

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS, MISSOURI
TWENTY-FIRST JUDICIAL CIRCUIT

CAROLINE MCCLANAHAN, on behalf of)
herself and all others similarly situated,)

Plaintiff,)

v.)

WEBSTER UNIVERSITY,)

Defendant.)

Cause No: 21SL-CC05384

JURY TRIAL DEMANDED

PLAINTIFF'S AMENDED CLASS ACTION PETITION

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PLAINTIFF Caroline McClanahan (“Plaintiff”), on behalf of herself and all others similarly situated, files this Amended Petition against Defendant Webster University (“Webster” or “Defendant”) based on personal knowledge as to her 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 Classes of similarly situated individuals (referred to collectively as “Class Members”) who are students at Webster University who did not receive the in-person services that they paid for during part of the 2020 Spring Semester as a result of Webster 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 did not receive their bargained-for in-person services, including in-person courses, activities, and services relating to student fees that they paid. Despite this, Defendant retained the tuition and student fees that Plaintiff and Class Members paid for these in-person services.

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 in-person services for which they paid. This includes in-person instruction, access to campus facilities, participation in campus organizations and student activities, and services related to student fees. Plaintiff and Class Members did not choose to attend an institution that only offered an online education; instead, they chose and paid for the in-person services.

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. She was a full-time in-person student at Webster at its main St. Louis campus during the 2020 Spring Semester.

Defendant

5. Defendant Webster University is a non-profit corporation organized under the laws of, and registered in, Missouri. It is a private university, with its principal place of business at 470 E. Lockwood Ave., St. Louis, MO 63119. Its registered agent in Missouri is Dr. Elizabeth J. Stroble, 470 E. Lockwood Ave., St. Louis, MO 63119.

JURISDICTION AND VENUE

6. This is a class action under Missouri Supreme Court Rule 52.08.

7. The Circuit Court of St. Louis County has subject matter jurisdiction over this action and personal jurisdiction over Defendant because the actions complained of regarding Plaintiff’s injuries took place in St. Louis County.

8. Venue is proper in this Court because Plaintiff was first injured by Defendant’s acts and conduct described herein in St. Louis County, Missouri. *See* R.S. Mo. § 508.010.4.

FACTUAL ALLEGATIONS REGARDING DEFENDANT’S LIABILITY

Overview of Webster University

9. Webster is a private non-profit university with its home campus in Webster Groves, Missouri.¹

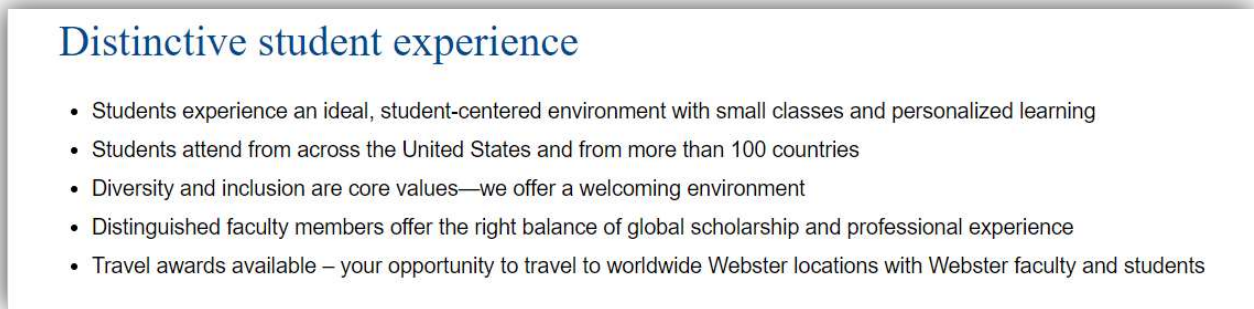
¹ <http://www.webster.edu/about/> (accessed 9/11/2020).

10. Webster offers many undergraduate and graduate programs, and its options for students include its College of Arts and Sciences, George Herbert Walker School of Business and Technology, Leigh Gerdine College of Fine Arts (including the Conservatory of Theatre Arts), School of Communications, School of Education, and various Centers and Institutes.²

Benefits of Defendant’s in-person services

11. In recruiting students, Webster markets many benefits associated with its in-person services that do not remain when it only offers online instruction away from campus.

12. For example, Defendant tells students on its website that it offers a “Distinctive student experience,” including this: “Students experience an ideal, student-centered environment with small classes and personalized learning.”³ Here is a screenshot:



13. It states that its “Distinctive campuses and network” provide a “beautiful and vibrant home campus” and enable students “to create a unique experience based on each Webster University campus location while being assured of consistent academic quality at each location in each program.”⁴

² <http://www.webster.edu/academics/>; <https://www.webster.edu/conservatory/> (both accessed 9/11/2020).

³ *Id.*

⁴ *Id.* (highlighting added).

Distinctive campuses and network

- The beautiful and vibrant home campus located in Webster Groves offers undergraduate and graduate programs
- Students are able to create a unique experience based on each Webster University campus location while being assured of consistent academic quality at each location in each program
- A global reach with locations around the world and online—offers quality, convenience and access to learning
- Webster Groves/St. Louis is one node in the worldwide network. Ideas, academic content and contact with students and faculty are constant and free flowing throughout the Webster network

14. Webster further advertises its “commitment to small class sizes and abundance of events throughout the year,” which means “students have the opportunity to share in a rich educational experience.” It cites its “[s]tate-of-the-art academic buildings, architecturally significant structures that house various university departments, a modern library, and student center,” that “combine to create a picturesque learning environment.”⁵

⁵ <http://www.webster.edu/stlouis/> (highlighting added; accessed 9/11/2020).

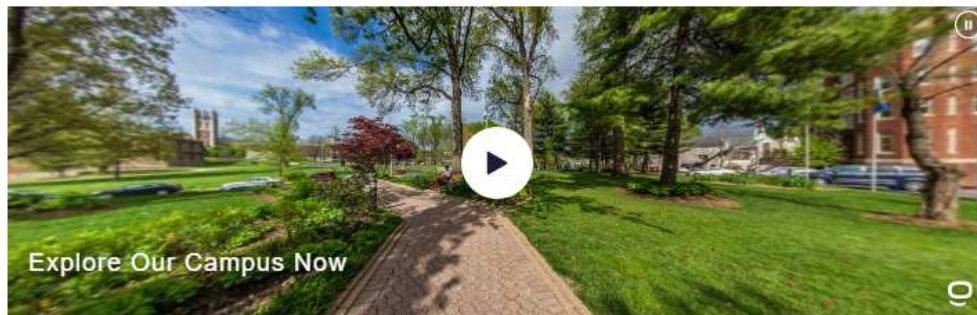
History. Community. Diversity.

Minutes from downtown St. Louis, Missouri, The Webster University main campus is nestled in Webster Groves, a charming and historic residential suburb.

Webster's commitment to small class sizes and abundance of events throughout the year, students have the opportunity to share in a rich educational experience.

State-of-the-art academic buildings, architecturally significant structures that house various university departments, a modern library, and student center combine to create a picturesque learning environment.

Vibrant campus. Dynamic student life.



15. Webster also touts its “Campus Life.”⁶

⁶ <http://www.webster.edu/campus-life/> (highlighting added; accessed 9/11/2020).

Home > Campus Life

Campus Life

Office of Student Engagement

Housing at the Home Campus

Campus Dining

Dean of Students Office

Health & Wellness

Campus Life

Be Yourself. Find a Community.

Whether it's a roommate, a classmate, a teammate or a fellow Webster student you meet while studying abroad – these people develop life long friendships and create [an extremely unique experience only at Webster University.](#)

16. On that same “Campus Life” page, Webster states: “A complete college experience can’t be contained in just a classroom. It’s so much more. Every Webster campus provides a wide range of activities, events and organizations that shape your daily life...”⁷

A Collaborative and Supportive Environment

A complete college experience can't be contained in just a classroom. It's so much more. Every Webster campus provides a wide range of activities, events and organizations that shape your daily life. Many resources are available to enable students to connect with the programs and activities – from publications and online resources to professionals offering academic advice, counseling and other helpful services.

Reflecting a Unique Culture

Every Webster campus is a unique reflection on the community and culture. From the historic home campus near St. Louis and U.S. campuses to network of location in Europe, Africa, and Asia.

⁷ <http://www.webster.edu/campus-life/> (accessed 9/11/2020).

17. Defendant then proves that it offers “a wide range of activities, events and organizations that shape your daily life” by listing a vast number of ways for students to become involved and benefit from campus life. On the page reproduced below, each item is linked to a page with further descriptions.⁸

⁸ *Id.*

Become Involved

First Year Experience Program
Athletics
Campus Ministry
Global Student Leadership Summit
Multicultural Center
SGA
Register to Vote
Student Ambassadors
Student Life Hall of Fame
Student Organizations
University Center
WebsterLEADS
Webster Works Worldwide

Well-Being

Alcohol/Drug Education & Prevention
Counseling
Fitness Center
Sexual Offense Support Services
Student Health Services
Swimming Lessons
Wellness Blog

Living On/ Off Campus

Campus Dining Services
Commuter Resources
First Generation Students
Housing & Residential Life
Meal Plan Options

Learning Communities

Brochure
Application
Website

Job Searching

Career Planning and Development Center
Student Employment

Meal Choices

Campus Dining Services
Meal Plan Options

Policies and Procedures

Grievance Policy
Student Code of Conduct
Student Handbook
Title IX Coordinators

Services

Behavioral Intervention Team
BIT Alert Instructions
Campus Dining Services
Connections
Emergency Food Pantry
Emergency Loans
Gorlok Mascot Appearance Form
International Student Affairs
Mail and Copy Solutions
Technology Resources
Money for Textbooks Program
New Student Orientation
Sexual Misconduct Information & Resources
Sexual Offense Survivor Support
Student Success Portal
Tuition Refund/Waiver

Student Affairs Forms

Program Funding Request
Program Report and Evaluation
Preferred Name Form

Student Media

Ampersand
The Journal (St. Louis Home Campus)
The Galaxy (Radio Station)
Idea Tree Media

Study Time

Academic Advising
Academic Resource Center
Bookstores
Emerson Library
Media Center

Activities

Athletics
Calendar of Events (General)
Getting Involved and Events for Students
Webster Film Series

18. Defendant tells prospective students that “you’ll appreciate personal attention” and “you’ll find our St. Louis home campus is an ideal setting for learning, having an active social life, and getting involved.”⁹

Prospective Freshmen [Request More Info](#)

A student-centered experience with a real-world perspective. From your first visit and throughout your career at Webster, you'll appreciate personal attention and global connections.

Whether you are an incoming freshman, a transfer student, or a working professional seeking your undergraduate degree, you'll find our St. Louis home campus is an ideal setting for learning, having an active social life, and getting involved.

Our class sizes are small. Our faculty is student-focused. And our staff is able to assist you in every aspect of your education – from student aid, to choosing coursework, and taking advantage of unique local and global learning opportunities.

19. Thus, Plaintiff and Class Members do not pay tuition merely for academic instruction but for in-person services, including face-to-face interaction with professors and peers (the “life long friendships”)¹⁰; access to computer labs, libraries, and laboratories; and on-campus activities and organizations, yet when all that Webster provides is online courses that must be attended away from campus, Plaintiff and Class Members do not receive their bargained-for in-person services.

20. By not receiving the in-person services that they bargained for and only receiving online-instruction away from campus, Plaintiff and Class Members have received services of

⁹ <http://www.webster.edu/admissions/undergraduate/stlouis.html> (accessed 9/11/2020).

¹⁰ <http://www.webster.edu/campus-life/> (highlighting added; accessed 9/11/2020).

lesser value during the time that Defendant implemented the COVID-19 related restrictions addressed herein.

21. In addition, Defendant required Plaintiff and Class Members to pay certain mandatory fees associated with student life. For example, Defendant charged, and Plaintiff and Class Members on Defendant's main campus paid, \$100 per semester for a "Student Activity Fee," which Defendant described as "fund[ing] campus-wide programs and activities."¹¹ Defendant also charged, and Plaintiff and Class Members paid, \$60 each semester for a "residential activity fee," which Defendant described as "support[ing] educational, cultural, and social programming efforts."¹²

22. Defendants also charged, and Plaintiff and Class Members paid, for parking permits¹³ and a meal plan, in which points not used by the end of the academic year are forfeited.¹⁴

23. Defendant's offering of these in-person services and collection of these mandatory fees for such services in advance formed a contract with Plaintiff and the Class.¹⁵

24. After Defendant'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 in-person services and/or access to campus. Yet Defendant has not provided reimbursements for the unused portions of these mandatory fees, other than an inadequate meal plan reimbursement.

¹¹ <http://www.webster.edu/catalog/documents/catalog-archives/undergraduate/2019-20-undergraduate-catalog.pdf>, at 36 (accessed 9/11/2020).

¹² *Id.* at 35.

¹³ <http://www.webster.edu/finance-and-administration/bursar-and-cashiers/policies-and-forms/charges-and-adjustments.html> (accessed 9/11/2020).

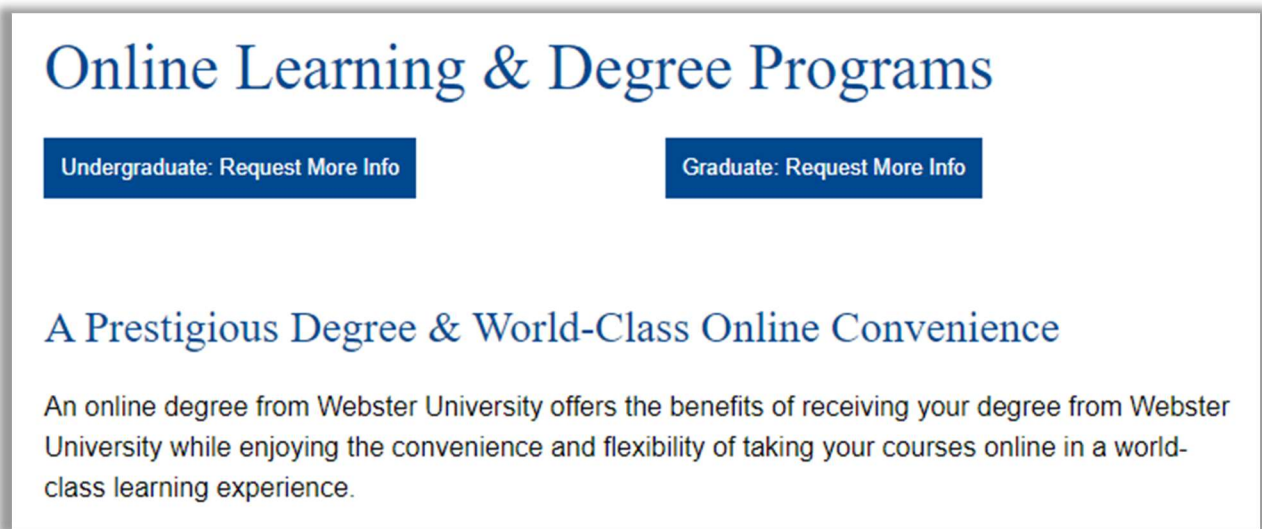
¹⁴ <http://www.webster.edu/catalog/documents/catalog-archives/undergraduate/2019-20-undergraduate-catalog.pdf>, at 35 (accessed 9/11/2020).

¹⁵ The Course Catalogue expressly states that it is not a contract. It further confers on Defendant unlimited discretion to change any statement made in the Course Catalogue at any time without notice.

Plaintiff contracted with Defendant for in-person services

25. Plaintiff and Class Members contracted with Defendant for services that included in-person courses and activities for the Spring 2020 semester.

26. While online-only instruction is the service that certain of Defendant's students bargain for, online-only instruction is not what Plaintiff and Class Members bargained and paid for. Notably, Defendant offers online degree programs that are separate from its in-person programs.¹⁶



Online Learning & Degree Programs

Undergraduate: Request More Info Graduate: Request More Info

A Prestigious Degree & World-Class Online Convenience

An online degree from Webster University offers the benefits of receiving your degree from Webster University while enjoying the convenience and flexibility of taking your courses online in a world-class learning experience.

27. Defendant therefore recognizes that its online programs are a distinct service from what it offers and provides to its in-person students.

28. On Defendant's webpage that provides a "Course Schedule Search," which allows students to view Defendant's course schedules for a given year and term, Defendant offers separate searches for its various physical campuses and online courses.¹⁷ For example, the webpage has a search specifically for "St. Louis Area Campuses" and a separate search for "Online Courses." *Id.*

¹⁶ <https://www.webster.edu/online/> (accessed 9/3/2020).

¹⁷ <http://www.webster.edu/academics/course-schedules.html> (accessed 9/4/2020).

Course Schedule Search

The following search forms allow you to search/view Webster University course schedules for a given year and term. Choose the appropriate form and follow the directions to view course schedules and descriptions:

Power Search

Limit your course search to a specific time range, specific days or to a single instructor..

[Conduct Power Search](#)

Online

Search course schedules for Webster University courses available online.

[Search Online Courses](#)

St. Louis Area Campuses

Search course schedules for any or all of the Webster University campuses in the St. Louis, Mo., area.

[Search St. Louis Area Courses](#)

Fall 2020 - One and Two Credit Hour Courses

View a PDF of the one and two credit hour course schedules for Fall 2020 (Term 1 and 2) offered at the Webster Groves campus and online.

[View One and Two Credit Hour Courses](#)

29. Clicking on the search for St. Louis Area Campuses leads to a webpage to search for courses by various St. Louis area campuses.¹⁸ While “online” is included as an option under the “Campus” search parameter, the selections specifically state whether or not the “Campus” is “online,” and only 7 of the 30 options under “Campus” reference “online” under this parameter. *Id.* Those 7 options are: “COMO Communications Online,” “HSOL Humane Society Online,” “MATO MAT Online,” “MBAO MBA Online,” “PAMO Procurement/Acquisitions Mngt

¹⁸ <http://apps.webster.edu/compcen/datadict/webcrs/stlform2.php3> (accessed 9/4/2020).

Online,” “WSCO Web Services Certification Online,” and “ONLN Online Courses.” *Id.* The other options in this search parameter are for physical campuses. *Id.* Here is a screenshot:

Campus

COURSE SCHEDULE SEARCH FORM
ST. LOUIS AREA/ONLINE COURSES

ATTENTION: All International Languages & Cultures (ILC) courses and programs as well as Anthropology and Sociology courses and programs are now listed under Global Languages, Cultures & Societies: CHIN, ESLG, FREN, GRMN, ILC, ISTL, ITAL, JAPN, LATN, SPAN, TRSL, TRFR, TRSP, ANTHRO, ANSO and SOCI.

Please See [instructions](#) at bottom of page.

Session: Spring Summer Fall
 Year: 2020
 Term: All Terms Semester Term 1 Term 2
 Campus:
 Courses By Department:
 Courses By Type:
 Program: Undergraduate Graduate Graduate Education
 Course Type: Any Internet

30. Running a search from this webpage leads to a new webpage that sets forth detailed information about Defendant’s courses, including the campus and building/room the course takes place in, unless it specifically shows that it is online.¹⁹

¹⁹

<http://apps.webster.edu/compcen/datadict/webcrs/stlform2.php3?sess=SP&yr=2020&term=&campus=STLAREA&dept=&ctype=Please+Select+Course+type&grdg=UG&im=any&submit=Enter+data> (accessed 9/4/2020).

**Spring 2020
Webster University Course Listings
St. Louis Area Campuses/Online Courses
Undergraduate Program
Courses**

Please remember that these course listing results are not "real time"; they are updated daily.
Click on the course number to see the description and up-to-date registration numbers for that course.

Course/Sec	Title	Textbooks	Instructor	Term	Seats Left	Max Seats	Credit Hrs	Dates	Days	Times	Campus	Bldg / Rm	Course Fee	Course Type
ACCT 2010 10	Financial Accounting I	Books	Dippel, Fi	Spring S	12	25	3.0	01/13/20 - 05/08/20	--T--	10:00 a - 11:20 a	Webster Groves, MO	East Academic Building 232		Lecture
ACCT 2010 11	Financial Accounting I	Books	Reif, Karl	Spring S	13	25	3.0	01/13/20 - 05/08/20	-M-WF-	10:00 a - 10:50 a	Webster Groves, MO	East Academic Building 202		Lecture
ACCT 2010 0A	Financial Accounting I	Books	Scott, Rog	Spring 1	5	24	3.0	01/13/20 - 03/06/20	INTERNET	INTERNET	Webster Groves, MO	www.webster.edu/online		Online SBT
ACCT 2010 0B	Financial Accounting I	Books	Staff	Spring 1	0	0	3.0	01/13/20 - 03/06/20	INTERNET	INTERNET	Webster Groves, MO	www.webster.edu/online		Online SBT
ACCT 2025 04	Managerial Accounting	Books	Gogel, Jos	Spring 2	21	25	3.0	03/16/20 - 05/08/20	--T---	05:30 p - 09:30 p	Webster Groves, MO	East Academic Building 254		Lecture
ACCT 2025 11	Managerial Accounting	Books	Reif, Karl	Spring S	1	25	3.0	01/13/20 - 05/08/20	-M-WF-	11:00 a - 11:50 a	Webster Groves, MO	East Academic Building 202		Lecture
ACCT 2025 0A	Managerial Accounting	Books	Clark, Ken	Spring 2	1	24	3.0	03/16/20 - 05/08/20	INTERNET	INTERNET	Webster Groves, MO	www.webster.edu/online		Online SBT
ACCT 3025 01	Advanced Managerial and Cost Accounting	Books	Rodriguez, Spring 1	17	25	3.0	01/13/20 - 03/06/20	-M-WF-	10:00 a - 11:50 a	Webster Groves, MO	East Academic Building 153		Lecture	
ACCT 3040 10	Intermediate Accounting II	Books	Dippel, Fi	Spring S	17	25	3.0	01/13/20 - 05/08/20	-M-W---	08:30 a - 09:50 a	Webster Groves, MO	East Academic Building 153		Lecture
ACCT 3040 0A	Intermediate Accounting II	Books	Dippel, Fi	Spring S	21	24	3.0	01/13/20 - 05/08/20	INTERNET	INTERNET	Webster Groves, MO	www.webster.edu/online		Online SBT
ACCT 3800 03	Accounting Information Systems	Books	Dippel, Fi	Spring 2	17	25	3.0	03/16/20 - 05/08/20	-M-WF-	01:00 p - 02:50 p	Webster Groves, MO	East Academic Building 210		Lecture
ACCT 4220 01	Financial Statement Analysis	Books	Rodriguez, Spring 1	16	25	3.0	01/13/20 - 03/06/20	-M----	05:30 p - 09:30 p	Webster Groves, MO	East Academic Building 236		Lecture	
ACCT 4930 03	Introduction to Internal and Information Technology Auditing	Books	Masenda, Spring 2	17	25	3.0	03/16/20 - 05/08/20	-M----	05:30 p - 09:30 p	Webster Groves, MO	East Academic Building 206		Lecture	

31. Similarly, one can search by a particular type of course, such as "Finance," under the "Courses By Type" selection; the resulting webpage sets forth the "Campus" and "Bldg/Rm" where applicable courses are offered.²⁰

Course Schedules

**Spring 2020
Webster University Course Listings
St. Louis Area Campuses/Online Courses
Undergraduate Program
Finance Courses**

Please remember that these course listing results are not "real time"; they are updated daily.
Click on the course number to see the description and up-to-date registration numbers for that course.

Course/Sec	Title	Textbooks	Instructor	Term	Seats Left	Max Seats	Credit Hrs	Dates	Days	Times	Campus	Bldg / Rm	Course Fee	Course Type
FNAC 3210 03	Principles of Finance	Books	Speck, Jam	Spring 2	16	25	3.0	03/16/20 - 05/08/20	--T---	05:30 p - 09:30 p	Webster Groves, MO	East Academic Building 261		Lecture
FNAC 3210 05	Principles of Finance	Books	Speck, Jam	Spring 1	7	9	3.0	01/13/20 - 03/06/20	----R--	05:30 p - 09:30 p	Gateway Campus, St. Louis, MO	Westport, St. Louis, MO 604		WebStat
FNAC 3210 07	Principles of Finance	Books	Speck, Jam	Spring 1	10	11	3.0	01/13/20 - 03/06/20	----R--	05:30 p - 09:30 p	Westport, St. Louis, MO	Westport, St. Louis, MO 604		WebStat
FNAC 3210 10	Principles of Finance	Books	Risik, Eh	Spring S	7	25	3.0	01/13/20 - 05/08/20	--T--	10:00 a - 11:20 a	Webster Groves, MO	East Academic Building 151		Lecture
FNAC 3210 G1	Principles of Finance	Books	Speck, Jam	Spring 1	3	5	3.0	01/13/20 - 03/06/20	----R--	05:30 p - 09:30 p	Wing Haven	Westport, St. Louis, MO 604		WebStat
FNAC 3600 10	Financial Management	Books	Risik, Eh	Spring S	9	25	3.0	01/13/20 - 05/08/20	--T--	01:30 p - 02:50 p	Webster Groves, MO	East Academic Building 152		Lecture
FNAC 4210 10	Investments	Books	Porras, Da	Spring S	18	25	3.0	01/13/20 - 05/08/20	-M-W---	01:00 p - 02:20 p	Webster Groves, MO	East Academic Building 208		Lecture
FNAC 4220 10	Financial Statement Analysis	Books	Ellison, M	Spring S	15	25	3.0	01/13/20 - 05/08/20	--T--	08:30 a - 09:50 a	Webster Groves, MO	East Academic Building 208		Lecture
FNAC 4300 10	International Finance	Books	Scott, Bra	Spring S	14	25	3.0	01/13/20 - 05/08/20	--T--	10:00 a - 11:20 a	Webster Groves, MO	East Academic Building 263		Lecture

New Query

²⁰ <http://apps.webster.edu/compce/datadict/webcrs/stlform2.php3> (accessed 9/8/2020).

32. In contrast, when one clicks on the search for Online Courses, the webpage that the individual is taken to does not even have an option to search by “Campus.”²¹

**COURSE SCHEDULE SEARCH FORM
ONLINE COURSES**

Please See [instructions](#) at bottom of page.

Session: Spring Summer Fall
Year: 2020
Term: All Terms Semester Term 1 Term 2
Courses By Prefix:
Program: Undergraduate Graduate Graduate Education

Use the following fields to search for course schedules/descriptions:

FIELD	DESCRIPTION	OPTIONAL/REQUIRED
Session:	Session you wish to search.	Required.
Year:	Year you wish to search.	Required.
Term:	Choose all, or a single term.	Required.
Courses By Prefix:	Choose the course prefix you wish to search. (ACCT Accounting or MATH Math, for example).	Optional.
Program:	Choose undergrad, grad or graduate education.	Required.

33. Thus, Defendant clearly differentiates between its online services and in-person services, and, as set forth above, it represents to its students the many benefits associated with the in-person services.

34. Defendant also differentiated between undergraduate tuition for in-person courses and online courses. For example, tuition for full-time undergraduates (12-18 credit hours per semester) for in-person learning was \$28,500 per year, which is \$14,250 per semester. Tuition for Conservatory full-time undergraduates for in-person learning was \$33,100 per year, which is

²¹ <http://apps.webster.edu/compcen/datadict/webcrs/onlform2.php3> (accessed 9/7/2020).

\$16,550 per semester. In contrast, Defendant charged tuition for online courses on a per-credit hour basis at \$725 per credit hour—less than the amount per credit hour for full-time undergraduate in-person tuition.

35. It was therefore Plaintiff's and Class Members' reasonable expectation that by enrolling in in-person programs and courses they were bargaining and paying for services that included in-person courses and activities.

36. This reasonable expectation was realized, as shown by the parties' course of dealing, including throughout the 2020 Spring semester until the COVID-19 pandemic resulted in the restrictions set forth below, as well as prior semesters. During these periods, Plaintiff paid Defendant tuition and fees and in return was provided with in-person services, including, *inter alia*, in-person classes and access to campus facilities, libraries, buildings, activities, and organizations.

37. It was therefore the common understanding of Plaintiff and Defendant that in return for the tuition and fees that Plaintiff paid Defendant, Plaintiff would be provided with in-person services, including in-person instruction and access to campus facilities and activities, and not simply online-only instruction. Defendant's provision of in-person services was therefore a material term of the parties' agreement, as their course of dealing shows.

38. The switch to providing Plaintiff and Class Members with nothing more than online course instruction away from campus deprived them of the in-person services for which they bargained and paid for, including in-person instruction and access to campus facilities and activities, yet Defendant has refused to reimburse Plaintiff and Class Members any tuition or student fees.

39. Accordingly, Plaintiff's claims are not for "educational malpractice," in that they are not based on the *quality* of instruction in particular classes or Defendant's failure to follow aspirational internal policies; rather, they are based on Defendant's failure to provide specific in-person services as promised, and for which Plaintiff paid, and retention of the money paid for such services.

COVID-19 related campus restrictions

40. Defendant announced on March 11, 2020, that all classes throughout the United States were being moved online through April 3, 2020.²² The announcement stated: "The move to online courses will have no impact on tuition/credit hour prices ..." *Id.* It further stated: "On the Webster Groves campus, residential halls, the library, and laboratories will remain open ... However, all events scheduled through April 5 on the Webster Groves campus will be postponed or canceled." *Id.*

41. On March 16, 2020, Defendant announced that as of that date it was initiating a phased closure of all on and off campus student housing facilities, to be completed by March 22.²³

42. Defendant announced on March 18, 2020, that it would "extend the online delivery of previously scheduled on-ground courses through the end of the spring 2020 semester."²⁴

43. On March 19, 2020, it stated that at its main campus in Webster Groves, as of March 20 a faculty/staff Webster ID card would be needed to enter all classroom and administrative buildings, and that after March 20 only faculty and staff who work in the Emerson

²² <http://news.webster.edu/global/2020/covid-19-task-force-online-course-events-update.html> (accessed 9/11/2020).

²³ <http://news.webster.edu/webster-life/2020/covid19-task-force-housing-closure.html> (accessed 9/11/2020).

²⁴ <http://news.webster.edu/global/2020/covid-19-online-instruction-extended-spring-term.html> (accessed 9/11/2020).

Library and University Center would have access to those buildings.²⁵ It clarified on March 20, 2020, that students needing access to any building “must coordinate with a faculty or staff member who can meet them to let them enter.”²⁶

44. Defendant announced on April 9, 2020, that “all undergraduate and graduate courses for the summer 2020 term at Webster University’s St. Louis area campuses, locations and corporate cohorts will be taught remotely,” and that the “current remote learning model, which was instituted in March in response to the pandemic, will continue through the end of summer terms in July.”²⁷

45. On June 2, 2020, Defendant announced that it “will begin the fall 2020 semester and term as scheduled and with face-to-face instruction.”²⁸ It stated: “Remote learning activities and options will be a component of most classes, and some classes will be offered entirely in remote format.” *Id.*

46. As a result of Defendant’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 tuition and fees that they paid in advance for in-person services. Nonetheless, Defendant has not provided any reimbursement for the tuition or fees paid by Plaintiff and Class Members.

Plaintiff’s Experience

47. Plaintiff was a full-time on-campus student at Webster’s main St. Louis campus during the Spring 2020 semester. She paid tuition and fees to Defendant for the Spring 2020

²⁵ <http://news.webster.edu/global/2020/newfile.html> (accessed 9/11/2020).

²⁶ <http://news.webster.edu/global/2020/covid-19-task-force-update-commencement-add-drop.html> (accessed 9/11/2020).

²⁷ <http://news.webster.edu/academics/2020/summer-term-remote-instruction-coronavirus.html> (accessed 9/11/2020).

²⁸ <http://news.webster.edu/global/2020/transition-plans-fall-term-task-force.html> (accessed 9/11/2020).

semester. In doing so, Plaintiff paid for and expected to receive in-person services, including in-person instruction and access to campus facilities and activities.

48. Other than during her first semester enrolled at Webster in the fall of 2020, it was Plaintiff's practice to use Webster's online Course Schedule Search to view classes prior to registration, plan what classes she wanted to take, and register for those classes.

49. To the best of Plaintiff's recollection, approximately two months prior to the Spring 2020 semester, she logged on to Webster's Course Schedule Search to view classes and plan what classes she wanted to take, and she subsequently used it to register for the Spring 2020 semester.

50. As a result of the restrictions and move to online only classes by Defendant set forth herein, Plaintiff did not receive the in-person services for which she bargained and paid, including *inter alia*, in-person instruction, access to campus facilities, libraries, and other services associated with being on campus.

51. Furthermore, she has not received the full benefits associated with the student fees that she paid, including, but not limited to, her student activity fee, parking pass, and meal plan, due to the on-campus restrictions set forth herein, yet Defendant has chosen not to reimburse Plaintiff for these fees except for an inadequate meal plan reimbursement.

52. Thus, despite paying for in-person services for the entire Spring 2020 semester, Plaintiff did not receive her bargained for in-person services after Defendant closed its campus and merely provided online-only instruction.

**DEFENDANT'S PRACTICES ARE UNETHICAL AND VIOLATED ESTABLISHED
ETHICAL STANDARDS**

53. Defendant's practice of failing to provide reimbursements for tuition and fees despite failing to provide the in-person services for which Plaintiff and Class Members bargained

and the benefit and services related to fees for which they paid, as alleged herein, violates generally accepted ethical principles of business conduct.

54. 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.”²⁹

AMA Statement of Ethics

55. The American Marketing Association (“AMA”) “commits itself to promoting the highest standard of professional ethical norms and values ...” **Ex. A.**³⁰ 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 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.*

56. 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.”

57. By not providing appropriate reimbursements to students despite not offering the in-person services that it promised, Defendant violated these Ethical Norms because, among

²⁹ <https://www.crunchbase.com/organization/american-marketing-association#section-overview> (accessed 11/10/2021).

³⁰ Available at <https://www.ama.org/codes-of-conduct/> (accessed 11/10/2021).

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.

58. 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.”

59. By not providing reimbursements to students despite failing to offer the in-person services that 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

60. **The Classes.** Plaintiff brings this action on her own behalf and as a class action on behalf of all Missouri citizens enrolled as full-time students at Webster University within the State of Missouri for the 2020 Spring Semester who paid, in whole or in part, tuition or other fees for in-person services that they did not receive in full.

61. Specifically, Plaintiff seeks to represent the following Classes:

All Missouri citizens enrolled as full-time undergraduate students at Webster University within the State of Missouri for the 2020 Spring Semester who paid Defendant, in whole or in part, tuition for in-person services, but were denied in-person services for the full 2020 Spring Semester based on the Defendant’s COVID-19 restrictions.

(“Tuition Class”).

All Missouri citizens enrolled as full-time students at Webster University within the State of Missouri for the 2020 Spring Semester who paid Defendant fees for the 2020 Spring Semester.

(“Fees Class”)

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

63. Plaintiff reserves the right to re-define the Classes prior to class certification.

64. **Numerosity.** The members of the proposed Classes are so numerous that joinder of all members is impracticable. On information and belief, the number of class members is in the thousands. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control.

65. **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 Defendant's failure to provide Plaintiff and Class Members the in-person services for which Plaintiff and Class Members paid tuition, without any reimbursement, constitutes a breach of contract;
- b. Whether Defendant has been unjustly enriched by its retention of tuition charged to Plaintiff and Class Members for in-person services, which Plaintiff and Class Members paid for but did not receive;
- c. Whether Defendant's failure to provide Plaintiff and Class Members the in-person services for which Plaintiff and Class Members paid student fees, without any reimbursement, constitutes a breach of contract;
- d. Whether Defendant has been unjustly enriched by its retention of student fees charged to Plaintiff and Class Members for in-person services, which Plaintiff and Class Members paid for but did not receive;
- e. 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;
- f. Whether Defendant's acts and practices described herein are unfair under the MMPA;
- g. Whether Defendant's acts and practices described herein breach the implied covenant of good faith and fair dealing; and
- h. Whether Plaintiff and Class Members are entitled to equitable relief, including but not limited to a preliminary and/or permanent injunction.

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

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

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

69. **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.

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

71. Absent a class action, the vast majority of Class Members 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.

72. In addition, particular issues are appropriate for certification under Mo Sup. Ct. R. 52.08(c)(4) because such claims present particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests thereon. Such particular issues include, but are not limited to:

- a. Whether Defendant breached its contracts with Plaintiff and Class Members by not providing the in-person services for which Plaintiff and Class Members bargained and paid for the entire 2020 Spring Semester and failing to provide any reimbursement;

- b. Whether Defendant breached its contracts with Plaintiff and Class Members by not providing Plaintiff and Class Members the in-person services for which Plaintiff and Class Members paid student fees and failing to provide any reimbursement;
- c. Whether Plaintiff and Class Members are entitled to actual damages and/or injunctive relief as a result of Defendant's wrongful conduct.

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

COUNT I: BREACH OF CONTRACT
(Plaintiff and the Tuition Class)

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

75. Plaintiff and Tuition Class Members entered into contracts with Defendant under which they paid Defendant tuition in exchange for in-person services for the 2020 Spring Semester as described above.

76. It was the mutual understanding of Plaintiff and Tuition Class Members and Defendant, as shown by their written communications, course of conduct and Defendant's usual and customary practice of providing in-person services, that in return for their tuition for the 2020 Spring Semester, Defendant would provide Plaintiff and Tuition Class Members with in-person services. Defendant's provision of in-person services was therefore a material term of the parties' agreement.

77. Plaintiff and Tuition Class Members fulfilled their end of the bargain by paying Defendant's required tuition.

78. Defendant breached its contracts with Plaintiff and Tuition Class Members by ceasing to offer in-person services during the 2020 Spring Semester and only providing instruction through online courses, without offering any tuition reimbursement.

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

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

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

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

(Plaintiff and the Tuition Class)

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

83. Defendant's contract with Tuition Class Members included the implied covenant of good faith and fair dealing in which Defendant owed Tuition Class Members the duty not to charge and retain money from Tuition Class Members for services which Defendant did not provide to Tuition Class Members.

84. Defendant breached its duty of good faith and fair dealing to Tuition Class Members by unfairly charging and collecting money from the Tuition Class Members for in-person services that Defendant did not provide to Tuition Class Members during the 2020 Spring Semester without providing any reimbursement to the Tuition Class Members.

85. Through such conduct Defendant acted, or exercised a judgment conferred by the express terms of the agreements, in bad faith by acting in such a manner as to evade the spirit of

the transactions and to deny Plaintiff and Tuition Class Members the expected benefits of their agreements. Such conduct was unfaithful to the agreed common purpose, inconsistent with the reasonable expectations arising from the contract, and violated community standards of decency, fairness, and reasonableness.

86. Plaintiff and Tuition Class Members have been damaged as a result of Defendant's breach of the covenant of good faith and fair dealing in the amount charged, collected, and retained by Defendant for the in-person services.

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

COUNT III: UNJUST ENRICHMENT
(Plaintiff and the Tuition Class)

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition, and further alleges as follows:

89. Substantial benefits have been conferred upon Defendant from Plaintiff and Tuition Class Members by Plaintiff and Tuition Class Members paying tuition for in-person services.

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

91. Defendant either knew or should have known that, by moving to online only education away from campus during the 2020 Spring Semester, it was not providing the in-person services for which Plaintiff and Tuition Class Members paid and was providing a service of significantly lesser value.

92. 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 Tuition Class based on the diminished value of the services they received.

93. Plaintiff and the Tuition Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant based on its failure to provide the in-person services for which Plaintiff and Tuition Class Members paid.

94. 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 Tuition 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.

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

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

96. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition, and further alleges as follows:

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

98. It is unjust for Defendant to accept and retain the full amount of this money that it received for tuition because by moving to online-only instruction away from campus it failed to provide the in-person services for which Plaintiff and Tuition Class Members bargained.

99. As an alternative to the claim for breach of contract, Defendant should return to Plaintiff and Tuition Class Members the money Defendant received that constitutes the diminished value of the services that Plaintiff and Class Members received as a result of Defendant's moving to online-only instruction away from campus during the 2020 Spring Semester, compared to the in-person services for which they bargained.

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

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

101. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition as if fully set forth herein, and further alleges as follows:

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

103. 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.

104. Plaintiff, on behalf of herself 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.

105. 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.

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

107. Plaintiff and the Tuition Class purchased in-person services from Defendant for personal, family, or household purposes and did not receive the benefit of the in-person services for which they paid upon Defendant providing only online course instruction away from campus during the 2020 Spring Semester.

108. Plaintiff and the Tuition Class thereby suffered ascertainable loss based on Defendant's unfair practice of failing to provide the bargained for in-person services, which are of higher value than the online-only instruction away from campus that Plaintiff and Tuition Class Members received during part of the 2020 Spring Semester, without providing Plaintiff and the Tuition Class with any tuition reimbursement.

109. 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.

110. 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.

111. 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.

112. Ceasing to offer the in-person services for which Plaintiff and Tuition Class Members paid without providing any reimbursement to Plaintiff and Tuition Class Members for tuition 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.

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

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

COUNT VI: BREACH OF CONTRACT
(Plaintiff and the Fees Class)

115. Plaintiff incorporates by reference the allegations contained in paragraphs 1- 59 of this Amended Petition as if fully set forth herein, and further alleges as follows:

116. Plaintiff and Fees Class Members entered into contracts with Defendant that provided that Plaintiff and other members of the Fees Class would pay certain fees, in exchange for which Defendant would provide in-person services related to those fees, such as access to activities, parking, meals, etc.

117. Plaintiff and Fees Class Members fulfilled their end of the bargain by paying these fees for the 2020 Spring Semester.

118. Defendant breached its contracts with Plaintiff and Fees Class Members when it closed its campuses and failed to provide Plaintiff and Fees Class Members the in-person services for which it had promised to provide them in exchange for their fees without any reimbursement, other than inadequate reimbursements as to meal plans. The result of Defendant's actions was that Plaintiff and Fees Class Members did not receive the benefits and services related to the fees for which they paid.

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

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

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

COUNT VII: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff and the Fees Class)

122. Plaintiff incorporates by reference each of the allegations contained in paragraphs 1- 59 of this Amended Petition, and further alleges as follows:

123. Defendant's contract with Fees Class Members included the implied covenant of good faith and fair dealing in which Defendant owed Fees Class Members the duty not to charge and retain money from Fees Class Members for services that Defendant did not provide to Fees Class Members.

124. Defendant breached its duty of good faith and fair dealing to Fees Class Members by unfairly charging and collecting money from the Fees Class Members for in-person services that Defendant did not provide to Fees Class Members during the 2020 Spring Semester without providing any reimbursement to the Fees Class Members, other than inadequate reimbursements as to meal plans.

125. Through such conduct Defendant acted, or exercised a judgment conferred by the express terms of the agreements, in bad faith by acting in such a manner as to evade the spirit of the transactions and to deny Plaintiff and Fees Class Members the expected benefits of their agreements. Such conduct was unfaithful to the agreed common purpose, inconsistent with the reasonable expectations arising from the contract, and violated community standards of decency, fairness, and reasonableness.

126. Plaintiff and Fees Class Members have been damaged as a result of Defendant's breach of the covenant of good faith and fair dealing in the amount charged, collected, and retained by Defendant for the benefits and services related to the fees that were not provided.

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

COUNT VIII: UNJUST ENRICHMENT
(Plaintiff and the Fees Class)

128. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition, and further alleges as follows:

129. Substantial benefits have been conferred upon Defendant from Plaintiff and Fees Class Members by Plaintiff and Fees Class Members paying for fees for on-campus benefits and services.

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

131. Defendant either knew or should have known that by closing its campuses and failing to provide Plaintiff and Fees Class Members the in-person services for which it had promised to provide them in exchange for their fees without offering any reimbursement, other than inadequate reimbursements as to meal plans, Plaintiff and Fees Class Members were not receiving the benefit of their bargain.

132. Defendant's acceptance and retention of these benefits under the circumstances makes it inequitable for Defendant to retain these benefits without reimbursement to Plaintiff and the Fees Class.

133. Plaintiff and the Fees Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant based on its failure to provide the benefits and services relating to the fees for which Plaintiff and Fees Class Members paid.

134. 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 Fees 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.

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

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

136. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition, and further alleges as follows:

137. Defendant has received money from Plaintiff and the Fees Class for fees for the 2020 Spring Semester, which includes money that it received for in-person benefits and services related to these fees that were not provided as a result of its closing its campuses, that in equity and good conscience should be returned to Plaintiff and the Fees Class.

138. It is unjust for Defendant to accept and retain the full amount of this money that it received for these fees because when it closed its campuses it failed to provide the in-person benefits and services related to fees for which Plaintiff and Fees Class Members bargained.

139. As an alternative to the claim for breach of contract, Defendant should return to Plaintiff and Fees Class Members the money Defendant received that constitutes the pro-rata portion of the money paid in fees for the 2020 Spring Semester for which Plaintiff and Fees Class Members did not receive the benefit of their bargain.

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

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

141. Plaintiff incorporates by reference the allegations contained in paragraphs 1-59 of this Amended Petition as if fully set forth herein, and further alleges as follows:

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

143. 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.

144. Plaintiff, on behalf of herself 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.

145. 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.

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

147. Plaintiff and the Fees Class purchased in-person services from Defendant, via fees that they paid Defendant, for personal, family, or household purposes and did not receive the benefit of the in-person services for which they paid Defendant such fees upon Defendant closing its buildings and facilities.

148. Plaintiff and the Fees Class thereby suffered ascertainable loss based on Defendant's unfair practice of failing to provide Plaintiff and Fees Class Members with the in-person benefits and services related to the fees that Plaintiff and Fees Class members paid, such

as access to activities, parking, meals, etc., without providing Plaintiff and the Fees Class with any reimbursement, other than an inadequate reimbursement as to meal plans.

149. 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.

150. 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.

151. 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.

152. Ceasing to offer the in-person benefits and services related to the fees that Plaintiff and the Fees Class Members paid, such as access to activities, parking, meals, etc., without providing Plaintiff and the Fees Class Members with any reimbursement, other than an inadequate reimbursement as to meal plans, 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.

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

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

**RESTROSPECTIVE APPLICATION OF AMENDMENTS TO THE MMPA BY
SENATE BILL 591 IS UNCONSTITUTIONAL**

155. To the extent that the amendments in Missouri Senate Bill 591, from Missouri's 2020 legislative session, impaired the substantive rights of Plaintiffs and Class Members that accrued prior to the passage of such amendments, any attempt to apply such amendments retrospectively violates Missouri's prohibition of laws that are retrospective in operation. *See* Mo. Const. art. I. § 13; *Hess v. Chase Manhattan Bank, USA, N.A.*, 220 S.W.3d 758, 769 (Mo. 2007).

PRAYER FOR RELIEF

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

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

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: February 9, 2022

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

By: /s/ Richard S. Cornfeld

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2022, the foregoing was filed with the Court Clerk via the Court's electronic filing system and served on upon all counsel of record via the Court's electronic notification system.

/s/ Richard S. Cornfeld