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11/04/2021	Appellee Brief	2	Appellee's Brief filed by Appellees Grand Canyon Education, Inc. and Grand Canyon University, Inc.. [21−12564] (ECF: Kristin Ramsay)

CASE NO. 21-12564-CC

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DONRICH YOUNG

Plaintiff-Appellant,

v.

GRAND CANYON UNIVERSITY, INC. and
GRAND CANYON EDUCATION, INC.

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
Civil Action No. 1:19-cv-01707
The Honorable Timothy C. Batten

BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-2, Grand Canyon University and Grand Canyon Education, Inc. ("Appellees" or "Grand Canyon") hereby provide the following Certificate of Interested Persons and Corporate Disclosure Statement.

1. Alston & Bird, LLP, Counsel for Appellees
2. Amigos de Torrejon, LLC
3. Batten, Sr., Timothy C., United States District Court Judge
4. Canyon Golf, LLC, Subsidiary of Grand Canyon University
5. Canyon Hospitality, LLC, Subsidiary of Grand Canyon University
6. Canyon Promotions, LLC, Subsidiary of Grand Canyon University
7. Casa de Amistad, LLC
8. Dickerson, Derin B., Counsel for Appellees
9. El Vecino de Amigos, LLC
10. GC Education, Inc. f/k/a Grand Canyon University, Inc.
11. GCE Community Fund (501(c)(3)) f/k/a GCU Community Fund
12. Grand Canyon Education, Inc. (NYSE: LOPE), Appellee
13. Grand Canyon University, Appellee
14. Grand Canyon University Foundation, Non-profit corporation and parent organization of Grand Canyon University

15. La Fuente de la Comunidad, LLC
16. La Sonrisa de Siena, LLC
17. Lemond, Jr., G. Franklin, Counsel for Appellant
18. Mid-State Rental Properties, LLC
19. Nueva Ventura, LLC
20. Nuevo Comienzo, LLC
21. Orbis Education Services, LLC, Subsidiary of Grand Canyon Education, Inc.
22. Orbis Education Co II, LLC
23. Orbis Education Management Company, LLC
24. Piedras Bonitas Inversiones, LLC
25. Tierra Vista Inversiones, LLC
26. Ramsay, Kristi, Counsel for Appellees
27. Reg 5160, LLC
28. Rentwise Properties, LLC
29. Strumph, Caroline Rawls, Counsel for Appellees
30. Webb, Edward Adam, Counsel for Appellant
31. Webb Klase & Lemond, LLC, Counsel for Appellant
32. Young, Donrich, Appellant

STATEMENT REGARDING ORAL ARGUMENT

Grand Canyon's position is that oral argument is not necessary. The District Court's decision to grant Grand Canyon's Motion to Dismiss was sound and the result of a straight-forward application of the law.

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The United States District Court for the Northern District of Georgia has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(d)(2). This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is from a final order or judgment that disposes of all of the parties' claims. Young timely appealed the District Court's orders granting Grand Canyon's Motion to Dismiss (Doc. 43) and denying Young's Motion for Entry of Default. (Doc. 37).

STATEMENT OF THE ISSUES

1. Whether the District Court correctly dismissed Donrich Young's ("Plaintiff" or "Young") breach of contract claim.

2. Whether the District Court correctly dismissed Young's good faith and fair dealing claim.

3. Whether the District Court correctly dismissed Young's fraud-based claims.

4. Whether the District Court correctly dismissed Young's unjust enrichment claim.

5. Whether the District Court abused its discretion in denying Young's Motion for an Entry of Default.

STATEMENT OF THE CASE

Young filed this lawsuit against Grand Canyon[1] because he did not complete his doctoral program within the timeline he wanted. He then filed a putative nationwide class action alleging breach of contract, fraud, intentional misrepresentation and other claims, seeking to put the blame on Grand Canyon. Young's claims are all based on the flawed premise that he was entitled to earn his doctoral degree in 60 credit hours, regardless of the academic progress he actually achieved in those credit hours.

I. Course of Proceedings and Disposition in the Court Below.

Six plaintiffs initially filed a putative class action lawsuit against Grand Canyon in the Superior Court of Fulton County, Georgia on March 7, 2019, alleging breach of contract, violation of the covenant of good faith and fair dealing, fraud,

[1] The Complaint improperly names Grand Canyon University, Inc. as a Defendant. Grand Canyon University, Inc. does not currently exist and was not a legal entity operating during the time period relevant to Young's allegations in the Amended Complaint. Grand Canyon Education, Inc. d/b/a Grand Canyon University was the legal entity that provided educational services to Young. During the timeframe of the events alleged in the Complaint, Grand Canyon Education, Inc. d/b/a Grand Canyon University operated as a comprehensive, regionally accredited university. On July 1, 2018, Grand Canyon Education, Inc. sold the educational assets of Grand Canyon University, along with its name, to a standalone, nonprofit organization that simultaneously changed its name to Grand Canyon University. As such, beginning July 1, 2018, Grand Canyon University operates as a standalone, nonprofit comprehensive, regionally accredited university that is separate and distinct from Grand Canyon Education, Inc. "Grand Canyon" is used in reference to all Defendants.

intentional misrepresentation, and unjust enrichment arising out of their enrollment in Grand Canyon College of Doctoral Studies. Doc. 1-1. Grand Canyon timely removed the case to the Northern District of Georgia. Doc. 1.

On May 7, 2019, Grand Canyon filed a motion to dismiss the original complaint and a motion to compel arbitration. Docs. 6, 7. Instead of responding to Grand Canyon's motions, the plaintiffs filed an amended class action complaint (the "Amended Complaint") that attempted to fix certain deficiencies identified by Grand Canyon. Notably, the six plaintiffs sought to rescue their complaint from complete dismissal for lack of personal jurisdiction by adding Plaintiff Donrich Young, who is now the only remaining named plaintiff. Doc. 10.

Grand Canyon again filed a motion to dismiss and a second motion to compel arbitration on June 4, 2019. Docs. 13, 14. On August 19, 2019, Judge Timothy C. Batten of the Northern District of Georgia granted Grand Canyon's motions and dismissed all claims brought by the original six plaintiffs for lack of personal jurisdiction and ordered that Young's claims must be arbitrated. Doc. 24. Plaintiff Young appealed the District Court's Order compelling arbitration, and this Court reversed and remanded. Doc. 31. Then, Young moved for an entry of default against Grand Canyon, despite the District Court having not yet ruled on Grand Canyon's Motion to Dismiss as to Young's claims. Doc. 34. Young's default motion was denied on January 21, 2021 (Doc. 37) and is part of the instant appeal. On May 26,

2021, the District Court requested briefing regarding whether any claims were moot as a result of the Eleventh Circuit's order, (Doc. 40) to which the parties responded. Docs. 41, 42. On July 22, 2021, the District Court granted Grand Canyon's Motion to Dismiss in full (Doc. 43), and Young timely filed this appeal. Doc. 45.

II. Statement of Facts.

Young alleges that Grand Canyon designed its dissertation program so that students cannot complete the program in 60 credit hours despite purported representations and contractual obligations to the contrary. Doc. 10, at ¶¶ 19, 100. But the premise of Young's claims is flawed. Grand Canyon does not promise that a student will complete a doctoral program within 60 credits; Grand Canyon merely provides the opportunity to do so. The time it takes a student to complete a doctoral degree program varies for reasons unique to each student, including the student's dissertation strategy, the student's approach to her chosen topic, and the student's aptitude and academic background.

The Dissertation Milestone Table attached as Appendix A to Grand Canyon's University Policy Handbook makes this clear.[2] The Dissertation Milestone Table

[2] Young appears to rely on the 2018-19 Handbook in his Amended Complaint, although that post-dates his enrollment by four years. The 2018 University Policy Handbook is publicly available online. https://www.GrandCanyon.edu/sites/default/files/media/documents/academics/handbook/18fall-handbook.pdf

demonstrates on its face that Grand Canyon offers students the opportunity to earn a doctoral degree in a ***minimum*** of 60 credit hours. The Minimum Progression Point represents the *least* amount of progress a student must make to move through each level of the program. The Optimal Progression Point column, however, reflects the fastest degree track that enables a student to complete the degree program by completing 60 credit hours. In this 60-credit track, students do not need to enroll in research continuation courses. The Milestone Table shows that Grand Canyon designed a program that ***can*** be completed in 60 credit hours. Grand Canyon, like any institution of higher education, is not contractually obligated to ensure that students complete their required coursework on a certain timetable. Nonetheless, Grand Canyon works diligently to support doctoral students and to promote student achievement.

On October 2, 2014, Young completed an Application for Admission to Grand Canyon. Doc. 13-2 at ¶ 7. He also completed an Enrollment Agreement for the Doctor of Education program the same day. Doc. 13-2 at ¶ 11; *see also* Doc. 10 at ¶ 68. Young's Enrollment Agreement states in bold that "**[a]** ***minimum*** **of 60 credits are required for completion of this program of study.**" Doc. 13-4, p. 9 (bold in original; italics added). Nowhere does Grand Canyon promise or guarantee that a student will complete a program in a specified time frame.

III. Standard of Review.

The Court reviews a district court's decision to grant a Rule 12(b)(6) motion to dismiss *de novo*. *Harper v. Blockbuster Ent. Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998). The Court reviews a district court's decision to deny a motion for default judgment for abuse of discretion. *Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1316 (11th Cir. 2002). "The abuse of discretion standard allows 'a range of choice for the district court, so long as that choice does not constitute a clear error of judgment.'" *Rasbury v. Internal Revenue Servs. (In re Rasbury)*, 24 F.3d 159, 168 (11th Cir. 1994) (citing *United States v. Kelly*, 888 F.2d 732, 745 (11th Cir. 1989)).

SUMMARY OF THE ARGUMENT

Young's lawsuit against Grand Canyon is based on a fundamental misunderstanding of the Dissertation Milestone Table. His interpretation of the Table defies any common-sense reading. Even when construing all allegations in the light most favorable to Young, he fails to state a claim, and the District Court adhered to well-settled law in dismissing his claims against Grand Canyon.

First, the District Court correctly dismissed Young's breach of contract claim because Young merely lists a number of contracts without ever identifying an alleged breach. He also ignores the plain language of the Dissertation Milestone Table and makes nothing more than conclusory allegations in support of this claim.

Second, the District Court correctly dismissed Young's good faith and fair dealing claim because Grand Canyon did not prevent Young from attaining any benefits that flow from Young's contract with Grand Canyon.

Third, the District Court aptly dismissed Young's fraud-based claims because they are fatally vague and insufficiently pleaded.

Fourth, because the parties do not dispute the existence of a contract, the District Court did not err in dismissing Young's alternative claim for unjust enrichment.

Finally, the District Court did not abuse its discretion in denying Young's motion for an entry of default judgment when Grand Canyon's Motion to Dismiss was still pending.

ARGUMENT AND CITATION OF AUTHORITY

I. The District Court Did Not Err in Dismissing Young's Breach of Contract Claim.

Young's breach of contract allegations are based on a facially incorrect reading of the Dissertation Milestone Table and untethered to any contractual provisions. The District Court did not err in dismissing this claim. As an initial matter, GCU did not promise Young that he would complete his degree program within 60 hours. Instead, Young's Enrollment Agreement provides only that "**[a] *minimum* of 60 credits are required for completion of this program of study.**" *See* Doc. 13-4, p. 9 (bold in original; italics added). When Young quotes this

provision in his brief, he omits the term "minimum." Young Br. at 27. What is more, Young chastises the District Court for quoting the language correctly. In his Brief, Young argues that the District Court's "circular argument" is "unpersuasive" because the court concluded there is no promise that student would complete a degree within 60 hours only that "'a student must complete a minimum of sixty credit hours to earn a degree.'" Young called this statement "contrary to the plain language of the enrollment agreement" despite the fact it is a nearly verbatim recitation of the language in the enrollment agreement. Plaintiff cannot allege what he wishes the agreement to say and then base a breach of contract claim on those imaginary contractual obligations.

Moreover, as the District Court recognized, the Dissertation Milestone Table does not show that it is "***impossible*** to complete the program within only 60 credit hours." (Doc. 10, ¶ 31). The Milestone Table outlines the academic progress a student must achieve to move through each dissertation review level and earn a degree. Young misinterprets[3] the "Minimum Progression Point" column as the earliest point at which a student can progress through each review level when instead it represents the *latest* a student can progress through each level. It is the Optimal

[3] The fact that Young continues to push an argument that is facially and factually incorrect even after being informed of his error by Appellees and the District Court renders this appeal frivolous. Accordingly, the Court should "award just damages and single or double costs to the appellee[s]." *See* Fed. R. App. P. 38.

Progression Point column that reflects the fastest degree track—a 60-credit track that permits students to earn a degree without the need to enroll in (and consequently, pay for) any research continuation courses. As the District Court noted, there is no promise that a student will earn a degree within 60 hours; rather, the table makes clear that a student must complete at least 60 hours to earn a degree.

Young may be frustrated with his inability to complete the program within the minimum credit hours, but his frustration does not equate to a breach of contract claim. A party cannot recover for breach of a written agreement that does not contain the terms he seeks to enforce. *See Addvensky v. Dysart Unified Sch. Dist. No. 89*, No. 11-cv-0283-PHX-JAT, 2011 U.S. Dist. LEXIS 53053, at *16-17 (D. Ariz. May 17, 2011) (dismissing breach claim where plaintiff could not identify contractual term that served as basis for claim).

There is similarly no basis for the other "breaches" Young alleges. Young argues that that Grand Canyon "breaches its contracts with doctoral students" by designing programs in such a way that it is impossible to complete the program in 60 credits. Doc. 10, ¶ 100; Young Br. at 27. But he must do more than simply point to the existence of a contract to state a claim that it has been breached. Instead, he must identify a specific obligation allegedly breached. Young's allegation relating to the design of the program is not tied to a specific contract, let alone a specific contractual obligation (although Young now contends that it represents a breach of

the Academic Catalog). As explained above, Young has not identified any contractual provision in which Grand Canyon promises that a student will complete the program within 60 hours. In fact, Young bases his allegations on the Dissertation Milestone Table in the 2018-2019 University Policy Handbook, which Young continues to misinterpret and could not have relied upon when enrolling in 2014.

Young also alleges that Grand Canyon failed to "ensure that its dissertation chairs and committee members provide students with prompt and meaningful feedback regarding their dissertations." Doc. 10, ¶ 103; Young Br. at 27. He similarly alleges that Grand Canyon will "assess[] students' needs for support services and provid[e] support through the doctoral process," "provide its doctoral students the 'individualized support' needed to timely complete a dissertation," and "'work directly' with doctoral candidates to complete his or her dissertation in a timely manner." Doc. 10, ¶¶102, 104-05; Young Br. at 17. Young references the "Academic Catalog" in the context of these allegations, but he again fails to identify a provision of the catalog he contends was breached and how it was allegedly breached. It is not enough for Young to simply rattle off a list of contracts and ask the court to trust that some unidentified provision in one of those contracts was breached. *Gallagher v. Wells Fargo Bank, N.A.*, No. CV17-1879-PHX-DGC, 2017 U.S. Dist. LEXIS 194121, at *13 (D. Ariz. Nov. 27, 2017) (granting motion to dismiss breach of contract claim where "Gallagher has not identified a

contractual provision that was breached or how Wells Fargo breached it by its 2010 conduct"); *Howard v. JPMorgan Chase Bank, N.A.*, No. CV12-0952-PHX DGC, 2012 U.S. Dist. LEXIS 178035, at *4-5 (D. Ariz. Dec. 17, 2012) (dismissing breach of contract and breach of covenant of good faith and fair dealing because plaintiffs "failed to clearly identify the contract or contracts breached, the provisions of those contracts that were breached, or which Defendants were parties to the contracts and committed the breach. Plaintiffs' amended complaint must plead sufficient facts to establish the existence of a contract, identify the specific provision(s) breached, and identify the Defendant who allegedly committed the breach.")

Additionally, the District Court did not subject Young to a heightened pleading standard with respect to his breach of contract claim. The Court simply held that Young's allegations were insufficient to state a claim because there were no facts alleged that made his allegations plausible. *Burgess v. Religious Tech. Ctr., Inc.*, 600 F. App'x 657, 664 (11th Cir. 2015) (dismissing breach claim because "plaintiffs' list of alleged misrepresentations, not tied to any specific contract or contractual provision, was insufficient to set forth a breach-of-contract claim"); *Johnson v. Fed. Home Loan Mortg. Corp.*, 793 F.3d 1005, 1008 (9th Cir. 2015) (dismissing breach of contract claim where allegations amounted to legal conclusions and not facts).

Additionally, Young relies on outdated Ninth and Eleventh Circuit case law to support his argument that his claims are sufficiently pleaded. Two cases Young cites pre-date *Ashcroft v. Iqbal* and *Bell Atl. Corp. v. Twombly*, which clarified that the pleading standard requires a complaint to include sufficient factual allegations to "state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2006). And the only case Young cites post-dating *Iqbal-Twombly* does not support his argument. In *Sierra-Sonora Enterprises, Inc. v. Domino's Pizza, LLC*, the Court was able to pinpoint an alleged breach. No. CV 10-0105-PHX-JAT, 2010 U.S. Dist. LEXIS 43503, at *4, *7 (D. Ariz. May 4, 2010) (noting that "[a] complaint that offers nothing more than naked assertions will not suffice"). That is not the case here.

Young must include in his complaint "sufficient factual matter, which, if accepted as true, states a claim to relief that is 'plausible on its face.'" *Repwest Ins. Co. v. Praetorian Ins. Co.*, 890 F. Supp. 2d 1168, 1183 (D. Ariz. 2012) (quoting *Iqbal*, 556 U.S. at 678); *see id.* (dismissing breach of contract claim because "Plaintiff must allege the existence of a contract, the terms of the contract that Defendant has breached, and the damages suffered from that breach. Plaintiff has not made these allegations with any detail, but rather makes conclusory assertions that Defendant Aon breached a contract it had with Plaintiff.") Young does not allege a single fact demonstrating how Grand Canyon's dissertation chairs and

committee members failed to provide prompt and meaningful feedback, or how Grand Canyon failed to provide support. Because Young's allegations that Grand Canyon breached unidentified provisions of an unidentified contract are insufficient to state a claim, the District Court did not err in dismissing this claim.

II. The District Court Did Not Err in Dismissing Young's Good Faith and Fair Dealing Claim.

The District Court correctly dismissed Young's good faith and fair dealing claim because Young does not allege that Grand Canyon prevented him from obtaining any benefits that flow from his contract with Grand Canyon. Young's claim for violation of the covenant of good faith and fair dealing, which is tacked onto his breach of contract claim, alleges that Grand Canyon breached this duty by "failing to offer a reasonable opportunity to complete dissertations during the initial 60-credit hour period" and by "refus[ing] to provide meaningful guidance to its doctoral students." Doc. 10, ¶ 110. But Young does not allege any facts to support his allegation that Grand Canyon failed to provide guidance or the opportunity to complete his program in 60 credit hours. "The essence of the duty of good faith and fair dealing is that neither party will act to impair the right of the other *to receive the benefits which flow from their agreement* or contractual relationship." *Wine Educ. Council v. Ariz. Rangers*, No. CV-19-02235-PHX-SMB, 2020 U.S. Dist. LEXIS

235192, at *36 (D. Ariz. Dec. 15, 2020) (emphasis in original). Young has not alleged that Grand Canyon did this.

This claim also fails because it is entirely duplicative of Young's breach of contract claim. Plaintiff included this "claim" under the "Breach of Contract" heading in the Complaint and incorporated the exact same allegations. Doc. 10, ¶¶ 97, 108-113. Allegations that do not go beyond a mere breach of contract claim and rely on the same alleged facts should be dismissed. *See Ir. Miller, Inc. v. Shee Atika Holdings Phx., LLC*, No. CV-10-00354-PHX-ROS, 2010 U.S. Dist. LEXIS 69425, at *7 (D. Ariz. July 12, 2010) (dismissing breach of covenant of good faith and fair dealing claim "as it is duplicative of Plaintiff's breach of contract claim").

Finally, to the extent Young's argument has morphed into complaints about his dissatisfaction with the quality of guidance he received, those allegations should be barred by the educational malpractice doctrine. *Ross v. Creighton Univ.*, 957 F.2d 410, 414-15 (7th Cir. 1992) (affirming dismissal of educational malpractice claim and itemizing policy reasons for doing so, including the number of claims such a cause of action would allow and the threat that courts would become "embroil[ed] … into overseeing the day-to-day operations of schools"); *Jansen v. Emory Univ.*, 440 F. Supp. 1060, 1062 (N.D. Ga. 1977) (recognizing precedent holding that "educational contracts have unique qualities and are to be construed in a manner which leaves the school sufficient discretion to 'properly exercise its educational

responsibility'"); *Telluselle v. Haw. Pac. Univ.*, No. 11-00343 BMK, 2012 U.S. Dist. LEXIS 124413, at *6 (D. Haw. Aug. 31, 2012) ("The majority of other jurisdictions do not recognize the tort of educational negligence or malpractice brought by students against their educational advisors and institutions because policy considerations dictate that no duty is owed by academic advisors and institutions to students."); *Brown v. Compton Unified Sch. Dist.*, 80 Cal. Rptr. 2d 171, 172 (Cal. Ct. App. 1998) ("Policy considerations preclude 'an actionable 'duty of care' in persons and agencies who administer the academic phases of the public educational process. . . . To hold them to an actionable 'duty of care,' in the discharge of their academic functions, would expose them to the tort claims–real or imagined–of disaffected students and parents in countless numbers.'").

III. The District Court Did Not Err in Dismissing Young's Fraud-Based Claims.

Young's allegations that sound in fraud fall far short of the pleading standard, and the District Court did not err in dismissing them. Claims that sound in fraud must meet the strictures of Fed. R. Civ. P. 9(b). "A claim 'sounds in fraud' when a plaintiff alleges 'a unified course of fraudulent conduct and rel[ies] entirely on that course of conduct as the basis of [that] claim.'" *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, 362 F. Supp. 3d 1295, 1335 (N.D. Ga. 2019) (citation omitted). In *Equifax*, which Young relies on, the court found that the specific allegations in that case related to a data breach and did not include fraud-like claims under the

various state deceptive trade practices statutes at issue. 362 F. Supp. 3d at 1336. The court in *Equifax* observed that for a claim to sound in fraud and thus be subject to the heightened pleading standards, "the elements of the claim must be similar to that of common law fraud, requiring, among other things, proof of scienter, reliance, and injury." *Id.* at 1335. Here, of course, the elements of the claims Young asserts are nearly identical to those of common law fraud. His Arizona Consumer Fraud Act claim is based on allegations that Grand Canyon knowingly made a false representation that Young relied on that resulted in injury. His intentional misrepresentation claim is similarly based on allegations that Grand Canyon knowingly made misrepresentations that Young relied on that resulted in injury. Thus, Young's contention that his allegations "do not resemble fraud at all" (Young Br. at p. 23) is patently false. Indeed, *Raup v. Wells Fargo Bank, NA*, cited by Young, highlights this point. There, the court held plaintiffs to the 9(b) standard and in fact dismissed some of the claims brought under the Arizona Consumer Fraud Act for failure to plead them with particularity. No. CV-13-00137-PHX-GMS, 2013 U.S. Dist. LEXIS 88922, at *6 (D. Ariz. June 25, 2013) ("Because claims brought under the CFA involve allegations of fraud, they must be pled with particularity.").

Accordingly, Young was required to plead the who, what when, where, and how of his allegations. To satisfy the heightened pleading requirements in this Court, a plaintiff must allege "(1) the precise statements, documents, or

misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled the plaintiffs; and (4) what the defendants gained by the alleged fraud." *Sheely v. Bank of Am., N.A.*, 36 F. Supp. 3d 1364, 1373 (N.D. Ga. 2014); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003) ("It is established law, in this circuit and elsewhere, that Rule 9(b)'s particularity requirement applies to state-law causes of action."); *Silving v. Wells Fargo Bank, NA*, 800 F. Supp. 2d 1055, 1074 (D. Ariz. 2011) (noting that Rule 9(b) requires a plaintiff to plead "time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation") (citing *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). Young failed to satisfy this standard, and thus, his fraud-based claims fail.

Even if Young's allegations satisfied Rule 9(b)'s heightened pleading standards (which they do not), the alleged representations do not support a claim for fraud or intentional misrepresentation. Young alleges that Grand Canyon intentionally misrepresented that its "doctoral programs can be completed in 60 credit hours" (Doc. 10, ¶¶ 119, 129) even though it is "impossible" to do so. Doc. 10, ¶¶ 31, 121, 129. But as previously explained, and as recognized by the District Court, Grand Canyon does not guarantee students that they will necessarily earn their degrees within 60 credit hours. Rather, a student must complete at *least* 60

credit hours to earn a degree; but many students will require more. There is no relief for those who simply fail to read their contracts. *Wyatt v. Hertz Claim Mgmt. Corp.*, 511 S.E.2d 630, 632 (Ga. Ct. App. 1999) ("Parties to a contract are presumed to have read their provisions and to have understood the contents. One who can read, must read, for he is bound by his contracts."); *Bufford v. Vxi Glob. Sols. LLC*, No. CV-20-00253-TUC-RCC, 2021 U.S. Dist. LEXIS 12003, at *15 (D. Ariz. Jan. 22, 2021) ("Plaintiffs' failure to pay attention to what they were signing does not make the terms unfair.")

The fact that Young did not fulfill the degree requirements in 60 credit hours has no bearing on the veracity of Grand Canyon's representations about what the fastest track to a degree looks like. *See Murphy v. Capella Educ. Co.*, 589 F. App'x 646, 648 (4th Cir. 2014) (affirming dismissal of fraud-based claims brought against school by plaintiff who failed examinations when he "[did] not allege with particularity that anyone at Capella assured him he would pass such examinations, that he would complete the program in a certain period of time, or that statements in the published materials…made any such representations").

Because Young does not allege Grand Canyon made any statements that were actually misleading or could be justifiably relied upon, the District Court did not err in dismissing the fraud-based claims.

IV. The District Court Did Not Err in Dismissing Young's Unjust Enrichment Claim.

The District Court did not err in finding Young's claim for unjust enrichment fails on the merits and is moot. ***First***, the claim fails on the merits because neither party disputes the existence and validity of a contract. The District Court recognized that Young "pleads a valid contract governs the parties' relationship." Doc. 43, p. 21. Under well-settled Georgia law, the analysis should end there. *See Am. Casual Dining, L.P. v. Moe's Sw. Grill, L.L.C.*, 426 F. Supp. 2d 1356, 1372 (N.D. Ga. 2006) ("because neither side disputes the existence of a valid contract, the unjust enrichment claim is improper"); *see also Techjet Innovations Corp. v. Benjelloun*, 203 F. Supp. 3d 1219, 1234 (N.D. Ga. 2016) (dismissing unjust enrichment claim and noting "courts have held that a plaintiff may not plead an unjust enrichment claim in the alternative to a claim for breach of contract when it is undisputed (or when the court has found) that a valid contract exists") (quoting *Clark v. Aaron's, Inc.*, 914 F. Supp. 2d 1301, 1310 (N.D. Ga. 2012)).

Although Young is correct that Federal Rule 8(d) allows parties to plead alternative claims, it is appropriate to dismiss a claim for unjust enrichment when the existence of a contract is not in dispute. The cases cited by Young support this conclusion. For example, *WESI, LLC v. Compass Env't, Inc.*'s analysis of unjust enrichment relies on *Tidikis v. Network for Med. Communs. & Research, LLC. WESI, LLC v. Compass Env't, Inc.*, 509 F. Supp. 2d 1353, 1363 (N.D. Ga. 2007). In

Tidikis, the plaintiff's claim for unjust enrichment failed as a matter of law because "any benefit conferred on the defendants was triggered by a provision in the contract, the validity of which neither Tidikis nor the defendants challenge." *Tidikis v. Network for Med. Commc'ns & Rsch., LLC*, 619 S.E.2d 481, 485 (Ga. Ct. App. 2005). Young has not alleged any benefits conferred upon Grand Canyon other than benefits conferred pursuant to the parties' agreements. A claim for unjust enrichment does not lie in these circumstances.[4]

Additionally, while Young contends that his unjust enrichment claim does not incorporate any allegations related to a contract, the claim incorporates paragraphs 1-96 of the Amended Complaint (as does the breach of contract claim). Doc. 10 ¶¶ 97, 135. This includes the allegations that Plaintiff Young "was a student enrolled

[4] Although *Abels v. JPMorgan Chase Bank, N.A.* and *Mancini Enters., Inc. v. American Express Co.* allowed for unjust enrichment claims to advance despite the existence of contracts, those courts analyzed claims under Florida law, and Georgia courts have held otherwise. *Cf. Abels v. JPMorgan Chase Bank, N.A.*, 678 F. Supp. 2d 1273, 1279 (S.D. Fla. 2009) (denying dismissal of unjust enrichment count under Florida law); *Manicini Enters., Inc. v. Am. Express Co.*, 236 F.R.D. 695, 699 (S.D. Fla. 2006) (same); *Ed Federkeil Racing, Inc. v. Fire Serv. Plus, Inc.*, No. 3:20-cv-141-TCB, 2021 U.S. Dist. LEXIS 119426, at *15 (N.D. Ga. Mar. 16, 2021) (noting "[a] party may plead the claims in the alternative only if one or more of the parties contests the existence of the express contract" and allowing claim to survive where existence of contract was disputed); *Bogard v. Inter-State Assurance Co.*, 589 S.E.2d 317, 319 (Ga. Ct. App. 2003) (granting motion for judgment on the pleadings where "the existence of the contract between the parties precludes Bogard's unjust enrichment claim").

in a doctoral program offered by GCU." *Id.* at ¶ 68. Additionally, the unjust enrichment claim references tuition payments paid by Young to Grand Canyon, payments that are governed by the Enrollment Agreement and are made pursuant to that contract. *Id.* at ¶ 141. Clearly, the breach of contract and unjust enrichment claims overlap and are duplicative. *See Tidikis*, 619 S.E.2d at 485; *Bogard*, 589 S.E.2d at 319.

Second, the District Court did not err in finding Young's claim must be arbitrated if not dismissed on the merits. In the appeal of the District Court's ruling on Grand Canyon's Motion to Compel Arbitration, this Court noted that "[t]he parties on appeal debate the district court's order only as it relates to the core breach-of-contract, misrepresentation, and statutory-fraud claims." *Young v. Grand Canyon Univ., Inc.*, 980 F.3d 814, 817 n.2 (11th Cir. 2020). Therefore, the Eleventh Circuit reversed the District Court's order compelling arbitration only as to the breach of contract, fraud, and misrepresentation claims. Young cannot contest this point at this late stage. *United States v. Davis*, 280 F. App'x 845, 847 (11th Cir. 2008) (holding that "issues not raised during a first appeal are waived on a second appeal").

V. The District Court Did Not Abuse its Discretion in Denying Young's Motion for Default Judgment.

The District Court did not abuse its discretion in denying Young's motion for default judgment and finding that Grand Canyon's Motion to Dismiss encompassed

the claims asserted by Young. Young's argument to the contrary ignores the plain language from Grand Canyon's briefing. When Grand Canyon moved to dismiss the Amended Complaint, Grand Canyon moved to dismiss all claims from all seven plaintiffs. Grand Canyon took the position that Young (and two other plaintiffs) were bound by their arbitration agreements, but if the District Court disagreed, their claims should be subject to dismissal for the same reason as the other plaintiffs. Indeed, Grand Canyon's Motion to Dismiss stated

> Defendants' motion to dismiss is directed at the claims asserted by Plaintiff Kolb and Jane Does I, II and III. Plaintiffs Carr, Stanton, and Young are required to submit their claims to arbitration, pursuant to their signed enrollment agreements. Accordingly, Defendants filed a Motion to Compel Arbitration as to Plaintiffs Carr, Stanton, and Young. **If the Court determines that those Plaintiffs are not required to arbitrate their claims, then their claims should also be dismissed for the reasons stated herein.**

Doc. 13-1, p. 4 n.5 (emphasis added).[5] This is hardly a pronouncement that the Motion to Dismiss was not directed at Young, as he claims. Young Br. at p. 30.

After this Court reversed the District Court's ruling granting Young's motion to compel arbitration, the District Court correctly reopened the Motion to Dismiss. *See, e.g.*, *Flintkote Co. v. Aviva PLC*, 769 F.3d 215, 224 (3d Cir. 2014) ("Because we will reverse the District Court's order to the extent that it granted Flintkote's motion to compel arbitration, Aviva's motion to dismiss or transfer is no longer

[5] Although Young cites from this footnote six times in his brief, incredulously, he only includes the bolded language once – on the third to last page of his brief.

moot. . . . Because the District Court has not yet passed on the merits of the parties' [dismissal] arguments . . . , we express no opinion on the matter and leave it for resolution upon remand.") (reversing district court order compelling arbitration). There was no need to Grand Canyon to re-file its Motion to Dismiss and doing so would not have been in the interests of judicial economy.

The cases Young cites regarding waiver of issues are inapposite. In *Henderson v. McMurray*, for example, an argument was waived on appeal because it was not raised in the district court. 987 F.3d 997, 1002 (11th Cir. 2021). *Sapuppo v. Allstate Floridian Ins. Co.* also does not apply. There, an appellant failed to raise any challenges to certain holdings from the district court in its opening brief and only addressed them the reply brief. 739 F.3d 678, 683 (11th Cir. 2014). Consequently, those arguments were abandoned. *Id.* Similarly, in *Singh v. U.S. Att'y Gen.*, an argument was abandoned where an appeal brief "stat[ed] that an issue exists, without further argument or discussion[.]" 561 F.3d 1275, 1278 (11th Cir. 2009). Grand Canyon is not attempting to argue on appeal an issue not previously raised, and thus these cases are not applicable.

Instead, Young asks this court to ignore an argument plainly raised at the District Court. Indeed, Grand Canyon defined "Plaintiffs" in its Motion to Dismiss briefing as Plaintiffs Eileen Carr, Clayton Kolb, Samuel Stanton, Donrich Young, and Jane Does I, II, and III. Doc. 13-1 at 3, and the arguments made throughout its

Motion addressed all Plaintiffs. Those dismissal arguments applied to every Plaintiff's claims, including Young's claims, inasmuch as those claims were not subject to arbitration. The arguments against Young's claims were fully advanced and supported by authorities throughout Grand Canyon's 25-page brief. As a result, the District Court did not abuse its discretion in denying Young's motion for entry of default and reopening Grand Canyon's Motion to Dismiss as to Young's claims.

CONCLUSION

For these reasons, the Court should AFFIRM the decision of the District Court granting Grand Canyon's Motion to Dismiss.

Respectfully submitted this 4th day of November, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), I hereby certify that the within and foregoing was prepared using Times New Roman 14-point font and contains 5,647 words.

This 4th day of November, 2021.

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CERTIFICATE OF SERVICE

I certify that on November 4, 2021, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system and served the following counsel of record:

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