

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

VALERIE MARIE MOORE, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

CASE NO. 21-CA-2445

THE UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,

DIVISION: L

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

THIS MATTER came before the Court for evidentiary hearing on January 20, 2023 (the “Hearing”) on Plaintiff’s Motion for Class Certification (the “Class Motion”). The Court, having carefully considered the Class Motion, USF’s Opposition, Plaintiff’s Supplement, and Plaintiff’s Reply, various notices of filings from the parties, and the testimony,¹ evidence, and arguments from counsel at the Hearing and makes the following Findings of Fact and reaches the following Conclusions of Law.

1. Plaintiff filed her Class Motion to certify the following Class, pursuant to Florida Rule of Civil Procedure 1.220(a) and (b)(3):

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

¹ USF did not file a written response to the Class Motion prior to the Hearing. At the Hearing, the Court heard testimony from Plaintiff and from four witnesses who testified on behalf of USF: 1) Cynthia Deluca, the Vice-President for Student Success, 2) Billy Jo Hamilton, Associate Vice President for Enrollment Planning and Management, 3) Jennifer Condon, Vice President, Deputy CFO and Controller, and 4) Robin Tornay, Associate University Registrar. Plaintiff’s Exhibit Nos. 1-6, 8-27 were admitted into evidence. Defendant’s Exhibit Nos. 1-20 were admitted into evidence. At the conclusion of the Hearing, the Court allowed Defendant to file a written opposition to the Class Motion. On January 23, 2023, USF filed its Opposition and Plaintiff filed her Reply on January 25, 2023.

during the Spring 2020, Summer 2020, Fall 2020, and Spring 2021 academic semesters.²

As used in the Class definition, “fees” refers to the fees that the University of South Florida charges students pursuant to section 1009.24, Florida Statutes, and applicable regulations.

2. Plaintiff ValerieMarie Moore attended the University of South Florida during the Spring, Summer, and Fall 2020 academic semesters and filed this action against USF on March 19, 2021. She filed an Amended Complaint on July 29, 2021. Plaintiff alleges that USF charged and refused to refund fees she and other students paid for on-campus services that USF did not provide to any student during the Spring, Summer, and Fall 2020 academic semesters, and Spring 2021 academic semester, due to the closure of its campuses in response to the COVID-19 pandemic. Based on these allegations, Plaintiff asserts claims on behalf of herself and other USF students against USF for breach of contract.

3. The decision on whether to certify a class is a matter within the trial court’s broad discretion. In considering a motion for class certification, the court accepts the plaintiff’s substantive allegations as true. The “trial court should resolve doubts with regard to certification in favor of certification, especially in the early stages of litigation.” *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 105 (Fla. 2011). Further, when determining whether to certify a class, a trial court should focus on the prerequisites for class certification and not the merits of a cause of action. *Id.* at 103, 105.

4. To certify a class, Plaintiff must plead and prove all elements required by Rule 1.220, including the four elements of Rule 1.220(a): numerosity, commonality, typicality, and adequacy. *Sosa*, 73 So. 3d at 106 (citation omitted). In addition to the requirements of Rule

² 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.

1.220(a), “the proponent of class certification must satisfy one of the three subdivisions of Rule 1.220(b).” *Id.*

5. **Numerosity (Rule 1.220(a)(1))** The Court finds that the proposed Class satisfies the numerosity requirement. When Plaintiff registered for courses at the University of South Florida for the Spring, Summer, and Fall 2020 semesters, Plaintiff executed a Registration Agreement which states on its face that it is a “legal, binding contract with USF.”³ The Registration Agreement that Plaintiff executed is “a standard registration agreement across all students.”⁴ USF’s representative confirmed at the hearing that Plaintiff’s registration agreement is “the same as every [other] student’s registration agreement.”⁵ When Plaintiff acknowledged and agreed to the Registration Agreement’s terms, she agreed to pay the fees charged to her by the university.⁶ Each time she registered for courses at the university, Plaintiff received from USF an “Account Details for Term,” which is an official document from the university that itemizes the student’s tuition and the various fees charged, by name and amount for each fee.⁷ Plaintiff’s “Account Details for Term” is the same form as the Account Details for Term received by “every other student.”⁸ Accordingly, the Court finds that, like Plaintiff, all students receive a copy of the Registration Agreement and an Account Details for Term upon registration for courses at the University of South Florida.

6. The Account Details for Terms lists the fees and tuition charged to the student. Plaintiff’s Account Details for Term show that she was charged the following fees during the Spring, Summer, and Fall 2020 semesters: a “Flat” Athletics fee, a “Flat” Activity and Service fee,

³ Moore’s Registration Agreement (Ex. 2 to Jennifer Condon Deposition Transcript).

⁴ Condon Depo. Tr. 29:14–32:7; *see also* Evidentiary Hearing Transcript (“Hearing Tr.”) (Ex. A to Plaintiff’s Reply) 68:25–69:6 (“A registration across all students.”).

⁵ Hearing Tr. 53:25–54:2

⁶ Moore’s Registration Agreement.

⁷ *See* Moore’s Account Details for Term (Ex. 1 to Moore Dec.).

⁸ Hearing Tr. 54:9–54:11.

a Technology fee, a “Local” Athletics fee, a “Local” Activity and Service fee, and a “Local” Health fee.⁹ Plaintiff was also charged a Transportation fee during the Spring 2020 and Fall 2020 semesters.¹⁰ The fees that were charged to Plaintiff are fees that USF charges students pursuant to section 1009.24, Florida Statutes, which governs the types, amounts, and uses of the student fees that USF may charge, and pursuant to the Florida Board of Governors’ (“FBOG”) Regulations, as well as the university’s own regulations. *See* § 1009.24, Fla. Stat.; *see also* FBOG Regs. §§ 7.001, 7.003. For example, if USF charges a student activity and service fee, the fee “shall be expended for lawful purposes to benefit the student body in general.” § 1009.24(10)(b), Fla. Stat.; *accord* FBOG Regs. § 7.003(4)(e). Other “associated fees” paid by every student are fees for health services or athletic services. § 1009.24(4)(d)-(13), Fla. Stat.

7. USF also charges additional “non-associated” fees which must be “based on reasonable costs of services.” § 1009.24(14), Fla. Stat. For example, a “Transportation Access Fee” charged to students must be used “to increase student access to transportation services.” FBOG Regs. § 7.003(10). Other “non-associated” fees include laboratory fees and parking fees. *Id.* If students at the university do not pay these fees, they are subject to penalties, including having their account sent to collections proceedings.¹¹

8. Every student at the University of South Florida is charged the same amount for a specific set of fees: the “Flat” Activity and Service and “Flat” Athletics fees, the “Local” Athletics, Activity and Service, and Health fees, a Transportation Fee, and “State” Energy and Capital

⁹ Moore’s Account Details for Term.

¹⁰ *Id.*

¹¹ *See* UNIV. OF S. FLA. REG. 4.009 (authorizing USF to, inter alia, “Issue collection letters” to “collect[] monies due”).

Improvement fees.¹² All students at the University of South Florida are also charged a Technology fee; this fee is charged at a slightly higher rate for graduate students than undergraduate students.¹³

9. The Account Details for Term also details the payments that are made on the student's account.¹⁴ For example, Plaintiff's Account Details for Term for the Spring and Summer 2020 semesters show that Plaintiff paid her tuition and the fees that were charged to her.¹⁵ This document also provides details on the method of payment; for example, Plaintiff made her payments using the financial aid awarded to her.¹⁶

10. USF retains the Registration Agreements and the Account Details for Terms for all its students—for all semesters.¹⁷ In fact, Ms. Tornay testified at the hearing: "We're record keepers so we keep a record" for "[e]very semester since 1956."¹⁸ Using its records, USF can identify every fee that is charged to every student for any semester.¹⁹

11. Plaintiff alleges that when USF closed its campuses in response to the COVID-19 pandemic, USF ceased providing on-campus services and resources and as a result, Plaintiff and all students no longer had access to athletics, on-campus resources, facilities, and activities, and transportation, in violation of USF's contracts with students.²⁰ Defendant does not dispute that, in March 2020, it closed its campuses and transitioned to online learning and that it was not until Fall 2020 that the university slowly began re-opening its campuses for students.²¹ Plaintiff's

¹² See UNIV. OF S. FLA. REG. 4.0102(c).

¹³ See UNIV. OF S. FLA. REG. 4.0102.

¹⁴ See Moore's Account Details for Term.

¹⁵ *Id.*

¹⁶ *Id.*; see also Hearing Tr. 68:14–19 (the Account Details for Term "shows who paid and it was a third party").

¹⁷ Hearing Tr. 65:8–65:16.

¹⁸ *Id.* 74:1–4.

¹⁹ *Id.* 64:10–64:17.

²⁰ See Amended Complaint.

²¹ See Opp., 1–2.

declaration describes the circumstances surrounding the campus closures due to the COVID-19 pandemic, including the availability of on-campus services to students.²²

12. Plaintiff's evidence shows the total amount of students who were charged the student fees during each of the semesters for the relevant time period: for Spring 2020, 46,668 students, for Summer 2020, 31,807 students, for Fall 2020, 48,440 students, and for Spring 2021, 45,214 students.²³ The Court finds that the proposed Class is also ascertainable. A proposed class is ascertainable if "it is adequately defined such that its membership is capable of determination." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304 (11th Cir. 2021); *see also BJ's Wholesale Club, Inc. v. Bugliaro*, 273 So. 3d 1119, 1121 (Fla. 3d DCA 2019) (holding class is ascertainable when "the class definition contains objective criteria that allow for class members to be identified"). Plaintiff's proposed Class is objectively defined to include only those students who may assert claims for damages against USF as a result of their payment of fees for services and access to facilities that USF did not provide because of its decision to shut down its campuses and on-campus services and facilities.²⁴ *See Alexandre* (certifying an identically defined class).

13. Further, the Account Details for Term, which the university provides to all students, show which fees were charged and paid by Plaintiff and all Class members. "Thus, the class members can be identified 'utilizing class-wide data that exists within [USF's] records.'" *Alexandre*, at 7 (citing *Herman v. Seaworld Parks & Entm't, Inc.*, 320 F.R.D. 271, 286 (M.D. Fla. 2017)); *see also Little v. Grand Canyon Univ.*, No. CV-20-00795-PHX-SMB, 2022 WL 266726, at *5 (D. Ariz. Jan. 28, 2022) ("the Court finds that the class is definite and ascertainable" because

²² Moore Dec. ¶¶ 5, 9–10.

²³ Defendant's January 11, 2023 Amended Responses and Objections to Plaintiff's Interrogatories, at No. 5.

²⁴ USF urges the Court to deny certification as the court denied certification in *Evans*, but the class definition in *Evans* was much broader than the one here. The proposed class in *Evans* included "**all persons** who paid tuition and/or fees" (*Evans v. Brigham Young Univ.*, No. 1:20-CV-100-TS, 2022 WL 596862, at *3-*4 (D. Utah Feb. 28, 2022)), while Plaintiff here seeks to certify a more limited class, that includes only *students* who enrolled and paid fees (directly or by means of a third-party) to the university.

GCU can readily ascertain the identity of class members from its records” such as “the amount of fees that each student paid”).

14. USF argues that ascertainability has not been met because USF cannot readily determine if the student paid their fees using their own funds, or whether it was a family member, loan provider, or friend who provided the funds for payment. The Court rejects this third-party payment argument and finds that it is not necessary to know “who actually paid the student fees,” such as a student’s parent, to ascertain class membership. The Court also rejects USF’s argument that the proposed Class is improper because it includes members who may not have standing if their tuition and fees were paid by a third party. Here, the undisputed evidence in the record shows that Plaintiff was charged and paid the student fees during the Spring and Summer semesters in 2020 for student services that were not provided due to the campus’s closures, which is sufficient to establish her Article III standing to raise these class claims. Finally, notice to the class can be efficiently disseminated in the manner in which USF regularly communicates with students, such as electronically through emails, about issues relating to all manner of campus issues, including campus closures.²⁵ After certification, the Class can be provided notice of the pendency of this action in an efficient streamlined manner.

15. **Commonality (Rule 1.220(a)(2))** The Court concludes that the commonality requirement is satisfied. There is no dispute that all students pay the same set of fees when they register for courses, and all students suffered the same injury because services and facilities on campus were either completely or partially closed and unavailable during various semesters. There is no dispute that USF cancelled on-campus classes.

²⁵ See Ex. B to Plaintiff’s Reply.

16. USF references the voluntary payment doctrine in its opposition, but this defense, as with sovereign immunity, would apply equally to all Class members and is therefore not a bar to certification. USF also argues that not all Class members paid the same amount for student fees, but commonality is satisfied even where certain class members have different damages. *Id.*; *Sosa*, 73 So. 3d at 107. “The fact that [USF] may have charged different amounts for the fees to certain students does not negate commonality because ‘the issue is not whether the . . . fees were the same, but whether or not [USF’s] practice’ constituted a breach of contract or unjust enrichment.” *Alexandre*, at 8 (citing *Olen Props. Corp. v. Moss*, 981 So. 2d 515, 520 (Fla. 4th DCA 2008)). Whether or not the fees charged were the same student is not the issue. Instead, the issue is whether GCU’s alleged breach of contract or unjust enrichment was the same for each student. Accordingly, the Court finds that Plaintiff has satisfied the requirement for commonality.”²⁶ Thus, the Court finds that the commonality requirements of Rule 1.220(a)(2) have been satisfied.

17. **Typicality (Rule 1.220(a)(3))** The proposed Class also satisfies the typicality requirement. “The key inquiry for a circuit court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class member.” *Sosa*, 73 So. 3d at 114. “Like the commonality requirement, the typicality requirement is permissive: representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *In re Checking Overdraft Litig.*, 281 F.R.D. at 675 (citing *Brown v. SCO Funeral Servs. of Fla., Inc.*, 212 F.R.D. 602, 605 (S.D. Fla. 2003)). “The typicality requirement

²⁶ See also *In re Checking Account Overdraft Litig.*, 281 F.R.D. 667 (S.D. Fla. 2012) (concluding commonality satisfied in class action asserting breach of contract and unjust enrichment claims because plaintiffs “provided evidence of a common corporate policy or practice”); *Nolan v. Integrated Real Estate Processing, LP*, No. 3:08-cv-642-J-34HTS, 2009 WL 10670779 (M.D. Fla. Sept. 9, 2009) (certifying class based on claims of, among others, breach of contract and unjust enrichment, because “common issues of law and fact arise from the Defendant’s alleged practice” of unfairly profiting from class members).

may be satisfied despite substantial factual differences . . . when there is a strong similarity of legal theories.” *Morgan*, 33 So. 3d at 65 (quoting *Clausnitzer v. Fed. Express Corp.*, 248 F.R.D. 647, 656 (S.D. Fla. 2008)); *see also Olen Props.*, 981 So. 2d at 520 (“While the factual reasons why the class members were charged the challenged fees may differ, ‘[t]he mere presence of factual difference will not defeat typicality’”) (quoting *Broin v. Phillip Morris Cos., Inc.*, 641 So. 2d 888, 892 (Fla. 3d DCA 1994) (finding typicality where “[a]ll class members seek the same relief”).

18. “Because [USF’s] uniform practice of shutting down its campuses and on-campus services to all students during the semesters in 2020 [and Spring 2021 semester] affected Plaintiff[] and all Class Members, the typicality requirement is satisfied.” *Alexandre*, at 10. Plaintiff and Class members “all suffered the same injury”: not receiving the services and access to facilities for which they paid.” *Morgan*, 33 So. 3d at 65. USF’s uniform practice of shutting down its campuses and on-campus services to all students during the relevant semesters affected Plaintiff and all Class Members equally.

19. Finally, “[t]he fact that Plaintiff’s *extent* of [her] injury (i.e., damages) might vary from that of the other class members does not bar a finding of typicality in this case.” *Id.* (citing *Ouellette v. Wal-Mart Stores, Inc.*, 888 So. 2d 90, 91 (Fla. 1st DCA 2004)); *see also Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (“Differences in the amount of damages between the class representative and other class members does not affect typicality.”)). The total amount due to Plaintiff and Class members is a trial issue involving damages, not liability, and is therefore not a bar to certification of a (b)(3) class. *See Sosa*, 73 So. 3d at 112; *see also Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003). The Court therefore finds that there is a sufficient nexus between Plaintiff’s claims and those of the proposed Class to satisfy the typicality requirement.

20. **Adequacy (Rule 1.220(a)(4))** The Court finds that Plaintiff and her class counsel are adequate, and that the adequacy of representation requirement is satisfied. The evidence in the record shows that “neither Plaintiff[] nor her counsel have any interest that are antagonistic to those of the absent class members.” *In re Checking Overdraft Litig.*, 281 F.R.D. at 675. “The central issues in this case”—the existence, unlawfulness, and effect of USF’s decision to retain the fees collected for services it did not provide—“are common to the claims of Plaintiff[] and the other members of the class.” *Id.* The Court is not persuaded by USF’s argument that Plaintiff is not an adequate representative because she was reimbursed fees for the Fall 2020 semester and was not enrolled during the Spring 2021 semester. Plaintiff has standing to bring her claims concerning all academic semesters because her claims concerning the Spring and Summer 2020 semesters are identical to the claims asserted concerning the other semesters, which suffices for purposes of class representative standing under Florida law.

21. The Court finds that Plaintiff has demonstrated that she is willing, able, and prepared to serve the Court and the Class in a representative capacity and will undertake all associated obligations and duties. Plaintiff also understands her fiduciary duties as class representative and has no conflicts of interest with the students whom she seeks to represent.²⁷ Given this evidence, the Court finds that Plaintiff is an adequate representative of the Class. Finally, the law firm seeking to represent the Class include qualified and experienced lawyers who are vigorously litigating against other Florida schools on behalf of students. Plaintiff’s counsel’s resume demonstrates counsel’s experience and expertise in class actions, and the financial ability fund the prosecution of complex class actions such as this one. The Court therefore concludes that Plaintiff and the firm seeking appointment as Class Counsel will properly and adequately prosecute

²⁷ *Id.* ¶ 16.

this case. The Court appoints Plaintiff as Class representative and the Moskowitz Law Firm as Class Counsel.

22. **Rule 1.220(b)(3) Requirements** Plaintiff seeks to certify the Class pursuant to Rule 1.220(b)(3), which allows a class to be certified if “the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class,” and if “class representation is superior to other available methods for the fair and efficient adjudication of the controversy.” Fla. R. Civ. P. 1.220(b)(3).

- **Common Questions of Law and Fact Predominate** The Court finds that common issues predominate over individual issues in this case because Plaintiff’s claims are based on USF’s failure to provide students with services they paid for with their fees. Any liability to the class will involve the same evidence: (i) the terms of the Registration Agreement, the information on the Account Details for Terms, which specify the exact fees charged to students, and the amounts charged and paid by students; (ii) the amounts of fees collected from students during the semesters in 2020 and in Spring 2021; and (iii) if and how those fees were spent during the semesters. Accordingly, the Court concludes that the common issues of liability predominate over any individual issues in this case, including individual damage calculations for each class member.
- **Class Representation Is the Superior Method to Adjudicate This Controversy.** The Court finds that the factors in this case also weigh in favor of a finding of superiority. There are thousands of members in the proposed Class seeking a portion of the few hundred dollars in fees they paid; these claims “are not so large that the cost of conducting individual litigation would be justified.” *Morgan*, 33 So. 3d at 66. Allowing students “to proceed with their claims in a class action suit would be the most economically viable remedy.” *Id.* at 67; *see also Eddlemon*, 2022 WL 3227865, at *9. The Court therefore certifies the Class as proposed by Plaintiff and notes the Court’s continuing jurisdiction to modify or revoke the class certification pursuant to Rule 1.220(d)(1).

The Court concludes that the proposed Class is certifiable as a damages class under Rule 1.220(b)(3) because common issues concerning USF’s uniform course of conduct, which resulted in all students being treated the exact same way and suffering the same type of readily quantifiable damages, predominate over individual questions about the amounts of fees paid by individual

students. A damages class is also the superior method to adjudicate this controversy because it allows the students, who all have small claims for damages, the ability to prosecute their claims in a manageable and effective manner.

Based on the foregoing, it is **ORDERED** that:

1. Plaintiff's Motion for Class Certification is **GRANTED**.

2. The Court certifies the following Class:

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.

3. Plaintiff is hereby appointed as the Class Representative.

4. The Moskowitz Law Firm, PLLC is hereby appointed as Class Counsel.

5. Within 14 days of the date of this Order, the parties must submit a Joint Proposed Notice plan to the Court. If the parties are unable to agree on the content of the notice, the parties may submit competing notices.

DONE and **ORDERED** in Chambers, in Hillsborough County, Tampa, Florida this ____ day of _____ 2023.

Electronically Conformed 8/14/2023
Darren D. Farfante

HONORABLE DARREN D. FARFANTE
Circuit Judge

Copies furnished to:
Counsel of Record