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<p>STEVEN DOVAL, MELISSA CUELLO, and CEANA CUELLO, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>FAIRLEIGH DICKINSON UNIVERSITY,</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY                  LAW DIVISION                  BERGEN COUNTY</p> <p>DOCKET NO. _____</p> <p>Civil Action</p> <p><b>CLASS ACTION COMPLAINT</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
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Plaintiffs Steven Doval, Melissa Cuello, and Ceana Cuello (“Plaintiffs”), by their attorneys, make the following allegations pursuant to the investigations of counsel and upon information and belief, except as to the allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge:

### NATURE OF THE ACTION

1. This is a class action against Fairleigh Dickinson University (“FDU” or “Defendant”), the largest private university in New Jersey, arising out of its failure to provide refunds to students for tuition and fees for in-person classes that were cancelled as a result of the COVID-19 virus

2. Plaintiffs and FDU entered into a contractual agreement where Plaintiffs would provide payment in the form of tuition and fees and Defendant, in exchange, would provide in-person educational services, experiences, opportunities, and other related services. The terms of the contractual agreement were set forth in publications from FDU, including FDU’s 2020 Spring Semester Course Catalog (“Course Catalog”).<sup>1</sup> Notably, the Course Catalog contains a separate section titled “Online courses only.”

3. When Plaintiffs and Class Members sought to enter into a contractual agreement with Defendant for the provision of educational services for the 2020 Spring Semester, Plaintiffs and Class Members viewed the Course Catalog to make specific course selections prior to registering and paying for selected courses. They did not select classes from the “Online courses only” section.

4. 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 physical on-campus location (including the building and room number) in which courses would be held. An exemplar of the 2020 Spring Semester Course Catalog is provided below:

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<sup>1</sup> <https://portal.fdu.edu/academic/coursefinder.html>

semester	section	campus	type seats filled	day(s) place	start week end week	instructor
20/SP	21	TEA	LEC 24/25	MTH 12:00PM-01:15PM DH1170	01/21/2020 05/13/2020	matthew_c_calderisi @fdu.edu
			Prereq: ACCT 3241 *			
20/SP	32	MAD	LEC 29/30	MTH 02:30PM-03:45PM ZEN108	01/21/2020 05/13/2020	scott39_mcgregor @fdu.edu
			Prereq: ACCT 3241 *			
20/SP	61	MAD	LEC 31/30	TH 06:00PM-08:30PM MAN17	01/21/2020 05/13/2020	scott39_mcgregor @fdu.edu
			Prereq: ACCT 3241 *			

5. Other publications from FDU reference the in-person nature of the 2020 Spring Semester course offerings, including course specific syllabi and Defendant's Academic Regulations,<sup>2</sup> which detail the policies, procedures, and expectations of FDU students. The Academic Regulations also describe the policies regarding classroom absences, stating that Students:

... are required to attend class, arrive on time and participate in all courses for which they are enrolled. Class attendance and participation are essential to academic progress. At the beginning of each semester, instructors will express the specific attendance requirements for each course according to the policies of their academic departments and colleges. The policy should clearly delineate the number of permissible absences and the sanctions to be applied for excessive absences or tardiness. Each instructor should include his or her attendance policy on each syllabus to prevent any misunderstanding of the requirements for the course.<sup>3</sup>

6. Students would not have considered the possibility of online instruction during the 2020 Spring Semester because FDU listed online classes separately from in person classes as can be seen below:

<sup>2</sup> <https://portal.fdu.edu/studentlife/2018/academic-regulations.pdf>

<sup>3</sup> *Id.* at 18.

Fully online class with online meetings during the above scheduled class times. *							
20/FA	ED	PET	WEB	S 09:00AM-11:30AM	WEBTWEB	08/17/2020	xiomara_guevara
			14/25			11/24/2020	@fdu.edu
Fully online class with online meetings during the above scheduled class times. *							
20/FA	E1B	PET	WEB	F 06:00PM-08:30PM	WEBTWEB	10/05/2020	Staff
			1/25			11/21/2020	
Note: Need FDU Webmail Account Fully online class with online meetings during the above scheduled class times. *							
20/FA	E3	325	LEC	TTH 02:00PM- TBA		10/12/2020	eric_goldman
			1/25	05:00PM		11/24/2020	@fdu.edu
-							
20/SP	21	TEA	LEC	MTH 11:30AM- RA205		01/21/2020	tina_loponte
			13/15	12:45PM		05/13/2020	@fdu.edu
-							
20/SP	22	TEA	LEC	W 11:15AM-01:45PM RA304		01/21/2020	william_mesce
			17/15			05/13/2020	@fdu.edu
-							

7. Additionally, FDU provides its faculty with a “Faculty Manual,”<sup>4</sup> which sets forth many of the policies and procedures regarding faculty, including their teaching obligations to students. One such obligation, of which students are the intended beneficiaries, is the requirement that “all full-time faculty members [] hold at least three office hours a week. Part-time faculty should hold at least one office hour a week for each course the faculty member is teaching.”<sup>5</sup>

8. FDU’s 2020 Spring Semester commenced on or around January 21, 2020, and was scheduled to conclude on or around May 13, 2020.<sup>6</sup> Plaintiffs and Class Members’ payment of tuition and fees were intended to cover in-person education, experiences, and services for the entirety of the 2020 Spring Semester.

9. On December 30, 2019, the Wuhan Municipal Health Commission in Wuhan, China released a notice to medical institutions that health authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Shortly thereafter, researchers in China identified a new virus that had infected dozens of people in Asia, subsequently identified and referred to as the

<sup>4</sup> <https://www.fdu.edu/wp-content/uploads/2019/12/facultymanual.pdf>

<sup>5</sup> *Id.* at 7

<sup>6</sup> <https://www.fdu.edu/wp-content/uploads/2020/01/grad-academiccalendar.pdf>

novel coronavirus or COVID-19. On January 30, 2020, the World Health Organization (“WHO”) officially declared COVID-19 as a “public health emergency of international concern.” On March 9, 2020, Governor Phil Murphy declared a state of emergency as a number of New Jersey residents tested positive for COVID-19.

10. On March 10, 2020, FDU announced its decision to suspend live instruction and began offering courses remotely (online) on March 16, 2020. On March 20, 2020, the majority of buildings on the New Jersey campuses were locked with access restricted to public safety facilities only.

11. FDU did not hold any in-person classes from March 10, 2020 through the end of the 2020 Spring Semester. Classes that continued were only offered in an online format, with no in-person instruction.

12. As a result of the closure of Defendant’s facilities, Defendant did not deliver the educational services, facilities, access and/or opportunities that Plaintiffs and the putative class contracted and paid for. The online learning options provided to FDU students are subpar in practically every aspect, from the lack of facilities, materials, and access to faculty. Students were deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique. The remote learning options were in no way the equivalent of the in-person education that Plaintiffs and the putative class members contracted and paid for.

13. FDU did not provide in-person education, experiences, or related services for approximately 50% of the 2020 Spring Semester.

14. Plaintiffs and the putative class did not enter into an agreement with FDU for online education, but rather sought to receive an in-person education from FDU. Plaintiffs and the putative class are therefore entitled to a refund of tuition and fees for in-person educational

services, facilities, access and/or opportunities that Defendant has not provided. Even if FDU claims it did not have a choice in cancelling in-person classes, it nevertheless has improperly retained funds for services that it did not provide.

15. 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 2020 Spring Semester when classes moved online and campus services ceased being provided. Plaintiffs seek a return of these amounts on behalf of themselves and the Class as defined below.

### **THE PARTIES**

16. Plaintiff Steven Doval is a citizen of New Jersey who resides in Teaneck, New Jersey. Mr. Doval is the parent of an undergraduate student at FDU. Mr. Doval's son is pursuing a degree in Psychology. The Psychology program at FDU relies extensively on in-person instruction, laboratory access, meaningful student presentations, peer collaboration, and access to other university facilities. None of these resources were available to Mr. Doval's son when in-person classes were suspended. Mr. Doval paid Defendant approximately \$10,620 in tuition and fees for 2020 Spring Semester. FDU has not provided Mr. Doval any refund of tuition or other mandatory fees, despite the fact that in-person classes have not been held since March 10, 2020.

17. Plaintiff Melissa Cuello is a resident of Fairfield, New Jersey. Plaintiff Melissa Cuello is the mother of Plaintiff Ceana Cuello. Plaintiff Melissa Cuello has paid tuition and fees to FDU on behalf of her daughter, Plaintiff Ceana Cuello, for the Spring 2020 semester in the amount of approximately \$27,137.00. Plaintiff Melissa Cuello also paid the following fees: lab fees of \$262; technology fee of \$462.00; graduation fee of \$245; and Wellness Education Fee of

\$70.00. FDU, however, has not provided Plaintiff Melissa Cuello any refund of tuition or other mandatory fees, despite the fact that in-person classes have not been held since March 10, 2020.

18. Plaintiff Ceana Cuello is a resident of Fairfield, New Jersey. Plaintiff Ceana Cuello is a student at FDU who is currently pursuing a degree in Nursing. The Nursing program at FDU relies extensively on in-person instruction, laboratory access, meaningful student presentations, peer collaboration, and access to other university facilities. None of these resources were available to Plaintiff Ceana Cuello when in-person classes were suspended.

19. Defendant FDU is New Jersey's largest private university with its principal place of business at 1000 River Rd, Teaneck, NJ 07666. FDU offers over 100 undergraduate and graduate degree programs, including doctoral programs in pharmacy, nursing practice, clinical psychology and school psychology; and an AACSB-accredited business school. According to Cappex.com, between 81% and 83% of FDU's student body for the Florham and Metropolitan campus (respectively) is composed of in-state residents.<sup>7 8</sup>

### **JURISDICTION AND VENUE**

20. This Court has subject matter jurisdiction over this action. This Court also has personal jurisdiction over Defendant because FDU is a citizen of and maintains its principal headquarters in New Jersey.

21. Venue is proper in this county because Defendant's principal place of business is located in this county, Defendant does substantial business in this county, and a substantial part of the events giving rise to the claims herein occurred within this county.

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<sup>7</sup> <https://www.cappex.com/colleges/fairleigh-dickinson-university-florham-campus>

<sup>8</sup> <https://www.cappex.com/colleges/fairleigh-dickinson-university-metropolitan-campus/campus-life>

## FACTUAL ALLEGATIONS

### *Plaintiffs And Class Members Paid Tuition And Fees For 2020 Spring Semester*

22. Plaintiffs and Class members are individuals who paid the cost of tuition and other mandatory fees for the 2020 Spring Semester at FDU.

23. Classes for the 2020 Spring Semester at FDU began on or about January 21, 2020. Classes and final exams for the semester ended on or around May 13, 2020.

24. Plaintiffs and Class members paid the cost of tuition for the 2020 Spring Semester. They also paid other mandatory fees associated with the 2020 Spring Semester, including but not limited to a Technology Fee and a University Wellness Fee.

25. Undergraduate tuition for the 2020 Spring Semester at FDU is approximately \$21,827. Mandatory undergraduate fees include a \$924 yearly Technology Fee and a \$140 yearly University Wellness Fee.

26. Graduate tuition for the 2020 Spring Semester at FDU varies based on the program. While some programs charge a flat rate, others charge per semester, per course, or per credit, as shown below:

<b>College</b>	<b>Amount</b>
Silberman College	\$1,347
University College Tier 1: masters level programs in education; history, political and international studies; natural sciences; and psychology	\$1,285
University College Tier 2: masters level programs in computer engineering, computer science, electrical engineering, electronic commerce, management information systems, medical technology, nursing, and systems science.	\$1,347
University College Tier 3: doctoral programs	\$1,405
Becton College and Petrocelli College	\$1,285
Becton College School of Arts MFA in Film, AY 2019-2020 [not including fees] Residency Fee each \$2,500	\$1,272



## Flat-rate Programs

Program	Amount
Annual (inclusive of technology fee)	
Nursing Post-Masters	\$23,170.00
21-Month Program	
Per Course	
Saturday MBA	
Clinical Psychopharmacology / per course	\$1,636.00
MA in Corporate and Organizational - dual degree - Bergamo	\$16,307.00
Ph.D. in Clinical Psychology	\$41,698.00
Dissertation (per semester)	\$5,006.00
Internship Charge (per semester)	\$260.00
Dissertation Maintenance (per semester)	\$510.00
Psy.D. in School Psychology (5 yr program)	\$41,698.00

27. FDU also charges mandatory graduate fees such as a Technology Fee and University Wellness Fee, as well as other fees that vary depending on the program and year.

28. The tuition and fees described in the paragraph above is provided by way of example; total damage amounts – which may include other fees that are not listed herein but that were not refunded – will be proven at trial.

### ***In Response To COVID-19, FDU Closed Campuses And Cancelled All In-Person Classes***

29. On March 10, 2020, FDU announced that because of the global COVID-19 classes would be held only in online format as of March 16, 2020, the first day back from Spring Break. On March 20, 2020, FDU announced that all classes would continue in online format through the end of the 2020 Spring Semester.

30. From March 10, 2020 through the end of the 2020 Spring Semester, FDU did not

hold any in-person classes. Classes that continued only were offered in an online format, with no in-person instruction. Even classes for students with concentrations in areas where in-person instruction is especially crucial (such as music, theatre, nursing, and the sciences) only had access to minimum online education options.

31. As a result of the closure of Defendant's facilities, Defendant did not deliver the educational services, facilities, access and/or opportunities that Plaintiffs and the putative class contracted and paid for. Plaintiffs and the putative class are therefore entitled to a refund of all tuition and fees for services, facilities, access and/or opportunities that Defendant did not provide. Even if Defendant did not have a choice in cancelling in-person classes, it nevertheless has improperly retained funds for services it did not provide.

32. Plaintiffs and members of the Class did not choose to attend an online institution of higher learning, but instead chose to attend Defendant's institution and enroll on an in-person basis.

33. Defendant markets the FDU on-campus experience as a benefit of enrollment on FDU's website:

## **The Classic College Experience**

The Florham Campus emphasizes a well-rounded academic experience rich in choices and balanced by dynamic extracurricular activities. Whatever your major, your education will prepare you to problem solve effectively, think creatively and communicate persuasively – skills that will prepare you for a lifetime of success.

FDU Florham is primarily a residential campus, supported by a strong student life program. It boasts active fraternities and sororities, diverse student activities, and dynamic Division III and intramural athletics programs. Resident students are joined in class by undergraduate commuters and by adult, graduate, and certificate students, utilizing first-class educational resources either retrofitted into the campus' distinctive and appealing original buildings, or newly built especially in the most recent decades.

34. The online learning options provided to FDU students were subpar in practically every aspect and a shadow of what they once were, from the lack of facilities, materials, and access

to faculty. Students were deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique.

35. The remote learning options are in no way the equivalent of the in-person education putative class members contracted and paid for. The remote education provided is not even remotely worth the amount charged class members for 2020 Spring Semester tuition. The tuition and fees for in-person instruction at FDU are higher than tuition and fees for its own online programs because such costs cover not just the academic instruction, but encompass an entirely different experience which includes but is not limited to:

- Face to face interaction with professors, mentors, and peers;
- Access to facilities such as libraries, laboratories, computer labs, and study rooms;
- Student governance and student unions;
- Extra-curricular activities, groups, intramural sports, etc.;
- Student art, cultures, and other activities;
- Social development and independence;
- Hands on learning and experimentation;
- Networking and mentorship opportunities.

36. Indeed, FDU offers an “AA Liberal Arts” online degree. FDU’s own website confirms that “[t]uition for the AA program is 50 percent less than standard FDU tuition.”

37. 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 2020 Spring Semester when classes moved online and campus services ceased being provided. Plaintiffs seek return of these amounts on behalf of himself and the Class as defined below.

### **CLASS ACTION ALLEGATIONS**

38. Plaintiffs bring this action pursuant to New Jersey Court Rule 4:32 on behalf of a class defined as all persons who paid FDU 2020 Spring Semester tuition and/or fees for in-person educational services that FDU failed to provide, and whose tuition and fees have not been refunded (the “Class”).

39. Plaintiffs also bring this action pursuant to New Jersey Court Rule 4:32 on behalf of a Subclass defined as all New Jersey residents who paid FDU 2020 Spring Semester tuition and/or fees for in-person educational services that FDU failed to provide, and whose tuition and fees have not been refunded (the “Subclass”).

40. Specifically excluded from the Class and Subclass are Defendant, Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by Defendant, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant’s officers and/or directors, the judge assigned to this action, and any member of the judge’s immediate family.

41. The members of the Class and Subclass are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiffs at this time but will be determined through discovery.

42. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

(a) whether Defendant accepted money from Class and Subclass members in exchange for the promise to provide services;

(b) whether Defendant has provided the services for which Class and Subclass members contracted; and

(c) whether Class and Subclass members are entitled to a refund for that portion of the tuition and fees that were contracted for services that Defendant did not provide.

(d) whether Defendant has unlawfully converted money from Plaintiffs, the Class and Subclass; and

(e) whether Defendant is liable to Plaintiffs, the Class, and Subclass for unjust enrichment.

43. Plaintiffs are adequate representatives of the Class and Subclass because their interests do not conflict with the interests of the Class members they seek to represent, they have retained counsel competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

44. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication,

economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

**COUNT I**  
**BREACH OF CONTRACT**  
**(On Behalf Of The Class And Subclass)**

45. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

46. Plaintiffs bring this claim individually and on behalf of the members of the Class and Subclass against Defendants.

47. Plaintiffs and Defendant entered into a contractual relationship where Plaintiffs would provide payment in the form of tuition and fees, and Defendant, in exchange, would provide in-person educational services, experiences, opportunities, and other related services. The terms of the parties' contractual relationship are set forth in publications from FDU, including the 2020 Spring Semester Course Catalog.<sup>9</sup>

48. When Plaintiffs and Class Members sought to enter into a contractual agreement with Defendant for the provision of educational services for the 2020 Spring Semester, Plaintiffs and Class Members viewed the Course Catalog to make specific course selections prior to registering and paying tuition and fees for those selected courses. Defendant's Course Catalog constitutes an offer to enter a contractual agreement.

49. 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

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<sup>9</sup> <https://portal.fdu.edu/academic/coursefinder.html>

be held, and the location (including the building and room number) in which the courses would be held.

50. Other publications from FDU reference the in-person nature of the 2020 Spring Semester course offerings, including course specific syllabi and the University's Academic Rules,<sup>10</sup> which detail the policies, procedures, and expectations of FDU students. The Academic Rules describe the policies regarding classroom absences. Students are informed that they:

... are required to attend class, arrive on time and participate in all courses for which they are enrolled. Class attendance and participation are essential to academic progress. At the beginning of each semester, instructors will express the specific attendance requirements for each course according to the policies of their academic departments and colleges. The policy should clearly delineate the number of permissible absences and the sanctions to be applied for excessive absences or tardiness. Each instructor should include his or her attendance policy on each syllabus to prevent any misunderstanding of the requirements for the course.<sup>11</sup>

51. Additionally, FDU provides its faculty with a "Faculty Manual,"<sup>12</sup> which provides many of the policies and procedures regarding faculty, including their teaching obligations to students. One such obligation, of which students are the intended beneficiaries, is the requirement that "all full-time faculty members [] hold at least three office hours a week. Part-time faculty should hold at least one office hour a week for each course the faculty member is teaching."<sup>13</sup>

52. As part of the contract, and in exchange for the aforementioned consideration, Defendant promised to provide certain services, all as set forth above. Plaintiffs, Class, and Subclass members fulfilled their end of the bargain when they paid monies due for 2020 Spring

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<sup>10</sup> <https://portal.fdu.edu/studentlife/2018/academic-regulations.pdf>

<sup>11</sup> *Id.* at 18.

<sup>12</sup> <https://www.fdu.edu/wp-content/uploads/2019/12/facultymanual.pdf>

<sup>13</sup> *Id.* at 7

Semester tuition. Tuition for 2020 Spring Semester was intended to cover in-person educational services from January through May 2020. In exchange for tuition monies paid, Class and Subclass members were entitled to in-person educational services through the end of the 2020 Spring Semester.

53. Defendant materially breached the parties' contractual agreement by failing to provide in-person education services for the entirety of the 2020 Spring Semester. The provisions of the contract breached by Defendant include, but are not limited to, the provision setting forth the details of in-person educational services as described in the 2020 Spring Semester Course Catalog. The 2020 Spring Semester Course Catalog indicated classes would be administered in an in-person, on-campus setting. The Course Catalog did not make any reference to the administration of these courses in an online format.

54. Defendant also materially breached the parties' contractual agreement by retaining various mandatory fees, including, but not limited to, a lab fee, a technology fee, and a graduation fee, which are used to support on-campus services and facilities.

55. Defendant also materially breached the parties' contractual agreement because its instructors failed to hold regular office hours after March 10, 2020, when the 2020 Spring Semester went remote.

56. Defendant has failed to provide the contracted for services and has otherwise not performed under the contract as set forth above by failing to provide in-person educational services from March 10, 2020 through the end of the 2020 Spring Semester. Defendant has retained monies paid by Plaintiffs and the Class for their 2020 Spring Semester tuition and fees, without providing them the benefit of their bargain.



57. Plaintiffs and members of the Class and Subclass have suffered damage as a direct and proximate result of Defendant's breach, including but not limited to being deprived of the education, experience, and services to which they were promised and for which they have already paid.

58. As a direct and proximate result of Defendant's breach, Plaintiffs, the Class, and Subclass are entitled to damages, to be decided by the trier of fact in this action, to include but not be limited to reimbursement of certain tuition, fees, and other expenses that were collected by Defendant for services that Defendant has failed to deliver. Defendant should return the pro-rated portion of any 2020 Spring Semester tuition and fees for education services not provided since FDU shut down on March 10, 2020.

59. Defendant's performance under the contract is not excused due to COVID-19. Indeed, Defendant should have refunded the pro-rated portion of any education services not provided. Even if performance was excused or impossible, Defendant would nevertheless be required to return the funds received for services it will not provide.

60. Therefore, Defendant should return a pro-rata share of the tuition and fees paid by Plaintiffs and Class Members that relate to those in-person educational services that were not provided after FDU shut down on or around March 10, 2020. In-person educational services were not provided for approximately 50% of the 2020 Spring Semester.

**COUNT II**  
**UNJUST ENRICHMENT**  
**(On Behalf Of The Class And Subclass In the Alternative)**

61. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

62. Plaintiffs bring this claim individually and on behalf of the members of the Class and Subclass against Defendant.

63. Plaintiffs and members of the Class and Subclass conferred a benefit on Defendant in the form of monies paid for 2020 Spring Semester tuition and other fees in exchange for certain service and promises. Tuition for 2020 Spring Semester was intended to cover in-person educational services from January 2020 through May 2020. In exchange for tuition monies paid, Class members were entitled to in-person educational services through the end of the 2020 Spring Semester.

64. Defendant voluntarily accepted and retained this benefit by accepting payment.

65. Defendant has retained this benefit, even though Defendant has failed to provide the education, experience, and services for which the tuition and fees were collected, making Defendant's retention unjust under the circumstances.

66. Accordingly, Defendant should return the pro-rated portion of any 2020 Spring Semester tuition and fees for education services not provided since FDU shut down on March 10, 2020.

67. It would be unjust and inequitable for Defendant to retain the benefit conferred by Plaintiffs' and Class Members' overpayments.

68. Defendant should be required to disgorge all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiffs and Class Members may seek restitution.

### **COUNT III**

**CONVERSION  
(On Behalf Of The Class And Subclass)**

69. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

70. Plaintiffs bring this claim individually and on behalf of the members of the Class and Subclass against Defendant.

71. Plaintiffs and members of the Class and Subclass have an ownership right to the in-person educational services they were supposed to be provided in exchange for their 2020 Spring Semester tuition and fee payments to Defendant.

72. Defendant intentionally interfered with the rights of Plaintiffs, the Class, and Subclass when it moved all classes to an online format and discontinued in-person educational services for which tuition and fees were intended to pay.

73. Plaintiffs and members of the Class and Subclass demand the return of the pro-rated portion of any 2020 Spring Semester tuition and fees for education services not provided since FDU shut down on March 10, 2020.

74. Defendant's retention of the fees paid by Plaintiffs and members of the Class and Subclass without providing the educational services, for which they paid, deprived Plaintiffs, Class and Subclass members of the benefits for which the tuition and fees paid.

75. This interference with the services for which Plaintiffs and members of the Class and Subclass paid damaged Plaintiffs and Class members in that they paid tuition and fees for services that will not be provided.

76. Plaintiffs, Class and Subclass members are entitled to the return of pro-rated portion of any 2020 Spring Semester tuition and fees for education services not provided since FDU shut down on March 10, 2020.

**COUNT IV**  
**MONEY HAD AND RECEIVED**  
**(On Behalf Of The Class And Subclass)**

77. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

78. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

79. Plaintiffs and members of the Class paid monetary funds to Defendant for tuition and fees for the 2020 Spring Semester.

80. Defendant has retained the monies paid by Plaintiffs and members of the Class for the 2020 Spring Semester while not providing in-person educational services, activities, opportunities, resources, and facilities for which those monies were paid.

81. Defendant is in possession of and holds money that belongs to Plaintiffs and the members of the Class in equity and good conscience.

82. Defendant has been unjustly enriched by its retention of the funds Plaintiffs and the members of the Class paid Defendant for tuition and fees, and it is unconscionable for Defendant to retain funds to which it is not entitled.

83. Defendant's unlawful retention of Plaintiffs' and Class Members' funds has damaged Plaintiffs and the members of the Class.

84. Defendant owes Plaintiffs and members of the Class for money had and received, including, but not limited to, the amount of Plaintiffs' and Class Members' pro-rated tuition and fees for the 2020 Spring Semester.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order declaring this action to be a proper class action pursuant to Rule 4:32 of the New Jersey Court Rules on behalf of the Class and Subclasses defined herein;
- B. For an order declaring that Plaintiffs be designated as the Class Representatives and their attorneys as Class Counsel to represent the Class and Subclass members;
- C. For an order finding in favor of the Plaintiffs, the Class and the Subclass on all counts asserted herein;
- D. For an order awarding compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;
- E. For an order or restitution and all other forms of equitable monetary relief;
- F. For prejudgment interest on all amounts awarded;
- G. For injunctive relief as pleaded or as the Court may deem proper; and
- H. For an order awarding Plaintiffs, the Class and the Subclass their reasonable attorneys' fees and expenses and costs of suit.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all claims so triable in this action.

**CERTIFICATION PURSUANT TO R. 4:5-1**

Plaintiffs, by their attorneys, hereby certify that this matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated. Plaintiffs are not currently aware of any other parties that should be joined in this action.

Dated: August 25, 2020

Respectfully submitted,

By: /s/Antonio Vozzolo  
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