

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ASHA SMITH and EMMA)	
NEDLEY, individually and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	CASE No. 2:20-CV-02086-TJS
)	
v.)	COMPLAINT – CLASS ACTION
)	
UNIVERSITY OF)	
PENNSYLVANIA,)	
)	
Defendant.)	
)	

CONSOLIDATED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Asha Smith and Emma Nedley (collectively “Plaintiffs”) by and through undersigned counsel, bring this action against University of Pennsylvania (“Defendant” or the “University” or “Penn”) on behalf of themselves and all others similarly situated, and make the following allegations based upon information, attorney investigation and belief, and upon Plaintiffs’ own knowledge:

PRELIMINARY STATEMENT

1. Plaintiffs bring this case as a result of Defendant’s decision not to issue appropriate refunds for the Spring 2020 semester after canceling in-person classes and changing 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 Plaintiffs and the 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 were paid in exchange for services that Defendant failed to provide during the Spring 2020 semester, or has provided inadequate and/or arbitrary reimbursement that does not fully compensate Plaintiffs and members of the Classes for their loss.

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

PARTIES

5. Defendant University of Pennsylvania is an institution of higher learning located in Philadelphia, Pennsylvania.

6. The University of Pennsylvania is a private research, Ivy League university founded in 1740.

7. Upon information and belief, Defendant has an estimated endowment of approximately \$14.7 billion.¹

8. Although eligible for federal aid under the CARES Act (the purpose of which is to assist financially vulnerable students), Defendant has refused to apply for such aid, announcing that it is financially capable of meeting student needs without such funding:²

Although Penn is declining to apply for these particular federal funds, our commitment to providing financial aid and support to students in need is unwavering, and we will continue to do all that we can to ensure the educational success of all Penn students.

9. Plaintiff Asha Smith is an individual and a resident and citizen of the Commonwealth of Pennsylvania.

10. Plaintiff Emma Nedley is an individual and a resident and citizen of the

¹ <https://www.investments.upenn.edu/about-us>

² <https://penntoday.upenn.edu/announcements/penn-will-not-apply-cares-act-funding>

Commonwealth of Pennsylvania.

11. During the Spring 2020 semester, Plaintiffs were enrolled as full-time students in Defendant's undergraduate program.

JURISDICTION AND VENUE

12. Plaintiffs incorporate by reference all preceding allegations as though fully set forth 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 Pennsylvania and has sufficient minimum contacts with Pennsylvania.

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, where Defendant is primarily located.

BACKGROUND FACTS

16. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

17. Plaintiffs were enrolled as full-time students for the Spring 2020 academic semester at Defendant's institution.

18. As a precondition for enrollment, Plaintiffs were 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. Defendant is not such a school.

21. Rather, a significant focus of Defendant's efforts to obtain and recruit students pertains to the on-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 University sells on-campus instruction, the on-campus experience, and the City of Philadelphia as key reasons that a student should choose to attend Penn. This is true across Defendant's schools, the degrees it offers, and its disciplines.

22. Plaintiffs 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 to enroll in the on-campus program and educational experience.

23. 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:

- Face-to-face interaction with professors, mentors, and peers;
- Access to facilities such as computer labs, study rooms, laboratories, libraries, etc.;
- Student governance and student unions;

- Extra-curricular activities, groups, intramural sports, etc.;
- Student art, cultures, and other activities;
- Exposure to community members of diverse backgrounds, cultures, and schools of thought;
- Social development and independence;
- Hands-on learning and experimentation; and
- Networking and mentorship opportunities.

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

25. When this happened, Plaintiffs were forced from campus and deprived of the benefit of the bargain for which they had paid, and in exchange for which Defendant had accepted, tuition as set forth more fully above.

26. In addition to tuition, Defendant charges certain mandatory fees, including but not limited to a mandatory "general fee," a technology fee and a clinical fee.

27. These mandatory fees totaled approximately \$3,307 for the Spring 2020 semester.³

28. Defendant describes the general fee as supporting "a variety of student related activities, services, and spaces."⁴

29. However, a majority of these activities and services were not provided for the latter half of the Spring 2020 semester, and most on-campus spaces were and remain closed.

30. By way of example, while not an exhaustive list, the following campus services were closed during the Spring 2020 semester: Hospitality Services; Morris Arboretum; Off-

³ <https://srfs.upenn.edu/costs-budgeting/undergraduate-tuition-and-fees>

⁴ <https://srfs.upenn.edu/costs-budgeting/undergraduate-tuition-and-fees>

Campus Services; Penn Bookstore; Penn Children’s Center; University Ice Rink; all on campus libraries; all student activities; student centers, and generally all other activities, services, and spaces not considered “life sustaining” to the University.⁵

31. As a result of being instructed to stay off campus for the latter portion of the Spring 2020 semester, Plaintiffs and members of the Fees Class lost the benefit of the services for which the fees had been paid. For example, Plaintiffs and the Class could not access the computer labs or recreational facilities; could not participate in student activities and events; and were not able to seek basic on-campus health and treatment services.

32. In addition to the broad-based mandatory fees described above, Defendant charges a myriad of other program or course specific fees.

33. Plaintiffs and members of the Fees Class were required to and did pay all mandatory fees associated with their Spring 2020 enrollment.

34. In short, as to tuition, Plaintiffs and the members of the Tuition Class have paid tuition for a first-rate education and educational experience, with all the appurtenant benefits offered by a first- rate university, and were provided a materially deficient and insufficient alternative, which constitutes a breach of the contracts entered into by Plaintiffs and the Class with the University.

35. As to fees, Plaintiffs and members of the Fees Class have paid fees in exchange for certain identifiable services, amenities, access, and activities, none of which were provided during the second half of the Spring 2020 semester.

36. As said in New York Magazine, “*Universities are still in a period of consensual*

⁵ See, e.g., <https://coronavirus.upenn.edu/students-families/student-faq> ; <https://coronavirus.upenn.edu/faculty-staff/march15-message-from-libraries> ; <https://coronavirus.upenn.edu/content/march-20-2020-message-penn-faculty-and-staff-regarding-university-operations>.

hallucination with each saying, ‘We’re going to maintain these prices for what has become, overnight, a dramatically less compelling product offering.’”⁶

FACTUAL ALLEGATIONS

37. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

38. Upon information and belief, Defendant’s Spring term began with the first day of classes on or about January 15, 2020.⁷

39. Upon information and belief, Defendant’s Spring term was scheduled to conclude with the last day of examinations on or about May 12, 2020, with commencement ceremonies to be held on May 18, 2020.⁸

40. Accordingly, Defendant’s Spring semester was scheduled and contracted to consist of approximately 119 days.

41. As a result of the COVID-19 pandemic, Defendant announced that it was moving all classes online for the remainder of the semester, starting on or about March 23, 2020. Defendant asked all students living on campus to vacate their dormitories by March 17, 2020.⁹

42. Almost immediately, students began demanding refunds for the fees and charges demanded in this action.

43. As early as March 24, the students at Defendant's institution started a change.org petition, which, at the current time, has over 1,300 signatures.¹⁰

⁶ James D. Walsh, “The Coming Disruption,” New York Magazine, May 11, 2020, available at https://nymag.com/intelligencer/2020/05/scott-galloway-future-of-college.html?utm_source=fb.

⁷ <https://almanac.upenn.edu/penn-academic-calendar>

⁸ Id.

⁹ <https://coronavirus.upenn.edu/students/email-march-15>

¹⁰ <https://www.change.org/p/amy-gutmann-upenn-petition-to-reduce-forgive-rebate-spring-2020-tuition-due-to-covid-19>

44. Many of these students have detailed how the school's actions have personally affected them:



45. Although Defendant continued to offer some level of academic instruction via online classes, Plaintiffs 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.

46. At the same time, Defendant was able to drastically reduce costs 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.

47. Students, meanwhile, have not had their costs cut during the pandemic. On the contrary, the University continued to charge students full tuition and fees—even as students suffered from the pandemic, the loss of housing, on-campus jobs and internships, and the full academic and extra-curricular on-campus college experience (much of which was supposed to be funded by mandatory fees) for which they contracted with Defendant.

48. These realities notwithstanding, Defendant has refused and continues to refuse to offer any refund whatsoever with respect to the tuition that had already been pre-paid for the Spring 2020 semester.

49. Likewise, Plaintiffs and members of the proposed Fees Class were deprived of utilizing services for which they had already paid, such as access to campus facilities, student activities, health services and other opportunities.

50. The University's President admitted in a message to students on March 17, 2020 that Defendant was no longer providing many of the services for which Plaintiffs and the members of the Fees Class contracted. The University also acknowledged that its students have suffered losses as a result:¹¹

March 17, 2020 - **A Personal Message from Amy Gutmann**

- To each and every one of our students—Penn undergraduate, graduate, professional, and nontraditional students—I know you are deeply concerned and uncertain about what comes next, and I share those feelings with you. You have goals and dreams left undone, plays not being performed, games and meets not taking place, research interrupted, spontaneous late-night conversations not occurring, and a thousand other losses both large and small that we all mourn. It hurts to have so much changed so quickly.

51. Nonetheless, Defendant has refused and continues to refuse to offer any refund whatsoever with respect to the fees that had already been pre-paid for the Spring 2020 semester.

¹¹ <https://coronavirus.upenn.edu/content/march-17-personal-message-amy-gutmann>

52. Defendant's refusal to refund tuition and fees for the Spring 2020 semester stands in stark contrast to their announcements regarding the upcoming Fall semester.

53. Although Defendant has refused and continues to refuse to reduce or refund tuition and fees for Spring semester students, Defendant has announced that students expecting to take Fall classes in person (who will now be forced to take them online) will be given a 3.9% discount on tuition and a 10% discount on mandatory fees.¹²

54. Upon information and belief, the only difference between Defendant's decision to discount online classes for the Fall and not discount online classes for the Spring is that Defendant has already collected tuition and fees for the Spring Semester and the Spring Semester students have no recourse, whereas Defendant has not yet collected tuition and fees for the Fall term (and/or such students may still withdraw without penalty) and Defendant knows many students will not agree to pay full price tuition and fees for online classes during the upcoming term.

CLASS ACTION ALLEGATIONS

55. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

56. Plaintiffs bring this action on behalf of themselves 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 University 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.

¹² <https://www.nbcphiladelphia.com/news/coronavirus/covid-on-campus/penn-tells-students-to-stay-home-amid-coronavirus-offers-tuition-cuts/2498291/>

The Fees Class:

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

57. Excluded from the Classes are The Board of Trustees of University of Pennsylvania (or other similar governing body) 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. Plaintiffs reserve the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

58. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs 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.

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

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

60. The members of the Classes are so numerous and geographically dispersed that individual joinder of all members is impracticable. Plaintiffs are informed and believe 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)

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

- i. Whether Defendant engaged in the conduct alleged herein;

- ii. Whether there is a reduction in benefit when comparing enrollment in an online distance learning program to enrollment in a live, on-campus instructional program;
- iii. Whether Defendant breached its contracts with Plaintiffs and the other members of the Tuition Class by retaining the portion of their tuition representing the reduction of benefits provided through online distance learning as compared to on-campus, in-person enrollment;
- iv. Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiffs and the Tuition Class representing the reduction of benefits provided through online distance learning as compared to on-campus, in-person enrollment;
- v. Whether Defendant breached its contracts with Plaintiffs 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;
- vi. Whether Defendant was unjustly enriched by retaining fees of Plaintiffs and the other members of the Fees Class without providing the services, benefits and/or programs the fees were intended to cover;
- vii. Whether certification of any or all of the classes proposed herein is appropriate under Fed. R. Civ. P. 23;
- viii. Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
- ix. The amount and nature of relief to be awarded to Plaintiffs and the other members of the Classes.

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

62. 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)

63. Plaintiffs are adequate representatives for the Classes because their interests do not conflict with the interests of other members of the Classes she seeks to represent. Plaintiffs have retained counsel competent and experienced in complex litigation and Plaintiffs intend to prosecute the action vigorously. The interests of the Classes will be fairly and adequately protected by Plaintiffs and their counsel.

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

64. 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 Plaintiffs 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.

65. 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)

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

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

67. Defendant has acted or refused to act on grounds generally applicable to Plaintiffs 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**

(Plaintiffs and Other Members of the Tuition Class)

68. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

69. Plaintiffs bring this count on behalf of themselves and other members of the Tuition Class.

70. Plaintiffs and the other members of the Tuition Class entered into contracts with Defendant which provided that Plaintiffs 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.

71. The terms of this contract are as implied or set forth by Defendant through its website, academic catalogs, student handbooks, marketing materials and other circulars, bulletins,

and publications.

72. 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.

73. One such right is the ability to be physically present on campus, and fully enjoy the facilities, services, and opportunities provided thereon.

74. This is so axiomatic and engrained into the culture of higher education generally and Penn specifically that it is enshrined within Defendant's various mission and vision statements.

75. For example, President of Penn, Amy Gutmann's far-reaching vision for the University builds on the Penn Compact, which she launched at her inauguration in 2004. Subsequent Penn Compacts outline President Gutmann's manifold strategy for making Penn the most inclusive, innovative, and impactful university in the nation.

INCLUSION

Increasing diversity, expanding financial aid, and offering free online classes to the public are three of the many ways Penn nurtures an inclusive learning environment.

INNOVATION

Penn's culture of innovation, entrepreneurship, and interdisciplinary collaboration generates discoveries and applies them to pressing social needs.

IMPACT

Faculty and students leverage Penn's distinctive intellectual resources to promote progress and prosperity in our local, national, and global communities.

76. As another example, Defendant's Facilities & Real Estate Services' as stewards of Penn's physical environment, "strives to provide innovative and cost-effective solutions that embrace our rich past and enhance the quality of the University's living and learning experience." Under the direction of the Vice President, this division provides the, "expertise, business processes,

policies and standards required to plan, design, construct, operate, maintain and renew the physical assets of the University.¹³

77. In a Message from President Amy Gutmann on Defendant's About webpage, she states that, "[U]Penn has a proud tradition of translating knowledge into social-minded action that dates back to our founder Benjamin Franklin. This tradition of active pragmatism, articulated in Franklin's maxim "well-done is better than well-said," lives today through the inclusive policies, innovative work, and impactful engagement of our faculty, students, and staff."¹⁴

78. President Gutmann goes on to describe how their mission of inclusion, innovation, and impact connect their faculty, students, and staff.¹⁵

Inclusion

Scholarship and Learning: Academic life at Penn is unparalleled, with 100 countries and every U.S. state. Consistently ranked among the top 10 universities in the country, Penn enrolls 10,000 undergraduate students and welcomes an additional 10,000-plus students to our world-renowned graduate and professional schools.

Penn's award-winning educators and scholars encourage students to pursue inquiry and discovery, follow their passions, and address the world's most challenging problems through an interdisciplinary approach.

Access and Affordability: Financial need is not a barrier to a Penn education. Penn admits undergraduate students without regard to need, and offers all-grant financial aid packages, substituting grants for loans. Since 2004, the University has awarded \$2 billion in undergraduate aid to more than 22,000 students. Forty-six percent of undergraduate students received grant-based financial aid in 2018-19, with an average package of \$54,301.

Dynamic and Diverse Community: Penn is committed to creating a community of students, scholars, and staff that reflects the diversity of the world we live in. Toward this end, the University established its Action Plan for Faculty Diversity and Excellence in 2011, which has led to, in 2019, a 46 percent increase in underrepresented faculty and a 22 percent increase in female faculty.

Nearly half of Penn's undergraduates self-identify as students of color, more than half are women, 13 percent are among the first in their families to attend college, and 13 percent are international. The spectrum of valuable perspectives and ensuing dialogue are key contributors to educational excellence and an inclusive, dynamic campus environment.

¹³ <https://www.facilities.upenn.edu/about/mission>

¹⁴ <https://www.upenn.edu/about/welcome>

¹⁵ Id.

Innovation

Integrated Knowledge: Solving today's complex problems requires knowledge that crosses traditional boundaries. True to our roots, Penn encourages both intellectual and practical pursuits, and has attracted some of the most eminent interdisciplinary scholars and teachers working today through our **Penn Integrates Knowledge** program.

\$1 billion

Research budget

Research Discovery: Penn is one of the world's most powerful research and teaching institutions, with a research budget of nearly \$1 billion and more than 4,000 active faculty members. The scale and interdisciplinary character of research and teaching sets Penn apart, and our highly ranked Perelman School of Medicine is one of the top recipients of NIH funding in the country.

Impact

Beautiful Urban Campus: Expansive college greens and recreational spaces. Landmark architecture. Twelve schools connected on a single campus. Penn's geographical unity is unique among Ivy League schools, fostering our integrated approach to education, scholarship, and research.

Since 2006, Penn's campus master plan, Penn Connects, has added 6 million square feet of new construction, and reinvested in 2.7 million square feet of renovated space while also adding more than 30 acres of new open space. These capital achievements represent a combined public and private investment of \$3.8 billion. Penn Connects 3.0 will add an additional 3 million square feet of space to campus.

Community Engagement: At Penn, civic engagement is an integral part of campus life. Situated near the heart of Philadelphia, the first World Heritage City in the U.S., Penn is a national leader in academically based community service through our **Netter Center for Community Partnerships**. Penn continues to deepen its longstanding commitment to the local community in numerous ways, with 13,000 University students, faculty, and staff participating in more than 300 volunteer and community service projects each year.

Thank you for visiting our home on the web. I invite you to explore the people and programs of Penn.

79. 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.

80. Through these publications, Defendant markets to and enrolls students in a distinctly on-campus, in-person educational experience.

81. 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.

82. When students and visitors enter the “Life at Penn” page on Defendant’s main website (<https://www.upenn.edu/life-at-penn>), they are greeted with a full screen video of aerial campus views and surrounding views of Philadelphia. Visitors are then greeted with the words, “Take a stroll down Locust Walk, sit and chat with Ben on the Bench, cheer on the Quakers, and become a part of Penn’s many unique and historic traditions.”¹⁶

83. Students and visitors are then greeted with the following “campus life” promises, among others:

Housing & Dining: With a multitude of housing and dining options both on and off-campus, all members of the University community can find the accommodations that make Penn feel like home.

Groups & Organizations: Participate in social, political, artistic, and multicultural activities that put learning into practice.

Arts & Culture: From the one-of-a-kind museums on campus to accomplished student performances in music, dance, and theater, culture and the arts play a leading role in life at Penn.

Athletics & Recreation: A proud member of the Ivy League, Penn offers many unique and exciting opportunities for students, faculty, and staff to cheer on the mighty Quakers, participate in competitive team sports, and stay physically fit at state-of-the-art, world-class training centers. Penn Athletics provides intercollegiate and recreational opportunities that enrich the Penn student experience, and makes athletic facilities and activities available to the entire campus community.¹⁷

84. Students and visitors can also visit <https://admissions.upenn.edu/living-experience> where they are greeted with the words, “The Living Experience” and “Discover a New World—

¹⁶ <https://www.upenn.edu/life-at-penn>

¹⁷ *Id.*

or Shape One.”¹⁸

85. On the above-mentioned webpage, Defendant states the following:

You will find a way, or you will find like 400 of them.

There are many clubs, organizations, and activities on campus. Take our word for it that there are enough academic, cultural, environmental, performing arts, religious, media, and social opportunities for you to get involved with. You will also live and learn in the vibrant city of Philadelphia where diverse people and a saturation of experiences come together. Ideas are born in cities like Philadelphia.¹⁹

86. Visitors are then able to click on specific student names to read their stories and learn more about how they created their own path based on their interests, and how Penn made that possible.²⁰

87. Students and visitors seeking further information about the University can connect to Defendant through its numerous official social media accounts.

88. Students and visitors seeking more information about the University are also invited to “spend time on campus and see the many ways [Penn’s] diverse community brings excitement and discovery to Penn’s stately buildings and state-of-the-art facilities”²¹ further illustrating that by being physically present on Defendant’s campus, visitors can get a feel for the college experience Defendant intends to provide its students.

89. Since COVID-19, Defendant is now holding virtual visits for potential new students. On its webpage, <https://admissions.upenn.edu/admissions-and-financial-aid/visit-penn>, Defendant concedes that, “visiting campus is a huge part of the college search process.”²²

90. Upon information and belief, there were no references or disclaimers in any of

¹⁸ <https://admissions.upenn.edu/living-experience>

¹⁹ Id.

²⁰ Id.

²¹ <https://www.upenn.edu/highlights/visitors>

²² <https://admissions.upenn.edu/admissions-and-financial-aid/visit-penn>

Defendant's websites, circulars, bulletins, publications, brochures, or other advertisements that even referenced the possibility of in-person classes being changed to fully online classes for any reason whatsoever after the start of a given term.

91. 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. This is evident from the fact that the University had to hurriedly and ineffectively scramble to make the switch.

92. Based upon these advertisements and other promises and inducements made by Defendant, those prospective students who were interested in enrolling at the University after consuming the marketing materials described above were invited to complete applications, and some were selected for and offered admission.

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

94. Initially, the student will receive an official offer letter from the Dean of Admissions on behalf of the President and Trustees of the University of Pennsylvania. For example, at least one version of Defendant's letter read, "Your application reflected your extraordinary potential, and you are now poised to magnify that potential at Penn. Our eminent faculty, who are deeply committed to undergraduate education, stand ready to guide your own exploration across the curriculum. Our alumni, who feel an unshakable gratitude for all that Penn has contributed to their lives, hearts and minds, are eager to introduce you to Penn's rich, historic tradition of innovation and impact."

95. Further, the letter states "I look forward to our encounters on Locust Walk in the coming years, but in the meantime, I send my sincere well-wishes and deep gratitude for your application. Welcome to Penn!"

96. Accepting an offer of admission is the first step to officially joining the Penn community.

97. According to Defendant’s Early Decision webpage, “Penn’s Early Decision program is binding, meaning that if you are admitted, you are obligated to accept our offer of admission.”²³

98. Accepted students, and their families, are invited to “spend time on Penn’s historic and vibrant campus in Philadelphia.” Defendant “offer[s] a variety of ways for prospective undergraduate students to get to know [the] dynamic community.”²⁴

99. In fact, prospective students are encouraged to attend an information session and a campus tour for an introduction to Defendant’s campus. To dive deeper, prospective students can attend a class or a school-specific information session or enjoy lunch with an undergraduate student upon advanced registration.²⁵

100. These information sessions and campus tours are led by Admissions Officers or current Penn students in the Kite and Key Society,²⁶ who offer an overview of Penn and what their campus has to offer. According to Defendant’s website, they are the “best source of information about the undergraduate student experience.”²⁷

101. Admitted students are invited to attend New Student Orientation (NSO), hosted on Defendant’s campus, which is a series of activities for undergraduate students and families designed to help with a successful transition to the Defendant’s campus.²⁸ On this website, students

²³ <https://admissions.upenn.edu/admissions-and-financial-aid/preparing-for-admission/freshman-admission/early-decision-and-regular>

²⁴ <https://web.archive.org/web/20191217182429/https://admissions.upenn.edu/admissions-and-financial-aid/visit-penn>

²⁵ *Id.*

²⁶ Penn’s largest and oldest service organization.

²⁷ *Id.*

²⁸ <https://web.archive.org/web/20200310195620/https://www.nso.upenn.edu/>

can learn “about all the exciting academic, cultural, and social events that will be taking place once you arrive on campus.”²⁹

102. Once students make it through orientation (and for returning students), it comes time to register for classes. This is another area where Defendant specifically emphasizes the in-person nature of its educational experience, while drawing a distinction between the few online classes and programs that it does offer.

103. The University Catalog provides information for current and prospective students about all of Penn’s undergraduate, PhD, and research master’s programs as well as academic policies and resources. The Catalog also provides a listing, by subject, of course offerings across the campus at all levels of education.³⁰

104. On Defendant’s Online Learning Course & Program Listing website, each of Defendant’s online courses and programs are listed with their respective length, cost, credits/credentials, time commitment, and location (which is online).³¹

105. Each of Defendant’s in-person academic programs is listed separately on the University’s Academics website and Course Search page which can be found at <https://catalog.upenn.edu/course-search/>.

106. Online programs are priced differently than Defendant’s undergraduate tuition, with the online programs offered at a higher discount from their on-campus equivalent.

107. When students log on to their PennIn Touch³² account 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.

²⁹ Id.

³⁰ <https://www.upenn.edu/programs>

³¹ <https://platform.onlinelearning.upenn.edu>

³² https://portal.apps.upenn.edu/penn_portal/intouch/splash.html

108. 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.

109. 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.

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

111. Each day for the weeks and months leading up to announced campus closures, students attended physical classrooms to receive in-person instruction, and Defendant provided such in-person instruction.

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

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

114. 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.

115. It is also clear that Defendant recognized and treated online enrollment vs. on-campus enrollment as two separate and distinct products.

116. In addition to maintaining separate websites and charging differing tuition prices,

Defendant published a separate course catalog for its limited online courses.

117. Based on this mutual assent, Plaintiffs 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.

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

119. This cause of action does not seek to allege “academic malpractice.”

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

121. Plaintiffs and members of the Tuition Class accepted Defendant’s offer for live in-person on-campus education and paid valuable consideration in exchange.

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

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

124. Plaintiffs 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.

125. Defendant's refusal to appropriately pro-rate and refund the tuition is in bad faith.

126. As a direct and proximate result of Defendant's breach, Plaintiffs 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**

(Plaintiffs and Other Members of the Tuition Class)

127. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

128. Plaintiffs brings this count on behalf of themselves and other members of the Tuition Class.

129. 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.

130. Plaintiffs 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.

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

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

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

134. Instead, Plaintiffs 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.

135. 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.

136. 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.

137. 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.

138. Equity and good conscience require that the University return a portion of the monies paid in tuition to Plaintiffs and other members of the Tuition Class.

139. This is particularly true where, as here, Defendant is supported by a \$14.7 billion 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.

140. At the same time, Defendant rejected federal aid that was made available for the

purpose of supporting students.

141. 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**

(Plaintiffs and Other Members of the Fees Class)

142. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

143. Plaintiffs bring this count on behalf of themselves and other members of the Fees Class.

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

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

146. As such, it is axiomatic that the monies Plaintiffs and other members of the Fees Class paid towards this fee were intended by both the students and Defendant to cover the services for which the fee was described and billed.

147. By way of example, Defendant describes its “General Fee” as follows:

A General Fee is assessed to all undergraduate, graduate, and professional students, and directly funds Penn’s non-instructional student support services. The General Fee for full-time students provides them with full access to a wide variety of services and resources, including counseling and wellness, multicultural resource centers, student activities, recreation and fitness, career services, learning support, and much more.³³

148. Defendant describes its “Technology Fee” as follows:

The Technology Fee is used to cover a broad group of technology-driven services,

³³ <https://srfp.upenn.edu/costs-budgeting/undergraduate-tuition-and-fees>

including online learning resources, data and network security, technology support, email services and support, technology-enabled spaces, provided software, electronic research tools, and other related costs.³⁴

149. Defendant describes its “Clinical Fee” as follows:

This mandatory fee is assessed to all students and supports Penn Wellness services, including Campus Health, Counseling and Psychological Services, the Student Health Service, and the Office of Alcohol and Other Drug Programs.³⁵

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

151. It is undisputed that Defendant did not provide student activities, on-campus computer or lab facilities, access to recreational facilities, access to campus events, any student activities, or any student health and treatment services for a portion of the Spring 2020 semester.

152. Plaintiffs 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.

153. However, Defendant breached the contract with Plaintiffs 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.

154. By retaining fees paid by Plaintiffs and other members of the Fees Class, without providing them the full benefit of their bargain, Defendant has not performed its contractual

³⁴ Id.

³⁵ Id.

obligations.

155. Defendant's refusal to appropriately pro-rate and refund the fees is in bad faith.

156. Plaintiffs 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 benefits, services and/or programs the fees were intended to cover.

157. As a direct and proximate result of Defendant's breach, Plaintiffs 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**

(Plaintiffs and Other Members of the Fees Class)

158. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

159. Plaintiffs bring this count on behalf of themselves and other members of the Fees Class.

160. 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.

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

162. Plaintiffs and other members of the Fees Class paid substantial student fees for on-campus benefits, access and services and did not receive the full benefit of the bargain.

163. Plaintiffs and other members of the Fees Class conferred this benefit on Defendant

when they paid the fees.

164. Defendant realized this benefit by accepting such payment.

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

166. 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.

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

168. Equity and good conscience require that Defendant return a *pro-rata* portion of the monies paid in fees to Plaintiffs and other members of the Fees Class.

169. This is particularly true where, as here, Defendant is supported by a \$14.7 billion 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.

170. At the same time, Defendant rejected federal aid that was made available for the purpose of supporting students.

171. 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)

172. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

173. Plaintiffs bring this count on behalf of themselves and all members of the other Classes.

174. The two key elements of conversion are (1) Plaintiffs' 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 Plaintiffs' right.

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

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

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

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

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

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

181. Defendant refuses to remit Plaintiffs' and the other Class members' reimbursement for tuition and fees paid for the 2020 Spring semester.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, 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 Plaintiffs 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 Plaintiffs' reasonable attorneys' 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, Plaintiffs demand trial by jury in this action of all issues so triable.

Dated August 31, 2020

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