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The Honorable Judith H. Ramseyer
Hearing: June 28, 2023
9:00 AM

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

ALEXANDER BARRY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 20-2-13924-6-SEA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

1 THIS MATTER having come before the Court on Plaintiff’s Motion for Class
2 Certification (the “Motion”), following the Court’s review of the Motion, the papers submitted in
3 support and in response, the hearing thereon, after conducting a rigorous analysis to ensure that
4 the Plaintiff has satisfied the requirements of CR 23(a) and CR 23(b)(3), and good cause
5 appearing, the Motion is hereby GRANTED.

6 **I. STANDARD OF REVIEW**

7 Class actions, authorized by CR 23 in Washington, are an essential tool for adjudicating
8 cases with multiple claims that involve similar factual and/or legal inquiries and that are too
9 modest to prosecute individually. *Chavez v. Our Lady of Lourdes Hospital at Pasco*, 190 Wash.
10 2d 507, 514, 415 P.3d 224 (2018) (other citations omitted). Washington courts liberally interpret
11 CR 23 because the rule “avoids multiplicity of litigation, saves members of the class the cost and
12 trouble of filing individual suits, and frees the defendant from the harassment of identical future
13 litigation.” *Weston v. Emerald City Pizza, LLC*, 137 Wash. App. 164, 168, 151 P.3d 1090 (2007)
14 (quoting *Smith v. Behr Process Corp.*, 113 Wash. App. 306, 318, 54 P.3d 665 (2002) (cleaned
15 up).

16 To certify a class, Plaintiff must meet all of the requirements under CR 23(a),
17 numerosity, commonality, typicality, and adequacy of representation, and at least one
18 subdivision of 23(b). *Schwendeman v. USAA Casualty Insurance Co.*, 116 Wash. App. 9, 18, 65
19 P.3d 1 (2003). These rules provide:

20 (a) Prerequisites to a Class Action. One or more members of a class may
21 sue or be sued as representative parties on behalf of all only if (1) the class is so
22 numerous that joinder of all members is impracticable, (2) there are questions of
23 law or fact common to the class, (3) the claims or defenses of the representative
24 parties are typical of the claims or defenses of the class, and (4) the representative
25 parties will fairly and adequately protect the interest of the class.

26 (b) Class Actions Maintainable. An action may be maintained as a class
27 action if the prerequisites of subdivision (a) are satisfied, and in addition:
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(3) The court finds that the questions of law or fact common to the
members of the class predominate over any questions affecting only individual
members, and that a class action is superior to other available methods for the fair

1 and efficient adjudication of the controversy. The matters pertinent to the findings
2 include: (A) the interest of members of the class in individually controlling the
3 prosecution or defense of separate actions; (B) the extent and nature of any
4 litigation concerning the controversy already commenced by or against members
5 of the class; (C) the desirability or undesirability of concentrating the litigation of
6 the claims in the particular forum; (D) the difficulties likely to be encountered in
7 the management of a class action.

8 CR 23(a); CR 23(b)(3). As noted further below and in the Court’s oral ruling on June 28, 2023,
9 incorporated herein, the proposed class meets the requirements of CR 23(a) and CR 23(b)(3).

10 **II. THIS CASE SATISFIES THE CR 23(a) PREREQUISITES**

11 To start, Plaintiffs have carried their burden of demonstrating this case meets each of the
12 four CR 23(a) prerequisites.

13 **CR 23(a)(1) Numerosity.** First, CR 23(a)(1) requires that a class be so numerous that
14 joinder of all members is impracticable. When a class is large, joinder is usually impracticable.
15 *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982). Joinder is generally
16 deemed impracticable in classes with over 40 members. *Chavez*, 190 Wash. 2d at 520. Here,
17 numerosity is satisfied because the proposed class contains over 56,000 members, including
18 undergraduate and graduate students. Compl. ¶ 24. *See Little v. Grand Canyon Univ.*, No. CV-
19 20-00795-PHX-SMB, 2022 WL 266726, at *5 (D. Ariz. Jan. 28, 2022) (finding numerosity met
20 and certifying class in COVID-19 fee refund case where proposed class included over 20,000
21 students).

22 **CR 23(a)(2) Commonality.** Second, the commonality element of Rule 23(a)(2) requires
23 only that “there are questions of law or fact common to the class.” CR 23(a)(2). “Commonality”
24 under CR 23(a)(2) is a “low threshold test” that “is qualitative rather than quantitative, that is,
25 there need be only a single issue common to all members of the class.” *Smith*, 113 Wash. App. at
26 320. Commonality is met if the “course of conduct” that gives rise to the cause of action affects
27 all the class members. *Pellino v. Brink's Inc.*, 164 Wash. App. 668, 682, 267 P.3d 383 (2011)
28 (commonality satisfied when alleged facts indicate defendant was engaged in common course of
conduct in relation to all potential class members). Plaintiff satisfies the low commonality
hurdle. Common issues here include: (1) whether UW and Class members had a contract; (2)

1 whether those contracts obligated UW to provide in-person instruction; (3) whether those
2 contracts obligated UW to provide access to campus facilities and in-person resources; (4)
3 whether UW breached the contracts; (5) whether UW unlawfully kept funds paid; (6) whether
4 UW was unjustly enriched by keeping the funds paid; and (7) the fact and measure of damages
5 derived from verifiable class-wide information maintained by UW. Commonality is met because
6 the proof will focus on UW’s conduct and will be common to the Class.

7 **CR 23(a)(3) Typicality.** Third, CR 23(a)(3) requires that the “claims or defenses of the
8 representative parties [be] typical of the claims or defenses of the class.” CR 23(a)(3). The
9 typicality requirement is met when the claims of the representative plaintiffs arise from the same
10 course of conduct that gives rise to the claims of the other class members, and where the claims
11 are based upon similar legal theories. *John Doe L v. Pierce County*, 7 Wash. App. 2d 157, 203,
12 433 P.3d 838 (2018) (citing *Pellino*, 164 Wash. App. at 684). Here, Plaintiff’s claims are typical
13 because they arise from the same events and course of conduct and common legal and remedial
14 theories. Plaintiff’s claims, like those of Class members, stem from a contract with UW for the
15 provision of in-person education and access to campus facilities and in-person resources.
16 Plaintiff, like members of the Class, was billed by UW for tuition and fees specific to students
17 who registered for in-person courses; and paid the demanded tuition and fees. Compl. ¶ 8. UW
18 stopped providing the promised in-person instruction and access to campus facilities and in-
19 person resources for all students simultaneously. Def. Ans. ¶ 3. UW then retained full price for
20 tuition and fees. Plaintiff alleges UW must refund the pro-rated fees for campus access and in-
21 person resources that UW did not provide when it shuttered its campus. Defendant raises factual
22 differences between students to oppose this finding. These issues stray into the merits of
23 Plaintiff’s allegations and his burden of proof as to the claims. Those issues need not be
24 determined at this stage. Since each Class member’s claims arise from the same course of UW’s
25 conduct, and each Class member makes similar legal arguments, the typicality requirement is
26 met.

27 **CR 23(a)(4) Adequacy.** For the final CR 23(a) prerequisite, CR 23(a)(4) requires that the
28

1 representative parties will “fairly and adequately protect the interests of the class.” CR 23(a)(4).
2 CR 23(a)(4) utilizes a two-part test is: (1) whether any substantial conflicts of interest exist
3 between the representatives and the class; and (2) whether the representatives will prosecute the
4 action vigorously on behalf of the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
5 1998). Plaintiff and his counsel satisfy both parts of this test.

6 First, the Court finds that Plaintiff’s interests are aligned with those of Class members in
7 obtaining a recovery that will provide each with the benefit of their bargain. In addition to these
8 aligned interests, Plaintiff has no conflicts with the Class and seeks to hold UW accountable.
9 Plaintiff has committed to prosecuting this litigation and will continue to advocate for the best
10 interests of the Class. Plaintiff and proposed Class Counsel will vigorously represent the Class.

11 In addition, proposed Class Counsel, Hagens Berman Sobol Shapiro LLP and Lynch
12 Carpenter LLP are each qualified. Both law firms include experienced class action lawyers, with
13 success in litigating issues relating to the provision of in-person education and campus access
14 during the Spring 2020 quarter, working together and separately. Plaintiff and proposed Class
15 Counsel satisfy the adequacy inquiry, satisfying each requirement of CR 23(a).

16 **III. CR 23(B)(3)’S PREDOMINANCE AND SUPERIORITY REQUIREMENTS ALSO**
17 **ARE MET HERE**

18 Next, CR 23(b)(3) permits class certification if “common questions of law predominate
19 over questions affecting only individual members and that a class action is the superior method
20 of handling the claim.” CR 23(b)(3).

21 **A. Common issues predominate given the central issues raised in this litigation.**

22 Predominance tests whether the proposed class is sufficiently cohesive to call for
23 adjudication by representation. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997)
24 “[T]he predominance requirement is not defeated merely because individual factual or legal
25 issues exist; rather, the relevant inquiry is whether the issue shared by the class members is the
26 dominant, central, or overriding issue shared by the class.” *Miller v. Farmer Bros. Co.*, 115
27 Wash. App. 815, 825, 64 P.3d 49 (2003). When one or more of the central issues are common to
28 the class and can be said to predominate, the action may be considered proper under CR

1 23(b)(3), “even though other important matters will have to be tried separately, such as damages
2 or some defenses peculiar to some individual class members.” *Tyson Foods Inc. v. Bouaphakeo*,
3 577 U.S. 422, 453 (2016). In determining whether predominance is met, the court engages “in a
4 pragmatic inquiry into whether there is a common nucleus of operative facts to each class
5 member's claim.” *Smith*, 113 Wash. App. at 323. The “predominance standard is not strictly
6 applied to every aspect of the plaintiffs’ claims; rather, questions of judicial economy are
7 central.” *Sitton*, 116 Wash. App. at 255. Here, this Court concludes that common questions
8 predominate. Plaintiff identifies key evidence common for all Class members, such as: whether
9 UW, based on UW’s conduct and representations, including during enrollment, course
10 registration, billing, and payment, and students paying tuition and fees, formed a contract that
11 required UW to provide in-person instruction and access to facilities and in-person services;
12 whether UW breached that contract when it closed campus; and the calculation of damages. This
13 evidence directly affects every Class member’s effort to show liability and every Class member’s
14 entitlement to relief.

15 Defendant targets much of its opposition to class certification here, arguing Plaintiff’s
16 proposed methodology is flawed. It does not and cannot, the argument goes, account for myriad
17 differences between class members to place a value on the education for which an individual
18 paid and, accordingly, how the change to remote learning at the height of the Covid-19 pandemic
19 may have affected or reduced that value. The Court finds that these issues also are properly
20 raised on the merits of Plaintiffs’ allegations and methodology for calculating damages.
21 Defendant will have the opportunity on the merits to challenge and dispute Plaintiff’s claims.
22 Even if some individual differences among class members are shown, the essential question here
23 is whether allegations arise from a “common nucleus of operative facts”. *Smith*, 113 Wash. App.
24 at 323. Plaintiff will present the same class-wide evidence that UW’s course of conduct,
25 transitioning to online-only education, caused economic loss to Plaintiff and Class members.
26 These common issues predominate over any individual issues, rendering class treatment
27 appropriate.

1 **B. A class action is superior to individual actions covering the same issues and arising**
2 **out the same transition to remote learning.**

3 The Court finds that a class action here is superior to the alternative of individual actions.
4 Where individual damages are small, the class vehicle is usually deemed superior. *Chavez*, 190
5 Wash. 2d at 523. “[F]orcing numerous plaintiffs to litigate the alleged pattern or practice ... in
6 repeated individual trials runs counter to the very purpose of a class action.” *Sitton*, 116 Wash.
7 App. at 256–57. CR 23(b)(3) includes four factors for this inquiry: “(A) the interest of members
8 of the class in individually controlling the prosecution or defense of separate actions; (B) the
9 extent and nature of any litigation concerning the controversy already commenced by or against
10 members of the class; (C) the desirability or undesirability of concentrating the litigation of the
11 claims in the particular forum; (D) the difficulties likely to be encountered in the management of
12 a class action.” CR 23(b)(3). Here, class action treatment is superior to adjudicate the claims in
13 this matter.

14 The first factor favors certification because it would cost Class members more to litigate
15 this action individually than the relatively small amount of damages they will recover. There is
16 no reason to believe putative Class members have any interest in controlling the litigation.

17 The second factor favors class certification, as neither Plaintiff nor his counsel are aware
18 of any other litigation regarding this matter against UW. *See* Barry Decl. ¶ 10; Kurowski Decl. ¶
19 15; Ciolko Decl. ¶ 8.

20 The third superiority factor also favors certification. This Court is the logical and
21 desirable forum as UW is located in King County, where this case is being litigated, and the
22 Court is familiar with the factual and legal issues. Holding separate trials for claims that could be
23 tried together would be costly and inefficient. *Elter v. United Servs. Auto. Ass’n*, 17 Wash. App.
24 2d 643, 661, 487 P.3d 539 (2021), *review denied sub nom. Elter v. USAA Cas. Ins.*, 198 Wash.
25 2d 1027, 498 P.3d 957 (2021).

26 The final superiority factor—manageability—focuses on the “practical problems that
27 may render the class action format inappropriate for a particular suit.” *Eisen v. Carlisle &*
28 *Jacquelin*, 417 U.S. 156, 164 (1974). That individual issues might exist or take some time to

1 resolve does not make a class action unmanageable. *Chavez*, 190 Wash. 2d at 521. Trial courts
2 have a “variety of procedural options to reduce the burden of resolving individual damage issues,
3 including bifurcated trials, use of subclasses or masters, pilot or test cases with selected class
4 members, or even class decertification after liability is determined.” *Sitton*, 116 Wash. App. at
5 255. This case can be tried in an efficient matter, and the Court foresees no manageability
6 problems that make over 56,000 individual actions a better alternative. As a result, Plaintiff
7 shows the superiority prong of CR 23(b)(3) has been met here.

8 **IV. THE PROPOSED CLASS IS ASCERTAINABLE**

9 While CR 23 does not explicitly include an ascertainability requirement, some appellate
10 courts have reviewed ascertainability issues in evaluating appeals from class certifications. *See*
11 *Elter*, 17 Wash. App. 2d 643, 658 (affirming class certification noting that appellant “also argues
12 that ‘ascertainability’ was not satisfied. But CR 23 does not list an ‘ascertainability’
13 requirement” and conducting no further analysis of the argument). In doing so, such courts direct
14 simply that “[t]he definition must include objective rather than subjective criteria that makes the
15 plaintiff class identifiable.” *Barnett v. Wal-Mart Stores, Inc.*, 133 Wash. App. 1036 (2006). *See*
16 *also Kihuria v. Consumer Legal Servs. Am., Inc.*, 5 Wash. App. 2d 1001 (2018) (“The class must
17 be sufficiently identifiable without being overly broad. The class should not be defined by
18 criteria that are subjective or that require an analysis of the merits of the case.”) (citations
19 omitted). The proposed Class meets this standard. The condition for class membership is
20 students who paid UW tuition and fees for access to a suite of promised in-person educational
21 services during the Winter and Spring 2020 quarters that UW did not provide. This definition
22 uses precise and objective criteria to identify Class members using UW’s student and payment
23 records.
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V. CONCLUSION

Plaintiff has satisfied the requirements of CR 23(a) and CR 23(b)(3). Accordingly, **IT IS HEREBY ORDERED** as follows:

1. The Court certifies the following Class:

All students who were enrolled in and paid for the University of Washington’s in-person based educational programs, services, and courses for the Winter Quarter 2020 or Spring Quarter 2020 academic term(s).

Excluded from the Class is UW, any entity in which UW has a controlling interest, and UW’s legal representatives, predecessors, successors, assigns, and non-student employees. Further excluded from the Class is this Court and its employees.

2. The Court appoints Plaintiff Alexander Barry as Class Representative.

3. The Court appoints Hagens Berman Sobol Shapiro LLP and Lynch Carpenter, LLP as Class Counsel.

4. The Court directs that notice issue to certified Class members under CR 23(d)(2) and further directs that UW provide Plaintiff’s counsel with last known Class member email and mailing address contact information. The parties shall confer and determine a realistic schedule to prepare and send notice to Class members. This Order shall constitute a “judicial order” within the meaning of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9), sufficient to compel the University of Washington to provide this information.

DATED:

HONORABLE JUDITH H. RAMSEYER
KING COUNTY SUPERIOR COURT JUDGE

[Proposed order prepared by Hagens Berman Sobol
Shapiro LLP]

King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-13924-6
Case Title: BARRY VS UNIVERSITY OF WASHINGTON ET AL
Document Title: ORDER RE GRANTING CLASS CERTIFICATION

Signed By: Judith H. Ramseyer
Date: June 28, 2023



Judge: Judith H. Ramseyer

This document is signed in accordance with the provisions in GR 30.

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