UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CZIGANY BECK, individually and on behalf of others similarly situated,	:	
Plaintiff,	:	1:20-cv-03229-LLS
-against-	:	(JURY TRIAL DEMANDED)
MANHATTAN COLLEGE,	:	
Defendant.	:	

AMENDED CLASS ACTION COMPLAINT

Plaintiff Czigany Beck ("Plaintiff") by and through undersigned counsel, brings this action against Manhattan College ("Defendant" or the "College") on behalf of herself and all others similarly situated, and makes the following allegations based upon information, attorney investigation and belief, and upon Plaintiff's own knowledge:

PRELIMINARY STATEMENT

1. Plaintiff brings this case as a result of Defendant's decision to not issue appropriate refunds for the Spring 2020 semester after canceling in-person classes and changes all classes to an online/remote format, closing most campus buildings and requiring all students who could leave campus to leave as a result of the Novel Coronavirus Disease ("COVID-19").

2. This decision deprived Plaintiff and other members of the Classes from recognizing the benefits of on-campus enrollment, access to campus facilities, student activities, and other benefits and services in exchange for which they had already paid fees and tuition.

3. Defendant has either refused to provide reimbursement for the tuition, fees, and other costs that Defendant failed to provide during the Spring 2020 semester, or has provided

inadequate and/or arbitrary reimbursements that does not fully compensate Plaintiff and members of the Classes for their loss.

4. This action seeks refunds of the amount Plaintiff and members of the Classes are owed on a *pro-rata* basis, together with the damages as pled herein.

PARTIES

5. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

6. Manhattan College is an institution of higher learning located in Riverdale, New York.

7. Upon information and belief, Defendant has an estimated endowment of approximately $107.2 Million and more than 4,000 enrolled students during the 2019-2020 academic year.[1]

8. Moreover, upon information and belief, Defendant was allocated more than $3.27 Million of federal stimulus funds under the CARES Act.[2]

9. From this bailout, Defendant has allocated only $1.63 million (the bare minimum required by law) to be distributed to students, presumably intending to retain the remaining $1.63 million for itself.[3]

10. Plaintiff is an individual and a resident and citizen of the State of New York.

11. Plaintiff was a student enrolled at Manhattan College during the Spring 2020 term.

JURISDICTION AND VENUE

12. Plaintiff incorporates by reference all preceding allegations as though fully set forth

[1] https://manhattan.edu/admissions/index.php.
[2] https://www2.ed.gov/about/offices/list/ope/allocationsforsection18004a1ofcaresact.pdf.
[3] https://manhattan.edu/return-to-campus/cares-doe-reporting-requirements.php.

herein.

13. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds $5 million, exclusive of interest and costs.

14. This Court has personal jurisdiction over Defendant because Defendant conducts business in New York and has sufficient minimum contacts with New York.

15. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

BACKGROUND FACTS

16. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

17. Plaintiff was enrolled as a full-time student for the Spring 2020 academic semester at Defendant's institution.

18. As a precondition for enrollment, Plaintiff was required to and did pay substantial tuition for the Spring 2020 semester either out of pocket or by utilizing student loan financing, as did all members of the putative Tuition Class.

19. There are hundreds, if not thousands, of institutions of higher learning in this country.

20. Many schools nationwide offer and highlight remote learning capabilities as a primary component of their efforts to deliver educational value, such as, Western Governors University, Southern New Hampshire University, and University of Phoenix-Arizona. Manhattan College is not such a school.

21. Rather, a significant focus of Defendant's efforts to obtain and recruit students pertains to the campus experience it offers, along with face-to-face, personal interaction with skilled and renowned faculty and staff. Through its website and other literature, the College sells on-campus instruction, the on-campus experience, and the City of New York as key reasons that a student should choose to attend Manhattan College.

22. For example, Defendant touts: [4]

NEW YORK CITY LOCATION

Manhattan College offers students the best of both worlds: a beautiful campus with a close-knit community and homey atmosphere, plus easy access to the most exciting city in the world — New York.

Many colleges and universities in this region boast about their proximity to New York City, but at Manhattan College we offer a truly unique location. We are within the boundaries of New York City and our campus is next door to a subway stop. But unlike many other New York City schools, we have a true college campus — 23 acres centered around a quad where our students play Frisbee, study under the sun and hang out with friends.

23. Plaintiff and members of the proposed Tuition Class did not choose to attend another institution of higher learning, or to seek an online degree, but instead chose to attend Defendant's institution and specifically chose the on-campus program and enrolled on that basis.

24. Accordingly, when students pay tuition in exchange for enrollment in the on-campus program, such students expect to receive, and Defendant has promised to provide, benefits and services above and beyond basic academic instruction, which include but are not limited to:

a. Face-to-face interaction with professors, mentors, and peers;

b. Access to facilities such as computer labs, study rooms, laboratories, libraries, etc.;

c. Student governance and student unions;

d. Extra-curricular activities, groups, intramurals, etc.;

[4] https://manhattan.edu/about/nyc-location.php.

e. Student art, cultures, and other activities;

f. Exposure to community members of diverse backgrounds, cultures, and schools of thought;

g. Social development and independence;

h. Hands-on learning and experimentation; and

i. Networking and mentorship opportunities.

25. Plaintiff's education was changed from in-person, hands-on learning to online instruction during the Spring 2020 term.

26. When this happened, Plaintiff was forced from campus and deprived of the benefit of the bargain for which she had paid, and in exchange for which Defendant had accepted, tuition as set forth more fully above.

27. In addition to tuition, Plaintiff was required to pay certain mandatory fees, including but not limited to a $685 "Comprehensive Fee."

28. Upon information and belief, the Comprehensive Fee is charged in order to cover the costs of things such as access to the Campus Health Center, student activities and services, athletics, etc.[5]

29. Plaintiff was required to and did pay all mandatory fees associated with her Spring 2020 enrollment.

30. As a result of the actions and announcements of Defendant during the Spring 2020 semester, Plaintiff and members of the Fees Class lost the benefit of the services and facilities for which these fees were intended to cover.

[5] https://inside.manhattan.edu/academic-resources/study-abroad/Incoming-Exchange-Program.php.

FACTUAL ALLEGATIONS

31. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

32. Upon information and belief, Defendant's Spring term began with the first day of classes on or about January 14, 2020.[6]

33. Upon information and belief, Defendant's Spring term was scheduled to conclude with the last day of examinations on or about May 9, 2020 and commencement ceremonies on May 15, 2020.[7]

34. Accordingly, Defendant's Spring semester was scheduled and contracted to consist of approximately 122 days.

35. However, as a result of the COVID-19 pandemic, Defendant announced on March 9, 2020 that it was cancelling all on-campus college-sponsored events.[8]

36. Defendant further announced that all in-person classes would be moving to online instruction as of March 11, 2020.[9]

37. On March 17, 2020, Defendant announced that most students were required to vacate residence halls, and almost no students were permitted to be on campus.[10]

38. Based on the dates set forth above, upon information and belief, Defendant's move to online classes and constructive eviction of students on or about March 11, 2020, deprived Plaintiff and other members of the Classes from access to campus facilities/activities and in person instruction for approximately 46% of the semester for which they had contracted

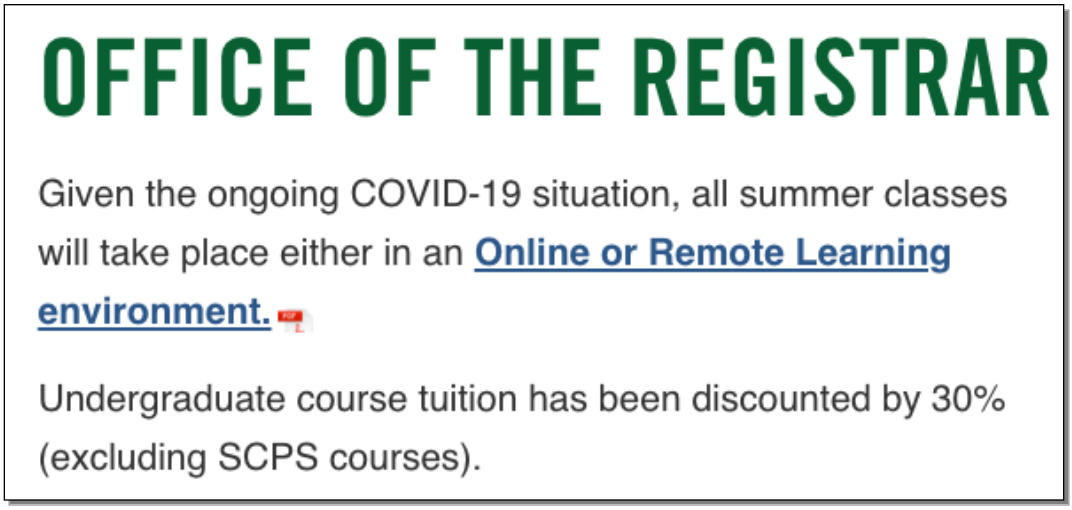
[6] https://inside.manhattan.edu/academic-resources/registrar/academic-calendar.php.
[7] Id.
[8] https://manhattan.edu/news/archive/2020/03/coronavirus-update-march-9.php.
[9] Id.
[10] https://manhattan.edu/news/archive/2020/03/coronavirus-update-march-17.php.

and already paid.

39. Although Defendant continued offering some level of academic instruction via online classes, Plaintiff and members of the proposed tuition Class were deprived of the benefits of on-campus enrollment for which they paid as set forth more fully above.

40. These realities notwithstanding, Defendant has refused and continues to refuse to offer any refund whatsoever with respect to the tuition that has already been paid.

41. Defendant acknowledged that online distance learning is not equivalent to the on-campus college experience when it reduced tuition for the summer term which was taught online by 30%:[11]



42. Upon information and belief, the only difference between Defendant's decision to discount online classes for the Summer and not discount online classes for the Spring is that Defendant had already collected tuition for the Spring semester and the Spring semester students had no recourse, whereas Defendant had not yet collected tuition for the Summer term and Defendant knew many students would not agree to pay full price tuition for online classes during that term.

[11] https://inside.manhattan.edu/academic-resources/registrarindex.php.

43. Likewise, Plaintiff and members of the proposed Fees Class were deprived of utilizing services for which they have already paid, such as access to the Campus Health Center, student activities and services, athletics, etc.

44. Nonetheless, Defendant has refused and continues to refuse to offer any discount or refund whatsoever on Spring 2020 student fees.

CLASS ACTION ALLEGATIONS

45. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

46. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Classes:

The Tuition Class:

All people who paid tuition for or on behalf of students enrolled in classes at the College for the Spring 2020 semester but were denied live, in-person instruction and forced to use online distance learning platforms for the latter portion of that semester.

The Fees Class:

All people who paid fees for or on behalf of students enrolled in classes at the College for the Spring 2020 semester.

47. Excluded from the Classes is Manhattan College, and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and 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.

48. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as

would be used to prove those elements in individual actions alleging the same claims.

49. This action has been brought and may be properly maintained on behalf of the Classes proposed herein under Federal Rule of Civil Procedure 23.

Numerosity: Fed. R. Civ. P. 23(a)(1)

50. The members of the Classes are so numerous and geographically dispersed that individual joinder of all members is impracticable. Plaintiff is informed and believes that there are thousands of members of the Classes, the precise number being unknown to Plaintiff, but such number being ascertainable from Defendant's records. Members of the Classes 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.

Commonality and Predominance: Fed. R. Civ. P. 23(a)(2)

51. This action involves common questions of law and fact, which predominate over any questions affecting individual members of the Classes, including, without limitation:

(a) Whether Defendant engaged in the conduct alleged herein;

(b) Whether there is a difference in value between enrollment in an online distance learning program and enrollment in a live, on-campus instructional program;

(c) Whether Defendant breached its contracts with Plaintiff and the other members of the Tuition Class by retaining the portion of their tuition representing the difference between the value of online distance learning and on-campus, in-person enrollment;

(d) Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiff and the Tuition Class representing the difference between the value

of online distance learning and on-campus, in-person enrollment;

(e) Whether Defendant breached its contracts with Plaintiff and the other members of the Fees Class by retaining fees without providing the services, benefits and/or programs the fees were contracted to cover;

(f) Whether Defendant was unjustly enriched by retaining fees of Plaintiff and the other members of the Fees Class without providing the services, benefits and/or programs the fees were intended to cover;

(g) Whether Defendant committed conversion as detailed above against Plaintiff and the other members of the Tuition Class;

(h) Whether Defendant committed conversion as detailed above against Plaintiff and the other members of the Fees Class;

(i) Whether Defendant violated New York General Business Law § 349, § 350 *et seq.* as to Plaintiff and the other members of the Tuition Class;

(j) Whether Defendant violated New York General Business Law § 349, § 350 *et seq.* as to Plaintiff and the other members of the Fees Class;

(k) Whether certification of any or all of the classes proposed herein is appropriate under Fed. R. Civ. P. 23;

(l) Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and

(m) The amount and nature of relief to be awarded to Plaintiff and the other members of the Classes.

Typicality: Fed. R. Civ. P. 23(a)(3)

52. Plaintiff's claims are typical of the claims of other members of the Classes because,

among other things, all such members were similarly situated and were comparably injured through Defendant's wrongful conduct as set forth herein.

Adequacy: Fed. R. Civ. P. 23(a)(4)

53. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of other members of the Classes they seek to represent. Plaintiff has retained counsel competent and experienced in complex litigation and Plaintiff intends to prosecute the action vigorously. The interests of the Classes will be fairly and adequately protected by Plaintiff and her counsel.

Superiority: Fed. R. Civ. P. 23(b)(3)

54. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Classes to individually seek redress for Defendant's wrongful conduct.

55. Even if members of the Classes could afford individual litigation, the Court system likely could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, comprehensive supervision by a single court, and finality of the litigation.

Certification of Specific Issues: Fed. R. Civ. P. 23(c)(4)

56. To the extent that any described Class herein does not meet the requirements of Rules 23(b)(2) or (b)(3), Plaintiff seeks the certification of issues that will drive the litigation toward resolution.

Declaratory and Injunctive Relief: Fed. R. Civ. P. 23(b)(2)

57. Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described herein, with respect to the members of the Classes as a whole.

FOR A FIRST COLLECTIVE CAUSE OF ACTION BREACH OF CONTRACT

(Plaintiff and Other Members of the Tuition Class)

58. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

59. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

60. Plaintiff and the other members of the Tuition Class entered into contracts with Defendant which provided that Plaintiff and other members of the Tuition Class would pay tuition for or on behalf of students and, in exchange, Defendant would enroll such students and admit them to campus; granting them the full rights and privileges of student status, including but not limited to access to campus facilities, access to campus activities, and live, in-person instruction in a physical classroom.

61. The rights and privileges of student status that comprise the contractual terms are set forth by Defendant through its website, academic catalogs, student handbooks, correspondence, marketing materials and other circulars, bulletins, and publications.

62. These rights and privileges form the basis of the bargain on which prospective students agree to accept Defendant's offer of enrollment in exchange for the payment of tuition and fees.

63. One such right is the ability to be physically present on campus, and fully enjoy the facilities, services, and opportunities provided thereon, including the campus' location and surrounding opportunities within New York City.

64. Defendant does not deny that the physical location of its campus is a main benefit of enrollment that attracts many students to the University:[12]

65. Defendant's website and recruitment brochures are the primary means through which Defendant targets prospective new students and attempts to influence such students to apply for enrollment at the University as opposed to other institutions of higher learning.

66. Through these publications, Defendant markets to and enrolls students in a distinct educational experience consisting of on-campus, in-person instruction and related benefits.

67. Defendant's publications are full of references to the on-campus experience, including numerous references to student activities; campus amenities; class size and student/teacher ratios; campus diversity, campus location, and the like.

[12] https://manhattan.edu/admissions/undergraduate/index.php.

68. For example, Defendant promises a "traditional classroom experience" to prospective students on its "Academics" website:[13]

> **Small Classroom, Big Opportunity**
>
> Manhattan College offers the variety of programming you might find at a large university, but with the personalized learning experience of a small, liberal arts school. We offer more than 100 majors, minors, graduate programs and advanced certificates, as well as degrees that can be earned fully online or combined with a traditional classroom experience.

69. Additionally, on this same website, Defendant promises prospective students the opportunity for "hands-on experiences in New York City."[14]

> **Learn By Doing**
>
> At Manhattan, you will have the chance to make learning come alive through a variety of immersive, hands-on experiences in New York City and beyond. Many of our students choose to study abroad for a semester, conduct a research project one-on-one with a faculty member, or pursue an internship. Along the way, our academic support services, tutoring sessions and career workshops will keep you on track to graduate and achieve success.

70. On Defendant's "About" page, which can be found at https://manhattan.edu/about/index.php., Defendant boasts the advantages of enrolling in their on-campus product.:

[13] https://manhattan.edu/academics/index.php.
[14] Id.

71. Prospective students are also guided to Defendant's "Life at Manhattan" page, which can be accessed at https://manhattan.edu/life-at-manhattan/index.php, here, Defendant promises students all that campus has to offer:

> **Living on Campus**
>
> Living on campus gives you the full Jasper experience, from spending sunny afternoons studying on the Quad with your roommates, to grabbing a late-night bite to eat in Locke's Loft after a basketball game at Draddy Gym. Our campus is classically beautiful and truly unique; it offers a slice of serenity just a subway ride away from the excitement of midtown Manhattan.

72. Students seeking further information about the College are directed to the "Facts & Stats" page where Defendant markets the following statistics:[15]

- 12 to 1 student to faculty ratio;
- Average class size of 23 students;
- 19 NCAA Teams Division 1 Athletics;
- 75% of freshman live on campus; and
- 75% of students participate in an internship or field-based experience;

73. Upon information and belief, there were no references or disclaimers in any of Defendant's websites, circulars, bulletins, publications, brochures, or other advertisements prior to January 22, 2020, that even referenced the possibility of in-person classes being changed to fully online classes at Defendant's discretion or for any other reason whatsoever after the start of a given term.[16]

74. In fact, it is clear that, prior to the COVID-19 interruption, Defendant had no plans whatsoever to offer its in-person classes via an online delivery model.

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[15] https://manhattan.edu/about/facts-stats.php.

[16] January 22, 2020 is the approximate date that students were permitted to withdraw from the College for the Spring 2020 term and receive a full tuition refund.

75. Those prospective students who were interested in enrolling at the College after consuming the marketing materials described above were invited to complete applications, and some were selected for and offered admission.

76. When a student is offered admission to the College, that student receives a number of further communications and has a number of additional interactions with Defendant.

77. For example, accepted graduate students are greeted on the "Accepted Graduate Students" page with a message from Defendant stating: "We look forward to welcoming you to campus."[17]

78. During this time, students also receive an Admitted Student Handbook from their respective school or program.

79. For example, The School of Education & Health New Student Resource Book opens with a welcome letter on page 2 which states "Feeling a part of a college campus takes more than filing out an admissions application. It means meeting staff, faculty, and other new students as well as participating in a broad and varied program of activities that the College has planned for you."[18]

80. When students log on to their student portals during the registration period to select their in-person classes, each class is listed not only by description, but also by meeting time and physical classroom location.

81. Upon registration, students in many of Defendant's on-campus schools and programs were subject to strict personal attendance requirements as set forth in various departmental policies and handbooks, evidencing Defendant's requirement and the student's acceptance of the requirement that such students physically attend such classes on campus.

[17] https://manhattan.edu/admissions/accepted/grad-accepted.php.
[18] https://turing.manhattan.edu/~loretta.wilkins/images/handbook.pdf.

82. For example, The School of Education & Health New Student Resource Book on page 5 strictly requires: "Any absence from any class period or activity including a lab session is considered to be an unexcused absence unless the student explains to the instructor of the course the reason for the absence."[19]

83. That Defendant offered to provide, and members of the Tuition Class expected to receive, instruction on the physical campus is further evidenced by the parties' prior course of conduct.

84. Those classes for which students expected to receive in-person instruction began the Spring 2020 semester by offering in-person instruction.

85. Each day for the weeks and months leading up to March 11, 2020, students attended physical classrooms to receive in-person instruction, and Defendant provided such in-person instruction.

86. Likewise, upon information and belief, most students were provided with syllabi and other documents that referenced class meeting schedules, locations, and physical attendance requirements.

87. Each day for the weeks and months prior to announced closures, students had access to the full campus.

88. Accordingly, it is clear that Defendant offered to provide live, in-person education, together with a full on-campus experience and that members of the Tuition Class accepted that offer by paying tuition and attending classes during the beginning of the Spring 2020 semester.

89. This distinction is highlighted further by Defendant's own transfer credit policy.

90. According to Defendant's policies, credits are only eligible to transfer from another

[19] https://turing.manhattan.edu/~loretta.wilkins/images/handbook.pdf.

institution only by completing an "Off-Campus Course Approval Form."[20]

91. However, "Manhattan College will normally not accept credit for off-campus courses to fulfill core or major requirements, or for prerequisite or sequential course requirements."[21]

92. Defendant's transfer credit policy clearly articulates Defendant's position: that online classes are not analogous to Manhattan College classes, because Manhattan College classes are taught face-to-face in person in a classroom setting.

93. Based on this mutual assent, Plaintiff and other members of the Tuition Class fulfilled their end of the bargain when they paid tuition for the Spring 2020 semester, either by paying out of pocket or by using student loan financing, or otherwise.

94. However, the University breached the contract with Plaintiff and other members of the Tuition Class by moving all classes for the Spring 2020 semester to online distance learning platforms, and restricting the on-campus experience without reducing or refunding tuition accordingly.

95. This cause of action does not seek to allege "academic malpractice."

96. Rather, it is clear from the facts and circumstances that Defendant offered a specific product, that being live, in-person, on-campus education, with its featured ancillary and related services.

97. Plaintiff and members of the Tuition Class accepted Defendant's offer for live in-person on-campus education and paid valuable consideration in exchange.

[20] https://turing.manhattan.edu/~loretta.wilkins/images/handbook.pdf.
[21] Id.

98. However, after accepting such consideration from Plaintiff and other members of the Tuition Class, Defendant provided a materially different product, which deprived Plaintiff and other members of the Tuition Class of the benefit of the bargain for which they had already paid.

99. Defendant retained tuition monies paid by Plaintiff and other members of the Tuition Class, without providing them the full benefit of their bargain.

100. Defendant's refusal to offer refunds is in bad faith.

101. Plaintiff and other members of the Tuition Class have suffered damage as a direct and proximate result of Defendant's breach amounting to the difference in the fair market value of the services and access for which they contracted, and the services and access which they actually received.

102. As a direct and proximate result of Defendant's breach, Plaintiff and other members of the Tuition Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include disgorgement of the difference between the fair market value of the online learning provided versus the fair market value of the live, in-person instruction in a physical classroom on a physical campus with all the attendant benefits for which they contracted.

FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT

(Plaintiff and Other Members of the Tuition Class)

103. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

104. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

105. This claim is pled in the alternative to, and to the extent it is determined a contract does not exist or otherwise apply, the contract-based claim set forth in the First Cause of Action

above.

106. Plaintiff and other members of the Tuition Class paid substantial tuition for live, in-person instruction in physical classrooms on a physical campus with all the attendant benefits.

107. Plaintiff and other members of the Tuition Class conferred a benefit on Defendant when they paid this tuition.

108. Defendant has realized this benefit by accepting such payment.

109. However, Plaintiff and other members of the Tuition Class did not receive the full benefit of their bargain.

110. Instead, Plaintiff and other members of the Tuition Class conferred this benefit on Defendant in expectation of receiving one product, *i.e.*, live in-person instruction in a physical classroom along with the on-campus experience of campus life as described more fully above, but they were provided with a materially different product carrying a different fair market value, *i.e.*, online instruction devoid of the on-campus experience, access, and services.

111. Defendant has retained this benefit, even though Defendant has failed to provide the services for which the tuition was collected, making Defendant's retention unjust under the circumstances.

112. As a result of closing campus and moving classes online, Defendant saved significant sums of money in the way of reduced utility costs, reduced maintenance and staffing requirements, reduced or eliminated hours for hourly employees, reduced or eliminated hours for paid work study students, and otherwise.

113. Simply put, it is significantly cheaper to operate a remote, on-line campus than a fully open physical campus. But even if it was not, it is not the product that students were offered and not the product the students expected to receive.

114. Equity and good conscience require that the College return a portion of the monies paid in tuition to Plaintiff and other members of the Tuition Class.

115. This is particularly true where, as here, Defendant is supported by a $107 million endowment, while its students on information and belief, do not have access to such immense financial resources, and further where, on information and belief, a substantial portion of its students have incurred substantial debt to finance an educational experience that they did not receive.

116. At the same time, Defendant received significant aid from the federal government, of which Defendant has indicated that it intends to retain roughly $1.63 million for itself, as opposed to passing it along to students.

117. Defendant should be required to disgorge this unjust enrichment to the extent that Defendant has retained more than the fair market value for the product that Defendant was able to provide.

FOR A THIRD COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT

(Plaintiff and Other Members of the Fees Class)

118. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

119. Plaintiff brings this count on behalf of herself and other members of the Fees Class.

120. In addition to tuition, Defendant charges a number of mandatory fees.

121. In its publications and, particularly on its website, Defendant specifically describes the nature and purpose of each fee.

122. Some fees apply broadly to all or certain groups of students, while other fees are program or course based.

123. Such fees are set forth not only in amount but also in description and purpose through the various academic catalogs and on the website.

124. As such, it is axiomatic that the monies Plaintiff and other members of the Fees Class paid towards these fees were intended by both the students and Defendant to cover the services, access, benefits and programs for which the fees were described and billed.

125. As Defendant admits when discussing facilities on campus, "[u]tilize the facilities on campus…These services are paid for by your student service fees…"[22]

126. According to Defendant, the Comprehensive Fee charged is charged in order to cover the costs of things such as access to the Campus Health Center, student activities and services, athletics, etc.[23]

127. As such, in accepting these terms and paying these fees, a contract was formed between Plaintiff, including the Fees Class, and Defendant, which provided that Plaintiff and other members of the Fees Class would pay these fees for or on behalf of themselves and, in exchange, Defendant would provide or make available the services, access, benefits and/or programs related to the fees, as promised.

128. Plaintiff and other members of the Fees Class fulfilled their end of the bargain when they paid these fees for the Spring 2020 semester, either by paying out of pocket or by using student loan financing, or otherwise.

129. However, Defendant breached the contract with Plaintiff and other members of the Fees Class by moving all classes for the Spring 2020 semester to online distance learning platforms, constructively evicting students from campus, closing most campus buildings and facilities, and cancelling most student activities.

[22] https://turing.manhattan.edu/~loretta.wilkins/images/handbook.pdf.
[23] https://inside.manhattan.edu/academic-resources/study-abroad/Incoming-Exchange-Program.php.

130. By retaining fees paid by Plaintiff and other members of the Fees Class, without providing them the full benefit of their bargain, Defendant has failed to perform its contractual obligations.

131. Defendant's refusal to offer refunds is in bad faith.

132. Plaintiff and other members of the Fees Class have suffered damage as a direct and proximate result of Defendant's breach, namely being deprived of the value of the services, access, benefits and/or programs the fees were intended to cover.

133. As a direct and proximate result of Defendant's breach, Plaintiff and other members of the Fees Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include disgorgement of the pro-rata amount of fees that were collected but for which services were not provided.

FOR A FOURTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT

(Plaintiff and Other Members of the Fees Class)

134. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

135. Plaintiff bring this count on behalf of herself and other members of the Fees Class.

136. This claim is pled in the alternative to, and to the extent it is determined a contract does not exist or otherwise apply, the contract-based claim set forth in the Third Cause of Action above.

137. Defendant has received a benefit at the expense of Plaintiff and other members of the Fees Class to which it is not entitled.

138. Plaintiff and other members of the Fees Class paid substantial student fees for on-

campus services, access, benefits and/or programs and did not receive the full benefit of the bargain.

139. Plaintiff and other members of the Fees Class conferred this benefit on Defendant when they paid the fees.

140. Defendant realized this benefit by accepting such payment.

141. Defendant has retained this benefit, even though Defendant has failed to provide the services, access, benefits and/or programs for which the fees were collected, making Defendant's retention unjust under the circumstances.

142. As a result of closing campus and moving classes online, Defendant saved significant sums of money in the way of reduced utility costs, reduced maintenance and staffing requirements, reduced or eliminated hours for hourly employees, reduced or eliminated hours for paid work study students, and otherwise.

143. Simply put, it is significantly cheaper to operate a remote, on-line campus than a fully open physical campus.

144. Equity and good conscience require that Defendant return a portion of the monies paid in fees to Plaintiff and other members of the Fees Class.

145. This is particularly true where, as here, Defendant is supported by a $107 million endowment, while its students on information and belief, do not have access to such immense financial resources, and further where, on information and belief, a substantial portion of its students have incurred substantial debt to finance an educational experience that they did not receive.

146. At the same time, Defendant received significant aid from the federal government, of which Defendant has indicated that it intends to retain roughly $1.63 million for itself, as

opposed to passing it along to students.

147. Defendant should be required to disgorge this unjust enrichment to the extent that Defendant has retained more than the fair market value for the product that Defendant was able to provide.

FOR A FIFTH COLLECTIVE CAUSE OF ACTION
CONVERSION

(Plaintiff and All Class members)

148. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

149. Plaintiff brings this count on behalf of herself and all members of the other Classes.

150. The two key elements of conversion are (1) Plaintiff's legal ownership or an immediate superior right of possession to a specific identifiable thing, and (2) Defendant's unauthorized dominion over the thing in question or interference with it, to the exclusion of Plaintiff's right.

151. When Plaintiff and Class members paid tuition, fees, and other charges, such payments were made to a specific fund for specific, identifiable services.

152. Such monies were paid to Defendant only for the particular purpose for which the tuition and fees were charged.

153. Plaintiff and members of the Classes have an identifiable legal ownership to the right to such access and services.

154. As set forth above, Defendant has not provided those services or access to the exclusion of Plaintiff's and other members of the Class' rights.

155. Such retention was unauthorized and illegal because Defendant failed to apply the retained funds to the particular purpose for which they were paid.

156. Defendant's continued possession of the full payments for the 2020 Spring semester is adverse and in derogation of Plaintiff's and the other Class members' entitlement to such funds.

157. Defendant refuses to remit Plaintiff's and the other Class members' reimbursement for tuition and fees paid for the 2020 Spring semester.

158. Defendant has therefore converted and continues to convert Plaintiffs' and the other Class members' 2020 Spring semester tuition and fees.

FOR A SEVENTH COLLECTIVE CAUSE OF ACTION
VIOLATIONS OF NY GENERAL BUSINESS LAW § 349, § 350, *ET SEQ.*

(Plaintiff and Other Members of the Tuition Class)

159. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

160. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

161. New York General Business Law § 349 provides for consumer protection by declaring as unlawful "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state . . . ."[24]

162. New York General Business Law § 350 provides that "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is

[24] *See* New York General Business Law § 349.

hereby declared unlawful."[25]

163. Defendant, through its agents, servants, and employees, engaged in unlawful, unfair, deceptive and fraudulent acts and practices in violation of New York General Business Law § 349, § 350, *et. seq.* by engaging in the activities described herein.

164. Defendant is a private college which, among other things, offered in-person, hands-on curriculum to Plaintiff and other members of the Tuition Class.

165. Plaintiff and other members of the Tuition Class are consumers who have paid substantial tuition and fees to attend in-person, hands-on curriculum at Defendant's College for the Spring 2020 semester.

166. Defendant's efforts to sell its services to prospective students, which included Plaintiff and other members of the Tuition Class, were "consumer-oriented."

167. As part of its marketing practices and recruitment efforts, as described above, Defendant made numerous statements, representations and omissions to the public (including Plaintiff and members of the Tuition Class) with respect to the in-person educational opportunity and on-campus experience that students who enrolled at the Defendant would receive. Such statements, representations and omissions, which were uniform and identical in nature, were intended to induce potential students to enroll at the College for the Spring 2020 semester.

168. With the reasonable expectation that students who enrolled at the College would receive in-person academic instruction with an on-campus experience for the entire 2020 Spring semester, Plaintiff and other members of the Tuition Class paid tuition to Defendant.

169. However, students did not receive an in-person academic instruction with on-campus experience, access and services for the entire 2020 Spring semester. As a result, Plaintiff

[25] *See* New York General Business Law § 350.

and other members of the Tuition Class were proximately caused to pay inflated tuition because they were deprived of in-person academic instruction and an on-campus experience, access and services for the Spring 2020 semester.

170. Therefore, the aforementioned statements, representations and omissions made by the University were objectively false, misleading and deceptive to Plaintiff and the other Tuition Class Members, as well as the public at large.

171. Defendant's above-alleged actions constitute unfair business practices since the actions were deceptive and injurious to Plaintiff and other members of the Tuition Class because students enrolled for the Spring 2020 term did not benefit from on-campus academic instruction and a unique on-campus experience during the entire spring term.

172. In fact, Plaintiff and other students were not permitted to receive and benefit from on-campus academic instruction and a unique on-campus experience during the entire Spring 2020 semester.

173. Defendant's acts and practices were designed to lead potential students, and the public, to believe that if students enrolled at the College then they would be entitled to receive in-class instruction and a unique campus experience for the entire Spring 2020 semester.

174. Plaintiff and other members of the other Tuition Class Members were deceived and injured because students did not receive in-class instruction and a unique campus experience for the entire Spring 2020 semester.

FOR AN EIGHTH COLLECTIVE CAUSE OF ACTION
VIOLATIONS OF NY GENERAL BUSINESS LAW § 349, § 350 *ET SEQ.*

(Plaintiff and Other Members of the Fees Class)

175. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

176. Plaintiff brings this count on behalf of herself and other members of the Fees Class.

177. Defendant's actions constitute unlawful, unfair, deceptive and fraudulent practices as defined by New York's Deceptive Acts and Practices Law, NY General Business Law § 349, § 350, *et seq.*

178. Consumer-oriented conduct has been defined as conduct that potentially affects similarly situated consumers.

179. Defendant is a private university which, among other things, offered in-person, hands-on curriculum to Plaintiff and other members of the Fees Class's and its efforts to sell its services to prospective students, which included Plaintiff were "consumer-oriented."

180. Plaintiff and other members of the Fees Class were required to pay certain mandatory fees as a condition to student enrollment at the University for the Spring 2020 semester, including, but not limited to, the Comprehensive Fee.

181. As discussed above, Defendant made statements, representations and omissions to the public, including Plaintiff and other members of the Fees Class, with respect to such fees.

182. These statements, representations and omissions, which were uniform and identical in nature, were intended to induce potential students, including Plaintiff and members of the Fees Class, to enroll at the College and pay or cause to have paid mandatory fees for the Spring 2020 semester.

183. With the reasonable expectation that students who enrolled at the College would be entitled to receive services, programs and/or benefits for which fees were charged for the entire Spring 2020 semester, Plaintiff and other members of the Fees Class agreed to pay such fees.

184. However, students did not receive the services, programs and/or benefits for which fees were charged for the entire Spring 2020 semester. As a result, Plaintiff and other members of

the Fees class were proximately caused to overpay such fees because the related services, programs and/or benefits were not available to students for the entire Spring 2020 semester.

185. Therefore, the aforementioned statements, representations and omissions made by the University were objectively false, misleading and deceptive to Plaintiff and the other Fee Members, as well as the public at large.

186. Defendant's above-alleged actions constitute unfair business practices since the actions were deceptive and injurious to Plaintiff and other members of the Fees Class because students enrolled at the College did not receive services, programs and/or benefits for which fees were paid for the entire Spring 2020 semester.

187. Defendant's acts and practices were designed to lead potential students, and the public, to believe that if students enrolled at the College and paid the mandatory fees then they would be entitled receive the services, programs and/or benefits for which such fees were charged and paid for the entire Spring 2020 semester.

188. Plaintiff and the other Fees Class Members were deceived and injured because students were not entitled to receive the services, programs and/or benefits for which the mandatory fees were charged and paid for the entire Spring 2020 semester.

189. As a result of Defendant's foregoing violations of New York General Business Law § 349, § 350, *et. seq.* Defendants have directly and proximately caused damage to Plaintiff and other members of the Fees Class and are entitled to recover actual damages in an amount to be determined at trial, and an award of reasonable attorney's fees, expenses, costs and disbursements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Classes, prays for judgment in their favor and against Defendant as follows:

A. Certifying the Classes as proposed herein, designating Plaintiff as Class representative, and appointing undersigned counsel as Class Counsel;

B. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this action;

C. Declaring that Defendant has wrongfully kept monies paid for tuition and fees;

D. Requiring that Defendant disgorge amounts wrongfully obtained for tuition and fees;

E. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies paid for tuition and fees;

F. Scheduling a trial by jury in this action;

G. Awarding Plaintiff's reasonable attorney's fees, costs and expenses, as permitted by law;

H. Awarding pre and post-judgment interest on any amounts awarded, as permitted by law; and

I. Awarding such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Dated August 24, 2020,

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