

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION**

SYLVIA JONES and JOHN ELLIS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

- against -

ADMINISTRATORS OF THE TULANE
EDUCATIONAL FUND D/B/A THE TULANE
UNIVERSITY OF LOUISIANA A/K/A TULANE
UNIVERSITY,

Defendant.

Case No. 2:20-cv-02505

**CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs John Ellis and Sylvia Jones (“Plaintiffs”), by and through the undersigned counsel, bring this class action against Defendant Administrators of the Tulane Educational Fund d/b/a The Tulane University of Louisiana a/k/a Tulane University (“Tulane,” the “University,” or “Defendant”), and allege as follows based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of all persons who paid tuition and/or fees to attend the Tulane University for an on-campus, in-person educational experience for the semesters or terms affected by Coronavirus Disease 2019 (“COVID-19”), including the Spring 2020, Summer 2020, and Fall 2020 semesters, only to see their campus shuttered and their classes moved online following the onset of the COVID-19 pandemic in early March 2020.

2. Defendant is a prestigious private university in New Orleans, Louisiana, providing higher education in the arts, sciences, business, engineering, architecture, medicine, law, professional advancement, and social work.

3. On March 11, 2020 Defendant announced via public release that “all classes will be conducted online beginning Monday March 23 through the end of the semester.”¹ “Friday, March 13 is the last day of in-person classes for the semester.”² “Between March 14 and March 22 all uptown, on-campus students should prepare to move out of their residence halls for the remainder of the semester.”³

4. Plaintiffs do not challenge Defendant’s compliance with the Covid-19 orders that were in place in Louisiana or by local governments. Rather, Plaintiffs challenge Defendant’s decision to retain monies paid by students like Plaintiffs and refused to offer any refunds, provide any discounts, or apply any credit to Plaintiffs and Class member accounts when Defendant failed to provide the in-person and on-campus services that were previously bargained for and paid for.

5. For the Spring 2020 semester, Plaintiffs and class members paid all or part of the tuition for an average tuition and fees that was around \$26,380 per semester for undergraduate students.

6. This included thousands of dollars in tuition for each “credit hour” of education (or for a semester of credit hours). By Tulane’s published policy, a “credit hour” is “one academic hour (50 min) of contact time each week . . . for the full academic semester, typically fifteen weeks [l]ong,” plus an additional thirty to forty-five additional “hours of effort outside the classroom,” for graduate students, or fifteen to thirty hours for undergraduate students.

¹ <https://tulane.edu/covid-19/tulane-university-moves-online-instruction-cancels-large-events>

² *Id.*

³ *Id.*

7. Prior to its March 11, 2020 announcement that it would cease in-person instruction, Tulane permitted online education for only some courses in only some schools, and typically charged far less in tuition. For example, for the Spring 2020 semester, Tulane charged undergraduate students in its School of Professional Advancement \$2,199 per credit hour for in-person classes, but only \$476 per credit hour for online classes – almost a 78.5% reduction.

8. For each credit hour in the Spring 2020 semester, students like Plaintiffs received less than half of the promised academic hours of “contact time.”

9. Though Tulane could no longer provide the remaining hours of “contact time” instruction per credit hour, Tulane demanded that students pay the full tuition price.

10. Students like Plaintiffs also received dramatically less than the promised hours of additional “hours of effort outside the classroom” per credit hour.

11. Additionally, students like Plaintiffs paid fees for services and access to facilities and equipment over the full semester. Though Defendant provided these services and facility/equipment access for only part of the semester, and could not provide them for the full semester, Defendant demanded that students pay fees for the entire semester.

12. The Mandatory Fees charges by the University include an academic service fee of \$1,400, an activity fee of \$120, a campus health fee of \$320, a recreation fee of \$180, and other fees associated with specific classes and services.

13. Defendant promoted and marketed these Mandatory Fees as being required in order to provide associated specific services as described below:

- Academic Service Fee – “provides certain academic resources to all Tulane Students. The fee enables students to have access to the University’s computer services, data, voice, and internet hook-ups, including those services provided by all outside vendors. In addition, tutoring and counseling services, on-line library, inter loan services and other support services, such as, the language and

science laboratories are covered by this fee.”⁴

- Campus Health Fee – “provides students with access to primary care, preventive care, and medical referrals at the Health Center. It also contributes to counseling services, mental health coordination, health education programs, drug/alcohol counseling, and Tulane Emergence Medical Services.”⁵
- Student Activity Fee – “entitles students to participate in or attend supported activities, readership of weekly student newspapers and admission to many events, movies, and lectures.”⁶
- Student Recreation Center Fee – “full-time students will be assessed for membership to the Reily Recreation Center.”⁷
- Course Fees – “A student may be charged a laboratory or other supplemental fees per course. These fees are calculated to cover the costs of materials and supplies consumed, and are established by the department faculty offering the course.”⁸

14. Defendant has not refunded any amount of the tuition or any of the Mandatory Fees, even though it implemented online only distance learning starting in or around March 13, 2020.

15. Because of Defendant’s response to the COVID-19 pandemic, on or about March 13, 2020, the University also stopped providing any of the services or facilities the Mandatory Fees were intended to cover.

16. Defendant’s failure to provide the services for which tuition and the Mandatory Fees were intended to cover since approximately March 13, 2020 is a breach of the contracts created between the University and Plaintiffs and the members of the Class.

17. Plaintiffs and the members of the Class have paid for tuition for a first-rate education and an on-campus, in-person educational experiences, including all the benefits offered

⁴ <https://studentaccounts.tulane.edu/content/understanding-your-bill>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

by a first-rate university. Instead, students like Plaintiffs were provided a materially deficient and insufficient alternative, which constitutes a breach of the contracts entered into by Plaintiffs with the University.

18. As to the Mandatory Fees, Plaintiffs and the Class have paid fees for services and facilities which were simply not provided.

19. This failure also constitutes a breach of the contracts entered into by Plaintiffs with the University.

20. Defendant is not entitled, by either contract or equitable principles, to pass the entire cost of its COVID-19 related closure to its students and their families. Plaintiffs and the putative class are entitled to a partial refund of the tuition, fees, and other related payments for in-person educational services, access to facilities, and/or related opportunities for which they paid that Defendant did not provide.

21. Defendant's online course policy and deeply discounted online course tuition reflects the inability of online classes to replicate the full academic opportunities and experiences of in-person instruction. Remote learning options cannot replace the comprehensive educational experience promised by Defendant. Access to facilities, materials, laboratories, faculty, student collaboration, and the opportunity for on campus living, school events, dialogue, feedback and critique are essential to the in-person educational experience.

22. For example, before Tulane's March 11th announcement, all of Plaintiffs' classes were taught as its "credit hour" policy dictates, with "contact time" of instruction and additional hours of "effort outside the classroom." Following Tulane's March 11th announcement in the Spring 2020 semester, instruction for two of Plaintiff Jones' classes were delivered only in a remote, online format. Instruction for two of Plaintiff Jones' classes were no longer delivered at

all – they were instead provided in a self-study format, one with recorded video and one without.

23. Plaintiffs and the putative class contracted and paid for an education, not course credits. They paid for the robust education and full experience of academic life on Defendant's campus; remote online learning was not what Defendants promised to provide Plaintiffs and class members.

24. As a result, Defendant has financially damaged Plaintiffs and the putative class members. Plaintiffs bring this suit because Plaintiffs and the class members did not receive the full value of the services for which they paid. They lost the benefit of their bargain and/or suffered out-of-pocket loss. They are entitled to recover compensatory damages, trebling where permitted, and attorneys' fees and costs.

25. Plaintiffs seek, for themselves and the putative class members, a return of a prorated portion of the tuition, fees and other related costs, proportionate to the diminished value of online classes and the amount of time in the Spring 2020 and following semesters when Defendant ceased in-person classes, campus services and access to campus facilities, continuing through to such time as Defendant reinstates in-person classes.

26. Plaintiffs seek for themselves and Class members protections including injunctive and declaratory relief protecting Class members from paying the full cost of tuition and fees during the pendency of the pandemic in light of the educational services, opportunities, and experiences Defendant can actually safely provide.

PARTIES

27. Plaintiff John Ellis was an undergraduate student during the Spring 2020 semester. For the Spring 2020, Tulane charged Plaintiff approximately \$26,380 in tuition and more than \$1,900 in Mandatory Fees, including an academic service fee of \$1,400, an activity fee of \$120, a

campus health fee of \$320, and a recreation center fee of \$180.

28. Plaintiff Ellis is a resident of Boston, MA.

29. Plaintiff Ellis paid tuition and fees for in-person educational services, experiences, opportunities, and other related collegiate services.

30. Plaintiff Ellis has not been provided a pro-rated refund of the tuition for his in-person classes that were discontinued and moved online, or the Mandatory Fees he paid after the University's facilities were closed and events were cancelled.

31. Plaintiff Sylvia Jones has attended Tulane University since the Fall 2016 semester, seeking a business degree from Tulane's A.B. Freeman School of Business.

32. Plaintiff Jones is a citizen and resident of the State of Louisiana.

33. Plaintiff Jones paid, either directly or through a third party paying on her behalf, \$26,380 in tuition for the 2020 Spring semester and an academic service fee of \$1,400.

34. For the 2020 Fall semester, Plaintiff Jones paid, either directly or through a third party paying on her behalf, \$25,102 in tuition, and academic service fee of \$1287, and an activity fee of \$80.

35. Plaintiff Jones has not been provided a pro-rated refund of the tuition for her in-person classes that were discontinued and moved online, or the Mandatory Fees she paid after the University's facilities were closed and events were cancelled.

36. Defendant Tulane is a private university in New Orleans, Louisiana that was founded in 1847. Defendant offers numerous major fields for undergraduate students, as well as a number of graduate programs.

37. Defendant Tulane is comprised of ten constituent schools. Tulane had a total enrollment of 8,740 undergraduate students and 5,459 graduate students for the 2019-2020

academic year. Tulane reported it had an endowment of \$1.43 billion for the 2019 fiscal year.

38. Defendant was eligible to receive federal stimulus funding under the CARES Act, which provides for approximately \$14 billion for colleges and universities based on enrollment numbers in order to mitigate the financial impact of the COVID-19 crisis on both institutions and students. Tulane applied for CARES Act funding and received approximately \$2.77 million. As of June 5, 2020, Tulane announced that it is distributing this money to some eligible students based on financial need for limited moving, health care, and technology expenses due to COVID-19, but that not every eligible student would receive the estimated average expenses for the disruption of campus operations.

39. Defendant's undergraduate and graduate programs includes students from many, if not all, of the states in the country. Its campus is located in New Orleans. Defendant is a citizen of Louisiana.

JURISDICTION AND VENUE

40. This Court has original jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A), because the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which one or more of the other Class members are citizens of a State different from the Defendant.

41. This Court has personal jurisdiction over Defendant because it resides in this District.

42. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), because Defendant resides in this District and is a resident of the state in which the District is located.

FACTUAL ALLEGATIONS.

43. Plaintiffs and Class members entered into a contract with Defendant whereby, in

exchange for the payment of tuition, fees and other related costs, Defendant would provide an agreed-upon number of classes through in-person instruction and access to physical resources and school facilities such as libraries, laboratories, and classrooms.

44. The terms of the contractual agreement were set forth in publications and documents from the Defendant, including Defendant's website and marketing materials, the application for admissions submitted by Plaintiffs and the Class, the acceptance letters received by Plaintiffs and the Class, registration documents, enrollment materials, the course catalog, course listings, and other documents that conveyed Defendant academic and educational offerings.

45. Plaintiffs accepted Defendant's offer by registering for classes and paying the required tuition and fees.

46. Tuition at the University was approximately \$58,850 per year for undergraduate students, at least \$1,900 in fees, and similar such charges for graduate students.

47. Plaintiffs and the members of the Class paid tuition for the benefit of on-campus live interactive instruction and an on-campus educational experience throughout the semesters.

48. Throughout March 2020, the University made public announcements adjusting educational services and opportunities that affected Plaintiffs.

49. On March 11, 2020, Defendant announced it was canceling all in-person classes and effectively closed its campus. On March 11, 2020, Defendant announced it was canceling all in-person classes and effectively closed its campus.

50. While Defendant's decision to close campus and end in-person classes was warranted by circumstances, it effectively breached or terminated the contract Defendant had with each and every student and tuition provider, who paid for the opportunity to participate fully in the academic life on Defendant's campus.

51. Though all in-person instruction ended on March 13, 2020, some classes were taught in an online format beginning March 23, 2020. Even students with concentrations in areas where in-person instruction is especially crucial (such as music, theatre, and the sciences), Defendant provided either no instruction or only remote, online instruction.

52. As a result of the closure of Defendant's campuses and facilities, Defendant has failed to deliver the educational services, facilities, access and/or opportunities for which Plaintiffs and the putative class contracted and paid, either directly or through a third-party on their behalf.

53. Defendant subsequently decided that in the Fall 2020, it would shorten its classes, no longer providing the agreed-upon "one academic hour (50 min) of contact time" for each credit hour. For example, for the Fall 2020 semester, instead of providing 150 minutes of instruction in its three credit hour courses, Tulane provides only 135 minutes (for classes taught Monday, Wednesday, and Friday) or 140 minutes (for classes taught Tuesday and Thursday).

54. Though Plaintiffs and members of the Class paid Defendant tuition in exchange for a full semester of in-person education, Defendant ceased to provide the in-person education it promised, and thus has failed to uphold its side of the agreement. Nonetheless, Defendant insists that students uphold their side of the agreement, and refuses to refund tuition and related expenses.

55. In so doing, Defendant is attempting to replace the irreplaceable – on-campus life at an elite university – with "virtual learning" via online classes, and is attempting to pass off this substitute educational experience as the same as or just as good as full participation in the University's academic life.

56. Defendant has not held any in-person classes since March 13, 2020 for undergraduate students. All classes since March 13, 2020 have only been offered in a remote online format with no in-person instruction or interaction.

57. Most of the services for which the Mandatory Fees were assessed were also terminated or cancelled at or about this time, such as access to University health and wellness facilities, programs or services; fitness facilities; student events or sports; and an in-person commencement.

58. Defendant has not provided reimbursement or refund information regarding tuition or the Mandatory Fees.

59. Students attending Defendant's Spring 2020, Summer 2020 and Fall 2020 semesters did not choose to attend an online-only institution of higher learning, but instead chose to enroll in the University's in-person educational programs – with the understanding that Defendant would provide in person educational opportunities, services, and experiences.

60. Prior to Plaintiffs' enrollment, Defendant highlighted in marketing materials, advertisements, and other documents that it provided quality in-person educational opportunities, experiences, and services that are invaluable to Plaintiff's educational experience.

61. On its website, Defendant markets its University's on-campus experience and opportunities as a benefit to students. "Because when you choose to study here, you're not just choosing a campus. You're choosing a place to live and work. You're picking a home. That means your education is inextricably tied to the world around you. And vice versa. You might be a grad student in the School of Public Health and Tropical Medicine, learning about water-quality issues by working for New Orleans' sewer and water board. Maybe you'll spend a semester abroad and realize that you can teach city-bound teenagers in the U.S. how to grow their own food."⁹

62. With respect to Campus Life, Defendant advertises on its website that:

- "Tulane's beautiful, tree-lined campus will feel like home in no time. Our students can choose to live in residential colleges with people who share

⁹ <https://tulane.edu/academics/undergraduate-education/why-study-tulane>

their interests, or opt for a more traditional dorm experience. Residence halls and libraries offer quiet places to study but there are many other cozy spots to study or even take a nap between classes.”¹⁰

- “In a city where the temperature rarely goes below 50°F, Tulane students are almost always able to spend their free time active and outdoors. With more than 200 student organizations, including 24 fraternities and sororities and a wide variety of collegiate and intramural athletics teams to take part in, students here have many ways to get involved on campus. The Reily Student Recreation Center, Tulane’s on-campus gym also is a great place to unwind after a long day to go swimming, take an exercise class or run a few laps around the indoor track.”¹¹
- “There are a number of entertaining theatrical performances, concerts and speakers on campus throughout the year. Tulane students are never at a loss for activities, either behind the scenes, onstage or in the audience. The Lavin-Bernick Center for University Life is a focal point for campus life with comfortable study spaces, multiple dining options, a bookstore and other retail shops. It's also the home for student organizations and many of the departments that provide student services.”¹²
- “Our on-campus clinic, pharmacy and counseling staff keep students healthy in mind and body. Primary and preventive healthcare, health promotion programs, and referral coordination are just a few of the services they offer. If at any time you encounter a challenge you're not sure how to handle, Student Resources and Support Services is here for you. Their services include student conduct as well as case management and victim support services.”¹³

63. With respect to residential housing, Defendant advertises on its website that:

- “Housing and Residence Life offers single rooms, double rooms, studios and apartment style housing. Residential Learning Communities give students the ability to live with others who share their interests. These communities are centered around the honors program, social change and entrepreneurship, community service and civic engagement as well as neuroscience and public health.”¹⁴
- “Each residence hall offers a wide variety of amenities for students, some

¹⁰ <https://tulane.edu/life-tulane/campus-life>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ <https://tulane.edu/life-tulane/campus-life/housing-and-dining>

of which are unique to that specific community. Residence halls have common rooms with TVs with streaming cable service, a common areas for studying or hanging out and vending machines for drinks and snacks. All communities offer free laundry facilities and many have classrooms in the building to seamlessly integrate learning into all aspects of life at Tulane.”¹⁵

64. With respect to fitness and health, Defendant advertises on its website that:

- “Tulane creates many opportunities for students to stay fit and healthy. Tulane’s Reily Center is a state-of-the-art recreational facility encompassing 156,000 square feet. It includes an Olympic-sized indoor pool, a 1/9th-mile indoor track; basketball, racquetball, squash, and volleyball courts, as well as a weight room; and studios for aerobics, yoga, and pilates. Tulane’s wellness programs also include personal training sessions, fitness consultations and multiple free group exercise classes.”¹⁶
- “Tulane offers more than 35 popular and unique club and intramural sports for all students. Many students also enjoy walking or jogging through Audubon Park, which is conveniently located across the street from the uptown campus.”¹⁷

65. Defendant further provided students, including Plaintiffs, with materials that reflected the on-campus services, experiences, and opportunities, such as:

¹⁵ *Id.*

¹⁶ <https://tulane.edu/life-tulane/campus-life/fitness-and-health>

¹⁷ *Id.*



tulaneu • Follow
Tulane University



tulaneu #TBTulane to just last week, Dec 9th, when The Commons was successfully invaded by aliens, delicious space-themed foods, and students looking for a welcome break from studying for exams. 🛸👽🚀
@tulanedining

49w



emma_abramson @agoldberg97
you're famous



49w 1 like Reply

— View replies (1)



2,638 likes

DECEMBER 19, 2019

Add a comment...

Post



Tulane's 200+ [student organizations](#) have educational, military, multicultural, performance, pre-professional, political, Greek, media, religious and service focuses that allow students to find organizations that are tailored to what they are most passionate about. These organizations give Tulanians an opportunity to not only meet others who have similar interests, but can help them cultivate new passions that will expand their worldview. With an incredible breadth of student organizations, everyone can find an activity that they will be excited to get involved with.



 **tulaneu** • Follow
Tulane University

 **tulaneu** @tulaneu recently concluded its first all-female glass blowing class! In the 1960's Tulane became one of the first universities in the country to initiate hot glass into the fine arts curriculum. 🧊🔥

49w



   

1,812 likes

DECEMBER 16, 2019

Add a comment... Post



About those classes: There are 1,700 to choose from. We offer more than 70 majors in five different schools, including science and engineering, architecture, business, liberal arts and public health. Can't pick? About a third of the students here double major.

Every single one of our undergraduate students, though, gives back. We were the first research university to require community service in the curriculum. Last year alone, our students logged more than 780,000 hours of civic service in New Orleans. (Service is really at our core: The physicians who formed the college that became Tulane were trying to combat epidemics of yellow fever and cholera that ravaged New Orleans in the 19th century.)



Once you spend some time here, it will become clear how Tulane and New Orleans are connected. Tulanians – that's what we're known as – come from 58 countries and all 50 states.



tulaneu • Follow

tulaneu Did you know that the Maker Space, located in a former campus machine shop on Engineering Road, is open to all Tulane affiliates with a current Tulane ID?

Here is a photos of a 3D print, left, made from polylactic plastic slowly taking shape on Friday morning.

#tulane #makersspace #3dprinting

298 likes
JULY 16, 2018

Add a comment... Post



Undergraduate Education

66. The online learning options being offered to Defendant's students pale in comparison to the on-campus, in-person educational experience Plaintiffs and class members contracted with Defendant to provide. During the online portion of the Spring and Summer 2020 semesters, Tulane used programs by which previously recorded lectures were posted online for students to view on their own or by virtual Zoom meetings. Therefore, there was a lack of classroom interaction among teachers and students, and among students that is instrumental in educational development and instruction.

67. The fact that students paid a higher price for an in-person education than they would

have paid for an online education is illustrated by the vast price difference in Defendant's in-person, on-campus programs versus Defendant's own online learning program.

68. For example, for the Spring 2020 semester, Defendant charged undergraduate students in its School of Professional Advancement \$2,199 per credit hour for in-person classes, but only \$476 per credit hour for online classes – almost a 78.5% reduction.

69. As another example, for the Spring 2020 semester, Defendant charged law students \$2,716 per credit hour for in-person degrees, but only \$1,150 per credit hour for online degrees – almost a 58% reduction.

70. The online formats being used by Defendant do not require memorization or the development of strong study skills given the absence of any possibility of being called on in class and the ability to consult books and other materials when taking exams. Further, the ability to receive a Pass-Fail grade rather than a letter grade provides educational leniency that the students would not otherwise have with the in-person letter grading education that was paid for and expected.

71. The move to online-only classes deprived students of the opportunity to benefit from a wide variety of academic and student events, on-campus entertainment, facilities, and athletic programs, which provided considerable value to Plaintiffs and the Class members.

72. The online learning options Defendant offered for the Spring 2020, Summer 2020, and Fall 2020 semesters, though consistent with safety measures, cannot provide the academic and collegiate experience Defendant extols.

73. Students, like Plaintiffs, have been deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique which they contracted with Defendant to provide.

74. Students, like Plaintiffs, have been denied access to facilities such as libraries, laboratories, computer labs, recitations, and study rooms, integral to a college education which they contracted with Defendant to provide.

75. Students, like Plaintiffs, have been denied access to activities offered by campus life which fosters intellectual and academic development and independence, and networking for future careers which they contracted with Defendant to provide.

76. Defendant priced the tuition and Mandatory Fees based on the in person educational services, resources, opportunities, and experiences it was providing on campus.

77. The University has not made any refund of any portion of the tuition Plaintiffs and the members of the Class paid for the semesters affected by Covid-19.

78. The University has not refunded any portion of the Mandatory Fees it collected from Plaintiffs and the members of the Class for the affected semester even though it closed or ceased operating the services and facilities for which the Mandatory Fees were intended to pay.

79. Plaintiffs and the Class members are therefore entitled to a pro-rated refund of the tuition and Mandatory Fee they paid for the Spring 2020 semester for the remaining days of that semester after classes moved from in-person to online and facilities were closed – as well as any other semesters affected by COVID-19.

80. Defendant's practice of failing to provide reimbursements for tuition and Mandatory Fees despite the diminished value of the education and other experiences that it provided, and the reduced benefits associated with the fees, as alleged herein, violates generally accepted principles of business conduct.

81. Through this lawsuit, Plaintiffs seek for themselves and Class members Defendant's disgorgement of the pro-rated portion of tuition and fees, proportionate to the amount

of time that remained in the Spring 2020 semester when classes moved online and campus services ceased being provided, accounting for the diminished value of educational opportunities, the reduced hours of instruction, as well as for each subsequent semester and continuing until Tulane resumes full in-person classes. Plaintiffs seek return of these amounts on behalf of themselves and the Class as defined below.

82. Plaintiffs also seek damages relating to Defendant's passing off an online, "virtual" college experience as similar in kind to full immersion in the academic life of a college campus.

CLASS ACTION ALLEGATIONS

83. Plaintiffs bring this case individually and, pursuant to FRCP 23, on behalf of the class defined as:

Any person who paid or caused to be paid tuition and/or fees to attend Tulane University when classes and/or coursework were limited in whole or in part to online attendance as a result of or in connection with COVID-19.

84. Specifically excluded from the Class are Defendant, Defendant's officers, directors, trustees and agents, the judge assigned to this action, and any member of the judge's immediate family.

85. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

86. **Numerosity.** The members of the Class are geographically dispersed and are so numerous that individual joinder is impracticable. Upon information and belief, Plaintiffs reasonably estimate that there are thousands of members in the Class. Although the precise number of Class members is unknown to Plaintiff at this time, the true number of Class members is known by Defendant and may be determined through discovery. Class members may be notified of the

pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

87. **Existence and predominance of common questions of law and fact.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- whether Defendant accepted money from Class members in exchange for the promise to provide services;
- whether Defendant provided the services for which Class members contracted;
- whether Class members are entitled to a refund for that portion of the tuition and fees that was contracted for services that Tulane did not provide; and
- whether Tulane is liable to Plaintiffs and the Class for unjust enrichment.

88. **Typicality.** Plaintiffs' claims are typical of the claims of the other members of the Class in that, among other things, all Class members were similarly situated and were comparably injured through Tulane's wrongful conduct as set forth herein. Further, there are no defenses available to Tulane that are unique to Plaintiffs.

89. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel that is highly experienced in complex consumer class action litigation, and Plaintiffs intend to vigorously prosecute this action on behalf of the Class. Furthermore, Plaintiffs have no interests that are antagonistic to those of the Class.

90. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of their claims against Tulane. It would, thus, be virtually impossible for the Class on an

individual basis, to obtain effective redress for the wrongs committed against them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

91. In the alternative, the Class may also be certified because:

- the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the Tulane; and/or
- the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or
- Tulane has acted or refused to act on grounds generally applicable to the Class as a whole, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

92. Plaintiffs also seek class certification for injunctive and declaratory relief under FRCP 23(b)(2) and (b)(3), at the appropriate juncture.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT
(On Behalf of Plaintiffs and the Class)

93. Plaintiffs repeat and re-allege the factual allegations above, as if fully alleged herein.

94. Plaintiffs brings this claim individually and on behalf of the members of the Class.

95. In return for enrollment, registration, and the payment of tuition and fees for each semester, Defendant agreed to, among other things, provide an in-person and on-campus live education as well as the services and facilities to which the Mandatory Fees they paid pertained throughout the semesters.

96. As a result, Plaintiffs and each member of the Class entered into a binding contract with Defendant.

97. Plaintiffs and each member of the Class entered into a contract to attend Tulane when they accepted the school's offer of enrollment after submitting an application for in-person and on-campus educational services and experiences.

98. Plaintiffs and Class Members entered into a contractual agreement with Defendant for the provisions of in-person and on-campus educational services for each semester, Plaintiffs and Class Members viewed the course catalog to make specific course selections prior to registering and paying tuition and Mandatory Fees for those selected courses. Defendant's course catalog constitutes an offer to enter a contractual agreement.

99. The course catalog provided Plaintiffs and Class Members with information regarding the courses offered, the instructor, the days and times during which the courses would be held, and the location in which the courses would be held.

100. In consulting the Course Catalog, Plaintiff understood and believed that every course in which he enrolled was to be taught in-person. Plaintiffs' understanding and belief was based on the course specifying an on-campus location where the course would be taught, as well as that the courses were not listed as hybrid or online on the Course Catalog. Thus, the in-person nature of the course was part of the benefit of the bargain, and Plaintiffs would not have paid as much, if any, tuition and fees for the Spring 2020, Summer 2020, or Fall 2020 semesters at Tulane

had he known that the course would not, in fact, be taught in-person.

101. Defendant has held that its in-person educational opportunities, experiences, and services are of substantial value.

102. Defendant has agreed to provide in-person educational opportunities, experiences, and services to enrolled students.

103. Defendant has promoted its in-person educational services as being valuable to students' educational experiences and their develop.

104. In marketing materials and other documents provided to the Plaintiffs, Defendant promoted the value of the in-person education experiences, opportunities, and services that Defendant provided.

105. Defendant "offered" these educational experiences, opportunities, and services.

106. Defendant provided Plaintiffs with an acceptance letter that the Plaintiffs accepted based on the promise of in-person educational experiences, opportunities, and services that Defendant would provide.

107. Defendant has breached its contracts with Plaintiffs and the Class by failing to provide the promised in-person and on-campus live education as well as the services and facilities to which the Mandatory Fees pertained throughout the semesters affected by Covid-19, yet has retained monies paid by Plaintiff and the Class for a live in-person education and access to these services and facilities during these semesters.

108. Plaintiffs and the members of the putative Class have therefore been denied the benefit of their bargain.

109. Plaintiffs and members of the putative Class have performed all of the obligations on them pursuant to their agreement – including by making such payments or securing student

loans or scholarships to pay for such education.

110. Plaintiffs and the members of the putative Class have suffered damage as a direct and proximate result of the University's breach in the amount of the prorated portion of the tuition and Mandatory Fee they each paid during the portion of time the semesters affected by Covid-19 in which in-person classes were discontinued and facilities were closed by the University.

111. The University should return such portions of the tuition and Mandatory Fee to Plaintiffs and each putative Class Member.

SECOND CLAIM FOR RELIEF
UNJUST ENRICHMENT
(On Behalf of Plaintiffs and the Class)

112. Plaintiffs repeat and re-allege the factual allegations above, as if fully alleged herein.

113. By paying the University tuition and the Mandatory Fees for the Spring, Summer, and Fall 2020 semesters, the University agreed to, among other things, provide an in-person and on-campus live education as well as the services and facilities to which the Mandatory Fees they paid pertained throughout those affected semesters.

114. Defendant has retained the benefits of the amount of tuition and fees that Plaintiffs have provided – without providing the benefits that Plaintiffs are owed.

115. For example, Defendant failed to provide Plaintiffs and Class Members access to any on-campus facility after March 13, 2020. Yet Defendant assessed Plaintiffs with tuition and fees that covered the cost of upkeep and maintenance of such facilities, services, costs, and expenses.

116. Plaintiffs were not able to access such facilities or services remotely.

117. Plaintiffs paid tuition and fees with the expressed understanding that such costs

included the in-person classes, services, opportunities, and experiences that Tulane have previously marketed, promoted, or made available prior to Covid-19.

118. Defendant has been unjustly enriched by Plaintiffs' payment of tuition and fees.

119. Despite not being able to provide such services, Tulane failed to provide reimbursements for tuition and fees despite the diminished value of the education and other experiences that it provided and the reduced benefits associated with the fees.

120. Plaintiffs and members of the putative Classes have sustained monetary damages as a result of each of Defendant's breaches of the covenant of good faith and fair dealing.

121. Defendant's acts were unjust for them to keep money for services they did not render.

THIRD CLAIM FOR RELIEF
CONVERSION & TAKING OF PROPERTY
(On Behalf of Plaintiff and the Class)

122. Plaintiffs repeat and re-allege the factual allegations above, as if fully alleged herein.

123. Plaintiffs have made financial arrangements that required Defendants to make payments before Defendants provided services.

124. Defendants accepted Plaintiffs' monies with the express understanding that the University would provide in-person educational experiences, opportunities, and services.

125. The University was unable to perform such services or provide such experiences and opportunities.

126. Defendant has converted Plaintiffs' property – namely their tuition and fees - into their own property¹⁸ without just compensation.

¹⁸ Indeed, colleges and universities must be able to separately account for student payments, as well as financial aid received on an individual student's behalf, as these institutions are frequently required to issue refunds to the

127. Just compensation would have been the in-person services, opportunities, and experiences that the University has touted, marketed, and advertised as important and essential to the quality of education that Plaintiffs should have received.

128. Just compensation would have been for Defendant to work with its students, like Plaintiffs and the Class, to provide alternatives for future semesters affected by COVID-19 including by offering discounts, credits, continued access to libraries or other facilities, and other equitable remedies.

129. It is inequitable for the University to convert such funds into its own profits despite the failure to provide such services, experiences, and opportunities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that judgment be entered in favor of Plaintiffs and the Class against Defendant as follows:

- (a) For an order certifying the Class under the FRCP and naming Plaintiffs as representative of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class;
- (b) For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- (c) For compensatory damages in an amount to be determined by the trier of fact;
- (d) For an order compelling disgorgement of the ill-gotten gains derived by

government and the student for instances where the student enrolls, but does not complete classes for which the institution has received financial aid payments from the federal government. The Higher Education Act ("HEA"), Title IV, governs federally funded student financial aid programs for college and post-secondary vocational training. *See* 20 U.S.C. §§ 1070–1099 (1990 & 1992 Supp.). The HEA requires that when a student withdraws partway through the enrollment period, the institution must refund a certain portion of the charges to account for its reduced educational obligations toward the student. *Career Coll. Ass'n v. Riley*, 74 F.3d 1265, 1269 (D.C. Cir. 1996). Thus, it is beyond dispute that any college or university receiving any tuition payments through government-provided financial aid must be able to account for what was paid for each individual student. This means that each student's tuition funds must be capable of being separately identified and sequestered, and a claim for conversion of those funds can be properly sustained. Moreover, discovery will flesh out more information about the particular accounting practices employed by Defendant.

Defendant from its misconduct;

- (e) For an order of restitution and all other forms of equitable monetary relief;
- (f) For an order awarding Plaintiffs' reasonable attorneys' fees, costs, and expenses;
- (g) For an order awarding pre- and post-judgment interest on any amounts awarded; and
- (h) For an order awarding such other and further relief as may be just and proper, including injunctive relief and declaratory relief.

DEMAND FOR TRIAL BY JURY

Plaintiffs demands a trial by jury of any and all issues in this action so triable of right.

Dated: December 21, 2020

Respectfully submitted,

s/ James A. Francis _____

James A. Francis*

John Soumilas*

David A. Searles*

Edward H. Skipton*

FRANCIS MAILMAN SOUMILAS, P.C.

1600 Market Street, Suite 2510

Philadelphia, PA 19103

T: (215) 735-8600

F: (215) 940-8000

jfrancis@consumerlawfirm.com

jsoumilas@consumerlawfirm.com

dsearles@consumerlawfirm.com

eskipton@consumerlawfirm.com

Richard C. Dalton, Esq.

Texas Bar No. 24033539

Louisiana Bar No. 23017

California Bar No. 268598

P.O. Box 358

Carencro, Louisiana 70520-0358

rick@rickdaltonlaw.com

Tel: (337) 371-0375

David A. Szwak, LBR#21157, T.A.**
BODENHEIMER, JONES & SZWAK, LLC
416 Travis Street, Ste. 800
Mid South Tower
Shreveport, Louisiana 71101
[318] 424-1400
FAX 221-6555

** Admitted in this District since 1991.

Jeffrey K. Brown, Esq. (*To apply Pro Hac Vice*)
Michael A. Tompkins, Esq. *
Brett R. Cohen, Esq.*
LEEDS BROWN LAW, P.C.
One Old Country Road, Suite 347
Carle Place, NY 11514
(516) 873-9550
jbrown@leedsbrownlaw.com
mtompkins@leedsbrownlaw.com
bcohen@leedsbrownlaw.com

Jason P. Sultzer, Esq. (*To apply Pro Hac Vice*)
Jeremy Francis, Esq. (*To apply Pro Hac Vice*)
THE SULTZER LAW GROUP, P.C.
270 Madison Avenue, Suite 1800
New York, NY 10016
Telephone: (212) 969-7810
sultzerj@thesultzerlawgroup.com
francisj@thesultzerlawgroup.com

Yvette Golan*
THE GOLAN FIRM
2000 M Street, NW, Suite #750-A
Washington, D.C. 20036
T: (866) 298-4150
F: (928) 441-8250
ygolan@tgfirm.com

*Admitted *Pro hac vice*

Counsel for Plaintiffs and Proposed Class