

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

CASE NO.: _____

ANTHONY ROJAS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FLORIDA BOARD OF GOVERNORS
FOUNDATION, INC.

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Anthony Rojas, individually and on behalf of all others similarly situated (collectively, the “Class,” as more fully defined below), brings this class action complaint against Defendant Florida Board of Governors Foundation, Inc. (the “FBOG” or “Defendant”). Plaintiff makes the following allegations upon personal knowledge as to his own acts, and upon information and belief, and his attorneys’ investigation, as to all other matters, alleging as follows:

I. NATURE OF THE ACTION

1. This is a class action brought on behalf of all Florida residents who paid fees for the Spring 2020 academic semester at Florida A&M University, Florida Atlantic University, Florida Gulf Coast University, Florida International University, Florida Polytechnic University, Florida State University, New College of Florida, University of Central Florida, University of Florida, University of North Florida, University of South Florida, and University of West Florida (collectively, the “Universities”) and who, because of FBOG’s response and policies relating to the Novel Coronavirus Disease 2019 (“COVID-19”) pandemic, lost the benefits of the on-campus services for which their fees were paid, without having a pro-rated portion of those fees and costs

refunded to them in full and without condition. For purposes of this 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. FBOG is the final authority concerning waivers of fees at all the constituent Universities and, accordingly, is ultimately responsible and liable for its decision not to order pro-rated refunds of campus fees.”

2. Plaintiff’s claims relate solely to fees paid by Florida residents for on-campus services and do not concern fees or costs for tuition and/or room and board because students were able to complete their courses and obtain their credits for the Spring semester and because the Universities have offered appropriate refunds relating to room and board, but *not* as to fees. Many school systems, such as the state of Georgia, 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 Florida’s State University System to this same standard of fairness.

3. In or around March 2020, FBOG announced that because of the global COVID-19 pandemic, classes at all Universities would be moved online for the remainder of the Spring 2020 semester. Students who lived in on-campus housing were told they had to move out or were strongly encouraged to do so, such that they had no meaningful choice but to comply. Further, because all classes were moved online, there was no reason for students to remain on campus if they had other housing available to them. This is particularly so in the face of the dangers, risks, and fear associated with the pandemic. On information and belief, many students chose to leave campus to be closer to their families, or to avoid exposure to COVID-19,¹ and have stayed off

¹ As of March 22, 2020, the University of Florida confirmed that 10 students and 1 university employee had tested positive for COVID-19, *see* <https://www.news4jax.com/news/florida/2020/03/22/university-of-florida-confirms-11-covid-19-patients/>, while the University of Tampa reported that five students had tested positive for COVID-10 following spring break. *See* <https://wgntv.com/news/coronavirus/college-students-in-florida-test-positive-for-covid-19-after-spring-break-trip/>. Cases of COVID-19 infection were also reported in March at the University of South Florida, *see* <https://www.floridaphoenix.com/blog/florida-public-universities-report-covid-19-cases-among-students-and-employees/>, and Florida Atlantic University, *see*

campus to comply with directives from FBOG, the Universities, and local, state, and federal governments. In addition, the services that their fees were intended to cover were no longer available to them.

4. Despite its constructive eviction of students at the Universities for the remainder of the semester and ending all campus activities for at least that same time period, FBOG has not offered refunds of fees paid to cover the cost of certain on-campus services which are no longer be available to students. To the extent refunds have been offered, the refunds have not been commensurate with the financial losses to the students and their families.

5. FBOG's decision to transition to online classes and to request or encourage students to leave campus were responsible decisions to make, but it is unfair and unlawful for FBOG to retain fees and to pass the losses on to the students and their families. Other higher education institutions across the United States that also have switched to e-learning and have 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's the right thing to do. FBOG, unfortunately, has taken the opposite approach by refusing to provide refunds concerning the fees for on-campus services and activities.

6. Accordingly, FBOG has improperly retained monies paid by Plaintiff and the other Class members for fees, while prohibiting or otherwise preventing Plaintiff and the other Class members from obtaining the benefits for which they paid. Even if FBOG claims that it didn't have a choice, it nevertheless has improperly retained funds for services it is not providing. No matter the excuse, FBOG's actions are unlawful and unfair, and as a matter of both contract and equity, Plaintiff and Class Members are entitled to disgorgement of the fees and monies paid-

7. Plaintiff brings this class action for legal, injunctive, declaratory, and equitable relief, and any other available remedies, resulting from FBOG's illegal, unfair, or deceptive

<https://www.upressonline.com/2020/04/fau-has-26-positive-covid-19-cases-but-why-dont-you-know-that/>.

conduct, namely retaining the costs of fees paid by Plaintiff and the other Class members, while forcing or encouraging Plaintiff and the other Class members (or the students on behalf of who Plaintiffs and Class members paid these expenses) to move off campus.

8. This lawsuit seeks damages and/or disgorgement consisting of the pro-rated, 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) will not be provided the benefit.

II. PARTIES

A. Plaintiff

9. Anthony Rojas is a Florida citizen, residing in Gainesville, Alachua County, Florida. He is a graduate student at the University of Florida in Gainesville, Florida and paid his fees for the Spring 2020 semester. Plaintiff lives off-campus in an apartment complex which has an official partnership with the University of Florida Housing & Residence Education as the only and official Graduate & Family Housing Affiliate community. In order to lease at The Continuum, you must be accepted to or enrolled in a graduate or professional degree program or be employed through the University of Florida or one of its partners. Graduate eligibility also includes 4th or 5th year seniors in a dual degree program that will result in a graduate degree.

10. Plaintiff paid certain fees for the entire Spring 2020 semester, the benefits of which he will no longer receive because the University urged students (wisely) to move off-campus and to not utilize any on campus facilities. Plaintiff has neither been offered nor provided a refund of any fees which he paid.

B. Defendant

11. The Florida Board of Governors is the governing board created under the Florida Constitution as the governing body for the State University System of Florida, which includes all public universities in the state of Florida. FBOG resides in Leon County, Florida, with its principal place of business at 325 West Gaines Street, Suite 1614, Tallahassee, Florida. Plaintiff is not suing to recover monies paid by taxes to the public universities in Florida; rather, Plaintiffs file suit

against FBOG, a corporate body that may be sued, for specific disgorgement of fees and monies paid by students and their parents, guardians, and families for services not received. Florida 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.”)

III. JURISDICTION AND VENUE

12. 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).

Further, the Plaintiffs in this matter seek declaratory relief.

13. This Court has personal jurisdiction over FBOG because it resides in Leon County, Florida.

14. Venue is proper in this District pursuant to section 47.011, Florida Statutes, because FBOG resides in Leon County, Florida, and because of Florida’s common law home venue privilege.

IV. FACTUAL ALLEGATIONS

A. Plaintiff and the Other Class Members Paid the Costs Fees for the Spring 2020 Semester

15. Plaintiff and the other Class members are individuals who paid the cost of University fees for the Spring 2020 semester at the Universities. Each University publishes its own schedule of fees, which can include items such as a Health Fee, Athletic Fee, Activity and Service Fee, Transportation Access Fee, among others.

16. For example, mandatory Student Fees for undergraduates at University of Florida’s main campus on a per credit hour basis are as follows:

- Capital Improvement Trust Fund Fee: \$6.76;
- Financial Aid Fee: \$5.25;

- Technology Fee: \$5.25;
- Activities and Services Fee: \$19.06;
- Athletic Fee: \$1.90;
- Health Fee: \$15.81; and
- Transportation Fee: \$9.44.

17. Graduate students and students at University of Florida’s other campus locations were also required to pay similar fees for the Spring 2020 semester.

18. Students at the other Universities within the State University System of Florida are required to pay similar fees

19. On information and belief, the fees described herein are not required of students enrolled in online curricula at any of Defendant’s constituent schools. These fees cover campus resources available to students on or around campus.

20. The fees listed and described in Paragraphs 15–19 (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.

B. *In Response to COVID-19, the Universities Get It Half Right: Students Are Required or Encouraged to Leave Campus, But Their Fees Are Not Refunded.*

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

22. 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.

23. Students at the Universities began to immediately express concerns that, if they stayed on campus or in student residence halls, the living conditions would threaten their safety, and expose them to COVID-19. At the University of Florida, for example, many students' worst fears seemed to be realized when, on March 17, 2020, it was reported that the University of Florida knew about a positive COVID-19 test as early as March 13, 2020, but asked the student not to publicize it. See <https://alachuachronicle.com/uf-knew-about-positive-covid-19-test-last-thursday-asked-student-not-to-publicize-it/>.

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

25. 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.

26. On or about March 17, 2020, FBOG extended remote learning through the end of the Spring semester at all Universities and directed all Universities to develop an alternate schedule or method of delivery for on-campus commencement ceremonies. On-campus and other co-curricular activities, including athletic events, were cancelled.

27. On March 20, 2020, Governor DeSantis issued Executive Order 20-71, instructing the Universities to close all campus recreation and fitness centers, which were closed that day.

28. On March 20, 2020, in a letter to students at the University of Florida, the Vice-President of Student Affairs indicated that the University of Florida was "developing plans for issuing refunds, rebates, or credits to students who may no longer be able to utilize their university residence hall and/or dining plan contracts." No communications were made concerning the many fees students paid associated with the Spring 2020 semester.

29. On March 24, 2020, Governor DeSantis 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.

30. On or about March 27, 2020, the University of Florida announced that it would soon begin distributing partial housing and dining refunds for students. Students who formally checked out of their on-campus housing before March 24 would be offered a housing refund based on their checkout date. Students who stopped using their meal plan after March 23 would also receive a refund for the unused portion of their meal plan, including flex bucks. These refunds would be automatically distributed to students' accounts. Once again, no mention was made concerning students' fees.

31. On March 30, 2020, the University of Florida announced Regulation 3.0372, which states that Student Health, Athletic, Activity and Service and Transportation Access Fees, would be amended to reflect the proposed revised Student Fees per credit hour basis for Summer 2020. The Notice of Proposed Regulation to Amendment indicated that the University of Florida would be reducing the Activity and Service, Athletic, Health, and Transportation Fees, but adding a "Distance Learning Fee," for a total fee reduction from the Spring semester of *eight cents*. When explaining the proposed reduction in fees, W. Andrew McCollough, the University of Florida's associate provost for teaching and technology, stated: "***The general rationalization was, with the students gone, it was no longer necessary for them to pay for access to services that will not be where they are.***" This same rationale applies to this class action since the students have not had access to the services being charged.

32. 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.

33. The Federal Government has also responded to the COVID-19 pandemic in ways that benefit the Universities and help the Universities cover the costs associated with the disruption. Specifically, \$14 billion of stimulus funds have been set aside to aid institutions of

higher education. On information and belief, Florida will receive over \$791 million for higher education.² Just the University of Florida will receive over \$31 million.³ The stimulus monies are designed to help students and Secretary of State Betsy DeVos was quoted, saying “[w]hat’s best for students is at the center of every decision we make.”⁴

34. The effect of the FBOG’s COVID-19-related protocols and messaging is that all students have effectively been forced to leave campus, unless they truly had no other safe place to go. For students who do remain on campus, services are now extremely limited. For students who do not live on campus, there is no reason to come to campus since all activities have been cancelled and all classes have moved online.

35. Notwithstanding each of the above-listed facts, FBOG has not granted its students refunds of their fees, even though they are no longer able to use the services for which they paid, and even though it has been accepted by FBOG, in approving the fee change for summer session, that students should not pay for services they cannot access.

36. While social distancing is 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, FBOG students in Florida and their families were expected to bear the brunt of the stress.

37. FBOG’s constituent universities have not offered or provided students and/or their families any refund of the system-wide fees or of the miscellaneous campus fees they paid that were unused and will not be able to be used.

² How Much Will States Receive Through the Education Stabilization Fund in the CARES Act? Center on Budget and Policy Priorities (April 3, 2020), <https://www.cbpp.org/research/state-budget-and-tax/how-much-will-states-receive-through-the-education-stabilization-fund>.

³ <https://www2.ed.gov/about/offices/list/ope/allocationsforsection18004a1ofcaresact.pdf>

⁴ *Id.*

38. As soon as FBOG's constituent universities (at FBOG's direction) announced that classes were moving online and campuses were effectively closing, the fees paid for the semester should have been promptly returned to Plaintiff and the other Class members and are now, effectively, held in trust by FBOG for the benefit of students and/or their families including Plaintiff and the other Class members, and must be disgorged and returned to them.

39. FBOG 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. Even if FBOG 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 families paid for those services. The inequity is further highlighted by the fact that FBOG will be receiving hundreds of millions of dollars in aid to help cover the costs associated with the COVID-19 disruption.

40. Class members have demanded the return of the unused portions of the fees that they paid through a number of channels, including through online forums. *See, e.g.,* <https://www.change.org/p/university-of-florida-provide-a-partial-refund-of-tuition-fees-for-uf-students>.

41. In addition, on information and belief, students and/or their families have contacted the Universities and FBOG directly and/or left comments on online forums requesting refunds, all to no avail.

42. Despite these demands, FBOG has not provided fee refunds.

43. Through this lawsuit, Plaintiff seeks—individually and on behalf of the other Class members—FBOG's disgorgement of the pro-rated, unused portion of fees, proportionate to the amount of time that remained in the Spring 2020 semester when classes moved online and campus services ceased being provided. These amounts must be fully disgorged and returned to Plaintiff and the other Class members. It is inequitable, unfair, and illegal for FBOG 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, equitable relief, and disgorgement on behalf of the Class, defined as:

All Florida residents who paid fees for or on behalf of themselves or other students enrolled in classes at any campus in the State University System of Florida for the Spring 2020 semester, including students and/or their families or guardians who paid fees (the “Class”).

45. Excluded from the Class are FBOG and any of their 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 the course of 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 FBOG’s records and, based upon publicly available information, is presumed to be not less than 341,000 people. 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 common to the Class, which predominate over any individual questions, including, without limitation:

- a. Whether FBOG engaged in the conduct alleged herein;

- b. Whether FBOG breached its contracts with Plaintiff and the other Class members by retaining fees without providing the services which the fees were intended to cover;
- c. Whether FBOG was unjustly enriched by retaining fees of Plaintiff and the other Class members without providing the services that the fees were intended to cover;
- d. Whether FBOG committed conversion by retaining fees of Plaintiff and the other Class members without providing the services that the fees were intended to cover;
- e. Whether certification of the Class is appropriate under Florida Rule of Civil Procedure 1.220;
- f. Whether Plaintiff and the other Class members are entitled to prospective declaratory, equitable, or injunctive relief, including disgorgement, and/or other relief; and
- g. 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 Spring 2020 semester at FBOG's Universities 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, FBOG retaining their fees and monies paid—as a direct and proximate result of the same wrongful conduct in which FBOG 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 his interests do not conflict with the interests

of the other Class members who he 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 his counsel.

51. **Declaratory and Injunctive Relief—Florida Rule of Civil Procedure 1.220(b)(2).** FBOG 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. **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. CLAIMS ALLEGED

FIRST CLAIM FOR RELIEF

Breach of Contract

Plaintiff and the Other Class Members

53. Plaintiff repeats and alleges the allegations in Paragraphs 1–52, above, as if fully alleged herein.

54. Plaintiff brings this claim individually and on behalf of the other Class members.

55. Plaintiff and the other Class members entered into contractual agreements with FBOG which provided that Plaintiff and the other Class members would pay fees for or on behalf of students, and in exchange, FBOG would provide services to students.

56. Plaintiff and the other Class members fulfilled their end of the bargain when they paid the fees for the Spring 2020 semester.

57. FBOG breached its contracts with Plaintiff and the other Class members when it moved classes online, cancelled on-campus events and activities, and stopped providing services for which the fees were intended to pay.

58. Even if performance was excused, FBOG cannot retain funds for services it will not provide.

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

60. Plaintiff and the other Class members have been deprived of the value of the services the fees they paid were intended to cover, while FBOG retained those fees. Plaintiff and the other Class members are entitled to an equitable remedy—here: disgorgement of the pro-rated, unused amounts of fees that FBOG has already charged and which Plaintiff and the other Class members have paid.

SECOND CLAIM FOR RELIEF
Unjust Enrichment
Plaintiff and the Other Class Members

61. Plaintiff repeats and alleges the allegations in Paragraphs 1–52, above, as if fully alleged herein.

62. Plaintiff brings this claim individually and on behalf of the other Class members and in the alternative to the breach of contract claim brought on behalf of Plaintiff and the other Class members (First Claim for Relief, above).

63. FBOG has received a benefit at the expense of Plaintiff and the other Class members to which it is not entitled. Plaintiff and the other Class members paid fees to FBOG and did not receive the full benefit of their bargain, while FBOG continues to retain those fees.

64. Plaintiff and the other Class members paid fees for or on behalf of students, which were intended to cover services for the Spring 2020 semester. In exchange, students were entitled to receive those services for the entire semester.

65. FBOG moved classes online, cancelled on-campus events and activities, and stopped providing the services the fees were intended to cover.

66. FBOG has been unjustly enriched by retaining the fees paid by Plaintiff and the other Class members for the semester while not providing services for which those fees paid.

Equity requires FBOG to return to Plaintiff and the other Class members the remaining, pro-rated amounts of fees paid for the Spring 2020 semester.

THIRD CLAIM FOR RELIEF
Conversion
Plaintiff and the Other Class Members

67. Plaintiff repeats and alleges the allegations in Paragraphs 1–52, above, as if fully alleged herein.

68. Plaintiff brings this claim individually and on behalf of the other Class members.

69. Plaintiff and the other Class members have a right to the services that were supposed to be provided in exchange for their payments of fees to FBOG.

70. FBOG intentionally interfered with the rights of Plaintiff and the other Class members when it moved all classes to an online learning format, cancelled on-campus events and activities, and discontinued services for which the fees were intended to pay, while retaining the fees paid by Plaintiff and the other Class members.

71. Class members demanded the return of the pro-rated, unused fees for the remainder of the Spring 2020 semester.

72. FBOG’s retention of the fees paid by Plaintiff and the other Class members without providing the services for which they paid, deprived Plaintiff and the other Class members of the benefits for which the fees paid.

73. This interference with the services for which Plaintiff and the other Class members paid, harmed Plaintiff and the other Class members in that FBOG has retained monies that are rightfully theirs.

74. Plaintiff and the other Class members are entitled to the return of the remaining, pro-rated amounts of fees paid for the Spring 2020 semester.

VII. REQUEST FOR RELIEF

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

- a. Certifying the Class as requested herein, designating Plaintiff as class representatives, and appointing Plaintiff's undersigned counsel as Class Counsel;
- b. Declaring that FBOG is financially responsible for notifying the Class members of the pendency of this suit;
- c. Declaring that FBOG 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 FBOG from retaining the pro-rated, unused portion of monies paid for fees; and
- e. Awarding such other and further relief as may be just and proper.

VIII. JURY TRIAL DEMANDED

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

Dated: May 4, 2020

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**Pro Hac Vice Admission Pending*

Counsel for Plaintiff and the Proposed Class