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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**04/01/2021** at 03:00:00 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

7 Attorneys for Defendant UNIVERSITY OF SAN  
8 DIEGO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO**

11 NICHOLAS RATEKIN,  
12 Plaintiff,  
13  
14 v.  
15 UNIVERSITY OF SAN DIEGO; and DOES 1  
through 50, inclusive,  
16 Defendants.

Case No. 37-2020-00040983-CU-BC-CTL  
**DEFENDANT UNIVERSITY OF SAN  
DIEGO'S ANSWER TO PLAINTIFF  
NICHOLAS RATEKIN'S UNVERIFIED  
COMPLAINT**  
**IMAGED FILE**  
Judge: Eddie C Sturgeon  
Dept.: C-67  
Action Filed: November 9, 2020  
Trial Date: Not Set

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**GENERAL DENIAL**

Pursuant to California Code of Civil Procedure section 431.30, Defendant University of San Diego (“USD” or “Defendant”) denies each and every material allegation of the Complaint, and each cause of action thereof, and further denies that Plaintiff Nicholas Ratekin (“Plaintiff”) has been damaged in any manner or amount, or at all, as a result of any act or omission by Defendant.

**AFFIRMATIVE DEFENSES**

Further responding to the Complaint, Defendant asserts the following as affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(As To All Causes of Action)**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(As To The First Cause Of Action)**

Plaintiff’s claims are barred because there is no enforceable contract.

**THIRD AFFIRMATIVE DEFENSE**

**(As To The First Cause Of Action)**

Plaintiff’s claims are barred because Defendant’s alleged non-performance was excused.

**FOURTH AFFIRMATIVE DEFENSE**

**(As To The First Cause Of Action)**

Plaintiff’s claims are barred by the statute of frauds.

**FIFTH AFFIRMATIVE DEFENSE**

**(As To The Fourth Cause Of Action)**

Plaintiff’s claims and damages are barred because Defendant owed no duty of care to Plaintiff that Defendant breached.

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**SIXTH AFFIRMATIVE DEFENSE**

**(As To The Fourth Cause Of Action)**

Plaintiff’s claims and damages are barred or mitigated by the doctrine of comparative negligence.

**SEVENTH AFFIRMATIVE DEFENSE**

**(As To The Fourth Cause Of Action)**

Plaintiff alleges that Defendant intentionally breached an agreement with him. Allegations of intentional conduct cannot state a claim for negligence.

**EIGHTH AFFIRMATIVE DEFENSE**

**(As To The Third, Fourth, Sixth, Seventh and Eighth Causes Of Action)**

Plaintiff’s claims are barred because Plaintiff has not identified any misrepresentation made by Defendant.

**NINTH AFFIRMATIVE DEFENSE**

**(As To The Seventh Cause of Action)**

Plaintiff has failed to provide the notice required by California Civil Code section 1782(a).

**TENTH AFFIRMATIVE DEFENSE**

**(As To All Causes Of Action)**

Plaintiff’s claims are barred by the doctrine of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(As To the Third, Fourth, Sixth, Seventh, and Eighth Causes Of Action)**

Plaintiff’s claims are barred because Defendant was under no duty to disclose any of the purported information Plaintiff alleges was not disclosed.

**TWELFTH AFFIRMATIVE DEFENSE**

**(As To the Third, Fourth, Sixth, Seventh, and Eighth Causes Of Action)**

Plaintiff’s claims are barred by the voluntary payment rule to the extent that Plaintiff voluntarily enrolled in and paid tuition to attend USD without mistake of fact or fraud.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

**(As To the Sixth, Seventh, and Eighth Causes Of Action)**

Plaintiff’s claims under the Business and Professions Code and Consumer Legal Remedies Act are barred by applicable safe harbor provisions including, but not limited to, California Civil Code section 1784, and as established in *Cel-Tech Communications, Inc. v. L.A. Cellular Telephone Co.* (1999) 20 Cal.4th 163, and its related line of cases.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(As To the Third Cause Of Action)**

Plaintiff has failed to allege fraud with sufficient particularity to satisfy the elements of Civil Code sections 1572 and/or 1709.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(As To the Seventh Cause Of Action)**

To the extent any violation of the Consumer Legal Remedies Act occurred, such violation was not intentional and resulted from a bona fide error.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(As To the Eighth Cause of Action)**

The injury or damage allegedly suffered by Plaintiff, if any, would be adequately compensated in an action at law for damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(As to All Causes Of Action)**

As a separate affirmative defense, Defendant alleges that although it denies it has committed or has responsibility for any act that could support the recovery of punitive damages in this action, and alleges that Plaintiff has failed to plead any facts necessary to justify punitive damages, if and to the extent that any such act is found, recovery of punitive damages against Defendant is unconstitutional under various provisions of the United States Constitution including, but not limited to, the Due Process Clause of the Fifth Amendment and section 1 of the Fourteenth Amendment. In addition, the recovery of punitive damages against Defendant is unconstitutional

1 under various provisions of the California Constitution, including, but not limited to, the  
2 Excessive Fines Clause of section 17 of Article I and the Due Process Clause of section 1 of  
3 Article I.

4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 **(As To All Causes of Action)**

6 Defendant is informed and believes and on that basis alleges that Plaintiff's claims are  
7 barred in whole or in part because Plaintiff was equally responsible for the wrongful conduct  
8 alleged.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 **(As To All Causes Of Action)**

11 Plaintiff's claims against Defendant are premised, in whole or in part, on the actions of  
12 third parties, thus, Plaintiff is barred, in whole or in part, from recovering monetary damages from  
13 Defendant.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 **(As To All Causes Of Action)**

16 Defendant is informed and believes, and on that basis alleges, that Plaintiff has failed,  
17 refused, or neglected to mitigate or avoid the damages complained of in the Complaint. By reason  
18 of the foregoing, Plaintiff is barred, in whole or in part, from recovering damages.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 **(As To All Causes Of Action)**

21 Defendant presently has insufficient knowledge or information upon which to form a belief  
22 as to whether it has additional, yet unknown, affirmative defenses. Defendant reserves the right to  
23 assert additional affirmative defenses in the event discovery indicates it would be appropriate.

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WHEREFORE, Defendant prays that:

- 1. Plaintiff be denied relief by way of his Complaint;
- 2. Plaintiff's Complaint be dismissed;
- 3. Defendant be dismissed with its costs of suit and attorneys' fees; and
- 4. For such and other relief as the Court deems proper.

Dated: April 1, 2021

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

By:   
MICHAEL C. SULLIVAN  
JOANNE ALNAJJAR BUSER  
KARYN R. MOORE  
Attorneys for Defendant UNIVERSITY OF SAN DIEGO

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**PROOF OF SERVICE**

*Nicholas Ratekin v. University of San Diego*  
Case No. 37-2020-00040983-CU-BC-CTL

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On April 1, 2021, I served true copies of the following document(s) described as **DEFENDANT UNIVERSITY OF SAN DIEGO’S ANSWER TO PLAINTIFF NICHOLAS RATEKIN’S UNVERIFIED COMPLAINT** on the interested parties in this action as follows:

Dennis N. Brady  
San Diego Education Law Group  
3717 Camino Del Rio South, Suite 400  
San Diego, CA 92108  
Telephone: (619) 528-2530  
E-Mail: [sdlawgroups@outlook.com](mailto:sdlawgroups@outlook.com)

Attorneys for Plaintiff Nicholas Ratekin

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List, with postage thereon fully prepaid. I placed each such envelope or package for deposit with United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 1, 2021, at San Diego, California.

  
\_\_\_\_\_  
Amy R. Dickey