

IN THE CIRCUIT COURT FOR THE COUNTY OF BOONE, MISSOURI
THIRTEENTH JUDICIAL CIRCUIT

STUDENT A, on behalf of)
STUDENT A)
and all others similarly situated,)
)
Plaintiff,)

Case No.:

v.)
)
THE CURATORS OF THE UNIVERSITY,)
OF MISSOURI)

Serve: Stephen J. Owens)
Office of the General Counsel)
227 University Hall)
Columbia, MO 65211)

JURY TRIAL DEMANDED

Defendant.)

PLAINTIFF'S CLASS ACTION PETITION

TABLE OF CONTENTS

	Page
INTRODUCTION	1
THE PARTIES.....	2
Plaintiff	2
Defendant.....	2
JURISDICTION AND VENUE	3
FACTUAL ALLEGATIONS REGARDING DEFENDANT’S LIABILITY	3
The University of Missouri System	3
Benefits of the full on-campus experience.....	4
COVID-19 related campus restrictions.....	7
Plaintiff’s Experience.....	8
DEFENDANT’S PRACTICES ARE UNETHICAL AND VIOLATED ESTABLISHED ETHICAL STANDARDS	9
AMA Statement of Ethics.....	9
CLASS ACTION ALLEGATIONS	10
COUNT I: BREACH OF CONTRACT	13
COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.....	14
COUNT III: UNJUST ENRICHMENT.....	15
COUNT IV: MONEY HAD AND RECEIVED.....	16
COUNT V: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES.....	16
PRAYER FOR RELIEF	19
JURY DEMAND	19

PLAINTIFF Student A (“Plaintiff”), on behalf of himself Plaintiff and all others similarly situated, files this Petition against Defendant The Curators of the University of Missouri (“Defendant”) based on personal knowledge as to his own actions and on information and belief, based on the investigation of counsel, as to Defendant’s conduct and practices.

INTRODUCTION

1. Plaintiff brings this class action individually and on behalf of a Class of similarly situated individuals (referred to collectively as “Class Members”) who are students within the University of Missouri-System who did not receive the in-person educational experience that they paid for during part of the 2020 Spring Semester as a result of Defendant effectively closing its campuses and switching to online instruction due to risks associated with the Novel Coronavirus Disease (“COVID-19”). Based on Defendant’s actions Plaintiff and Class Members received a diminished educational experience and received no or reduced value from student fees that they paid associated with the in-person educational experience. Despite this, Plaintiff and Class Member have not been refunded any tuition, and refunds for student fees have either been nonexistent or inadequate.

2. Plaintiff does not challenge Defendant’s decision to effectively close its campuses and transition to online-only classes because of the COVID-19 pandemic, but the effect of this decision was that Plaintiff and Class Members were deprived of the many benefits of the full in-person university experience for which they paid. This includes in-person instruction, access to campus facilities, participation in campus organizations and student activities, and other benefits and services related to the full on-campus experience. Plaintiff and Class Members did not choose to attend an institution that only offered an online education; instead, they chose and paid for the complete in-person university experience.

3. Defendant's actions as alleged herein constitute a breach of contract, violate the equitable principles of unjust enrichment and money had and received, constitute a breach of the implied covenant of good faith and fair dealing, and violate the Missouri Merchandising Practices Act ("MMPA"), § 407.010 *et seq*, by means of unfair practices.

THE PARTIES

Plaintiff

4. Plaintiff is a citizen of the State of Missouri. Plaintiff is an in-person student at a university that is a part of the University of Missouri System that is controlled by Defendant.¹

5. Plaintiff has good reason to be concerned that Plaintiff's involvement in this lawsuit could be used by Defendant or others for retaliatory purposes and/or that Plaintiff could be wrongfully denied admission from future programs of Plaintiff's choice. Accordingly, Plaintiff brings this action under the pseudonym "Student A."

Defendant

6. Defendant The Curators of the University of Missouri is a body politic created under the Missouri Constitution and laws of the State of Missouri. Pursuant to RSMo. §172.020, the University has the "power to sue and be sued, complain and defend in all courts." At all times relevant herein, Defendant operated and operates the campuses of University of Missouri-Columbia, the University of Missouri-Kansas City, Missouri University of Science and Technology, and the University of Missouri-St. Louis. Defendant resides in, and its principal place of business is located in, Columbia, Missouri.

7. Sovereign immunity does not apply to Defendant with respect to Plaintiff's claims set forth herein. Sovereign immunity is inapplicable to breach of contract suits. *See Kunzie v.*

¹ <https://www.umsystem.edu/about-us/facts> (accessed 5/13/2020).

City of Olivette, 184 S.W.3d 570, 575 (Mo. banc 2006); *see also Edoho v. Bd. of Curators of Lincoln Univ.*, 344 S.W.3d 794, 799 (Mo. App. W.D.2011). Furthermore, sovereign immunity is limited to tort claims (*see* RSMo § 537.600; *Wyman v. Missouri Dep't of Mental Health*, 376 S.W.3d 16, 19 (Mo. App. W.D. 2012), and MMPA claims do not sound in tort. *See Owen v. Gen. Motors Corp.*, 533 F.3d 913, 922 (8th Cir. 2008). Nor does sovereign immunity bar claims against the state for equitable relief. *Wyman*, 376 S.W.3d at 23 (citing *Kubley v. Brooks*, 141 S.W.3d 21, 29 (Mo. banc 2004)).

JURISDICTION AND VENUE

8. The Circuit Court of Boone County has personal jurisdiction over Defendant because Defendant resides in Missouri and operates the University of Missouri System within the State of Missouri.

9. Venue is proper in the Circuit Court of Boone County because Defendant resides in Boone County. Mo. Rev. Stat. § 407.025.1; Mo. Rev. Stat. § 508.010.2.

10. This is a class action filed under Mo Rev. Stat. § 407.025.3(6) and Missouri Supreme Court Rule of Civil Procedure 52.08(b)(2) with respect to the claim for injunctive relief and pursuant to Mo. Rev. Stat. § 407.025.3(7) and Rule 52.08(b)(3) with respect to the claim for actual damages.

FACTUAL ALLEGATIONS REGARDING DEFENDANT'S LIABILITY

The University of Missouri System

11. Defendant owns, operates, controls, and manages the University of Missouri System, which includes the University of Missouri-Columbia, the University of Missouri-Kansas City, Missouri University of Science and Technology, and the University of Missouri-St. Louis.²

² <https://www.umsystem.edu/about-us/facts> (accessed 5/13/2020); <https://www.umsystem.edu/curators> (accessed 5/13/2020).

12. The University of Missouri System refers to itself as a “\$3B enterprise with a broad statewide reach, composed of four universities, a health system and an extension division, along with numerous research parks, business incubators, health centers and affiliates and more.”³

13. Its vision is to: “advance the opportunities for success and well-being for Missouri, our nation and the world through transformative teaching, research, innovation, engagement, and inclusion.”⁴

14. More than 75,000 students are enrolled in the University of Missouri System.⁵

Benefits of the full on-campus experience

15. In recruiting students, the member universities within the University of Missouri System market many benefits associated with the on-campus educational experience that do not remain when it only offers online instruction away from campus.

16. For example, Missouri S&T tells future students on its website: “You’ll be among the brightest minds – both inside and outside of the classroom.”⁶

17. Its website also has a section entitled “Student Involvement,” in which it states: “Student Involvement can connect you to the community through service projects, fraternity and sorority life, and student organizations. We can help you get engaged on campus and develop leadership skills.”⁷ It has separate webpages for “Student Clubs and Organizations,” “Fraternity

³ <https://www.umsystem.edu/about-us/facts> (accessed 5/13/20).

⁴ <https://www.umsystem.edu/sites/default/files/media/about/UMFacts.pdf> (accessed 5/13/2020).

⁵ <https://www.umsystem.edu/about-us> (accessed 5/13/2020).

⁶ https://futurestudents.mst.edu/?utm_source=v3topbar&utm_content=futurestudents_link (accessed 5/13/2020).

⁷ <https://involvement.mst.edu/> (accessed 5/13/2020).

& Sorority Life” and “Volunteerism & Civic Engagement,” in which it sets forth the benefits associated with these offerings. *Id.*

18. Similarly, the website for the University of Missouri-Columbia states: “Attending classes is just part of the full student experience at Mizzou.”⁸ It then has an option to click a button that states “GET INVOLVED,” which links to a new webpage with information on various campus organizations and events.⁹

19. Its website also touts the benefits of “hands-on learning,” stating: “Gain valuable first-hand experience in your career, before you graduate.”¹⁰ It adds: “At Mizzou, hands-on learning leads to great careers. Learn more about the different ways our students are learning by doing and how this is [*sic*] prepares them for their future careers.”

20. Additionally, the University of Missouri-Kansas City’s website states: “Our diverse and vibrant community is always buzzing with excitement, and we’re proud of our urban location in the heart of Kansas City.”¹¹ It further states that there are “lots of ways to get involved at UMKC” and references its 300+ campus organizations. *Id.*

21. The website for the University of Missouri-St. Louis similarly markets benefits associated with its on-campus experience, including its student organizations, leadership programs, service programs, diversity & cultural programs, and campus programs.¹²

22. Thus, students within the University of Missouri System do not merely pay tuition for academic instruction but for the full campus experience. Yet not only does the quality of the academic experience decrease without the benefits of in-person instruction and on-campus

⁸ <https://missouri.edu/student-life> (accessed 5/13/2020).

⁹ <https://missouri.campuslabs.com/engage/> (accessed 5/13/2020).

¹⁰ <https://missouri.edu/academics> (accessed 5/13/2020).

¹¹ <https://www.umkc.edu/student-life/index.html> (accessed 5/14/2020).

¹² <https://www.umsl.edu/studentinvolvement/> (accessed 5/14/2020).

facilities, including face-to-face interaction with professors and peers, access to computer labs, libraries, laboratories, and more, but the other benefits of the broader in-person university experience are entirely eliminated when all that is provided is online courses that must be attended away from campus.

23. Without being able to enjoy the benefits of various student organizations, extra-curricular activities, athletics, networking opportunities and additional benefits associated with on-campus life, the educational experience that Plaintiff and Class Members have received since the University of Missouri System implemented the COVID-19 related restrictions addressed herein has been of significantly lesser value than the in-person educational experience that they paid for.

24. In addition, Plaintiff and Class Members paid certain mandatory fees associated with student life. For example, the University of Missouri-Columbia lists the following mandatory fees for the 2019-2020 academic year on its website: Information Technology Fee - \$14.03 per credit hour; Student Health Fee - \$95.00 flat rate; Recreation Center Fee - \$150.76 flat rate; and Student Activity Fee -\$222.12 (undergraduate), \$193.05 (graduate).¹³ The Student Activity Fee “is a mandatory fee that provides funding to on-campus programs and services that students can utilize.” *Id.* The Student Health Fee “supports the MU Student Health Center, important health and safety initiatives on campus,” and other services. *Id.*

25. At Missouri S&T, for the 2020 spring semester students had to pay an information technology fee, an activity/facility fee, and a health service fee.¹⁴

¹³ <https://cashiers.missouri.edu/cost/mandatory-fees/> (accessed 5/13/2020).

¹⁴ <https://cashier.mst.edu/media/administrative/cashier/documents/feeschedules/ay19-20/SP2020%20Campus%20Fee%20Schedule.pdf#191114082432> (accessed 5/13/2020).

26. After the University of Missouri System's COVID-19 related restrictions and switch to online learning went into effect, Plaintiff and Class Members no longer received the benefit of these mandatory fees or received a decreased benefit from them, because the fees are primarily associated with the on-campus student experience. Yet Defendant has either provided no reimbursements for these mandatory fees or has offered inadequate and/or arbitrary reimbursements that do not fully compensate Plaintiff and Class Members.

27. For example, the University of Missouri-Columbia announced on April 6, 2020, that it was not issuing any refund on the student health fee, activity fee, or information technology fee.¹⁵

COVID-19 related campus restrictions

28. The University of Missouri System announced that effective March 16, 2020, it was suspending all "in-person classes at MU, UMKC, Missouri S&T and UMSL, effective Monday, March 16, through the remainder of the spring 2020 semester."¹⁶ In this announcement it stated that all classes would be taught remotely. *Id.* It further stated: "Recreation centers and complexes on all four campuses will be closed." *Id.*

29. On March 19, 2020, the University of Missouri System issued a directive, effective March 23, 2020 through April 12, 2020 stating that "no one physically works on our universities unless they are requested to do so by an appropriate supervisor."¹⁷ It told supervisors to have employees report in person "only for duties that are necessary to continue the university operations in this interim period." *Id.* Furthermore, while it did not explicitly order all students to

¹⁵<https://mualert.missouri.edu/coronavirus/financial/> (accessed 5/13/2020).

¹⁶<https://www.umsystem.edu/president-blog/um-system-universities-extend-remote-courses-semester> (accessed 5/13/2020).

¹⁷<https://www.umsystem.edu/president-blog/presidential-directive-reduce-person-work-effective-mar-23> (accessed 5/13/20).

leave its residence halls, it stated: “There are some students who do not have other options to support their continuing education, including international students. Those students will be allowed to remain in our residence halls.” *Id.* Thus, all other students had to leave.

30. On April 6, 2020, the University of Missouri System indefinitely extended its directive that no one physically work on its universities unless requested by their supervisor.¹⁸

31. As a result of the University of Missouri System’s COVID-19 related on-campus restrictions and move to online-only classes, Plaintiff and Class Members were deprived of the full value of the educational experience for which they paid and were further deprived of the full value of certain student fees for which they paid. Nonetheless, Defendant has not provided any reimbursement for the tuition paid by Plaintiff and Class Members and any attempts it has made to provide reimbursement for student fees have been inadequate.

Plaintiff’s Experience

32. Plaintiff is an on-campus student at a university within the University of Missouri-System. Plaintiff paid tuition and fees to Defendant for the Spring 2020 semester. In doing so, Plaintiff paid for and expected to receive the full on-campus educational experience, including in-person instruction, access to campus facilities, and other student activities.

33. As a result of the restrictions and move to online only classes by the University of Missouri-System set forth herein, Plaintiff did not receive the full value of the educational experience for which Plaintiff bargained and paid for.

34. Plaintiff has lost out on in-person instruction, access to campus facilities, libraries, and the benefits of the broader on-campus student experience.

¹⁸ <https://www.umsystem.edu/president-blog/covid-19-response-and-revised-hr-policies> (accessed 5/13/20).

35. Furthermore, Plaintiff has not received the full benefits associated with the student fees that Plaintiff paid due to the on-campus restrictions set forth herein, yet Defendant has failed to reimburse Plaintiff for any of these fees.

36. Thus, despite paying for the full on-campus educational experience for the entire Spring 2020 semester, Plaintiff has received an educational experience of a significantly diminished value.

DEFENDANT’S PRACTICES ARE UNETHICAL AND VIOLATED ESTABLISHED ETHICAL STANDARDS

37. Defendant’s practice of failing 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, as alleged herein, violates generally accepted ethical principles of business conduct.

38. The basis for the allegation that it was unethical to engage in the above practices comes, in part, from established ethical principles recognized by the American Marketing Association, “the leading organization for marketers [and] the trusted go-to resource for marketers and academics.”¹⁹

AMA Statement of Ethics

39. The American Marketing Association (“AMA”) “commits itself to promoting the highest standard of professional ethical norms and values ...” **Ex. A.**²⁰ As such, it has published its “Statement of Ethics.” *Id.* AMA states that “marketers are expected to embrace the highest professional ethical norms and the ethical values implied by our responsibility toward multiple

¹⁹ <https://www.crunchbase.com/organization/american-marketing-association#section-overview> (accessed 5/15/2020).

²⁰ Available at <https://www.ama.org/codes-of-conduct/> (accessed 5/15/2020).

stakeholders (e.g., customers ...).” *Id.* Thus, the Statement of Ethics contains “Ethical Norms,” which “are established standards of conduct that are expected and maintained by society and/or professional organizations.” *Id.*

40. The AMA’s Ethical Norms state that marketers must “consciously avoid [] harmful actions and omissions,” “striv[e] for good faith and fair dealing,” “avoid [] deception in ... pricing, communication, and delivery of distribution,” and affirm “core values” of honesty, ... fairness [and] transparency.”

41. By not providing appropriate reimbursements to students despite offering a greatly diminished educational experience compared to what it promised, Defendant violated these Ethical Norms because, among other reasons, it did not strive (or achieve) good faith and fair dealing and did not affirm the core values of honesty, fairness and transparency.

42. The AMA has also published “Ethical Values,” which “represent the collective conception of what communities find desirable, important and morally proper.” *Id.* These Ethical Values include honesty and “[h]onoring our explicit and implicit commitments and promises.”

43. By not providing reimbursements to students despite offering a greatly diminished educational experience compared to what it promised, Defendant violated these Ethical Values, because, among other reasons, it did not honor its explicit and implicit commitments and promises.

CLASS ACTION ALLEGATIONS

44. **The Class.** Plaintiff brings this action on Plaintiff’s own behalf and as a class action on behalf of all students enrolled in the University of Missouri System for the 2020 Spring Semester who paid, in whole or in part, tuition or other fees for an in-person educational experience that they did not receive in full.

45. Specifically, Plaintiff seeks to represent the following Class:

All students enrolled in the University of Missouri System for the 2020 Spring Semester who paid Defendant, in whole or in part, tuition and/or other fees for an in-person educational experience, but were denied an in-person educational experience for the full 2020 Spring Semester based on the System's COVID-19 restrictions.

("Class").

46. This action is properly maintainable as a class action under Missouri Supreme Court Rule 52.08.

47. Plaintiff reserves the right to re-define the Class prior to class certification.

48. **Numerosity.** The members of the proposed Class are so numerous that joinder of all members is impracticable. The precise number of Class Members is unknown at this time, as such information is in the exclusive control of Defendant. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control.

49. **Common Questions of Law and Fact and Predominance.** Numerous questions of law and fact are common to Plaintiff and the Class Members and predominate over any individual questions. Such common legal and factual questions include, but are not limited to:

- a. Whether there is a difference in value between receiving online-only classes and the complete on-campus educational experience;
- b. Whether Defendant breached its contracts with Plaintiff and Class Members by retaining the portion of their tuition that represents the difference between the value of receiving only online classes and the complete on-campus educational experience;
- c. Whether Defendant has been unjustly enriched by retaining the portion of Plaintiff's and Class Members' tuition that represents the difference between the value of receiving only online classes and the complete on-campus educational experience;
- d. Whether Defendant breached its contracts with Plaintiff and Class Members by retaining student fees without providing the complete services that the fees were intended to cover;

- e. Whether Defendant has been unjustly enriched by retaining Plaintiff's and Class Members' student fees without providing the complete services that the fees were intended to cover;
- f. Whether Defendant has a policy of denying reimbursements, in whole or in part, to Plaintiff and the Class Members based on the campus restrictions and move to online-only classes described herein;
- g. Whether Defendant's acts and practices described herein are unfair under the MMPA;
- h. Whether Defendant's acts and practices described herein breach the implied covenant of good faith and fair dealing; and
- i. Whether Plaintiff and the other Class Members are entitled to equitable relief, including but not limited to a preliminary and/or permanent injunction.

50. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and consumer class actions.

51. Plaintiff and counsel are committed to prosecuting this action vigorously on behalf of the Class, and do not have any interests that are contrary to or in conflict with those of the Class they seek to represent.

52. **Typicality.** Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members were enrolled within the University of Missouri System for the 2020 Spring Semester and have suffered damages as a result of its move to online-only classes.

53. **Superiority.** A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

54. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action.

55. Absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims.

56. Class treatment will conserve the resources of the courts and the litigants, and further efficient adjudication of Class Member claims.

COUNT I: BREACH OF CONTRACT

(Plaintiff and the Class)

57. Plaintiff incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein, and further alleges as follows:

58. Plaintiff and Class Members entered into contracts with Defendant under which they paid Defendant tuition and student fees in exchange for in-person education and other in-person experiences for the 2020 Spring Semester.

59. Plaintiff and Class Members fulfilled their end of the bargain by paying Defendant's required tuition and student fees.

60. Defendant breached its contracts with Plaintiff and Class Members by ceasing to offer an in-person educational experience during the 2020 Spring Semester and only providing instruction through online courses.

61. Accordingly, Defendant has failed to provide the services as required by its contracts with Plaintiff and Class Members, and Plaintiff and Class Members have not received the benefit of their bargains with Defendant.

62. Plaintiff and Class Members thereby suffered damages as a result of Defendant's breach.

63. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(Plaintiff and the Class)

64. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Petition, and further alleges as follows:

65. By ceasing to offer to Plaintiff and Class Members an in-person educational experience during the 2020 Spring Semester and only providing instruction through online courses without offering appropriate refunds for tuition and fees, Defendant breached the implied covenant of good faith and fair dealing that is present in every contract.

66. Through such actions Defendant acted, or exercised a judgment conferred by the express terms of the agreements, in such a manner as to evade the spirit of the transactions and to deny Plaintiff and Class Members the expected benefits of their agreements.

67. Specifically, by failing to provide Plaintiff and Class members with the in-person educational experience for which they paid without offering appropriate refunds, Defendant acted to deny Plaintiff and Class Members the expected benefit of their agreements, in that their agreements were for an in-person educational experience for the 2020 Spring Semester, which is of a higher value than the instruction they received through online courses without an in-person educational experience.

68. No provision in the agreements between the parties allowed Defendant to provide instruction only through online courses.

69. Plaintiff and Class Members have been damaged as a result of Defendant's failure to provide the in-person educational experience they were promised.

70. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT III: UNJUST ENRICHMENT
(Plaintiff and the Class)

71. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Petition, and further alleges as follows:

72. Substantial benefits have been conferred upon Defendant from Plaintiff and Class Members by Plaintiff and Class Members paying for tuition and student fees for in-person educational experiences.

73. Defendant knowingly accepted these benefits conferred on it by Plaintiff and Class Members.

74. Defendant either knew or should have known that, by moving to online only education during the 2020 Spring Semester, it was providing an educational experience of significantly lesser value and that Plaintiff and Class Members were not receiving the full value they bargained for in paying tuition and student fees.

75. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain these benefits without reimbursement to Plaintiff and the Class based on the diminished value of their educational experiences.

76. Plaintiff and the Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant based on its failure to issue such reimbursements.

77. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, and in the alternative to the claim for breach of contract, Plaintiff and the Class are entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant, plus attorneys' fees, costs, and interest thereon.

78. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT IV: MONEY HAD AND RECEIVED
(Plaintiff and the Class)

79. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Petition, and further alleges as follows:

80. Defendant has received money from Plaintiff and the Class for tuition and fees for the 2020 Spring Semester, which includes money that it received for in-person educational experiences that were not provided as a result of its move to online only instruction, that in equity and good conscience should be returned to Plaintiff and the Class.

81. It is unjust for Defendant to accept and retain the full amount of this money that it received for tuition and student fees because by moving to online-only instruction it failed to provide the educational experience for which Plaintiff and Class Members bargained.

82. As an alternative to the claim for breach of contract, Defendant should return to Plaintiff and Class Members the money Defendant received that constitutes the diminished value of Plaintiff's and Class Members' educational experience and loss of the benefit of student fees as a result of Defendant's moving to online only education during the 2020 Spring Semester.

83. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT V: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES
(Plaintiff and the Class)

84. Plaintiff incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein, and further alleges as follows:

85. The actions of Defendant alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act ("MMPA") because they constitute unfair practices.

86. The MMPA, Mo. Rev. Stat. § 407.020, states in relevant part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice.

87. Plaintiff, on behalf of Plaintiff and all others similarly situated in Missouri, is entitled to bring this action pursuant to Mo. Rev. Stat. § 407.025, which provides in relevant part that:

1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons, institute an action as representative or representatives of a class against one or more defendants as representatives of a class In any action brought pursuant to this section, the court may in its discretion order, in addition to damages, injunction or other equitable relief and reasonable attorney's fees.

88. The MMPA defines "merchandise" as any objects, wares, goods, commodities, intangibles, real estate or services. Mo. Rev. Stat. § 407.010. Thus, the educational services that Defendant provides to its students are merchandise.

89. In providing educational services to its students, Defendant is engaging in the sale of merchandise in trade or commerce.

90. Plaintiff and the Class purchased in-person educational services from Defendant for personal, family, or household purposes and did not receive the benefit of the in-person

educational services for which they paid upon Defendant providing only online course instruction during the 2020 Spring Semester.

91. Plaintiff and the Class thereby suffered ascertainable loss based on Defendant's unfair practice of providing an educational experience of lesser value during the portion of the 2020 Spring Semester in which it ceased offering an in-person educational experience, without providing Plaintiff and the Class with an appropriate refund toward tuition and fees.

92. The Missouri Attorney General has promulgated regulations defining the meaning of unfair practice as used in the MMPA. That definition states that unethical practices are unfair in violation of the above statute. Mo. Code Regs. tit. 15, § 60-8.020.

93. Missouri case law provides that the MMPA's "literal words cover *every practice imaginable and every unfairness to whatever degree.*" *Conway v. CitiMortgage, Inc.*, 438 S.W.3d 410, 416 (Mo. 2014) (quoting *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. banc 2001)). Furthermore, the statute's "plain and ordinary meaning of the words themselves ... are unrestricted, all-encompassing and exceedingly broad." *Id.* at 240.

94. Pursuant to the MMPA, Defendant has a duty not to engage in any unethical or unfair practice in connection with the sale or advertisement of any merchandise in trade or commerce. For the reasons stated herein, it breached that duty.

95. Ceasing to offer the in-person educational experience for which Plaintiff and Class Members paid without providing appropriate refunds to Plaintiff and Class Members for tuition and fees based on the diminished educational experience they received after Defendant's move to online only course instruction is unfair and unethical and violates generally accepted principles of ethical business, including but not limited to the principles of the American Marketing Association, as set forth above.

96. Defendant's acts and practices alleged herein have directly, foreseeably, and proximately caused loss, damages, and injury to Plaintiff and the Class in an amount to be determined at trial.

97. Defendant's unfair and unethical acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous, and were done in reckless indifference to the rights of Plaintiff and Class.

98. WHEREFORE, Plaintiff and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of Plaintiff and the Class, pray judgment against Defendant as follows:

1. Certifying the Class as requested herein;
2. Entering an order appointing Plaintiff's counsel as lead counsel for the Class;
3. Awarding actual damages against Defendant in an amount to be determined;
4. Awarding punitive damages against Defendant as the Court deems necessary or proper;
5. Awarding injunctive and equitable relief as permitted by law or equity;
6. Awarding pre-judgment and post-judgment interest;
7. Awarding reasonable attorneys' fees and costs herein;
8. Awarding such other and further relief as the Court deems fit and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: May 15, 2020

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

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