

**IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT IN
AND FOR HILLSBOROUGH COUNTY, FLORIDA**

CASE NO.: 21-CA-2445

VALERIEMARIE MOORE, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

THE UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,

Defendant.

**AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiff ValerieMarie Moore, individually and on behalf of all others similarly situated (collectively, the “Class,” as more fully defined below), brings this amended class action complaint against Defendant the University of South Florida Board of Trustees (“USF” or “Defendant”). Plaintiff makes the following allegations upon personal knowledge as to her own acts, and upon information and belief, and her attorneys’ investigation, as to all other matters, alleging as follows:

I. NATURE OF THE ACTION

1. This is a class action brought by Plaintiff Moore, a doctoral student in the College of Education at the University of South Florida, on behalf of all persons who paid fees to USF for on-campus services, resources, facilities, activities, and/or events during any academic semester in 2020 and the Spring 2021 academic semester¹ and who, because of USF’s response and policies relating to the Novel Coronavirus Disease 2019 (“COVID-19”) pandemic, did not receive the

¹ For purposes of this Amended Complaint, “semester” also encompasses “quarter” and means any academic period for which Plaintiff and the other Class members paid fees but experienced a loss of services because of COVID-19.

benefits for which their fees were paid, without having a pro-rated portion of those fees and costs refunded to them or otherwise refunded or waived in full and without condition.²

2. This is one of many lawsuits around the country in which students have demanded that colleges and universities refund them the fees they paid for on-campus services and resources which were not available to them as a result of the campus closures in 2020. The universities make millions of dollars in revenue from the mandatory fees they charge students (in addition to their increasing tuition costs)³ in exchange for the services and resources they provide for students. Once the universities shut down their campuses last year due to COVID-19, these were no longer available to students. Students, like Plaintiff, who were already struggling financially due to the unique challenges brought on by the pandemic, were nonetheless charged for and paid these fees. It is therefore unfair for the universities to keep this money. Some schools have already done the right thing and agreed to reimburse their students for these unused and unavailable services and charges. This lawsuit seeks to hold USF to this same standard of fairness.

3. Courts in Florida have concluded that similar class action lawsuits brought against other Florida colleges and universities state viable causes of action that are not barred by sovereign immunity. For example, in *Verdini v. District Board of Trustees of Miami-Dade College*, Case No. 2020-17924-CA-44 (Fla. 11th Jud. Cir.), the Court entered an order, attached as **Exhibit A**, denying Miami-Dade College's motion to dismiss, finding that the complaint stated a claim for breach of contract that was not barred by sovereign immunity. The Court found that the student's invoices, which were both described in and attached to the complaint, "sufficiently contain[ed] the express written terms and provide[d] the specific services MDC was contractually obligated to provide in exchange for Plaintiff's payment of 'fees.'" The Court concluded that, by entering into an express written agreement to provide specific services in exchange for fees, the college waived

² Plaintiff Moore's claims relate solely to fees for on-campus services that were not available to students with campuses effectively shut down; they do not concern tuition costs.

³ For example, USF students paid \$17 million during the 2019-2020 academic year for the Activity and Service (A&S) fees *alone*. See <http://www.usforacle.com/2020/04/16/sg-has-no-plans-to-refund-activity-service-fees-funding-to-go-toward-fall-semester-events-instead/>.

the defense of sovereign immunity as to the plaintiff's "well pled breach of contract claim." *Id.* at 3. Similarly, in another case, *Rojas v. Florida Board of Governors*, Case No. 2020 CA 000846 (Fla. 2d Jud. Cir.), the defendants' motion to stay discovery based on the argument that the plaintiff's claims against Florida's universities were barred by sovereign immunity, was denied. This order is attached as **Exhibit B**. The circuit court concluded that the invoices and other financial obligation agreements regarding fees and costs that the student-plaintiffs were required to sign, as with Plaintiff and Class members here, were evidence of the existence of express contracts between the universities and students and that the "[t]he State does not enjoy immunity from claims based on express contracts." *Id.* at 2-3.⁴

4. On March 11, 2020, the Florida Board of Governors ("FBOG") directed all universities to transition to remote learning effective immediately.⁵ Students were also encouraged to stay off campuses.

5. To comply with directives from the FBOG, and pursuant to local, state, and federal guidelines, USF transitioned to remote learning in March 2020 and began closing on-campus services and facilities.⁶ University-sponsored events were canceled.⁷ The Marshall Student Center, along with the university's libraries and campus recreation facilities and pools were closed.⁸ The university also limited the dining options available to students.⁹

⁴ These decisions mirror those of other courts nationwide. *See e.g.*, February 26, 2021 Order and Opinion in *In Re Columbia Tuition Refund Action*, Case No. 20-CV-3208 (finding student-plaintiff stated a "plausible claim that Pace [University] breached a contract to provide access to some on-campus facilities and activities in exchange for the fees that [the student] paid and therefore denying the university's motion for judgment on the pleadings on the breach of contract claim). Indeed, earlier this month, Southern New Hampshire University agreed to pay \$1.25 million to settle a similar lawsuit brought by students. *See Brianna Wright v. Southern New Hampshire University*, Case No. 1:20-cv-00609, which is pending in the U.S. District Court for the District of New Hampshire.

⁵ *See* <https://www.flbog.edu/2020/03/11/state-university-system-statement-on-covid-19/>.

⁶ *See* <https://www.usf.edu/coronavirus/updates/03-11-update-usf-community.aspx>; <https://www.usf.edu/coronavirus/updates/03-11-transitioning-remote-instruction.aspx>.

⁷ *See* <https://www.usf.edu/coronavirus/updates/03-11-update-usf-community.aspx>.

⁸ *See* <https://www.usf.edu/coronavirus/updates/03-13-residential-students.aspx>.

⁹ *See* <https://www.usf.edu/coronavirus/updates/03-13-residential-students.aspx>.

6. As a result, many of the services that the fees paid by Plaintiff and Class members were intended to cover were no longer available to them. In addition to the foregoing, USF's campus remained completely and/or partially closed for the subsequent academic semesters—including the Spring 2021 session—yet USF continued to charge mandatory fees to students for campus services that USF knew would not be available.

7. USF's decision to transition to online classes, request or encourage students to leave campus, and shut down its campus facilities and services were responsible decisions to make, but it is unfair and unlawful for USF to retain the fees and pass the losses on to the students and their families. Other higher education institutions across the United States that also switched to e-learning and requested that students leave campus have recognized the upheaval and financial harm to students and their families from these decisions and have provided appropriate refunds. That is the right thing to do. USF, unfortunately, has taken the opposite approach by refusing to refund students the fees for on-campus services and activities.

8. Furthermore, USF has improperly retained funds for services it did not provide, in violation of its express contracts with students which allow it to collect fees only for certain statutorily specified purposes. USF's actions are unlawful and unfair, and as a matter of both contract and equity, Plaintiff and Class members are entitled to a refund of the fees and monies paid.

9. USF implemented changes concerning the fees charged to students for the Summer 2020 semester. It reduced *some* of the fees, such as the Activity and Service Fee and the Capital Improvement Fee, and waived others, such as the Transportation, Marshall Center Use, and Athletic fees.¹⁰ The flat fees, however, remained the same. Despite this limited acknowledgment that certain fees should not be charged to students for the time period that the university campuses were closed and therefore the services were unavailable, USF did not offer prorated discounts for

¹⁰ See <https://www.usf.edu/business-finance/controller/documents/regulation-usf4.0102-summer-session.pdf>.

the fees paid by students for any other academic semester in 2020 or 2021 which fund on-campus services and resources which students were no longer able to access due to the campus closures.

10. Plaintiff brings this class action against USF for breach of contract, seeking to enjoin USF from retaining fees for services not provided and for damages consisting of the prorated, unused amounts of fees that Plaintiff and the other Class members paid, but for which they (or the students on behalf of whom they paid) were not provided the benefit.

II. PARTIES

A. Plaintiff

11. ValerieMarie Moore is a Florida citizen, residing in Duval, Florida. She was a graduate student at the University of South Florida during the Spring 2020 and Summer 2020 semesters and paid her costs and fees.

12. Plaintiff paid fees for both the Spring 2020 and Summer 2020 semesters, the benefits of which she did not receive because USF urged students (wisely) to move off-campus and to not utilize on-campus facilities and services. Plaintiff has neither been offered nor provided a refund of the fees she paid, even though many of the services funded by the fees were substantially or completely unavailable.

B. Defendant

13. The University of South Florida Board of Trustees is the governing body of the University of South Florida, a public university in Florida. USF resides in Hillsborough County, with its principal place of business located at 4202 E. Fowler Avenue, CGS401, Tampa, FL 33620.

III. JURISDICTION AND VENUE

14. This is an action for damages and the amount in controversy exceeds this Court's minimum jurisdictional amount (\$30,000 exclusive of interest, costs, and attorney's fees).

15. This Court has personal jurisdiction over USF because USF is domiciled in Hillsborough County, Florida.

16. Venue is proper in this District pursuant to section 47.011, Florida Statutes, because USF resides in Hillsborough County, Florida, and because of Florida's common law home venue privilege.

IV. FACTUAL ALLEGATIONS

A. *Plaintiff and Class Members Paid Fees for the 2020 Academic Semesters.*

17. Plaintiff and the other Class members are individuals who paid the cost of student fees for the 2020 academic semesters and/or Spring 2021 academic semester at USF. Each university publishes its own schedule of fees, which can include charges for Student Services, Capital Improvement, Technology, and Parking, among others. These fees are established in accordance with section 1009.24, Florida Statutes, which delineates which fees the universities can charge and their specific purposes, as well as the Chapter 7 regulations enacted by FBOG and the regulations enacted by the individual boards of trustees at each university.

18. Among the mandatory student fees for college credit programs at the University of South Florida on a per credit hour basis are the following:

- Technology: \$17.39¹¹
- Local Fees (includes Activity & Service, Health and Athletic Fees): \$36.48
- Transportation Access: \$3.00
- Student Union Enhancement (Marshall Center Use): \$21.50¹²

See <https://usf.app.box.com/v/usfregulation40102>.

19. In addition to these fees, all students are charged a mandatory Athletic "Flat Fee" (\$10.00).¹³ And, students at the main Tampa campus, like Plaintiff, are charged additional

¹¹ This is the amount for graduate students. Undergraduate students pay \$5.25.

¹² This fee only applies to Tampa campus students. It is a "flat fee of \$20.00 per semester and an additional \$1.50 per credit hour fee." See <https://usf.app.box.com/v/usfregulation40102>.

¹³ See <https://www.usf.edu/business-finance/controller/student-services/tuition-info.aspx> ; <https://www.usf.edu/business-finance/controller/student-services/tuition-other-fees.aspx>

mandatory “flat fees” for “Activities & Services” (\$7.00) and “Student Union Enhancement” (\$20.00).¹⁴

20. These fees cover resources and services available to students on or around campus. The Marshall Center Use Fee, for example, is “to facilitate the use of student union facilities”¹⁵ and for “the maintenance of the Marshall Center.”¹⁶ The Marshall Center “offers many services that students . . . may need during their enrollment in or visit to the USF Tampa campus,”¹⁷ such as the Bull Market, the Bookstore Corral, the university’s numerous dining and shopping options, the wellness center, a credit union, a pharmacy, and a print shop.¹⁸ Among the building’s amenities for students are charging stations, lounges, a mothering room, study spaces, a serenity room, a gaming room, and a computer lab.¹⁹

21. The Transportation Access Fee goes “to support USF’s transportation infrastructure and to increase student access to transportation services.”²⁰ Students depend on these shuttles to move around the university’s large campus. The Technology Fee is “used to enhance instructional technology resources” for students, such as making computers, scanners, and other technology available to students on campus and enhancing classroom and campus technology.²¹ The Health Fee “helps to offset [students’] medical costs, which means [students] can see a healthcare provider with no out-of-pocket charge for the general office visit.”²² It also “provides [students] with free

¹⁴ See <https://www.usf.edu/business-finance/controller/student-services/tuition-info.aspx> ; <https://www.usf.edu/business-finance/controller/student-services/tuition-other-fees.aspx>

¹⁵ See <https://usf.app.box.com/v/usfregulation40107>.

¹⁶ See <https://www.usf.edu/business-finance/controller/student-services/tuition-other-fees.aspx>.

¹⁷ See <https://www.usf.edu/student-affairs/msc/msc-services/index.aspx>.

¹⁸ See <https://www.usf.edu/student-affairs/msc/visit-the-msc/index.aspx>.

¹⁹ See <https://www.usf.edu/student-affairs/msc/building-amenities/>.

²⁰ See <https://usf.app.box.com/v/usfregulation40107>.

²¹ See *id.* The Technology Fee is separate and apart from the Distance Learning Fee charged by USF for online classes and which was charged to students when all classes went online. See, fn. 11.

²² See <https://www.usf.edu/student-affairs/student-health-services/fees/>.

services from the Counseling Center, Center for Student Well-being, Success and Wellness Coaching, and the Centers for Victim Advocacy and Violence Prevention.”²³

22. The fees listed and described above are provided by way of example; the total amount of fees for which this action seeks disgorgement thereof—which may include other fees that are not listed herein—will be proven at trial. For purposes of this action, “fees” do *not* include the cost of tuition or the cost of room and board.

23. Plaintiff and Class members agreed to pay these fees in express, written contracts with USF. Specifically, Plaintiff and the other Class members entered into contractual agreements with USF which provide that Plaintiff and the other Class members would pay fees for or on behalf of students and, in exchange, USF would provide certain services to students. These contracts are express written agreements between Plaintiffs and Class members and USF and are constituted by bills and invoices provided to students, such as the Account Details for Term provided to Plaintiff for the Spring 2020 and Summer 2020 sessions which are attached as **Exhibit C**, and written agreements requiring students to make specific fee payments in exchange for receiving certain services, such as Plaintiff’s “Registration Agreement” that is attached as **Exhibit D**. The Registration Agreement, which is created and provided to students by USF, and which every student must sign when they enroll for classes, provides that the student is “entering a legal, binding contract with USF.” *See* Exhibit D. It further provides that the student agrees “to pay ... account charges pursuant to ***USF policies and deadlines***” and if the student does not pay, the student will be forced to pay “the amount owed and to reimburse USF the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys’ fees that USF incurs in such collection efforts.” *Id.* (emphasis added)

24. Among the “USF policies” that are incorporated by the Registration Agreement are UNIV. OF S. FLA. REG. 4.0102, which lists the amount of each fee that student must pay, and UNIV.

²³ See <https://www.usf.edu/student-affairs/student-health-services/fees/>.

OF S. FLA. REG. 4.0107, which details the corresponding service or services that students receive for payment of various fees charged. For example, students are charged and pay the “Marshall Center Use Fee,” which includes a flat fee and an additional fee per credit hour fee in exchange for “the use of student union facilities.” *See* UNIV. OF S. FLA. REG. 4.0107(27). This Regulation also makes clear that “[all fees es, fines and penalties collected by USF shall be allocated to the appropriate account as required by section 1009.24, Florida Statutes” and FBOG regulations. *See* UNIV. OF S. FLA. REG. 4.0107(1).

25. The Registration Agreement also includes additional policies, including but not limited to, UNIV. OF S. FLA. REG. 4.0101(I)(A), which states that, as part of the “Registration Procedures,” a “student must pay all assessed tuition and fees to include satisfaction of all amounts due and delinquent to USF”; and UNIV. OF S. FLA. REG. 4.010, which requires students to pay fees to avoid having their “current term registration . . . cancelled for nonpayment of tuition and fees . . .” *See also* UNIV. OF S. FLA. REG. 4.009 (authorizing USF to, *inter alia*, “Issue collection letters” to “collect[] monies due”), and UNIV. OF S. FLA. REG. 4.0107(9) (authorizing USF to, *inter alia*, “assess[] to students who fail to pay . . . associated fees by the deadline set by USF” a “Late Payment Fee” of \$100).

26. These documents constitute the express agreement between Plaintiff (and Class members) and USF and detail the obligations imposed on both parties—Plaintiff’s obligation to pay the fees to USF in exchange for USF’s obligation to provide the corresponding services pursuant to the Florida statute and the applicable policies and regulations. Notably, both parties have an obligation; otherwise, the lack of mutuality would make the contract illusory, which is the exact basis for the Florida Supreme Court’s ruling that express contracts constitute a waiver of sovereign immunity.²⁴

²⁴ *See Pan-Am Tobacco Corp. v. Dep’t of Corrections*, 471 So. 2d 4, 5 (Fla. 1984); *see also M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 441 (2015) (instructing “courts to avoid constructions of contracts that would render promises illusory because such promises cannot serve as consideration for a contract”).

27. Although Plaintiff may not have all the documents constituting the express contracts currently in her possession, Plaintiff should be given the opportunity to establish the contracts' existence by discovery directed to USF, who certainly has these express contracts in its sole and exclusive possession. *See, e.g., Amiker v. Mid-Century Ins. Co.*, 389 So. 3d 974 (Fla. 1st DCA 1981).

B. *In Response to COVID-19, USF Gets It Half Right: It Requires or Encourages Students to Leave Campus and Not Utilize Campus Services, But Does Not Refund Fees.*

28. Beginning in January 2020, COVID-19 began presenting American cities and colleges and universities with an unprecedented, modern-day challenge: maintaining the fabric of our economy and communities while protecting American lives.

29. In March 2020, several U.S. cities, states, and municipalities began calling for social distancing to slow the spread of COVID-19. Eventually, some cities, states, and municipalities ordered citizens and residents to “shelter-at-home,” effectively requiring them to stay home, other than to receive essential services.

30. Students at USF began to immediately express concerns that, if they stayed on campus, they could potentially be exposed to COVID-19. These fears continued through the start of the Fall 2020 semester. *See e.g.,* <https://tampa.cbslocal.com/2021/03/05/usf-students-hesitant-about-returning-to-in-person-classes-1/>.

31. On March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a Florida State of Emergency due to COVID-10.

32. On or about March 11, 2020, FBOG issued an order directing all universities to implement a process to transition to remote instruction immediately and encourage students to stay home (if they had left their campuses for spring break) or to return home.²⁵ On or about March 17, 2020, it extended remote learning through the end of the Spring semester at all universities and

²⁵ *See* <https://www.flbog.edu/2020/03/11/state-university-system-statement-on-covid-19/>.

directed all universities to develop an alternate schedule or method of delivery for on-campus commencement ceremonies.²⁶

33. On March 20, 2020, Governor DeSantis issued Executive Order 20-71, instructing schools to close all campus recreation and fitness centers, which were closed that day. On March 24, 2020, he issued Executive Order 20-83, ordering the Florida Surgeon General and State Health officer to issue a public health advisory recommending all Florida residents avoid social gatherings of ten or more people and encouraging anyone who can work remotely to do so.

34. On April 1, 2020, Governor DeSantis issued Executive Order 20-91, instructing all Florida residents to limit their movements and interactions outside the home to only those that are necessary to obtain or provide essential services or activities.

35. Pursuant to these orders, USF began the transition to remote learning and began closing its facilities on campus.²⁷ On-campus and other co-curricular activities, including athletic events, were cancelled. Like many other students, Plaintiff Moore was unable to use basic resources such as the library and the campus's dining services. Simple tasks such as checking out a book for an assignment became almost impossible. Some of the university's facilities continue to be limited and/or closed for the Spring 2021 session; the Wellness Center, for example, where students "can pick up free health products and resources, get a chair massage or grab a power snooze in one of our futuristic nap pods," is closed as of today's date.²⁸

36. The effect of USF's COVID-19-related protocols and messaging was that all students were effectively forced to leave campus, unless they truly had no other safe place to go. For all students, on-campus services and resources were closed or extremely limited.

37. Notwithstanding each of the above-listed facts, USF has not provided USF students refunds of their fees, even though students were no longer able to use the services for which they paid.

²⁶ See <https://www.flbog.edu/2020/03/17/state-university-system-extends-remote-learning/>.

²⁷ See <https://www.usf.edu/coronavirus/updates/03-11-transitioning-remote-instruction.aspx>.

²⁸ See <https://www.usf.edu/student-affairs/msc/building-amenities/wellness-center.aspx>.

38. While social distancing continues to be recommended by healthcare professionals and even the Centers for Disease Control and Prevention (“CDC”), the resulting impact to the economy—and individual families’ wallets—cannot be understated. Rather than acknowledge the difficult financial stresses that COVID-19 has placed on families, USF students and their families were expected to bear the brunt of the stress.

39. USF has retained the value of monies paid by Plaintiff and the other Class members for fees, while failing to provide the services for which those fees were paid. USF’s refusal to provide refunds in consideration of its decision to shutter its campuses and move to remote learning violates its express written contractual agreements with Plaintiff and Class members to provide specific benefits (such as student activities, intercollegiate sports, and access to recreational facilities, the health clinic, and libraries) in exchange for certain fee amounts.

40. Even if USF had a legal right to cancel the fee contracts and no longer provide the services for which the fees paid, it does not have the right to retain the monies that students and/or their families paid for those services. The inequity is further highlighted by the fact that USF has received \$17.4 million in aid from the federal government to help cover the costs associated with the COVID-19 disruption.²⁹

41. Class members have demanded the return of the unused portions of the fees that they paid through several channels, including online forums.³⁰ USF has ignored these demands.

42. In addition, on information and belief, students have contacted USF directly via online forums requesting refunds, all to no avail.

43. Through this lawsuit, Plaintiff seeks—individually and on behalf of the other Class members—a judgment requiring USF to disgorge the pro-rated, unused portion of fees, proportionate to the amount of time that remained in the Spring 2020 semester when campus services ceased being provided, as well as the fees for any other semesters in 2020 and for the

²⁹ See <https://www.usf.edu/financial-aid/cares-act/cares-report.aspx>.

³⁰ See, e.g., <https://www.change.org/p/university-of-south-florida-usf-relief-for-students-and-workers>.

Spring 2021 semester when the campus and its facilities and services remained closed and/or unavailable. These amounts must be fully disgorged and returned to Plaintiff and the other Class members. It is inequitable, unfair, and unlawful for USF to retain these funds.

V. CLASS ACTION ALLEGATIONS

44. Plaintiff brings this case individually and, pursuant to Florida Rule of Civil Procedure 1.220(a), (b)(2), (b)(3), and/or (c)(4) for damages on behalf of the Class, defined as:

All students enrolled at the University of South Florida who paid Fees for services, facilities, resources, activities, and/or events that were not provided to students during the Spring 2020, Summer 2020, Fall 2020, and Spring 2021 academic semesters.³¹

45. Excluded from the Class is USF and any of its respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; the judicial officers, and their immediate family members; and Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during this litigation.

46. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 1.220 of the Florida Rules of Civil Procedure.

47. **Numerosity—Florida Rule of Civil Procedure 1.220(a)(1).** The Class members are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiff, but may be readily ascertained from USF's records and, based upon publicly available information, is presumed to be no less than 49,000 students. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

48. **Commonality—Florida Rule of Civil Procedure 1.220 (a)(2); Predominance—Florida Rule of Civil Procedure 1.220 (b)(3).** This action involves questions of law and fact

³¹ The term "Fees" as used in the class definition refers to the fees charged for the on-campus services, facilities, resources, activities, and/or events which were not provided, in whole or in part, to students because of USF's policies relating to COVID-19.

common to the Class, which predominate over any individual questions, including, without limitation:

- a. Whether USF engaged in the conduct alleged herein;
- b. Whether USF breached its contracts with Plaintiff and the other Class members by charging and retaining fees without providing the services which the fees were intended to cover;
- c. Whether certification of the Class is appropriate under Florida Rule of Civil Procedure 1.220;
- d. Whether Plaintiff and the other Class members are entitled to damages, and prospective declaratory, equitable, or injunctive relief, including disgorgement, and/or other relief; and
- e. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

49. **Typicality—Florida Rule of Civil Procedure 1.220(a)(3).** Plaintiff's claims are typical of the other Class members' claims because Plaintiff and the other Class members each paid for fees associated with the 2020 academic semesters and/or Spring 2021 academic semester at USF but were not provided the services that those fees were meant to cover, nor were they reimbursed therefor. Plaintiff and the other Class members each suffered harm—namely, USF retaining their fees and monies paid—as a direct and proximate result of the same wrongful conduct in which USF engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the other Class members' claims.

50. **Adequacy of Representation—Florida Rule of Civil Procedure 1.220(a)(4).** Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other Class members who she seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action

vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and her counsel.

51. **Declaratory and Injunctive Relief—Florida Rule of Civil Procedure 1.220(b)(2).** USF has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

52. **Superiority—Florida Rule of Civil Procedure 1.220(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

53. **Certification of Specific Issues—Florida Rule of Civil Procedure 1.220(c)(4).** To the extent a class does not meet the requirements of Rules 1.220(b)(2) or (b)(3), Plaintiff seeks the certification of issues that will drive the litigation toward resolution.

VI. CLAIM FOR RELIEF

Breach of Contract On behalf of Plaintiff and the Class

54. Plaintiff repeats and alleges the allegations in Paragraphs 1–53 above, as if fully alleged herein.

55. Plaintiff brings this breach of contract claim individually and on behalf of the other Class members.

56. Pursuant to section 1001.706, Florida Statutes, every Florida University System institution board of trustees, including USF, establishes fees pursuant to section 1009.22, 1009.24, 1009.25, 1009.26, and 1009.27, Florida Statutes. The fees established pursuant to section 1009.24

and applicable FBOG regulations include fees for on-campus services.

57. Plaintiff and the other Class members entered into contractual agreements with USF which provide that Plaintiff and the other Class members would pay fees for or on behalf of students and, in exchange, USF would provide specific services to students. *See* Exhibits C and D.

58. Plaintiff and the other Class members fulfilled their end of the bargain when they paid the fees for the 2020 academic semesters and/or the Spring 2021 semester.

59. USF breached its express contracts with Plaintiff and the other Class members when it cancelled on-campus events, activities, and services funded by the fees and did not return the fees to students.

60. Even if performance was excused, USF cannot retain funds for services it did not provide.

61. USF retained monies paid by and which belong to Plaintiff and the other Class members, without providing them the benefit of their bargain.

62. Plaintiff and the other Class members have been deprived of the value of the services the fees they paid were intended to cover, while USF retained those fees. Plaintiff and the other Class members are entitled to the unused amounts of fees that USF charged, and which Plaintiff and the other Class members paid but did not receive the benefits thereof.

63. Plaintiff is not suing to recover monies paid by taxes to the public universities in Florida; rather, Plaintiff files suit against USF, a corporate body that may be sued, for the fees and monies paid by students and their parents, guardians, and families for services not received.

64. Moreover, “Florida law is firmly established that a municipality waives the protections of sovereign immunity . . . when it enters an express written contract.” *See* Order on Motion to Dismiss, *Suarez v. City of Opa-Locka Florida*, Case No. 2017-008285-CA-01. Accordingly, USF has waived its sovereign immunity for breach of contract suits in its own courts. *See, e.g., Pan-Am Tobacco Corp. v. Dep’t of Corr.*, 471 So.2d 4, 5 (Fla. 1984) (“[W]here the state has entered into a contract fairly authorized by the powers granted by general law, the defense of

sovereign immunity will not protect the state from action arising from the state's breach of that contract."'). *See also* Exhibits A and B.

REQUEST FOR RELIEF

Plaintiff, individually and on behalf of the other Class members, respectfully requests that the Court enter judgment in her favor and against USF as follows:

- a. Certifying the Class as requested herein, designating Plaintiff as class representative, and appointing Plaintiff's undersigned counsel as Class Counsel;
- b. Declaring that USF is financially responsible for notifying the Class members of the pendency of this suit;
- c. Declaring that USF has wrongfully retained monies paid for fees, which belong to Plaintiff and the other Class members and must be disgorged;
- d. Awarding injunctive relief as permitted by law or equity, including enjoining USF from retaining the pro-rated, unused portion of monies paid for fees;
- e. Awarding damages in the form of the portion of the fees that should properly be returned to students; and
- f. Awarding such other and further relief as may be just and proper.

VII. JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: July 29, 2021

/s/ Adam M. Moskowitz
Adam M. Moskowitz
Florida Bar No. 984280
Howard M. Bushman
Florida Bar No. 364230
Adam A. Schwartzbaum
Florida Bar No. 93014
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201 N. Franklin St., 7th Floor
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jyanchunis@forthepeople.com

Counsel for Plaintiff and the Proposed Class

Exhibit A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO. 2020-17924-CA-44

FERNANDO VERDINI, an individual on
behalf of others similarly situated

Judge William Thomas

Plaintiff,

v.

DISTRICT BOARD OF TRUSTEES OF
MIAMI-DADE COLLEGE

Defendant.

**ORDER ON DEFENDANT, DISTRICT BOARD OF TRUSTEES OF MIAMI-DADE
COLLEGE'S, MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

THIS CAUSE came before the Court on Defendant, District Board of Trustees of Miami-Dade College's ("MDC"), motion to dismiss Plaintiff's complaint. The Court having reviewed the motion, heard argument of counsel, and otherwise being fully advised in the premises, the Court makes the following findings:

A motion to dismiss tests only the legal sufficiency of a complaint and is not intended to determine issues of ultimate fact. "[T]he trial court is necessarily confined to the well-pled facts alleged in the four corners of the complaint." *Lewis v. Barnett Bank of S. Florida, N.A.* 604 So. 2d 937 (Fla. 3d DCA 1992). The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal. *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022 (Fla. 4th DCA 1996). The court must draw all reasonable inferences in favor of

the nonmoving party. *Id.* Thus, the question for this court to decide is whether, assuming the well-pleaded factual allegations in the Complaint are true, Plaintiffs would be entitled to the relief requested.


Plaintiff alleges that MDC breached an express, written agreement with him concerning fees that he was required to pay in exchange for registering for courses at MDC. Plaintiff attaches invoices providing the fees he was charged for the Summer 2020 semester—invoices which list the specific purpose of each and every fee—and an invoice demonstrating he was charged similar fees in the Spring 2020 semester. The Plaintiff alleges that these documents constitute an express, written agreement between Plaintiff and MDC to provide specific services authorized by the Florida statutes in exchange for the payment of fees. MDC argues that Plaintiff does not identify the on-campus services or the express written terms that MDC breached by not providing those services. It is the finding of the Court that Plaintiff's invoices, as attached to the complaint, sufficiently contain the express written terms and provide the specific services MDC was contractually obligated to provide in exchange for Plaintiff's payment of "fees" to survive a motion to dismiss. *See Waite Development, Inc. v. City of Milton*, 866 So. 3d 153, 155 (Fla. 1st DCA 2004) (reversing order dismissing claim against City based on sovereign immunity defense finding that "[s]everal writings may constitute a valid and binding written contract when they evidence a complete meeting of the minds of the parties and an agreement upon the terms and conditions of the contract.")

MDC argues sovereign immunity bars Plaintiff's claims. "Sovereign immunity is the 'privilege of the sovereign not to be sued without its consent.'" *City of Fort Lauderdale v. Israel*, 178 So. 3d 444, 446 (Fla. 4th DCA 2015) (citation omitted). "Sovereign immunity is a doctrine designed to protect the public treasury from what would otherwise be countless claims filed by the

vast number of citizens affected by actions of a government.” *S. Roadbuilders, Inc. v. Lee Cty.*, 495 So. 2d 189, 190 n.1 (Fla. 2d DCA 1986). “[A] [sovereign] waives the protections of sovereign immunity only when it enters into an express contract.” *Israel*, 178 So. 3d at 447. Immunity remains, however, where the claims do not arise from breaches of expressed, written contracts. *See S. Roadbuilders, Inc. v. Lee Cnty.*, 495 So. 2d at 190- 91. In addition, under Florida law, where there is an express written contract, “the defense of sovereign immunity does not protect the state agency from an action arising out of a breach of either an express or implied covenant or condition of that contract.” *Champagne-Webber, Inv. v. City of Fort Lauderdale*, 519 So. 2d 696, 698 (Fla. 4th DCA 1988). Therefore, it is

ORDERED AND ADJUDGED that Plaintiff has sufficiently stated a cause of action for breach of an express contract. Therefore, at the motion to dismiss stage, sovereign immunity is no bar to Plaintiff’s well pled breach of contract claim and MDC’s motion to dismiss is **DENIED**. However, as to the Plaintiff’s unjust enrichment claim, the motion to dismiss is **GRANTED** with prejudice as Florida law does not permit a waiver of sovereign immunity based on implied contracts. MDC has 20 days from the date of this order to file an answer.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 02/01/21.



WILLIAM THOMAS
CIRCUIT COURT JUDGE

**No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or

hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Exhibit B

**IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR
LEON COUNTY, FLORIDA**

CASE NO.: 2020 CA 000846

ANTHONY ROJAS, AMANDA HEINE,
and JORDAN SPERLING, individually and
on behalf of all others similarly situated,

Plaintiffs,

CLASS ACTION

JURY TRIAL DEMANDED

v.

FLORIDA BOARD OF GOVERNORS,

Defendant.

**ORDER ON DEFENDANT FLORIDA BOARD OF GOVERNOR'S MOTION FOR
PROTECTIVE ORDER AND TO STAY DISCOVERY PENDING FINAL
ADJUDICATION OF DISPOSITIVE MOTIONS**

THIS CAUSE, having come before the Court upon Defendant's Motion for Protective Order and to Stay Discovery Pending Final Adjudication of Dispositive Motions ("Motion to Stay"), the Court having reviewed the motion and the briefs submitted by the parties, conducted oral argument on October 29, 2020, and being duly advised of the premises, the Court finds as follows:

1. The Defendant seeks to stay discovery in this case based on the argument that Defendant intends to raise a sovereign immunity defense. Defendant has cited *State of Florida v. Curcio*, 71 So. 3d 931 (1st Dist. 2011), in support of its argument that discovery is not necessary when sovereign immunity is at issue. The Court does not agree.

2. In *Curcio*, the Appellate Court specifically allowed discovery to proceed "as necessary to resolve the sovereign immunity defense to Counts III & IV." *Curcio*, 71 So. 3d at 933.

3. In the case at hand, the Defendant argues that the State enjoys sovereign immunity from claims arising out of implied contracts. The Plaintiffs, however, have alleged that they entered into contractual agreements, not implied contracts. *See* Am. Comp. ¶¶ 13, 57.

4. Further, in their opposition to the Motion to Stay, the Plaintiffs provided examples where at least one of Florida's public universities references "agreements" with students for the payment of fees. *See* Pl's Opp. Br. at 11. Specifically, the Plaintiffs provided evidence that at the University of Florida, students had to agree to the following written terms:

I agree to pay all UF debts and charges pursuant to UF policies. I understand that the university is advancing value to me in the form of educational services and that ***my right to register is expressly conditioned upon my agreement to pay the costs*** of tuition, fees, and other charges and any additional costs when those charges become due.

See <https://www.fufl.edu/directives/terms-and-agreements/> (emphasis added).

5. The Plaintiffs also argue at page 15 of their Opposition Brief that students receive and pay written invoices for their fees, and that these invoices should be considered an express contract. *See, e.g. Int'l Star Registry of Illinois v. Omnipoint Mktg., LLC*, 510 F. Supp. 2d 1015, 1022 (S.D. Fla. 2007) ("the invoices constitute contracts between the parties").

6. The State does not enjoy immunity from claims based on express contracts. *See Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So.2d 4, 6 (Fla. 1984); *Corcoran v. Geffin*, 250 So. 3d 779, 786-87 (Fla. 1st DCA 2018). In *Corcoran*, a case that included the Florida Board of Governors as a defendant, the First District Court of Appeal stated that "neither sovereign immunity nor the separation of powers doctrine prohibits respondents from bringing a breach of contract claim." *Corcoran*, 250 So. 3d at 787.

7. At this stage of the proceedings, the Plaintiffs need not prove the existence of express contracts, and the Court need not decide whether there are, in fact, express contracts. Alleging it

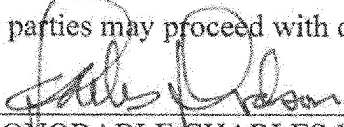
is sufficient. *See Zainulabeddin v. Univ. of S. Fla. Bd. of Trustees*, 2016 WL 1451726 (M.D. Fla. April 13, 2016).

8. Since the Plaintiffs have alleged the existence and breach of an express contract, discovery will be necessary to determine whether the contractual relationships at issue in the case were express or implied in order to resolve the sovereign immunity issue.

9. Defendant has provided no other basis for staying discovery in this case.

IT IS ORDERED AND ADJUDGED:

Defendant's Motion is Denied. The parties may proceed with discovery.


 11/12/20
HONORABLE CHARLES W. DODSON
CIRCUIT COURT JUDGE

Copies furnished to Counsel of Record

Exhibit C

Valerie Marie Moore
Mar 04, 2021 12:02 am

Account Detail for Term

 Review detail transactions on your account, including current and future balance totals for the selected term and other terms.

The Florida Prepaid Memo item is the estimated amount USF expects Florida Prepaid to pay based on your current credit hours. Students can deduct the Memo amount to estimate the Account Balance owed.

Florida Prepaid approved amounts will officially post to the account as a payment approximately 3-4 weeks into the semester. For more information on Florida Prepaid please visit: [Florida Prepaid](#)

202001 Spring 2020 Term Detail


Detail Code	Description	Item Date	Charge	Payment	Balance
TFAF	Flat Fee Athletic Tampa	02-DEC-2019	\$10.00		
TFAS	Flat Fee A&S Tampa	02-DEC-2019	\$7.00		
TFMC	Student Union Enh Flat Fee	02-DEC-2019	\$20.00		
TGGF	Tuition - Green Energy Fee	02-DEC-2019	\$6.00		
TGLF	Tuition - Grad Local Fees	02-DEC-2019	\$218.88		
TGMC	Tuition - Graduate	02-DEC-2019	\$2,087.46		
TGSF	Tuition - Grad State Fees	02-DEC-2019	\$144.90		
TGTF	Tuition - Graduate Tech Fee	02-DEC-2019	\$104.34		
TGTR	Tuition - Grad Transportation	02-DEC-2019	\$18.00		
TGUF	Tuition - Facilities Fee	02-DEC-2019	\$9.00		
RFIN	Direct Deposit	22-JAN-2020	\$7,516.42		
RFIN	Direct Deposit	11-MAY-2020	\$400.00		
F975	FRDL Direct Loan-Unsub-Spring	19-JAN-2020		\$10,142.00	
F035	FDRL CARES Act Grant	09-MAY-2020		\$400.00	
Net Term Balance					\$0.00
Net Balance for Other Terms:					\$0.00
Account Balance:					\$0.00



No pending transactions exist on your record for the selected term.

Valerie Marie Moore
Mar 04, 2021 12:04 am

Account Detail for Term

 Review detail transactions on your account, including current and future balance totals for the selected term and other terms.

The Florida Prepaid Memo item is the estimated amount USF expects Florida Prepaid to pay based on your current credit hours. Students can deduct the Memo amount to estimate the Account Balance owed.

Florida Prepaid approved amounts will officially post to the account as a payment approximately 3-4 weeks into the semester. For more information on Florida Prepaid please visit: [Florida Prepaid](#)

202005 Summer 2020 Term Detail

Detail Code	Description	Item Date	Charge	Payment	Balance
ODLG	Distance Learning Fee Graduate	10-MAY-2020	\$80.37		
ODLG	Distance Learning Fee Graduate	10-MAY-2020	\$80.37		
TFAF	Flat Fee Athletic Tampa	10-MAY-2020	\$10.00		
TFAS	Flat Fee A&S Tampa	10-MAY-2020	\$7.00		
TGLD	Tuition - Grad Local Fees	10-MAY-2020	\$123.12		
TGMC	Tuition - Graduate	10-MAY-2020	\$2,087.46		
TGSD	Tuition - Grad State Fees	10-MAY-2020	\$132.90		
TGTF	Tuition - Graduate Tech Fee	10-MAY-2020	\$104.34		
RFIN	Direct Deposit	26-MAY-2020	\$5,078.44		
F978	FRDL Direct Loan-Unsub-Summer	24-MAY-2020		\$7,704.00	
Net Term Balance					\$0.00
Net Balance for Other Terms:					\$0.00
Account Balance:					\$0.00



No pending transactions exist on your record for the selected term.

Exhibit D

Add or Drop Classes

Valerie Marie Moore
Fall 2021
Jul 15, 2021 01:19 pm

Use this interface to add, drop, and withdraw for classes for the selected term. If you are already registered, your classes will appear in the "Class Registered Successfully" section. You may add additional classes by entering the Course Reference Numbers (CRNs) in the "Add Classes Worksheet" below. You may drop or withdraw (depending on the [Academic Calendar](#)) using the options available in the "Action" field; if no option is listed in the Action field, the class may not be dropped or withdrawn. Once your changes are complete, click the "Submit Changes" button to make the requested action. **Direct questions about credit card refunds for dropped courses to Student Financial Services (Cashiers@usf.edu); all other refund questions should be directed to SFSrefund@usf.edu.**

Repayment for dropped and withdrawn courses funded by [Bright Futures](#): If you receive Bright Futures, you are required to repay Bright Futures for any courses dropped or withdrawn unless an exception is approved by appeal to the Office of Financial Aid. USF will only grant exceptions for documented, verifiable illness or emergency beyond your control. Repayment for dropped courses is required to renew a Bright Futures award for a subsequent academic year in addition to the normal Bright Futures renewal requirements.

Registration Agreement

In addition to USF policies, I agree to the following:

1. I understand that actions taken on this screen are considered official registration. I am responsible for knowing all registration, drop and withdrawal policies and [associated deadlines](#).
2. I understand non-attendance or notifying my instructor(s) does not constitute a drop or withdrawal. [Financial Aid](#) is awarded based on enrollment; dropping classes may affect the amount of Financial Aid I am awarded; any reduction in Financial Aid may result in a balance due to USF.
3. I agree to pay my account charges pursuant to USF policies and deadlines. [I understand that USF does not send bills](#), and I am responsible for the charges posted in Student OASIS.
4. I understand USF collects and processes my personal data. I have reviewed the [Privacy Statement](#)
5. I agree to give USF and parties acting on its behalf permission to contact me at the cell phone number and other contact methods that I have provided.
6. I understand that [I must update my student record](#) with new addresses and phone numbers within seven days of such change
7. In the event of a [default in payment](#), I agree to pay the amount owed and to reimburse USF the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees that USF incurs in such collection efforts.

By clicking "Submit Changes" below, I am entering a legal, binding contract with USF and I hereby acknowledge that I have read and understand the terms and conditions of this registration agreement.

Add Classes Worksheet

CRNs									
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="Submit Changes"/> <input type="button" value="Reset"/>									