IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MICHAEL JAMES LAWSON, JR. and TARA LAWSON, individually and on behalf of all others similarly situated, Plaintiffs	:	No. 21-01134
	:	CIVIL ACTION – LAW
Vs.	:	
PENNSYLVANIA COLLEGE OF TECHNOLOGY, Defendant	:	

OPINION AND ORDER

AND NOW, following argument on Defendant Pennsylvania College of Technology's Preliminary Objections to Plaintiff's Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiffs Michael James Lawson, Jr. ("Michael") and Tara Lawson ("Tara"), son and mother, commenced this case by filing a Class Action Complaint on October 12, 2020 in Philadelphia County. The Complaint seeks reimbursement of money paid to Defendant, a college in Williamsport, for tuition, room, board, and other purposes. The gravamen of the Complaint is that when Defendant switched from in-person learning to remote learning in response to the COVID-19 pandemic, they did not fully refund students sums of money that were paid for, *inter alia*, in-person lessons, meals, room and board, and activities. In doing so, Plaintiffs allege, Defendant committed numerous breaches of contract and was unjustly enriched. The Complaint contains eight counts, four for breach of contract and four for unjust enrichment, relating to four classes of payment.

Counts I and II allege that class members entered into a contract with Defendant, agreeing to pay tuition in exchange for, *inter alia*, "access to campus facilities, access to campus activities, and live, in-person instruction in a physical classroom." Plaintiffs contend that Defendant retained all tuition moneys paid despite switching from in-person education to remote education in the middle of the Spring 2020 semester, and in doing so "provided a materially different product" than the one class members paid tuition for. This is especially egregious, Plaintiffs allege, given that Defendant emphasizes trades and hands-on learning, which means that many of its programs (such as diesel technology, Michael's course of study) are not amenable to remote education.

Counts III and IV allege that class members paid "a myriad of fees that are either related to courses or included under the guise of tuition," such as fees for facilities, technology infrastructure support, health services, social activities, and lab fees. When Defendant switched to online learning, Plaintiffs contend, Defendant retained these fees despite the services they paid for being inaccessible to class members.

Counts V and VI allege that when Defendant switched to remote learning, it closed its on-campus housing facilities, requiring that on-campus students vacate. Plaintiffs contend that Defendant provided "partial refunds, equal to four weeks of housing charges," despite "student [being] evicted with approximately eight weeks remaining in the semester."

Counts VII and VIII allege that many students purchased meal plans from Defendant, but that when Defendant switched to remote learning, it offered, as with

housing, "partial refunds equal to four weeks of meal charges" despite there being approximately eight weeks remaining in the semester.

Plaintiffs seek certification of a class, damages for themselves and class members, and a number of fees and remedies particular to the class action context.

On December 18, 2020, Defendant filed Preliminary Objections to the Complaint. Defendant raised eight separate objections, the first of which was to venue in Philadelphia County. Shortly thereafter, Defendant filed a motion to transfer the action to Lycoming County. The Philadelphia County Court of Common Pleas granted the parties a period of discovery limited to the issues of forum and venue, and on October 6, 2021 the Philadelphia County Court of Common Pleas sustained Defendant's first preliminary objection and transferred the case to this Court.

Following the transfer, this Court held a conference with the parties on February 18, 2022, at which time all parties agreed that Defendant's remaining preliminary objections were outstanding and ripe for decision.

DEFENDANT'S PRELIMINARY OBJECTIONS

A. Standing of Tara Lawson

Defendant's first preliminary objection asserts that Plaintiff Tara Lawson lacks standing to bring a claim.[1] Defendant notes that to demonstrate standing, a litigant must "show a substantial, direct, and immediate interest in the outcome of the litigation."[2] A litigant's interest is "substantial… if there is a discernable adverse

[1] Pa. R.C.P. 1028(a)(5) allows a preliminary objection for "lack of capacity to sue," which encompasses asserted lack of standing. *See, e.g., C.G. v. J.H.*, 193 A.3d 891 (Pa. 2018).
[2] Defendant quotes *Petty v. Hosp. Serv. Ass'n of Ne. Pa.*, 23 A.3d 1004, 1013 (Pa. 2011).

effect to an interest other than that of the general citizenry. It is direct if there is harm to that interest. It is immediate if it is not a remote consequence of a judgment."[3]

Defendant alleges that Tara has not satisfied any of these standards, noting that the Complaint contains just two paragraphs mentioning Tara: Paragraph 16, which states "Plaintiff Tara Lawson is Michael Lawson's mother," and Paragraph 17, which states "Plaintiff Tara has contributed a substantial sum toward paying the cost of Michael's tuition and fees, either out of pocket or through Federal Direct Parent Plus Financing, or otherwise." Defendant contends that "[o]nce a student reaches the age of majority, courts have routinely held that parents lack standing to bring claims against their adult children's colleges and universities, even when the parents pay tuition on behalf of their children."[4] Thus, Defendant generally argues that the allegations concerning Tara's relationship to Michael and contribution to his tuition and fees is insufficient to establish standing.

Defendant makes three specific arguments in support of this claim. First, Defendant observes that "nowhere within the Complaint does [Tara] allege what sums she purportedly contributed, how she contributed them, or how that contribution equates to her having a legal relationship with [Defendant]." Second, Defendant contends that "a loan agreement with the federal government to pay for [Michael's] education" does not establish standing because it "is a separate transaction, between [Tara] and the loan issuer, [which] goes to the source of her finances [but] is wholly irrelevant to the claims being made...." Finally, Defendant avers that "one cannot be

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[3] *Id.*

[4] Defendant cites *Lindner v. Occidental Coll.*, 2020 WL 7350212, at *5 (C.D. Cal. Dec. 11, 2020).

liable for a breach of contract unless one is a party to that contract";[5] thus, inasmuch as Tara does not "claim that she personally entered into any contract with [Defendant]," she does not have standing to bring breach of contract claims.[6]

In addition to *Lindner*, Defendant cites *Salerno*,[7] another federal case, in support of its position. In *Salerno*, the Middle District of Florida granted the defendant's motion to dismiss the claims brought by Salerno, the mother of Murillo, a student at the defendant college; the Court noted that the college:

> "[had] no contractual agreement of any type with Salerno. Murillo executed all documents relating to her admission and attendance [and] did not grant Salerno access to her records or information at the College... The College also points to evidence that—contrary to Salerno's allegations that she paid 'approximately $18,430 to [the College] for Ms. Murillo's Spring 2020 tuition,' the College has no account in Salerno's name. The amended complaint also alleges, inconsistently, that Murillo paid this amount with her own credit card."

On this evidence, which Salerno did not rebut, the Court concluded that "Salerno [had] not... adequately explain[ed] how any action on [the college's] part injured her." The Court also concluded that "the lack of injury to Salerno is clear regardless of whether Salerno provided financial support to her daughter," because "[t]hat arrangement was between mother and daughter [and did] not establish a relationship between the College and Salerno under these facts."

Plaintiffs' general response is that Tara "paid for... Michael's education," and therefore she "suffered economic injury and she serves as a party to a contract."

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[5] Defendant cites *Electron Energy Corp. v. Short*, 597 A.2d 175, 177-78 (Pa. Super. 1991).
[6] Defendant cites two out-of-state cases in which courts have ruled that a parent did not have standing to bring claims to recover contributions to a child's tuition in "the context of COVID-19 education litigation...."
[7] *Salerno v. Florida Southern College*, 2020 WL 5583522 (M.D. Fla. 2020).

Plaintiff cites two unreported federal cases in support of this claim. In both *Sibeto*[8] and *Harris,*[9] the sole plaintiff was an adult student who asserted, *inter alia*, a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). Both defendants noted that under the UTPCPL a plaintiff must show they "purchased or leased" goods or services, and asserted that *the student plaintiff* did not have standing because their parents, rather than the plaintiffs themselves, paid their tuition. In both cases, the Court found that each plaintiff's allegation in the complaint that they "purchased educational services" from the defendant university was sufficient to survive a preliminary objection on this ground. Although neither of these cases explicitly concluded that a parent paying for tuition conferred standing on that parent, they each endorsed the principle that an allegation that a plaintiff "purchased... educational services... for which he remitted payment in the form of tuition and fees" will support a finding of standing, at least under the UTPCPL.[10]

The Court concludes that Tara has satisfactorily alleged standing. Essentially, Tara alleges that she paid money to Defendant under the impression that Defendant would provide a product of a certain character to Michael, but Defendant ultimately delivered either a product of a different, lesser character or no product at all, keeping a disproportionately large percentage of the money Tara paid. The Complaint does not allege that Tara paid Michael money which he then contributed to the costs described in the Complaint; rather, the Complaint alleges that Tara paid this money

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[8] *Sibeto v. Capella University*, 2014 WL 3547347 (W.D.Pa. 2014).
[9] *Harris v. Saint Joseph's University*, 2014 WL 1910242 (E.D.Pa. 2014).
[10] *Id.* at *6. The Court notes that these cases addressed the requirements for standing to bring a UTPCPL claim; as the UTPCPL is not implicated here, the Court views these cases as persuasive only to the extent they address general principles of standing.

to Defendant. This allegation, modest though it is, sufficiently alleges that Tara suffered harm to her financial interests beyond that sustained by the general public. Further, the fact that Michael attended Defendant college and Tara did not, does not render the potential reimbursement of her payments a "remote consequence" of a judgment in this case.

For the foregoing reasons, the Court overrules Defendant's first preliminary objection.

B. Rule 1019(i)

Pennsylvania Rule of Civil Procedure 1019(i) states that "[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing." Defendant notes that Plaintiffs, despite including numerous breach of contract claims and "referenc[ing] a purported 'contract' or 'contractual obligations' approximately 30 times" in their Complaint, have not attached any writing to their Complaint. Thus, Defendant objects to the Complaint on the grounds that it fails to conform to a rule of law[11] and lacks sufficient specificity.[12]

At argument, Defendant also argued that the links to websites in the Complaint direct not to a copy of the website as it existed at a given time prior to the filing of the Complaint but rather to *active websites*, which could theoretically change or be removed at any time. Because any purported contract between Michael and

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[11] Pa. R.C.P. 1028(a)(2) allows preliminary objections for "failure of a pleading to conform to law or rule of court...."

[12] Pa. R.C.P. 1028(a)(3) allows preliminary objections for "insufficient specificity in a pleading."

Defendant was necessarily based on the content of the writings at the time the contract was made in the past, Defendant argues that the links to active websites fail to direct readers of the Complaint to the "writing or copy" of the writing as required by Rule 1019(i).

Plaintiffs respond that a fair reading of their Complaint demonstrated that they are alleging that "the contractual relationship between [Michael] and Defendant is based off of several manifestations that are conglomerated from marketing materials, numerous website publications, and excerpts from Defendant's Course Catalogue which were all directly taken from, included, and attached within the Complaint." Plaintiffs also noted that they "included hyperlinks to various written sources" listed directly in the body of the Complaint. Thus, Plaintiffs contend, they have satisfied the requirements of Rule 1019(i).

Plaintiffs' Complaint is interspersed with occasional clippings from websites and other documents allegedly published by Defendant. These include:

- An excerpt from Defendant's website addressing its COVID-19 response;
- Defendant's Mission Statement, Vision Statement, and Values as listed on its website;
- Multiple short entries from Defendant's "about" page;
- A paragraph from Defendant's website discussing its resources for dealing with COVID-19 and its plan to reopen; and
- Course descriptions for "Powertrain and Brake Systems Lab" and "Hydraulics II" from Defendant's course catalog;

Plaintiffs also include numerous quotes from various pages on Defendant's website along with links to those websites.

Ultimately, Plaintiffs contend that the contracts at issue in this case – regarding tuition, fees, housing, and meal plans – contain terms "implied or set forth by Defendant through its website, academic catalogs, student handbooks, marketing materials and other circulars, bulletins, and publications." Although Plaintiffs have reproduced or quoted a great many brief excerpts from Defendant's website, they have not attached the vast majority of the writings they claim formed the contracts between Defendant and Michael (and other putative class members). The Court agrees with Defendant that Rule 1019(i) does not give Plaintiff the choice to either attach the relevant writing *or* reproduce the relevant portions, but rather requires them to attach the writing *unless* it is inaccessible to them. Here, Plaintiffs generally have not done so.

The Court also agrees with Defendant's contention that Plaintiffs must generally reproduce the relevant portions of Defendant's website as they existed at or near the time of contract formation, rather than providing links to the present-day website, which is of dubious relevance to the terms of the contract Michael claims he entered into years ago.

The Court recognizes that in cases alleging a contract based on a constellation of representations and bargains spanning multiple writings, the requirement imposed by Rule 1019(i) may be burdensome, and the required attachments voluminous. Factual complexity or practical difficulty, however, cannot excuse noncompliance with the Rules of Civil Procedure, or a relaxation of the Plaintiffs' burden to demonstrate the existence of a contract and exactly what its terms are, or Defendant's right to notice. Although it may be difficult to compile the

myriad documents that form the entirety of the purported contract, under Rule 1019(i), Plaintiffs must at least make a good faith effort to do so. If Plaintiffs are unable to access a document despite such a good faith effort, Rule 1019(i) permits them to state as much, together with the reason for inaccessibility. In the absence of such an effort, it is impossible to determine whether the document's absence is due to actual inaccessibility or some other reason.

For the foregoing reasons, the Court sustains Defendant's second preliminary objection. The Court will provide Defendants twenty (20) days to file an Amended Complaint attaching the relevant documents or explaining why they are inaccessible to Plaintiffs.[13]

C. Failure to Identify Specific Contractual Claims

Defendant's third preliminary objection is premised on two grounds: a demurrer to Plaintiffs' breach of contract claims, and an alleged lack of sufficient specificity.[14] Defendant notes that in order to plead a breach of contract claim, a plaintiff must plead "1) the existence of a contract and its essential terms; 2) a breach of the duty imposed by the contract; and 3) damages that resulted."[15] In the context of a student-school relationship, Defendant asserts that "[t]he student's claim 'must relate to a specific and identifiable promise that the school failed to honor'" and that "[a] plaintiff must do more than allege that the school did not provide a good or quality

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[13] Pa. R.C.P. 1028(e) states that "[i]f the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix."
[14] Pa. R.C.P. 1028(a)(4) allows preliminary objections for "legal insufficiency of a pleading (demurrer)."
[15] Defendant cites, *inter alia*, *Hart v. Univ. of Scranton*, 2012 WL 1057383 (M.D. Pa. 2012).

education."[16] In the absence of such, Defendant contends, the Court will be unable to assess the viability of Plaintiffs' contract claim or for Defendant to respond to Plaintiffs' claims. Ultimately, Defendant claims that Plaintiffs failed generally to highlight any definite contractual provisions they allege Defendant breached, and failed specifically to cite any provisions suggesting that "all instruction would be provided on a live in-person basis, regardless of exigent circumstances, nor do they identify a specific refund obligation that was breached by [Defendant] as a result of a forced closure of on-campus housing, or because on-campus meals were no longer offered."

At argument, Defendant further stressed that "promises have to be specific" to form contractual provisions. To this end, Defendant argued that things like advertising and general descriptions of what a student could expect to encounter at Defendant college are as a matter of law insufficient to form contract provisions.[17] To this end, Defendant asserted the fact that Plaintiffs expected to receive in-person instruction at Defendant college, even if that expectation was a result of advertising, was insufficient to form a contract in the absence of a specific provision promising such.

Ultimately, Defendant argued that Plaintiffs' failure to plead specific contractual provisions leaves Defendant unaware of exactly what it is defending against. As an

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[16] This Opinion discusses Defendant's fourth preliminary objection, alleging that Plaintiffs' complaint raises claims of education malpractice that are not cognizable under Pennsylvania law, *infra*.

[17] Defendant gave the example of a course catalog that listed the particular building a class would be held in and the instructor scheduled to teach the class. It would be absurd, Defendant argued, for a student to construe those statements as contract terms and attempt to claim a breach of contract should the course move to a different building or a substitute teacher take over.

example, Defendant cited the allegation that they breached a contract regarding fees paid for various services on campus. Although Plaintiffs did identify the fees, Defendants note, they did not identify any particular promises made about the fees, exactly how much of a refund they are seeking, or how they believe any refund should be calculated based on when students were sent home.

Plaintiffs respond that Defendant's argument essentially means that a contract could never be formed between a school and a student unless the school went out of its way to say "this is a contract" or otherwise explicitly make clear that it was making promises rather than representations in its advertising, handbook, and other materials. Plaintiffs acknowledge that "a contractual promise in a college setting must be sufficiently clear and specific" lest a student be able to "turn every minor grievance with their university into a breach-of-contract lawsuit alleging vague and indefinite broken promises." They argue, however, that Defendant's proposed standard for specificity goes too far, and would allow universities to act contrary to even the most basic expectations of the academic setting with impunity (such as the understanding that four years of successful coursework will result in the conferral of a degree) while asserting that they have made no promises of behavior specific enough to bind them.[18] Plaintiffs cite *Gati* for the proposition that "[a] student [in Pennsylvania] has a reasonable expectation based on statements of policy by [the

[18] Plaintiffs cite *Villareal v. Art Institute of Houston, Inc.*, 20 S.W.3d 792 (Ct. App. Tx. 2020), to demonstrate that at least one court has acknowledged that a contract between a student and school can be "partly written and partly oral" that "[a]t a minimum, an implied contract [can] exist[] between [a student and a school] that [the school] would provide [the student] an educational opportunity and confer upon her a degree... in consideration for her agreement to successfully complete degree requirements, abide by the school's guidelines, and pay tuition."

school] and the experience of former students that if he performs the required work in a satisfactory manner and pays his fees he will receive the degree he seeks."[19] Plaintiffs go on to describe ways in which they contend students are likely to understand advertisements, representations, and other statements of Defendant to constitute contractual provisions and an intent to be bound.

At the preliminary objection stage, the Court may sustain a demurrer "[w]here it appears that the law will not permit recovery."[20]

The parties cite competing cases in support of their theories regarding whether Plaintiffs' averments support a cause of action for breach of contract. In *Ryan*, cited by Defendant, the plaintiff students argued that "the terms of [their contracts] with [the defendant university] provided that [the plaintiffs] would pay tuition in exchange for course enrollment, access to campus facilities, and in-person instruction in a physical classroom."[21] The plaintiffs contended that "the terms of this contract were implied through [the defendant's] publications describing student life at the University… [including the defendant's] website, academic catalog, marketing materials, and mission statement [which all] make repeated references to the on-campus experience as a benefit of enrollment."[22] The District Court disagreed, holding that because the terms of the "Student Financial Responsibility Agreement" between the plaintiffs and defendant were stated in "plain and unambiguous language" and "set forth with sufficient clarity," that agreement constituted the contract between the

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[19] Plaintiffs cite *Gati v. University of Pittsburgh of Com. System of Higher Education*, 91 A.3d 723, 731 (Pa. Super. 2014). Defendant contends that *Gati* is inapposite, inasmuch as it concerns a dental school's internal disciplinary procedures.
[20] *Bayada Nurses, Inc. v. Com., Dept. of Labor and Industry*, 8 A.3d 866, 884 (Pa. 2010).
[21] *Ryan v. Temple University*, 535 F.Supp.3d 356, 362 (E.D. Pa. April 22, 2021).
[22] *Id.*

parties.[23] The Court rejected the plaintiffs' argument that the agreement was "incomplete" and that there was an implied contract between the parties, noting that "school publications are generally not a valid source of contractual obligations under these circumstances," as they are often "vague or aspirational."[24] For this reason, the Court explained, "Pennsylvania courts have routinely declined to construe publications like academic catalogues, student handbooks, mission statements, or marketing materials as contracts between students and public universities."[25] The Court ultimately concluded that the absence of any "specific and identifiable promise concerning in-person instruction" in the materials cited by the plaintiffs meant that the alleged terms of the implied contract "lack[ed] sufficient clarity and could not be specifically enforced by the Court," especially in light of the express agreement between the two parties as stated in the Student Financial Responsibility Agreement.[26]

In response, Plaintiffs cite *Figueroa*, decided four months after *Ryan*.[27] In *Figueroa*, the District Court noted that certain Pennsylvania cases had recognized a "potential cause of action for breach of implied contract" when a "student 'allege[d] that there was [a] specific undertaking, in the student handbook and catalog or otherwise' that was not met...."[28] The Court explained:

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[23] *Id.* at 365.
[24] *Id.* at 369.
[25] *Id.*
[26] *Id.*
[27] *Figueroa v. Point Park University*, 553 F.Supp.3d 259 (W.D. Pa. August 11, 2021).
[28] *Id.* at 267 (*citing Cavalier v. Duff's Bus. Inst.*, 605 A.2d 397, 404 (Pa. Super. 1992)). The District Court noted that, although *Cavalier* recognized the theoretical possibility of such claims, it made explicit that educational malpractice is not a viable cause of action in Pennsylvania, and therefore a student does not state a valid claim when the alleged breach

> "Because the multi-faceted contractual relationship between a university and its students is generally not documented within a single integrated express writing, it is comprised of – and the courts look to – the many different representations provided to the students during their enrollment. That is, student-university contracts are considered under the law of implied (or 'implied-in-fact') contract. More particularly… '[t]he contract between a private institution and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.'"[29]

The District Court concluded that the plaintiffs "sufficiently [pled] an implied contract under Pennsylvania law 'to provide in-person, on-campus instruction, experiences, and activities," in that they "allege[d] that [the university] promised – in the official materials promulgated in electronic and print form during the students' enrollment – a particular method of instruction for which students paid a premium in tuition and fees, but delivered a lower-cost option which the students had previously declined."[30] Defendant acknowledges that *Figueroa* appears to cut against their position, but they characterize it as an "outlier."

There simply does not appear to be a way to completely resolve the discrepancy between the accounts of Pennsylvania law in *Ryan* and *Figueroa*. Rather, they appear to reflect the reality that whether an implied contract exists between a school and its students – and what the scope of that contract is – depends on the specific factual scenario presented and is not susceptible to broad

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of contract arises from "inadequate and proper instruction, in breach of an alleged implied contract for a quality education…."

[29] *Id.* at 267-68 (quoting *Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. 1999)). The parties have not analyzed whether different standards apply as to the instant issue depending on whether the defendant school is public or private, and on the specific issues before the Court, it is not obvious why public or private schools would require different analyses.

[30] *Id.* at 274-75. The Court concluded that, in the alternative, the plaintiffs had stated a claim of unjust enrichment or *quantum meruit*.

generalizations. Thus, the Court agrees with Plaintiffs that under Pennsylvania law, a student may state a claim for breach of contract based on an amalgamation of documents, materials, and other writings.

Here, however, the Court concludes that Plaintiffs have not alleged the existence of the contract or its provisions with sufficient specificity because they have not attached many of the materials they claim form the basis of the contract. Plaintiffs claim that Defendant breached the contract between itself and students by, *inter alia*:

- Promising that students would receive live, in-person education if they paid higher tuition than their remote classmates, but then providing online education to all students while retaining the additional payments made by students who paid a premium for in-person education;
- Retaining numerous specific fees that were tied to specific benefits, services, and programs that Defendant ultimately failed to provide;
- Reimbursing students for only four weeks of housing costs despite preventing them from utilizing on-campus housing for approximately eight weeks; and
- Reimbursing students for only four weeks of meal plan costs despite the cafeteria being closed for approximately eight weeks.

The Court can only evaluate whether the alleged contract actually contains these terms and binds Defendant to honor them by considering the full context of the alleged contract between the parties, and the Court can only determine the full context of the alleged contract if all of the writings that comprise it are attached to the Complaint or summarized in relevant part. This is also the only way for Defendant to receive full notice of the claims against it and avoid unfair surprise. The Court may ultimately determine that the allegations in the Complaint are stated with sufficient

specificity and in fact form a contract, but it cannot make this determination until it sees the alleged contract in full.

For the foregoing reasons, the Court sustains Defendant's third preliminary objection. The Court will provide Plaintiffs twenty (20) days to file an Amended Complaint including the documents Plaintiffs contend constitute the full contract and identifying the location in the alleged contract of each provision Plaintiffs allege the Defendant breached.

D. Educational Malpractice

Defendant characterizes Plaintiffs' claims as "regarding the quality of education they received... through online instruction, versus the quality of education they would have received had the instruction been live in-person." Defendant notes that Pennsylvania does not recognize a cause of action for "educational malpractice" – that is, claims that "the educational institution failed to provide a quality education" – because "[i]t would be unwise to inject the judiciary into an area where it would be called upon to make judgments despite often insurmountable difficulties both in the formulation of an adequate standard of care and in finding a causal link between the alleged breach and the alleged damages."[31] Arguing that Plaintiffs' claims are "in fact, an attack upon the pedagogical decisions made by [Defendant] on how to deliver instruction in the midst of a pandemic," Defendant contends that Plaintiffs' claims are not cognizable under Pennsylvania law.

Defendant urges the Court to "see through Plaintiffs' attempt to recast an educational malpractice claim as one sounding in contract and unjust enrichment."

[31] *Cavaliere*, 605 A.2d at 403.

Defendants argue that the true nature of Plaintiffs' claims is apparent inasmuch as they "ultimately ask that the Court conclude that live, in-person education is qualitatively more valuable than online instruction." Defendant notes that *Lindner*, a California case, rejected such claims because "'the theory underlying all of Plaintiffs' claims' was really that 'the education [plaintiff] received once [the school] transitioned to remote instruction in response to the Covid-19 global pandemic was not 'worth the amount charged' or 'in [any] way the equivalent of [an] in-person education.'"[32]

Plaintiffs respond that "[n]ot every action by a student against a school is an educational malpractice claim," and that such a claim is not present here because they do not allege that "the school breached its agreement by failing to provide an effective education." Plaintiffs cite *Paladino*, a New York case mentioned by the Superior Court of Pennsylvania in *Cavaliere*, for the proposition that "if [a] contract with [a] school were to provide for certain specified services, such as for example, a designated number of hours of instruction, and the school failed to meet its obligation, then a contract action with appropriate consequential damages might be viable."[33] To that end, Plaintiffs note that the Court in *Cavaliere* stated that "a cause of action for breach of contract or misrepresentation" may exist "where, for example, a private trade school has made a positive representation that a certain curriculum will be offered and the student then finds that such curriculum is not available...."[34] Plaintiffs ultimately assert that they are not seeking redress for "Defendant's general failure to provide a quality education" but for failure to satisfy "specific and identifiable

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[32] *Lindner*, 2020 WL 7350212 at *1, *7.
[33] *Paladino v. Adelphia Univ.*, 89 A.D.2d 85 (N.Y. 1982).
[34] *Cavaliere*, 605 A.2d at 404.

promises made...." Plaintiffs note that many numerous pending cases throughout the country have refused to dismiss similar complaints at the pleadings stage on the grounds that they constitute forbidden educational malpractice claims.[35]

The Court concludes that Plaintiffs have stated a viable claim for breach of contract and unjust enrichment, as opposed to an educational malpractice claim masquerading as a contractual one. Plaintiffs do *not* argue that 1) in-person education is in some abstract sense "better" than online education; 2) Defendant provided a "worse" education than they had promised; and therefore 3) Defendant must reimburse Plaintiffs the difference between the "value" of in-person education and the "value" of online education.

Rather, Plaintiffs argue 1) Defendant offered students the choice between in-person education and online education; 2) Defendant *charged a higher price* for in-person education; 3) Defendant provided a *different* product than they had promised; and 4) Defendant must reimburse Plaintiffs the difference between the *cost* of in-person education and the *cost* of online education.

Further, the Court disagrees with Defendant's argument that its decision to transition from in-person to online classes was a pedagogical one. Clearly, not every decision a school makes is pedagogical. Defendant's decision to close its campus and transition to entirely remote learning was certainly a health and safety decision,

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[35] Both parties have provided the Court with extensive supplemental authority discussing dozens of cases from various levels of state and federal courts. Each party can point to multiple cases that support their position and which are simply incompatible with the other party's preferred cases. This authority from other states and federal courts is extremely helpful to frame and elucidate the issues presented, but is of course not binding on this Court.

and likely also a business decision, but the Court does not believe that it was a pedagogical decision.

However, even accepting Defendant's argument that this decision was pedagogical, a fair reading of Plaintiffs' Complaint shows that they are not attacking any pedagogical elements of Defendant's decision to shut down the campus. Rather, they are contesting the financial elements of the decision to transition to entirely online learning without providing refunds or reimbursement to students who paid extra for in-person learning.

For the foregoing reasons, the Court overrules Defendant's fourth preliminary objection.

E. Failure to State Implied Contract

Defendant's fifth preliminary objection contends that Plaintiffs' allegation that "[t]he terms of [the] contract [between the students and Defendant college] are as implied or set forth by Defendant through its... publications" is impermissible, in that it simultaneously alleges the existence of a contract as well as the absence of one. Defendant argues that even if the Court does not believe dismissal is warranted, Rule of Procedure 1020(a) requires these theories to be stated in separate counts.

Plaintiffs respond that they "have sufficiently alleged a claim for breach of contract," and that "an express contract does not necessitate a written agreement." Thus, they argue, their pleadings are appropriate in that their "breach of contract claim is not based on a fully written and integrated contract that can be attached" to the Complaint.

Rule 1020(a) allows a plaintiff to "state in the complaint more than one cause of action cognizable in a civil action against the same defendant," and requires "[e]ach cause of action and any special damage related thereto [to] be stated in a separate count containing a demand for relief." Rule 1020(c) states that "[c]auses of action and defenses may be pleaded in the alternative."

Pennsylvania recognizes three sources of contractual liability. The first of these is an express contract, in which the parties enter an agreement based on an express writing.

The second source of contractual liability is "unjust enrichment."[36] The concept of unjust enrichment "imposes a duty not as a result of any agreement, whether express or implied, but in spite of the absence an agreement when one party receives an unjust enrichment at the expense of another."[37]

The third source of contractual liability is an "implied contract."[38] Under the theory of implied contract, "an actual contract... arises where the parties agree upon the obligations to be incurred, but their intention, instead of being expressed in words, is inferred from acts in the light of the surrounding circumstances."[39]

Because the existence of a written contract is incompatible with the existence of a quasi contract, Pennsylvania courts have held that a plaintiff must plead these causes of action in the alternative.[40] At least one Pennsylvania case has held

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[36] This concept is variously referred to as "unjust enrichment," "quasi-contract," and "contract implied in law"; these three terms describe an identical theory of contractual liability.
[37] *Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 970 (Pa. Super. 2009).
[38] This concept is variously referred to as "implied contract" or "contract implied in fact"; these terms describe an identical theory of contractual liability.
[39] *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 659 (Pa. 2009).
[40] *See, e.g., Lugo*, 967 A.2d at 969.

similarly with respect to contracts implied in fact.[41] Therefore, the Court concludes that under Rule 1020(a) Plaintiffs must plead a breach of an implied contract in a separate count from claims for breach of an express contract or unjust enrichment.

For the foregoing reasons, the Court sustains Defendant's fifth preliminary objection. Plaintiffs shall have twenty (20) days to file an amended complaint pleading claims for breach of express contract and breach of implied contract in separate counts.

F. Unjust Enrichment

Defendant's sixth preliminary objection alleges that Plaintiffs have failed to sufficiently plead their claims of unjust enrichment for two reasons. The first of these reasons it that Plaintiffs have also pled the existence of a contract, which is incompatible with unjust enrichment. The second reason is that Plaintiffs have not alleged that Defendant has been unjustly enriched. More specifically, Defendant avers that because Plaintiff continued to attend the classes at issue, he has failed to show that Defendant was unjustly enriched, because it provided him what he bargained for, i.e., an education.

Plaintiffs first respond that they have appropriately pled unjust enrichment in the alternative to their contract claim as permitted by Pa. R.C.P. 1020(c). Plaintiffs contend that they have alleged Defendant was unjustly enriched by, *inter alia*, retaining money paid for in-person classes but offering less costly online classes; retaining tuition and fees despite a cessation or alteration of the character of those

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[41] *Birchwood Lakes Community Ass'n v. Comis*, 442 A.2d 304, 308-09 (Pa. Super. 1982) (the rationale that a plaintiff seeking to recover for under express contract and quasi-contract in the alternative must plead both in the complaint "appl[ies] equally well to contracts implied in fact").

services; reimbursing four weeks' worth of housing and meal plan payments even though those services were unavailable for a period of approximately eight weeks; and enjoying "reduced utility costs, reduced maintenance and staffing requirements, [and] reduced or eliminated hours for hourly employees" despite retaining the payments that were originally meant to cover these costs.

The Court concludes that Plaintiffs have permissibly pled unjust enrichment in the alternative to their contractual claims under 1020(c). Further, the Court concludes that Plaintiffs have sufficiently alleged "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value" as is necessary to state a claim for unjust enrichment.[42]

For the foregoing reasons, the Court overrules Defendant's sixth preliminary objection.

G. Attorneys' Fees

Defendant's seventh preliminary objection is to Plaintiffs' request for attorneys' fees. Defendants aver that generally, attorneys' fees may not be awarded unless Plaintiffs plead some "recognized exception to the American Rule" that each party to a lawsuit pays their own legal costs.[43] Defendant contends that Plaintiffs have not done so here. More specifically, Defendant argues "[t]he fact that Plaintiffs may seek class certification does not allow them to seek counsel fees." This is because Rule of

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[42] *See Temple University Hosp., Inc. v. Healthcare Management Alternatives, Inc.*, 832 A.2d 501, 507 (Pa. Super. 2003).

[43] Defendant cites *City of Reading v. Feltman*, 562 a.2d 926, 930 (Pa. Cmwlth. 1989).

Civil Procedure 1717, governing attorneys' fees in class action suits, does not *authorize* an award of attorneys' fees but merely specifies the factors for determining what attorneys' fees should be awarded when they are authorized by some other positive provision of law.

Plaintiffs respond that the Rules of Civil Procedure governing class actions lawsuits – specifically Rules 1716 and 1717 – function together to justify an award of attorneys' fees generally in class action cases. Plaintiffs clarify that "Defendant is not being asked to pay attorneys' fees as a separate sum on top of that being pled to compensate class members. Should Plaintiffs prevail, Plaintiffs will acquire a judgment to be fulfilled by Defendant at the discretion of the Court. Attorneys' fees will be awarded out of that sum by the Court's reconciliation of the amount for which Plaintiff's Counsel applied, public policy, the guidelines of [Rules 1716 and 1717], and the Court's determination."

Rule 1717 lists factors that the court "shall consider… [i]n all cases where [it] is authorized under applicable law to fix the amount of counsel fees…." As Defendant points out, the official note to Rule 1717 states that it "does not determine when fees may be awarded. That is a matter of substantive law

As written, the Complaint requests attorneys' fees as part of its prayer for relief, but does not identify any exception to the American Rule. Typically, class action attorneys' fees are not an additional sum to be recovered from the defendant but are rather awarded by the court, coming from the judgment or settlement.[44] As such, a party seeking class certification need not plead a demand for attorneys' fees

[44] *In re Bridgeport Fire Litigation*, 8 A.3d 1270, 1288-89 (Pa. Super. 2010).

under Rule 1717 unless that party is relying on some positive of law to recover attorneys' fees from the opposing party. Here, Plaintiffs have explicitly noted that they are *not* seeking attorneys' fees beyond those typically awarded from the judgment or settlement in the class action context.

For the foregoing reasons, the Court sustains Defendant's seventh preliminary objection. To avoid confusion, Plaintiffs' request for attorneys' fees is stricken from the Complaint, without prejudice to Plaintiffs to seek an award of attorneys' fees from settlement or judgment proceeds.

ORDER

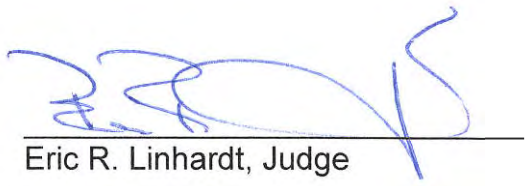
AND NOW, for the foregoing reasons, the Court hereby ORDERS as follows:

- Defendant's first preliminary objection is OVERRULED.
- Defendant's second preliminary objection is SUSTAINED. Plaintiffs shall have twenty (20) days from the date of this Opinion and Order to file an Amended Complaint attaching each relevant document or explaining why it is inaccessible.
- Defendant's third preliminary objection is SUSTAINED. Plaintiffs shall have twenty (20) days from the date of this Opinion and Order to file an Amended Complaint including the documents Plaintiffs contend constitute the full contract and identifying the location in the alleged contract of each provision Plaintiffs allege the Defendant breached.
- Defendant's fourth preliminary objection is OVERRULED.
- Defendant's fifth preliminary objection is SUSTAINED. Plaintiffs shall have twenty (20) days from the date of this Opinion and Order to file an Amended Complaint pleading claims for breach of contract, claims for breach of implied contract, and claims for unjust enrichment in the alternative in separate counts.
- Defendant's sixth preliminary objection is OVERRULED.
- Defendant's seventh preliminary objection is SUSTAINED. Plaintiffs' request for attorneys' fees is stricken from the

Complaint, without prejudice to Plaintiffs to seek an award of attorneys' fees from settlement or judgment proceeds.

IT IS SO ORDERED this 28th day of June 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr

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