board of Regents Defendants), Plaintiff lost access to the on-campus instruction,
2 opportunities, facilities, and services for which Plaintiff had bargained for by selecting—and
3 paying tuition and fees for—in-person courses and experiences.

4 15. While Plaintiff enrolled with and paid the University of Washington for an in-
5 class experience that would enable Plaintiff to communicate directly with his professors, attend
6 office hours, and provide access to resources unique to his in-person program, such experiences
7 are non-existent following Defendant’s effective campus closure. Such a transition has also made
8 it difficult to connect with professors and staff, a critical component to the bargained-for
9 experience.

10 16. As a result, while Plaintiff and other students paid for in-person access to faculty
11 mentorship as an important component of the University of Washington experience, Defendants
12 excluded students from such access starting in the Winter Quarter 2020.

13 17. Defendant University of Washington is an institution of higher learning with
14 locations in Seattle, Tacoma, and Bothell, Washington. Defendant University of Washington
15 provides Class members with campus facilities, in-person classes, as well as a variety of other
16 facilities for which the University of Washington charges Plaintiff and the Class members.

17 18. Defendants William S. Ayer, Joel Benoliel, Joanne Harrell, Jeremy Jaech, Libby
18 MacPhee, Constance Rice, Rogelio Riojas, Blane Tamaki and David Zeek were board members
19 of the University of Washington Board of Regents and serve as “the University’s governing body
20 whose broad responsibilities are to supervise, coordinate, manage and regulate the university, as
21 provided by state statute.”⁴ The Board of Regents maintains its principal place of business at 139
22 Gerberding Hall, Seattle, WA 98195-1264.

23 19. Under state law, the Board of Regents has full control of the University and its
24 property of various kinds and any authority delegated by the Board is subject to the ultimate
25 authority of the Board. In retaining the ultimate authority over the University with which it is
26 charged by law to exercise within constitutional and statutory limitations, the Board is obligated
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28 ⁴ <https://www.washington.edu/regents/>.

1 to exercise the right of periodic review of any and all aspects of government of the University,
2 the right to intervene and modify any rule, regulation, or executive order formulated by the
3 President or the faculty, the right to amend or rescind any existing rule, regulation, or executive
4 order, and the right to enact such rules, regulations, and orders as it deems proper for the
5 government of the University.”⁵

6 20. Defendant Ana Mari Cauce is President of the University of Washington.
7 President Cauce maintains her principal place of business at 301 Gerberding Hall, Seattle, WA
8 98195-1264.

9 21. For the purpose of effecting the government of the University under and by the
10 Board of Regents, President Cauce is “authorized to act for the Board of Regents in formulating,
11 prescribing and issuing rules, regulations, and executive orders not inconsistent with the Bylaws,
12 Standing Orders, Regent Policies, and other orders of the Board and applicable state law for the
13 immediate government of the University.”⁶

14 III. JURISDICTION AND VENUE

15 22. This Court has jurisdiction over all claims against Defendants as the acts and
16 issues forming the basis of Plaintiff’s allegations occurred in King County, Washington.

17 23. Venue is proper in King County Superior Court because Defendants are located
18 and/or conduct business in King County, Washington.

19 IV. FACTS

20 A. Background

21 24. Founded in 1861, the University of Washington has a current enrollment of
22 approximately 56,000 undergraduate, graduate, and professional students across 18 schools and
23 colleges.⁷

24 25. A significant focus of Defendant’s efforts to obtain and recruit students and
25 justify its high costs pertains to the campus experience it offers along with face-to-face, personal

26 _____
27 ⁵ <http://www.washington.edu/admin/rules/policies/BRG/SOCh1.html>.

28 ⁶ *Id.*

⁷ <https://finance.uw.edu/uwar/annualreport2019.pdf>.

1 interaction with skilled and renowned faculty and staff, a wide array of in-person services,
2 opportunities, and extracurricular activities, state-of-the-art facilities, and much more.

3 26. The University of Washington promotes student life as an integral part of the
4 experience that students bargain for in attending the University of Washington, explaining that
5 “Your Husky Experience doesn’t end when you leave the classroom. The hours you spend
6 outside class are just as vital as the ones you spend inside.”⁸

7 27. Indeed, the school recognizes that “[a] **UW education is *more than a degree*,**”
8 such that “[b]y *more* we mean skills, knowledge and abilities gained through classroom learning
9 as well as high impact experiences such a studying abroad, jobs and internships, research and
10 leadership projects, and participating in clubs and community organizations.”⁹

11 28. And as President Cauce noted in a July 10, 2020 town hall, “I really want
12 everyone to know that we recognize that students, parents, and quite frankly our faculty, prefer
13 in-person. . . . And we really look forward to having 100% in-person as soon as that is possible.
14 That is something we all want.”¹⁰

15 29. The University of Washington touts the beauty of its campus, highlighting its
16 2017 ranking of #1 for the “Most Beautiful College Libraries in America,” #1 “Most Picturesque
17 College Fountain,” and #22 out of the “100 Most Beautiful College Campuses in America.”¹¹

18 30. And while students are not required to live on campus, “two-thirds of freshman
19 do. By living on campus, you’ll find countless opportunities to develop meaningful relationships,
20 join an engaging and supportive academic community and explore who you are.”¹²

21 31. Indeed, students who live on campus “can choose from all sorts of community
22 activities throughout the year,” all “[d]esigned so you can unplug and have fun with your friends

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24 ⁸ <https://admit.washington.edu/student-life/>.

25 ⁹ <https://www.washington.edu/strategicplanning/initiatives/husky-experience/> (emphases in
26 original).

27 ¹⁰ [https://s3-us-west-2.amazonaws.com/uw-s3-cdn/wp-content/uploads/sites/10/2020/04/
28 15093420/Back-to-School-Town-Hall-transcription.pdf](https://s3-us-west-2.amazonaws.com/uw-s3-cdn/wp-content/uploads/sites/10/2020/04/15093420/Back-to-School-Town-Hall-transcription.pdf).

¹¹ <https://admit.washington.edu/visit/>.

¹² [https://depts.washington.edu/doitsum/mer2017/files/0_Tuesday/2017-UW-Freshman-
Viewbook-FINAL-s.pdf](https://depts.washington.edu/doitsum/mer2017/files/0_Tuesday/2017-UW-Freshman-Viewbook-FINAL-s.pdf).

1 and family.”¹³

2 32. And “no matter” where students “live on the University of Washington (UW)
3 campus, you’ll make friends and have access to social events, learning opportunities and the
4 academic and emotional support that make the Husky Experience your own unique adventure.”¹⁴

5 33. Likewise, students living in a Living Learning Community “have unique
6 opportunities to engage with faculty and community leaders and learn through experience.”¹⁵

7 34. And students living in Family Housing “will have opportunities to participate in a
8 variety of social and educational programs, meet people of different cultures and backgrounds,
9 make lifelong friends, have fun and help influence the character of your living environment.”¹⁶

10 35. While many schools nationwide offer and highlight remote learning capabilities
11 as a primary component of their efforts to deliver educational value (*see, e.g.*, Western
12 Governors University, Southern New Hampshire University, University of Phoenix-Arizona),
13 Defendant is not such a school.

14 36. In fact, Defendant’s Winter and Spring 2020 course listings show that classes
15 were offered in-person at specific locations on campus.¹⁷ The sample screenshots below show
16 Winter 2020 graduate rehabilitation medicine course REHAB 579 Domain and Process I and
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24
25 ¹³ <https://hfs.uw.edu/Experience/Residential-Life-Activities>.

26 ¹⁴ <https://hfs.uw.edu/Guides-and-Handbooks/UW-Housing-Application-Guide-Undergrads.aspx>.

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

¹⁷ <https://www.washington.edu/students/timeschd/archive/>.

1 Spring 2020 course REHAB 579 Domain and Process II meeting in the University Medical
2 Center, Wing CC (UMCC) room 902.

3 **W** UNIVERSITY of WASHINGTON

4 [UW Home](#) > [Discover UW](#) > [Student Guide](#) > [Time Schedule](#)

5 [▷ Winter 2020 Time Schedule](#)

6 **Winter Quarter 2020 Time Schedule**

7 **REHABILITATION MEDICINE (SCHOOL OF MEDICINE)**

8 [Help with the UW Time Schedule](#)

9 **REHAB 578 DOMAIN & PROCESS I**

10 19788 A 4 M 1000-1150 [UMCC](#) CC902 Fogelberg,Donald J Open 24/ 30E CR/NC
11 F 100-250 [UMCC](#) CC902

12 **W** UNIVERSITY of WASHINGTON

13 [UW Home](#) > [Discover UW](#) > [Student Guide](#) > [Time Schedule](#)

14 [▷ Spring 2020 Time Schedule](#)

15 **Spring Quarter 2020 Time Schedule**

16 **REHABILITATION MEDICINE (SCHOOL OF MEDICINE)**

17 [Help with the UW Time Schedule](#)

18 **ENTRY CODES ARE AVAILABLE IN UMC CC902**

19 **REHAB 579 DOMAIN & PROCESS II**

20 Restr 19183 A 3 W 130-320 [UMCC](#) CC902 Fogelberg,Donald J Open 24/ 30E
21 F 1100-1220 [UMCC](#) CC902 Fogelberg,Donald J

22 37. However, Defendants did not provide these on-campus experiences and in-person
23 courses, and refused to refund Plaintiff and Class members for their losses due to the campus-
24 wide transition to online-only learning starting in the Winter Quarter 2020.

25 38. Additionally, students select and register for their courses in advance of the start
26 of each quarter. For example, Winter Quarter 2020 registration for enrolled students took place
27 between November 1–17, 2019 and Spring Quarter 2020 registration for enrolled students took
28

1 place between February 14–March 1, 2020.¹⁸

2 **B. Defendants contracted to provide in-person education, housing, dining, and access**
3 **to facilities and resources.**

4 39. For all quarters enrolled, Plaintiff contracted with the University of Washington—
5 and paid a premium—specifically for *on-campus* courses and programs.

6 40. University publications obligated Defendants to provide Plaintiff and Class
7 members the same in-person education, on-campus housing, sports, resources, and facilities that
8 Defendant highlighted in its promotional marketing materials throughout the entirety of their
9 enrollment.

10 41. Students admitted to, and enrolled with, an institution of higher learning such as
11 the University of Washington generally stay and graduate at that same institution.

12 42. Though students register for different classes each quarter, the contractual
13 obligations of an institution of higher learning span throughout the entirety of each student’s
14 enrollment.

15 43. The University of Washington’s 2018–2020 Academic Catalogs for the
16 undergraduate and graduate schools, as well as Defendant’s policies, handbooks, circulars,
17 publications, advertisements, and other promotional materials, lay out the terms of the contract
18 between the University of Washington and Plaintiff and Class members.¹⁹

19 44. The Catalog emphasizes student access to the University of Washington campus:
20 “The natural beauty of the Pacific Northwest envelops us. This is an important element of who
21 we are, for this awe-inspiring place not only anchors us, it reaffirms our desire to effect positive
22 change in the world around us. We accept gratefully our role in preserving and enhancing
23 Washington: the place, the people, our home.”²⁰

24 45. As the Catalog lays out, courses provided on-campus routinely offer students

25
26 ¹⁸ <https://www.washington.edu/students/reg/1920cal.html>.

27 ¹⁹ <https://www.washington.edu/students/gencat/>.

28 ²⁰ <https://www.washington.edu/students/gencat/>.

<https://www.washington.edu/about/visionvalues>.

1 advantages and opportunities that are only available through on-campus, in-person instruction.
2 For example, the Catalog’s descriptions for on-campus courses refer to: students using “state-of-
3 the-art facilities,”²¹ access to “laboratories equipped with modern research equipment”²² to
4 support students with coursework and projects, access to “excellent instructional and research
5 facilities,”²³ access to “rehearsal and performance spaces,”²⁴ studios, technology, and
6 equipment,²⁵ courses with opportunities for “hands-on experience,”²⁶ “hands-on experiments,”²⁷
7 and dozens of other references to benefits exclusive to on-campus instruction.

8 46. The Catalog also establishes students’ rights to access services and facilities only
9 available on-campus, noting “The Husky Card . . . provides access to services and opportunities,
10 including campus libraries.”²⁸

11 47. In enrolling as students with the University of Washington, and in registering and
12 paying the University of Washington’s tuition and fees, Plaintiff and Class members bargained
13 for and understood that instruction would be provided in person by leading academics, and on
14 campus, including in specific buildings with state-of-the-art resources.

15 48. The University of Washington’s usual and customary practices when students
16 enroll at the University as students and register for on-campus courses and pay tuition for such
17 courses is to provide on-campus instruction. Plaintiff’s and Class members’ reasonable
18 expectation when enrolled at the University of Washington and when registering for classes in
19 the Winter Quarter 2020 and beyond was that those classes would be provided on-campus,
20 consistent with the University of Washington’s usual and customary practice.

21
22 ²¹ <https://www.washington.edu/students/gencat/academic/microm.html>;
<https://www.washington.edu/students/gencat/academic/nbio.html>.

23 ²² <https://www.washington.edu/students/gencat/academic/bioc.html>.

24 ²³ <https://www.washington.edu/students/gencat/academic/phys.html>.

25 ²⁴ <https://www.washington.edu/students/gencat/academic/drama.html>.

26 ²⁵ *Id.*; <https://art.washington.edu/spaces/technology>.

27 ²⁶ <http://www.washington.edu/students/crscat/archo.html>; <http://www.washington.edu/students/crscat/art.html>; <http://www.washington.edu/students/crscat/psych.html>.

28 ²⁷ <http://www.washington.edu/students/crscat/biology.html>.

²⁸ <https://www.washington.edu/students/gencat/>; <https://hfs.uw.edu/Husky-Card-Services>.

1 49. Plaintiff and Class members had the reasonable expectation that Defendants
2 would provide the in-person educational experience and use of its facilities provided in
3 Defendant University of Washington’s publications, including but not limited to the Catalogs,
4 manuals, regulations, brochures, advertisements, and other promotional materials throughout the
5 entirety of their enrollment.

6 50. The combination of the express terms of the Catalogs, Defendant University of
7 Washington’s publications and its usual and customary practice constituted an offer of in-person
8 and on-campus classes to any student choosing enrollment at University of Washington. When
9 accepted by Plaintiff and Class members, who did, in fact, register for such on-campus classes in
10 accordance with the University of Washington’s policies and procedures and usual custom and
11 practice, and who timely paid tuition for those on-campus classes, the University of Washington
12 became contractually obligated to provide on-campus classes to Plaintiff and the other Class
13 members.

14 51. In light of the terms laid out in the Catalogs, the University of Washington’s
15 publications, and its usual and customary practice, Plaintiff and Class members registered for on-
16 campus courses in the Winter Quarter 2020 and in subsequent quarters. The University of
17 Washington accepted their registration as an on-campus student taking on-campus courses and
18 charged Plaintiff and Class members specific amounts for tuition and fees.²⁹

19 52. Tuition and fees are set quarters in advance, which students can preview before
20 enrollment.

21 53. Tuition and fees were set by the University of Washington with full intentions of
22

23 ²⁹ <https://www.washington.edu/opb/tuition-fees/current-tuition-and-fees-dashboards/> On
24 information and belief, Defendant University of Washington accounts for all student payments,
25 as well as financial aid received on an individual student’s behalf, as it is frequently required to
26 issue refunds to the government and the student for instances where the student enrolls, but does
27 not complete classes for which the institution has received financial aid payments from the
28 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).

1 providing in-person on-campus instruction and experiences during the entirety of the
2 undergraduate or graduate period for which students were offered admission.

3 54. Plaintiff contracted with Defendants and agreed to pay the high cost of the
4 University of Washington's on-campus tuition because the program offered access to
5 opportunities that were based on in-person classes and study.

6 55. Plaintiff and Class members paid the University of Washington tuition and fees
7 for on-campus courses—and the benefits, services, opportunities, and facilities that came with
8 that—in Winter Quarter 2020 and the subsequent quarters at issue in this lawsuit. When
9 enrolling, Plaintiff and Class members understood, per the Catalogs, the University of
10 Washington's promotional materials, and its usual and customary practice, that the classes they
11 bargained and paid for would be administered on campus for the duration of each quarter, and
12 that they would get a full quarter's worth of access to on-campus facilities, services, and
13 resources.

14 56. For the 2019–2020 academic year, full-time resident graduate students on the
15 Seattle campus paid a minimum of \$5,575 in tuition per quarter and full-time non-resident
16 graduate students paid a minimum of \$9,770 in tuition per quarter.

17 57. Full-time graduate students on the Seattle campus paid a quarterly building fee at
18 a minimum of \$158.00 for residents and \$332.00 for non-residents.

19 58. Additional fees included a \$141.00 services and activities fee, \$38.00 technology
20 fee, \$32.00 IMA bond fee, and a \$70.00 facilities renovation fee per quarter.

21 59. Such charges for study are significantly higher than online-only programs.

22 60. Schools delivering an online-only educational experience assess significantly
23 discounted rates for delivering such educational services. For example, Western Governor's
24 University charges a flat-rate tuition at \$3,370 per term.

25 61. However, as set forth further below, since March 9, 2020, Plaintiff and Class
26 members have been denied the benefit of their bargain. Plaintiff and other Class members have
27 lost the benefits of the in-person education, services, food, and other experiences that Defendants
28

1 promised. Despite failing to fulfill its obligations, Defendants are currently unlawfully retaining
2 and refusing to fully or partially refund Plaintiff's and Class members' tuition and fees.

3 **C. Defendants' transition exclusively to remote learning and closure of the University**
4 **of Washington's campuses, facilities, and activities**

5 62. On December 31, 2019, governmental entities in Wuhan, China, confirmed that
6 health authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Days
7 later, researchers in China identified a new virus that had infected dozens of people in Asia,
8 subsequently identified and referred to as the novel coronavirus, or COVID-19.

9 63. By January 21, 2020, officials in the United States were confirming the first
10 known domestic infections of COVID-19, the first of which was only miles away from the
11 University of Washington's Seattle campus.

12 64. Due to an outbreak of thousands of new cases in China, on January 30, 2020, the
13 World Health Organization officially declared COVID-19 as a "public health emergency of
14 international concern."

15 65. And by March 11, 2020, the World Health Organization declared COVID-19 a
16 pandemic.

17 66. On March 6, 2020, the University of Washington's President Ana Mari Cauce
18 sent a message to the University of Washington community announcing that "[s]tarting Monday,
19 March 9, classes will no longer be meeting in person. For the remainder of the quarter,
20 instructors have been asked to conduct classes and/or exams remotely, as possible, until the
21 quarter concludes on March 20."³⁰

22 67. Approximately nine days later, on March 18, 2020, the University of Washington
23 announced that "Spring quarter will begin as scheduled on March 30, with remote instruction
24 that will continue through the end of the quarter."³¹

25 68. The University of Washington also expected "most students who returned home

26 ³⁰ [https://www.washington.edu/coronavirus/2020/03/06/beginning-march-9-classes-and-
28 finals-will-not-be-held-in-person-message-to-students/](https://www.washington.edu/coronavirus/2020/03/06/beginning-march-9-classes-and-
27 finals-will-not-be-held-in-person-message-to-students/).

³¹ [https://www.washington.edu/coronavirus/2020/03/18/uw-spring-quarter-classes-will-be-
held-remotely-message-to-students/](https://www.washington.edu/coronavirus/2020/03/18/uw-spring-quarter-classes-will-be-
held-remotely-message-to-students/).

1 prior to spring break will remain there, and we encourage that.”³²

2 69. The University subsequently offered online-only courses throughout the Summer
3 Quarter 2020, and are offering an online-only format for most of the courses in the Fall Quarter
4 2020.

5 70. The University ended on-campus events, as well. Even as of this amended
6 complaint, “events are allowed only if necessary, and they must have 5 or fewer people. Events
7 not directly related to academic or critical operations, or hosted by non-UW entities are not
8 currently allowed.”³³

9 71. Similarly, all physical branches of the University’s library system remain closed
10 as last updated on September 12, 2020.³⁴

11 72. Though the reasons for such closures are justified, the fact remains that such
12 closures and cancellations present significant loss to Plaintiff and Class members.

13 **D. Defendants’ refusal to issue tuition and fee refunds after the March 2020 remote**
14 **conversion and campus closures**

15 73. Given the University’s transition to online classes and COVID-19 concerns,
16 Defendants encouraged students to remain at home as opposed to returning to dormitories prior
17 to March 18, 2020.

18 74. Plaintiff and Class members paid for services they cannot use because those
19 services were curtailed or eliminated, or because the student followed the University’s
20 encouragement to leave campus and return home.

21 75. The online-only education provided by the University of Washington has not
22 compared and cannot compare to the live classes and access to facilities bargained for and paid
23 for by Plaintiff and the other Class members that Defendants promised to deliver.

24 76. Plaintiff and Class members were provided with an online substitute for the
25 hands-on, in-person coursework for which they contracted—and for which Plaintiff and Class

26 ³² *Id.*

27 ³³ <https://www.washington.edu/coronavirus/faq/#operations>.

28 ³⁴ *Id.*

1 members paid.

2 77. The remote, online learning classes offered to students starting in the Winter
3 Quarter 2020 deprived students of in-person learning from their peers and school faculty. The
4 move to these remote classes also deprived students of access to the facilities, materials, and
5 opportunities only offered on the University of Washington's physical campus, including
6 laboratory and research experience, use of on-campus facilities, such as the gym and libraries,
7 and use of on-campus services and events such as sporting events, end-of-year programs,
8 lectures, and various student services.

9 78. The online classes Plaintiff and his peers have been provided are not equivalent to
10 the in-person, campus experience that Plaintiff and other University of Washington students
11 chose for their university education. The tuition and fees that Defendants charged were
12 predicated on access to—and constant interaction with—and feedback from peers, mentors,
13 professors, and guest lecturers; access to technology, libraries, and laboratories; opportunities to
14 attend or participate in spectator sports and athletic programs; access to student government and
15 health services; and participation in extracurricular groups and learning, among other things.

16 79. University of Washington students have offered apt descriptions of the loss they
17 have experienced as a result of the pandemic, highlighting the disparity between students'
18 bargained-for in-person educational experience and the online experience that the University of
19 Washington provided.

20 80. As reflected in a Change.org petition signed by over 15,000, students at the
21 University of Washington highlights the loss experienced by students:³⁵

22 In light of COVID-19 global pandemic, the state of Washington has
23 declared state of emergency. Per state laws, the University of
24 Washington administration has wisely decided to offer all classes
25 and instruction remotely throughout spring quarter. While this is a
26 smart, logical decision in consideration of the health of all students
27 and faculty, this mode of online education is not what we pay for.
28 For the following reasons, we are seeking a partial refund of tuition
for the spring 2020 quarter:

³⁵ <https://www.change.org/p/university-of-washington-seattle-partial-tuition-refund-for-spring-2020-at-uw>.

1 Despite the “high-quality method of instruction” that UW is striving
2 to establish for the quarter, the student body will no longer have
3 access to resources that are required to graduate/ fulfill certain hours
4 for a specific programs/ internships, including but not limited to:
5 labs, facilities, equipment, valuable face to face guidance, and
6 professional physical critique and advising from faculty. We believe
7 that these are essential factors of the university learning experience,
8 and therefore, in their absence we are seeking a partial monetary
9 refund for the spring 2020 quarter. We believe that these are
10 valuable hundreds of hours we are missing out on being at the school
11 physically, though we do understand that it is a critical time to
12 uphold social-distancing and self-quarantine to ensure safety of both
13 vulnerable and general populations. It is entirely impossible for the
14 students to receive the fullness of the educational experience we are
15 paying for, not to mention the immense amount of tuition for the
16 out-of-state students. Many students are experiencing great financial
17 suffering due to numerous job closures throughout the state, and a
18 number of students is front-line healthcare workers who are at risk
19 for exposure and serious health-related consequences. Thus we
20 believe that a partial refund of tuition and reduced billing on tuition
21 collection would greatly assist in alleviating the financial stress and
22 uncertainty of the situation. Therefore, we respectfully implore the
23 administration to rightfully grant us monetary return compensation.

24 UW has created a page with answers to many key questions about
25 spring quarter. However, the only financial concerns that the page
26 addresses are as follows: “there will be no change in financial aid
27 for full-time students enrolled in spring quarter.”

28 81. And as reflected in another Change.org petition:³⁶

We, **the Students of University of Washington Seattle**, chose to go to UW because of the many resources it offers, connections to be made, and the numerous businesses readily hiring students from Seattle. Now that spring quarter is fully online and those same resources are not being offered, it seems only fair that tuition should reflect the decline in assistance available to students. **While Zoom may be able to address some concerns, it is not a perfect solution** and many students will be feeling the consequences of this change of pace. Many students work part time jobs in order to afford tuition, any many of those same students are now unemployed due to the current situation involving **COVID-19. Students are having a hard time stomaching the prospect of unemployment, debt, health concerns, and decreased effectiveness in schooling all at the same time.** UW, for the time being, is just like any other online school and cannot justify the current tuition it expects from students. **No student should be forced to pay for resources that are no longer offered to them,** and no student should face the prospect of going through these difficult times alone.

We must stand together and unite to mitigate the social, economic,

³⁶ <https://www.change.org/p/university-of-washington-adjusted-tuition-for-uw-seattle> (emphases in original).

1 and health concerns affecting our students.

2 **UW STUDENTS DEMAND CHANGE**
3 **AND WE NEED IT NOW**

4 82. The University of Washington’s student newspaper, The Daily, highlights other
5 examples noting how students are not receiving the benefit of their bargain:

- 6 • “Online classes and stay-at-home orders are not how any of us imagined spring
7 quarter, let alone the coronavirus pandemic happening around us.”³⁷
- 8 • “As we’ve gone through this national crisis, there has been a lot of talk about the
9 value of our tuition money. For students like me, the concern has been about
10 paying the same outrageously high tuition bill as our families and neighbors are
11 laid off and classes have been moved online. How can we pay the same to be
12 taught twice as infrequently, about half as much content, as we vacate university
13 buildings?”³⁸
- 14 • “However, even if [the remote learning] decision is best for public health and
15 safety, many students are left feeling robbed of the education that they signed up
16 and paid for.”³⁹
- 17 • “‘We decided students aren’t getting the appropriate UW education that we pay
18 all of this money towards by just sitting at home on our computers,’ Davidson
19 said. ‘As much as the university likes to share that narrative and push that
20 narrative that we’re investing in our online technologies to continue that same
21 education, it’s just not occurring.’”⁴⁰

22 83. And the University of Washington’s own website reflects such discrepancies as

24 ³⁷ Maryam Noor, *Slow and steady spring quarter*, THE DAILY (May 14, 2020),
http://www.dailyuw.com/opinion/article_3e51d2a2-95a6-11ea-b44e-03329cfc3951.html.

25 ³⁸ Peter Fink, *You’re paying, so wouldn’t it be nice if they did what you wanted?*, THE DAILY
26 (Apr. 22, 2020), http://www.dailyuw.com/opinion/article_6e58ea84-8445-11ea-a4ba-83bc4dbbf62e.html.

27 ³⁹ Griffin Dugan, *Online will not compare to classroom learning*, THE DAILY (Apr. 2, 2020),
http://www.dailyuw.com/opinion/article_9951813a-7485-11ea-8725-cbc267e82e84.html.

28 ⁴⁰ *Id.*

1 well.

2 84. For example, in describing the transition to remote teaching and work for students
3 at the Northwest Center for Occupational Health and Safety: “With classes fully online for the
4 spring quarter, trainees have adjusted to the new reality of online lectures and remote lab
5 training. In a short mid-quarter poll, trainees responded that the transition to remote learning has
6 been reasonably smooth, although not the same as in-person learning.”⁴¹

7 85. Defendants’ own faculty further highlight the differences between what students
8 bargained for and what they received. As one faculty member noted: “The students and I feel
9 challenged in so many ways this quarter, and we are being open and honest with one another.
10 I’m certainly not at my best, and I can’t expect them to be either. We are learning a great deal,
11 but our learning is not the same as it would be in the classroom.”⁴²

12 86. As noted by another: “The past six weeks have certainly provided an
13 unprecedented number of challenges as we all try to understand how to adapt to the inescapable
14 realities brought on by COVID-19. Our faculty have rapidly responded to the need to shift all of
15 our teaching to an online platform and have quickly become familiar with Zoom, Panopto, and
16 our online learning management system, Canvas. While these tools are effective and have made
17 the continuation of classes possible, they are, of course, not the same as teaching and engaging in
18 person, especially for our studio-based courses.”⁴³

19 87. Despite the fact that University of Washington students also would not get what
20 they bargained for in contracting for on-campus courses, opportunities, facilities, and resources,
21 Defendants have inexplicably refused to prorate or refund Plaintiff and Class members any of the
22 tuition or mandatory fees they had paid for the Winter Quarter 2020 terms and beyond.

23 88. Indeed, the University of Washington has noted in a coronavirus-related FAQ
24 section that “tuition and required fees for spring quarter 2020 are not changing” and that all but

25 _____
26 ⁴¹ <https://deohs.washington.edu/nwcohs/blog/teaching-learning-and-research-continues-during-covid-19-pandemic-and-restricted-operations>.

27 ⁴² <https://web.archive.org/web/20200619053651/https://www.washington.edu/teaching/2020/06/03/flexible-finals-in-the-pandemic/>.

28 ⁴³ <https://art.washington.edu/news/2020/04/14/directors-notes>.

1 two fees would remain unchanged as well.⁴⁴

2 89. All the while, the University of Washington has also received millions of dollars
3 from the federal government under the Coronavirus Aid, Relief and Economic Security Act,
4 ultimately receiving \$39.7 million in total allocations.⁴⁵

5 V. CLASS ACTION ALLEGATIONS

6 90. Plaintiff sues under CR 23(a), (b)(2), and CR 23(b)(3), on behalf of himself and a
7 Class defined as follows:

8 All people paying the University of Washington, in whole or in
9 part, personally and/or on behalf of others, for tuition, and/or fees
10 for in-person instruction and use of campus facilities, but who
11 were denied use of and/or access to in-person instruction and/or
12 campus facilities by Defendants for the Winter Quarter 2020 term
13 or any subsequent term.

14 Excluded from the Class are Defendants, any entity in which Defendants have a controlling
15 interest, and Defendants' legal representatives, predecessors, successors, assigns, and non-
16 student employees. Further excluded from the Class is this Court and its employees. Plaintiff
17 reserves the right to modify or amend the Class definition including through the creation of sub-
18 classes if necessary, as appropriate, during this litigation.

19 91. The definition of the Class is unambiguous. Plaintiff is a member of the Class
20 Plaintiff seeks to represent. Class members can be notified of the class action through contact
21 information and/or address lists maintained in the usual course of business by Defendants.

22 92. Per CR 23(a)(1), Class members are so numerous and geographically dispersed
23 that their individual joinder of all Class members is impracticable. The precise number of Class
24 members is unknown to Plaintiff but may be ascertained from Defendants' records. However,
25 given the thousands of students enrolled at Defendant University of Washington in a given year,
26 that number greatly exceeds the number to make joinder possible. Class members may be
27 notified of the pendency of this action by recognized, court-approved notice dissemination

28 ⁴⁴ See <https://www.washington.edu/provost/springquarter/#financial-concerns> (noting waiver of only two student fees for the Spring Quarter 2020: (1) UPASS transit fee for the spring quarter, and (2) the "Y Fee" applicable to the UW Tacoma campus).

⁴⁵ http://www.dailyuw.com/news/article_a9b24658-7b7a-11ea-839d-0b86f398b645.html.

1 methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published
2 notice.

3 93. Defendants have acted or refused to act on grounds generally applicable to
4 Plaintiff and Class members, making appropriate final injunctive relief and declaratory relief
5 regarding the Class under CR 23(b)(2).

6 94. Consistent with CR 23(a)(2), Defendants engaged in a common course of conduct
7 giving rise to the legal rights sought to be enforced by Class members. Similar or identical legal
8 violations are involved. Individual questions pale in comparison to the numerous common
9 questions that predominate. The injuries sustained by Class members flow, in each instance,
10 from a common nucleus of operative facts—Defendants’ effective campus closure, its complete
11 transition to online classes, and Defendants’ refusal to fully refund tuition and/or fees.

12 95. Additionally, common questions of law and fact predominate over the questions
13 affecting only individual Class members under CR 23(a)(2) and 23(b)(3). Some of the common
14 legal and factual questions include:

- 15 a. Whether Defendants engaged in the conduct alleged;
- 16 b. Whether Defendants have a policy and/or procedure of denying refunds, in
17 whole or in part, to Plaintiff and Class members;
- 18 c. Whether Defendants breached identical contracts with Plaintiff and Class
19 members;
- 20 d. Whether Defendants violated the common law of unjust enrichment;
- 21 e. Whether Defendants violated Plaintiff’s and the Class members’ rights under
22 the U.S. and Washington Constitutions;
- 23 f. The nature and extent of damages and other remedies to which the conduct of
24 Defendants entitles Class members.

25 96. The Class members have been damaged by Defendants through its practice of
26 denying refunds to Class members.

27 97. Plaintiff’s claims are typical of the claims of the other Class members under CR
28 23(a)(3). Plaintiff is a student that was enrolled at Defendant University of Washington in the

1 Winter Quarter 2020 and in subsequent quarters. Like other Class members, Plaintiff was
2 instructed to stay off of Defendants' campus, forced to take online classes, and has been
3 completely or partially denied a refund for tuition and/or fees.

4 98. Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of
5 the Class as required by CR 23(a)(4). Plaintiff is familiar with the basic facts that form the bases
6 of the Class members' claims. Plaintiff's interests do not conflict with the interests of the other
7 Class members he seeks to represent. Plaintiff has retained counsel competent and experienced in
8 class action litigation and intends to prosecute this action vigorously. Plaintiff's counsel has
9 successfully prosecuted complex class actions, including consumer protection class actions.
10 Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of the Class
11 members.

12 99. The class action device is superior to other available means for the fair and
13 efficient adjudication of the claims of Plaintiff and the Class members under CR 23(b)(3). The
14 relief sought per individual members of the Class is small given the burden and expense of
15 individual prosecution of the potentially extensive litigation necessitated by the conduct of
16 Defendants. It would be virtually impossible for the Class members to seek redress individually.
17 Even if the Class members themselves could afford such individual litigation, the court system
18 could not.

19 100. In addition, under CR 23(b)(3)(A), individual litigation of the legal and factual
20 issues raised by the conduct of Defendants would increase delay and expense to all parties and to
21 the court system. The class action device presents far fewer management difficulties and
22 provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
23 supervision by a single court.

24 101. Under Civil Rule 23(b)(3)(C), it is desirable to concentrate the litigation of the
25 claims of Plaintiff and Class members in this forum given that Defendants are located within
26 King County and discovery of relevant evidence will occur within King County.

27 102. Given the similar nature of the Class members' claims and the absence of material
28 differences in the state statutes and common laws upon which the Class members' claims are

1 based, a nationwide Class will be easily managed by the Court and the parties per CR
2 23(b)(3)(D).

3 VI. CAUSES OF ACTION

4 COUNT I

5 BREACH OF CONTRACT

6 103. Plaintiff realleges and incorporates by reference all previous allegations, as
7 though set forth in full herein.

8 104. Plaintiff brings this claim individually and on behalf of the other members of the
9 Class against Defendant University of Washington.

10 105. Plaintiff and Class members entered into identical, binding contracts with
11 Defendant by accepting Defendant's offer of enrollment in accordance with the terms of the
12 Catalogs, Defendant's publications, and Defendant's usual and customary practice of providing
13 on-campus courses.

14 106. The language on the University of Washington's website, Catalogs, and in other
15 materials made available to students promising in-person instruction, campus facilities, services,
16 and resources became terms of the contract. That is, at the time of contract, the parties had the
17 reasonable expectation that, in exchange for tuition and fee payments, Defendant would provide
18 Plaintiff and Class members with an on-campus education. The nature of the instruction provided
19 by the University of Washington at the time Plaintiff and Class members enrolled (i.e., in-person
20 classroom instruction) as well as the facilities and resources offered by the University of
21 Washington across its schools and campuses were and are material terms of the bargain and
22 contractual relationship between students and Defendant.

23 107. Under their contracts with Defendant, and per Defendant's usual and customary
24 practice of providing on-campus courses, Plaintiff and Class members registered for on-campus
25 courses and paid Defendant tuition and/or fees for Defendant to provide in-person instruction
26 and access to Defendant's facilities.

27 108. Plaintiff and Class members have fulfilled all requirements of their mutually
28

1 agreed contracts, having followed the Catalogs' policies, procedures, and requirements for
2 registering and paying for on-campus courses and access to on-campus facilities and services.
3 Plaintiff and Class members have paid Defendant for all financial assessments in the Winter
4 Quarter 2020 and beyond.

5 109. By ceasing in-person instruction, relegating Plaintiff and Class members
6 exclusively to remote instruction, and shutting down campus facilities and opportunities to
7 Plaintiff and the Class, Defendant failed to provide the services for which Plaintiff and Class
8 members bargained when they entered into their contractual relationship with Defendant.

9 110. Defendant's failure to provide in-person instruction and shutdown of campus
10 facilities amounts to a material breach of the contract.

11 111. The tuition, fees, and other costs that Plaintiff and the proposed Class paid were
12 intended to cover in-person educational and extracurricular services. Defendant, however, has
13 failed and continues to fail to provide the education and services due under the contracts, yet has
14 improperly retained the funds Plaintiff and the other Class members paid or agreed to pay.

15 112. Plaintiff and members of the Class have suffered damages as a direct and
16 proximate result of Defendant's breach, including being deprived of the education, experience,
17 and services that they were promised and reasonably expected to obtain, and for which they have
18 paid.

19 113. Plaintiff and Class members are entitled to an award of money damages or partial
20 restitution in an amount to be determined at trial as redress for the University of Washington's
21 breach, including but not limited to prorated reimbursement of the tuition, fees, and other
22 expenses for services that Defendant failed and continues to fail to deliver fully.

23 114. Defendant's performance under the contracts is not excused because of COVID-
24 19. Even if performance were excused or impossible, Defendant would nevertheless be required
25 to return the funds received for services and/or goods that it did not provide.

1 **COUNT II**

2 **BREACH OF IMPLIED CONTRACT**

3 115. Plaintiff restates and realleges, and incorporates herein by reference, the
4 preceding paragraphs as if fully set forth herein.

5 116. Plaintiff pleads this Count in the alternative to Count I against Defendant
6 University of Washington.

7 117. Plaintiff and Class members entered into an implied contract by accepting
8 Defendant's offer of enrollment for on-campus classes and use of Defendant's facilities in
9 accordance with Defendant's usual and customary practice of providing on-campus courses.

10 118. Under the implied contract, Plaintiff and Class members registered for on-campus
11 courses.

12 119. It was the reasonable expectation of Plaintiff and Class members that Defendant
13 would provide them with on-campus—as opposed to online—classes and instruction and use of
14 Defendant's facilities as mutually agreed and intended in accordance with Defendant's
15 publications, including brochures, advertisements, and other promotional materials, and
16 Defendant's usual and customary practice of providing on-campus courses.

17 120. Plaintiff and Class members accepted and intended to use and enjoy Defendant's
18 on-campus classes and facilities.

19 121. Plaintiff and Class members have fulfilled all expectations of their mutual
20 agreement, by registering and paying for on-campus courses and access to on-campus facilities
21 and services in Winter Quarter 2020 and the following quarters. Plaintiff and Class members
22 have paid Defendant for all financial assessments in Winter Quarter 2020 and beyond.

23 122. However, Defendant breached the implied contract, failed to provide those on-
24 campus classes and/or services, and has not otherwise performed as obligated and required by
25 the implied-in-fact contract between Plaintiff and Class members and Defendant. Defendant
26 moved all classes to online classes, restricted or eliminated Class members' ability to access
27 university facilities. In doing so, Defendant has deprived and continues to deprive Plaintiff and
28 Class members of the benefit of their bargains with Defendant.

1 students to stay off campus, closed or limited access to services and facilities, and otherwise
2 denied Plaintiff and Class members the in-person, on-campus education for which their tuition
3 and fees paid, is unjust and inequitable under the circumstances.

4 133. Equity and good conscience require that the University of Washington return a
5 portion of the monies paid in tuition and fees to Plaintiff and Class members.

6 134. This is particularly true where, as here, Defendant is supported by a \$3.588 billion
7 endowment, with assets totaling more than \$5.578 billion,⁴⁶ while its students, on information
8 and belief, do not have access to such immense financial resources, and further where, on
9 information and belief, a substantial portion of its students have incurred substantial debt to
10 finance an educational experience that they did not receive.

11 135. Because Defendant's retention of the non-gratuitous benefits conferred by
12 Plaintiff and Class members is unjust and inequitable, Plaintiff and Class members are entitled
13 to, and seek disgorgement and restitution of, the benefits unjustly retained, and Defendant should
14 return the prorated portion of the tuition and fees that Plaintiff and Class members each paid or
15 agreed to pay, but did not and will not receive the bargained-for in-person education and on-
16 campus experience.

17 **COUNT IV**

18 **VIOLATION OF THE TAKINGS CLAUSE—42 U.S.C. § 1983**

19 136. Plaintiff restates and realleges, and incorporates herein by reference, the
20 preceding paragraphs as if fully set forth herein.

21 137. Plaintiff brings this claim individually and on behalf of the Class members against
22 the individually named Defendants.

23 138. The Takings Clause of the Fifth Amendment provides that private property shall
24 not "be taken for public use, without just compensation." U.S. Const. amend. V. The Takings
25 Clause is made applicable to the states through the Fourteenth Amendment. *See* U.S. Const.
26

27
28 ⁴⁶ <https://finance.uw.edu/uwar/annualreport2019.pdf>

1 amend. XIV; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942, 198 L. Ed. 2d 497 (2017) (citing
2 *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897)). Thus,
3 the Takings Clause of the U.S. Constitution prohibits the individual Defendants from taking
4 private property for public use without just compensation.

5
6 139. Common law has recognized that there is a property right by an owner in funds
7 held in an account managed by another. Here, Defendants received payment of tuition, housing,
8 and mandatory fees from private citizens, as consideration for the benefit of receiving in-person
9 course instruction, housing, and other on-campus benefits—the funds are thus private in nature
10 but held by a public entity. Plaintiff and Class members have a protected property right in all
11 sums they paid to the University.

12
13 140. Plaintiff and Class members also have a protected property interest in continued
14 education and services as contracted for.

15
16 141. Defendants violated the Takings Clause by failing to provide the contracted for
17 in-person on-campus education and experience or return and/or direct the return to Plaintiff and
18 Class members that portion of the tuition, housing, and mandatory fees for which they received
19 nothing, or significantly less than what they bargained for in return. Neither Plaintiff nor the
20 other Class members have made a knowing and voluntary waiver of their constitutional right
21 under the Fifth Amendment to be paid just compensation for the taking of their property rights in
22 those funds or services.

23
24 142. Thus, Plaintiffs and the Class are entitled to injunctive relief prohibiting Defendants
25 from continuing to charge full tuition and fees when only providing online distance learning and
26 limited or no access to campus, and injunctive relief ordering Defendants to return funds unlawfully
27 withheld.
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COUNT V

INVERSE CONDEMNATION

143. Plaintiff restates and realleges, and incorporates herein by reference, the preceding paragraphs as if fully set forth herein.

144. Plaintiff brings this claim individually and on behalf of the Class members against all Defendants.

145. Article I, § 16 of the Washington State Constitution provides “No private property shall be taken or damaged for public or private use without just compensation having been first made.” Const. art. 1, § 16. Thus, the Washington Constitution prohibits the individual Defendants from taking private property for public use without just compensation.

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

147. Plaintiff and Class members also have a protected property interest in continued education and services as contracted for.

148. Defendants violated the Washington Constitution by failing to provide the contracted for in-person on-campus education and experience or return and/or direct the return to Plaintiff and Class Members that portion of the tuition, housing, and mandatory fees 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

1 constitutional right under the Washington Constitution to be paid just compensation for the
2 taking of their property rights in those funds.

3 149. Thus, Plaintiff and the Class are entitled to just compensation for the taking of
4 their property.

5
6 **COUNT VI**

7 **DUE PROCESS—42 U.S.C. § 1983**

8 150. Plaintiff restates and realleges, and incorporates herein by reference, the
9 preceding paragraphs as if fully set forth herein.

10 151. Plaintiff brings this claim individually and on behalf of the members of the Class
11 against all Defendants.

12 152. Government actors must provide adequate due process procedures when
13 depriving citizens of protected property interests. U.S. Const. amend. XIV; Const. art. I, § 3.

14 153. The due process clauses of the U.S. Constitution and Art. I, § 3 of the Washington
15 Constitution prohibit the State of Washington and the governmental agencies that it forms, such
16 as Defendant, from depriving citizens of a protected property interest without due process of law.
17

18 154. Plaintiff and the Class members had a constitutionally protected property interest
19 in the tuition, housing, and mandatory fees they paid for in-person education, housing, and on-
20 campus services and opportunities but were denied due to the COVID-19 pandemic.

21 155. Defendants took action affecting Plaintiff and the other Class members'
22 constitutionally protected property interest by retaining amounts from Plaintiff's and the Class
23 members' payment of tuition, housing, and mandatory fees.
24

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

- 27 a. Failing to provide timely notice to Plaintiff and the Class, whose identity and
28 contact information Defendants either knew, or by exercise or reasonable

1 diligence should have known, of the refundable nature of the tuition, housing, and
2 mandatory fees;

- 3 b. Failing to design and implement criteria by which the tuition, housing, and
4 mandatory fees can be refunded to Plaintiff and the Class in light of the
5 University of Washington ceasing or severely limiting all on-campus in-person
6 lectures, housing, and activities due to the COVID-19 pandemic; and
7
8 c. Failing to design and implement a mechanism by which Plaintiff and the other
9 Class members can obtain a refund of the tuition, housing, and mandatory fees in
10 light of the University of Washington ceasing or severely limiting all on-campus
11 in-person lectures, housing, and activities due to the COVID-19 pandemic.

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

14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff and Class members request that the Court enter an order or
16 judgment against Defendants including:

- 17 A. Certification of the action as a Class Action under CR 23(b)(2) and 23(b)(3), and
18 appointment of Plaintiff as Class Representative and his counsel of record as Class Counsel;
19
20 B. Damages in the amount of unrefunded tuition and/or fees;
21
22 C. Actual damages and all such other relief as provided under the law;
23
24 D. Pre-judgment and post-judgment interest on such monetary relief;
25
26 E. Other appropriate injunctive relief as permitted by law or equity, including an
27 order enjoining Defendants from retaining refunds for tuition, and/or fees;
28
29 F. The costs of bringing this suit, including reasonable attorney's fees; and
30
31 G. All other relief to which Plaintiff and members of the Class may be entitled by
32 law or in equity.

33 JURY DEMAND

34 Plaintiff demands trial by jury on his own behalf and on behalf of Class members.
35
36
37
38

1 Dated: December 7, 2020

Respectfully submitted,

2 By: /s/ Steve W. Berman

3 Steve W. Berman (WA Bar No. 12536)

4 HAGENS BERMAN SOBOL SHAPIRO LLP

5 1301 Second Avenue, Suite 2000

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