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“In Pro Per” Nicholas Christian Ratekin

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

NICHOLAS RATEKIN,
Plaintiff,

v.
UNIVERSITY OF SAN DIEGO
et. al. ; and DOES 1 through 50,
Inclusive,

Defendants.

Case No.:
37-2020-00040983-CU-BC-CTL

**AMENDED COMPLAINT FOR
(1) BREACH OF CONTRACT;
(2) BREACH OF the
COVENANT OF GOOD FAITH
AND FAIR DEALING;
(3) fraud in the inducement;
(4) NEGLIGENT
MISREPRESENTATION;
(5) unjust enrichment;
(6) violations of california
business and professions code
section 17200;
(7) violations of the consumer
legal remedies act, california
civil code section 1750 et seq.;
and
(8) untrue and misleading
advertising in violation of
california business and
professions code section 17500.**

jury trial demand

Date: July 15th, 2022

Time: 3:00pm

DEPT: C-67

Judge:Honorable Judge Eddie C.
Sturgeon

Dept: C-67

Action Filed: November 9th, 2020

Trial Date November 4th, 2022

PARTIES

1. Plaintiff, Nicholas Ratekin (“Plaintiff”), at all times relevant hereto, was a resident of the State of California, County of San Diego.
2. Plaintiff is informed and believes, and thereby alleges, that Defendant, University of San Diego et al. (“USD”) was at all times relevant, a private university organized under the laws of California and located in San Diego, California.
3. The true names and capacities of the Defendants named herein as DOES 1 through 50, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that DOE Defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined.
4. Plaintiff is informed and believes, and thereby alleges, that each of the Defendants herein (collectively, “Defendants”) has or may have been, at all relevant times, the agent, employee, or representative of the remaining Defendants, acting, at least in part, within the scope of such relationship.

FACTS COMMON TO ALL CAUSES OF ACTION

5. In or about August, 2016, Plaintiff was hired by Canyon Crest Academy (“CCA”), which is part of the San Dieguito Union High School District (“SDUHSD”), as a water polo coach.
6. USD’s mission statement found in its marketing materials (hereinafter “advertisements”) makes it clear that USD is committed to “creating a diverse and inclusive community, and preparing leaders dedicated to ethical conduct and compassionate service.”
7. USD’s vision statement found in its advertisements is “the University of San Diego sets the standard for an engaged, contemporary . . . university where innovative Changemakers confront humanity's urgent challenges.”
8. USD’s core values found in its advertisements state USD “is committed to the dignity and fullest development of the whole person.”
9. USD’s core values found in its advertisements also state that USD “possesses that institutional autonomy and integrity necessary to uphold the highest standards of intellectual inquiry and academic freedom.”
10. USD’s core values found in its advertisements promise that it “provides professional education . . . while preparing students to understand complex issues and express informed opinions with courage and conviction.
11. USD’s core values found in its advertisements also state “the university is committed to creating a welcoming, inclusive and collaborative community accentuated by a spirit of freedom and charity and marked by protection of the rights and dignity of the individual. The university values students, faculty and staff from different backgrounds and faith traditions and is committed to creating an atmosphere of trust, safety and respect in a community characterized by a rich diversity of people and ideas.”
12. Plaintiff applied for, and in or about 2017, Plaintiff was admitted into USD’s Master of Education program (“Program”) , where he was a dutiful student. In applying and accepting enrollment at USD, Plaintiff relied on the aforementioned advertised mission, vision, and core values of USD. He understands the advertised mission, vision, and core values of USD to mean that he would not be disadvantaged in his educational program because of his political views, but, as discussed below, he was.
13. As part of the Program, on or about July 26, 2018, Plaintiff began student teaching at CCA.
14. Almost immediately Plaintiff’s CCA teaching leads, Elise Ochenduszko (“Ochenduszko”) and Zachary Brown (“Brown”), began harassing Plaintiff about his political activity and affiliation.
15. Ochendusko and Brown continually harassed Plaintiff, even attempting to sabotage his career by not giving Plaintiff any assistance and badgering Plaintiff during an observation by Plaintiff’s USD Student Teaching Supervisor, Gina Cherashore (“Cherashore”).
16. On or about December 11, 2018, Plaintiff received positive feedback on his teaching skills from Cherashore, suggesting only minor improvements .

17. During the Spring semester of 2019, Plaintiff was repeatedly harassed and discriminated against by CCA teachers due to his political activity and political affiliation outside of the school.
18. On or about February 8, 2019, Cherashore, a professor at USD, again came to observe Plaintiff at CCA, and again she gave positive feedback on Plaintiff's teaching lesson.
19. Plaintiff informed Cherashore about the mistreatment by CCA teachers due to his political activity and affiliation.
20. Despite the positive feedback, and rather than correcting the harassing situation, USD dismissed Plaintiff from CCA, a clear breach of USD's contractual and other obligations to Plaintiff as well as USD's advertised mission, vision, and core values.
21. Only after Plaintiff demanded the reasoning for his dismissal did USD officials give him unsubstantiated excuses.
22. USD further disadvantaged Plaintiff in contravention of his rights and USD advertised mission, vision, and core values by postponing his next student teaching placement.
23. Plaintiff again informed USD of the harm he was receiving from USD and reminded USD officials of his discrimination at CCA.
24. USD then further retaliated against and discriminated against Plaintiff by both removing him from his second student teaching placement and then by completely removing him from the Program. Again, this was done in violation of Plaintiff's contractual rights and contrary to USD's advertised mission, vision, and core values.

FIRST CAUSE OF ACTION

(Breach of Contract Against

UNIVERSITY OF SAN DIEGO et. al. and Does 1-10, inclusive)

25. Plaintiff hereby realleges and incorporates by reference herein, each and every preceding paragraph of this complaint.
26. Plaintiff was a student in the Master of Education Program at USD, in which there was a contract with Plaintiff to pay for tuition and perform program duties in exchange for Defendants' promise to provide educational services to him in good faith, advance his academic excellence, and prepare him to be a leader who is dedicated to ethical conduct and compassionate service. USD was not supposed to deny him the benefits of the contract because of his political views.
27. USD also made promises and representations regarding its mission statement, vision statement, and core values as listed above that were also part of the promise USD made to Plaintiff.
28. Plaintiff's reliance on, belief in, and acceptance in good faith of, all of the assurances, promises and representations as listed in the preceding paragraphs led Plaintiff throughout his time at USD to reasonably believe that he would receive guidance,

assistance, and education from USD faculty and officials and not be disadvantaged because of his political views.

29. Plaintiff undertook and duly performed all conditions of the Program pursuant to the contract. Plaintiff has at all times been ready, willing and able to perform and has offered to perform all the conditions of this contract to be performed by him.
30. Despite the representations made to Plaintiff and the reliance he placed on them, Defendants failed to carry out their responsibilities under the terms of contract.
31. As a proximate result of Defendants' breach of contract against Plaintiff, Plaintiff has suffered losses in tuition cost, employment earnings and other compensation all to his damage in an amount according to proof.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing Against Defendant UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 10-20 inclusive)

32. Plaintiff hereby realleges and incorporates by reference herein, each and every preceding paragraph of this complaint.
33. Plaintiff and Defendants entered into a contract as provided above. Express or implied into the contract was a covenant of good faith and fair dealing, wherein Defendants promised to give full cooperation to Plaintiff and his performance under said contract and to refrain from doing any act which would prevent or impede Plaintiff from performing all the conditions of the contract to be performed by him, or any act that would prevent or impede Plaintiff's enjoyment of the fruits of said contract. Specifically, said covenant of good faith and fair dealing required Defendants to fairly, honestly, and reasonably perform the terms and conditions of the agreement.
34. Plaintiff, as an individual student, was in an inherently unequal bargaining position in his dealings with Defendants. In addition, once Plaintiff committed himself to the above-stated contract, and took the reasonable actions alleged herein in reliance, Plaintiff was placed in a particularly vulnerable position. He had entrusted his entire education and future teaching career to Defendants' willingness to perform its obligations under the contract, and risked suffering grave harm if Defendants failed to perform. Defendants were aware of Plaintiff's vulnerability in this regard.
35. Plaintiff performed his duties as a student and paid for the tuition required of him. Defendants arbitrarily breached the covenant of good faith and fair dealing, by, among other things, the actions as alleged above, including dismissing him as a student because of his political views.

36. As a proximate result of Defendants' breach of the covenant of good faith and fair dealing, Plaintiff has suffered losses in tuition, and for earnings and other compensation all to his damage in an amount according to proof.
37. In reliance of the above stated representations, Plaintiff accepted admission to the Program, paid and incurred tuition to USD, and duly performed all the conditions of the contract to be performed. Plaintiff has at all times been ready, willing and able to perform and has offered to perform all the conditions of the contract to be performed by him.
38. As stated above, Defendants, and each of them, misrepresented to Plaintiff that Defendants would provide Plaintiff opportunities pursuant to the agreement as set forth above, and additionally misrepresented that they would adhere to USD's advertised mission, vision, and core values. Without such representations, Plaintiff would not have accepted admission into the Program, paid for the Program's tuition, and relied on the Program to prepare him for future employment.
39. Plaintiff, at the time the misrepresentations were made, was unaware of the falsity of the Defendants' misrepresentations, and believed them to be true. In reliance on these misrepresentations, Plaintiff was induced to perform the duties of the Program and pay for tuition in expectation that Defendants' promises were true. Had Plaintiff known Defendants' promises were not true, or that he would be disadvantaged in the program because of his political views, he would not have taken, paid for, and stayed in the Program. Plaintiff's reliance on the Defendants was justified.
40. As a proximate result of Defendants' misrepresentations, Plaintiff has been damaged. Plaintiff has incurred substantial tuition in the Master in Education program, along with loss of future earnings and other employment benefits. He has also lost reputation, which has severely injured his future employment prospects.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION
(Fraud in the Inducement Against
UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 20-30 inclusive)

41. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
42. USD made actual or implied false representations concerning that it would provide Plaintiff the opportunities pursuant to the agreement as set forth above, as well as adhering to its advertised mission statement, vision, and core values by not disadvantaging Plaintiff because of his political views. Defendants knew that, without such representations, Plaintiff would not have accepted admission into the Program nor paid for the Program's tuition.

43. USD was aware of the falsity of its representations, or at a minimum had an utter disregard for their truthfulness.
44. USD intended Plaintiff to rely upon these representations because they were included in USD's advertisements.
45. Plaintiff relied on these representations when enrolling at USD for the Program.
46. Plaintiff was justified in relying on these representations.
47. USD made these representations to defraud Plaintiff.
48. Plaintiff was harmed by these representations, incurring tuition costs, fees, and other educational expenses, as well as loss of future income as an educator, harm to his reputation and emotional distress.
49. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of PLAINTIFF'S rights. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation Against

UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-10 and 25-35 inclusive)

50. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
51. Assuming arguendo (but denying) that Defendants did not intend to defraud Plaintiff into entering the program, Defendants surely were negligent in advertising their misrepresentations, to the harm of Plaintiff.
52. As a result, Defendants misrepresentations have harmed Plaintiff's future career prospects and reputation, as well as causing him financial loss of tuition paid, loss of future income, and emotional distress.

FIFTH CAUSE OF ACTION

(Unjust Enrichment Against

UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 25-35 inclusive)

53. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
54. Defendants have engaged in unjust conduct, to the detriment of Plaintiff.
55. USD appreciated or had knowledge of the benefit received by retaining the tuition money paid by Plaintiff.
56. Although USD accepted the tuition payments and retained and received benefit therefrom, it did not provide Plaintiff with the Program he was promised and expected in connection with the payment of the tuition. On the contrary, USD intentionally and deliberately extracted tuition from Plaintiff knowing the falsity of its advertised mission statement, vision, and core values and other promises made to Plaintiff.
57. This unjust conduct on the part of USD has resulted in Plaintiff enrolling in its Program and incurring tuition and costs, and forgoing opportunities to pursue other Master of Education Programs, resulting in loss of potential income as an educator.
58. Despite its inequitable conduct, USD has retained the payments made by Plaintiff.
59. As a result, USD has been unjustly enriched, to the detriment of Plaintiff.
60. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION

(Violation of California Business and Professions Code Section 17200 Against UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 30-40 inclusive)

61. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
62. Plaintiff brings this cause of action under California Business and Professions Code Section 17200.
63. California Business and Professions Code Section 17200 prohibits acts of unfair competition, which means and includes any "unlawful, unfair or fraudulent business act or practice" and any act prohibited by California Business and Professions Code Section 17500.
64. Defendants violated Cal. Bus. and Prof. Code § 17200's prohibition against engaging in an unlawful business act or practice by making the misrepresentations set forth in this complaint and by discriminating against and retaliating against Plaintiff for his political activity and affiliation.

65. Defendants violated Cal. Bus. & Prof. Code § 17200's prohibition by engaging in fraudulent business acts or practices by, inter alia, disseminating, through its advertisements, untrue statements about USD's Program.
66. Defendants' practices offend public policy and are unethical, oppressive, and violate the laws stated. The gravity of Defendants' alleged wrongful conduct outweighs any purported benefits attributable to such conduct.
67. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.
68. As a result of Defendants' conduct as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of suit as provided by California Code of Civil Procedure section 1021.5 and other provisions of law.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

**(Violation of the Consumer Legal Remedies Act,
California Civil Code Section 1750 et seq. Against**

UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 35-45 inclusive)

69. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
70. Plaintiff brings this cause of action under the Consumer Legal Remedies Act ("CLRA"), California Civil Code Section 1750 et seq.
71. Plaintiff is a "consumer" as defined by California Civil Code Section 1761(d). USD's Program constitutes "services" and or "products" as defined by Cal. Civ. Code § 1761(a) and (b). At all times relevant hereto, USD constituted "persons" as that term is defined by Cal. Civ. Code § 1761(c), and Plaintiff's payment of tuition and fees to enroll in the Program constitutes "transactions," as the term is defined in Cal. Civ. Code § 1761(e).
72. USD violated the CLRA by engaging in the following deceptive practices specifically proscribed by Cal. Civ. Code § 1770(a), in transactions with Plaintiff that were intended to result or that resulted in the sale or lease of goods or services to consumers: (1) in violation of Cal. Civ. Code § 1770(a)(5), Defendants' acts and practices constituted misrepresentations that they would provide educational services to him in good faith, advance his academic excellence, and prepare him to be a leader who is dedicated to ethical conduct and compassionate service; (2) in violation of Cal. Civ. Code § 1770(a)(7), USD misrepresented that its Program was of a particular standard, quality, or grade, when it was of another; and (3) in violation of Cal. Civ. Code § 1770(a)(9), USD advertised its Program with the intent to sell the program as advertised or represented.

73. Defendants' uniform representations as set forth in this Complaint were false, deceptive, and/or misleading in violation of CLRA.
74. Among other damages, Plaintiff is entitled to recover attorneys' fees, costs, expenses, and disbursements pursuant to Civ. Code §§ 1780 and 1781.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

**(Violation of California Business and Professions Code Section 17500 Against
UNIVERSITY OF SAN DIEGO et. al.; and DOES 1-5 and 40-50 inclusive)**

75. Plaintiff hereby realleges and incorporates by reference herein each and every preceding paragraph of this Complaint.
76. Plaintiff brings this cause of action under California Business and Professions Code Section 17500.
77. Cal. Bus. & Prof. Code § 17500 prohibits various deceptive practices in connection with the dissemination in any manner representations that are likely to deceive members of the public to purchase products and services such as enrollment in USD's Program.
78. USD disseminated, through common advertising, untrue statements about USD and its Program as described within this Complaint. Plaintiff relied on these untrue statements to his detriment. USD knew or should have known that its advertisements or representations regarded its Program as described herein were false. USD intended Plaintiff to rely on these advertisements and misrepresentations to his detriment.
79. Because of the foregoing, Plaintiff is entitled to injunctive and equitable relief and damages in an amount to be proven at trial as well as reasonable attorney's fees and costs.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

Demands: Monetary Demands Sought from “USD et. al.”

1. For damages according to proof including loss of tuition and fees, loss of education, loss of earnings and earning potential, and value of lost employment benefits;
2. For compensatory damages for losses resulting from humiliation, mental anguish, emotional distress and harm to his reputation according to proof;
3. For punitive damages according to proof as allowed by law;
4. That Defendants, their agents, successors, employees and those acting in concert, be enjoined permanently from engaging in each of the unlawful practices, policies, usages and customs set forth herein;
5. For a declaration that one or more of the Defendants engaged in vis’ a vis’ Plaintiff (1) Breach of Contract; and/or (2) Breach of Covenant of Good Faith and Fair Dealing; and/or (3) Negligent Misrepresentation; and/or (4) Fraud in the Inducement; and/or (5) Unjust Enrichment; and/or (6) Violations of California Business and Professions Code section 17200; and/or (7) Violations of the Consumer Legal Remedies Act, California Civil Code section 1750 et seq.; and/or (8) Untrue and Misleading Advertising in Violation of California Business and Professions Code section 17500;
6. For cost of suit including reasonable attorney’s fees; and
7. For such other and further relief as the Court may deem proper.

By: 
“In Pro Per” Nicholas Christian Ratekin
DATED: JULY 14TH, 2022