

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

MICHAEL JAMES LAWSON, JR., and :
TARA LAWSON, individually and on : No. CV 21-01,134
behalf of all others similarly situated, :
Plaintiffs, : .

vs. : .

PENNSYLVANIA COLLEGE OF :
TECHNOLOGY, :
Defendant. : .

CIVIL ACTION

FILED
LYCOMING COUNTY
2024 DEC 26 PM 1:20
THOMAS O. HEARP
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OPINION AND ORDER

AND NOW, this 26th day of December, 2024, upon consideration of Plaintiffs' Motion for Class Certification,¹ Defendant's Response to the Motion,² and the briefs³ and arguments of the parties,⁴ it is hereby ORDERED and DIRECTED that the Motion is GRANTED, for the reasons explained at length below.

I. BACKGROUND.

Plaintiffs Michael James Lawson, Jr. and Tara Lawson, son and mother, commenced this action 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, Lycoming County for tuition, room, board, and other purposes. Defendant challenged venue in Philadelphia County, and,

¹ "Plaintiff's Motion for Class Certification," filed September 19, 2023 (the "Motion").

² "Defendant's Response in Opposition to Plaintiff's Motion for Class Certification," filed November 8, 2023 (the "Response").

³ The parties filed the following briefs: (i) Plaintiffs' Memorandum of Law in Support of Motion for Class Certification," filed February 13, 2024 ("Plaintiffs' Brief"); (ii) Plaintiffs' Proposed Finding[s] of Fact [], Conclusions of Law and Order," filed February 13, 2024 ("Plaintiffs' Proposed Findings"); and (iii) "Defendant's Notice of Supplemental Authority in Opposition to Plaintiff's Pending Motion for Class Certification," filed August 20, 2024 ("Defendant's Supplemental Response").

⁴ The Court held a hearing and heard oral argument on the Motion on February 13, 2024. Application for Continuance and Order entered November 14, 2024; Scheduling Order, entered September 25, 2023. Attorney Paul J. Doolittle, Esq. appeared and made argument for the Plaintiffs, and attorneys Brian J. Bluth, Esq. and James A. Morsch, Esq. appeared and made argument for the Defendant.

thereafter, on October 6, 2021, the Court of Common Pleas of Philadelphia County sustained Defendant's objection and transferred the case to this Court.⁵

The gravamen of the Complaint⁶ is that when Defendant switched from in-person learning to remote learning⁷ in response to the COVID-19 pandemic, it did not fully refund sums of money that students paid for, *inter alia*, in-person lessons, meals, room and board, and activities for the Spring 2020 semester. In doing so, Plaintiffs allege, Defendant committed numerous breaches of express and implied contract and was unjustly enriched.⁸ Plaintiffs also seek certification of this case as a class action, damages for themselves and class members, and a number of fees and remedies particular to the class action context.⁹

A. The Plaintiffs' Motion for Class Certification.

Plaintiff seeks certification of two classes: (1) a "Tuition Class," alternatively defined as "[a]ll people who paid tuition for or on behalf of students enrolled in in-person classes at the College for the Spring 2020 semester" or "[a]ll students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay tuition for the Spring 2020 semester;" and (2) a "Fees Class," alternatively defined as "[a]ll people who paid fees for or on behalf of students enrolled in in-person classes at the College for the Spring 2020 semester" or "[a]ll

⁵ See Opinion of the Court of Common Pleas of Philadelphia County, entered October 6, 2021.

⁶ Plaintiffs filed an Amended Complaint on July 28, 2022 (the "Complaint"), after resolution of preliminary objections. The Amended Complaint is the operative Complaint at the present time.

⁷ Defendant closed its campus to students, moved all classes to remote platforms and barred students from its physical facilities. Despite the shutdown, Defendant retained students' full tuition and fees, although it refunded a portion of the students' room and board. A key factual question concerns whether or how the on-line education product differed from what Defendant promised to its students.

⁸ Plaintiffs' "Amended Complaint," filed July 28, 2022. The Complaint asserts twelve (12) causes of action: breach of express contract, breach of implied contract, and unjust enrichment for each of four proposed classes: The Tuition Class (students who paid tuition), the Fees Class (students who paid fees), the On-Campus Housing Class (students who paid for on-campus housing), and the Meals Class (students who paid for on-campus dining).

⁹ *Id.*

students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay fees for the Spring 2020 semester.”¹⁰ Plaintiff also seeks appointment of Plaintiff Michael James Lawson, Jr. as representative of the classes and seeks appointment of Plaintiffs’ counsel as class counsel.¹¹

Plaintiffs contend that this case is well suited to class-wide resolution, in that:

(i) the proposed class is so numerous that joinder of all members would be impracticable, given Defendant’s enrollment of more than 4,200 on-campus students for the Spring 2020 semester; (ii) common questions of law or fact include: (1) whether Defendant had a contract with its students to provide in-person instruction and access to campus facilities; (2) if so, whether Defendant breached the contract; (3) whether Defendant unjustly refused to refund prorated tuition and fees for the lack of in-person classes and services; (4) whether Defendant’s students suffered damages and, if so, in what amount; (iii) the claims or defenses of the proposed class representative is typical of the claims or defenses of the proposed class members, in that the proposed class representative suffered the same alleged injuries as the proposed class members; (iv) the proposed class representative will fairly and adequately assert and protect the interests of the proposed class in that there are no antagonisms or conflicts in interest and in that the proposed class representative has committed significant time and effort in moving the case forward; and (v) a class action provides a fair and efficient method to adjudicate the controversy.¹²

¹⁰ Motion, at 1-2. Plaintiffs have not moved for certification of the proposed On-Campus Housing Class (students who paid for on-campus housing) or the proposed Meals Class (students who paid for on-campus dining). *Id.*, at 1 n.1.

¹¹ *Id.*, at 2.

¹² *Id.*, ¶¶ 7-12, 37-108.

Plaintiffs argue that an in-person learning experience is a key component of Defendant's marketing, and that in-person learning is particularly important to the Defendant's mission of "offering opportunities for technology-based, hands-on education and workforce development."¹³ Plaintiff Michael Lawson contends that he attended the Defendant's on-campus program, paid tuition and fees for the Spring 2020 semester, and previously was provided with in-person and on-campus educational services and opportunities at Defendant's campus.¹⁴ He complains that when Defendant closed its campus in response to the COVID-19 pandemic, he no longer had the ability to access campus facilities, in-person classes or activities and that Defendant refused to refund any of his tuition or fees.¹⁵

B. The Defendant's Response to the Motion.

Defendant challenges certification on the basis that Plaintiffs "ignor[e] the crucial facts about [Defendant] and the Spring 2020 semester for which [Plaintiffs] seek[] a refund" and fail to "address[] the elements of the claims at issue or the defenses the [Defendant] has raised to them."¹⁶ Consequently, Defendant claims, a class action "is not a fair and efficient method for adjudicating this dispute for the [Defendant] or for all of the members of the proposed classes."¹⁷ More specifically, Defendant contends that Plaintiffs' contract claim depends on an implied contract theory and fails to address the Statement of Student Financial Responsibility, the express written contract between each student and the Defendant governing payment of tuition and fees, or the Defendant's refund policies contained in it. Instead, Defendant contends, the breach of contract theory relies on the Defendant's

¹³ *Id.*, ¶¶ 15-16.

¹⁴ *Id.*, ¶¶ 20-22.

¹⁵ *Id.*, ¶¶ 23-25.

¹⁶ Response, Preliminary Statement, at 1.

¹⁷ *Id.*

marketing, recruiting and course registration materials and alleges they form an implied contract for in-person education and pro-rata refund of tuition if the same could not be provided. Defendant argues this presents “insurmountable hurdles” to class certification (1) because there is no standard implied contract between Defendant and all members of the proposed class; (2) because for many members of the proposed class there is no difference between in-person and online education; (3) because Defendant has individual defenses to liability and damages that predominate over common questions; and (4) because individual questions will predominate over common questions concerning whether any particular class member suffered actual harm as a result of the transition to online classes.¹⁸

With respect to Plaintiffs’ unjust enrichment theory, Defendant contends that Plaintiffs will have to demonstrate that Defendant retained monies paid in tuition and fees under circumstances where it would be inequitable for Defendant to retain such funds. Defendant contends that this theory of liability does not lend itself to class treatment because each student’s circumstances are different and must be taken into consideration in determining whether Defendant has been unjustly enriched, and that many courts have so found in similar circumstances.¹⁹

Defendant contends that Plaintiffs’ theory relies on Plaintiffs’ expert, who asserts he has a class-wide method of proving harm and damages. Defendant believes this method is untested and unreliable and is not applicable in that Defendant charges the same tuition for in-person and online courses.²⁰

¹⁸ *Id.*, at 1-2.

¹⁹ *Id.*, at 2.

²⁰ *Id.* Defendant points out that Pennsylvania residents were charged the same tuition for in-person and online courses, while non-Pennsylvania residents were not. *Id.*

Finally, Defendant contends that the Plaintiffs' proposed classes are overly broad (i) because the proposed classes include persons who were non-students who paid tuition or fees on behalf of a student without any expectation that they, individually, would receive anything in return for those payments; (ii) because there is no meeting of the minds that the Defendant would owe a refund to such persons; and (iii) because there is no feasible way to identify who actually paid tuition and fees. Further, Plaintiffs' alternative proposed classes, while limited to enrolled students, are still too broad because they include Pennsylvania residents for whom there was no difference in value between in-person and online courses and non-residents for whom there was such a difference.²¹

II. LAW AND ANALYSIS.

A. Standard of Review.

Class action²² lawsuits are intended to serve the interests of judicial administration and justice by providing a means by which claims of many individuals can be resolved at the same time, thereby eliminating repetitious litigation and giving small claimants a means of redress for claims too small to merit individual litigation.²³ In Pennsylvania, a class action lawsuit is appropriate only if:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately assert and protect the interests of the class ...; and (5) a class action provides a fair and efficient method for adjudication of the controversy....²⁴

²¹ *Id.*, at 2-3.

²² A "class action" is "any action brought by or against parties as representatives of a class until the court by order refuses to certify it as such or revokes a prior certification...." Pa. R. Civ. P. 1701.

²³ *Bell v. Beneficial Consumer Discount Co.*, 348 A.2d 734, 737 (Pa. 1975) (citing *Wright, Class Actions*, 47 F.R.D. 169, 170 (1970), quoting *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 560 (2d Cir. 1968)).

²⁴ Pa. R. Civ. P. 1702.

When a plaintiff files a case as a class action, the court is required to hold a hearing on class certification,²⁵ and plaintiff's failure to establish even one of the five enumerated prerequisites for a class action can be fatal to certification.²⁶

"At a class certification hearing, the burden of proof lies with the proponent; however, since the hearing is akin to a preliminary hearing, it is not a heavy burden. The proponent need only present evidence sufficient to make out a *prima facie* case from which the court can conclude that the five class certification requirements are met. This will suffice unless the class opponent comes forward with contrary evidence; if there is an actual conflict on an essential fact, the proponent bears the risk of non-persuasion."²⁷

"When, as here, the underlying facts are not in dispute, the court may hold the [plaintiff's] burden more easily satisfied."²⁸ Class certification decisions present mixed questions of fact and law, and the trial court does not decide the merits of underlying claims at certification, although it may inquire into their elements to consider the class issues properly.²⁹

The court is vested with broad discretion in making decisions regarding certification,³⁰ but its "decisions should be made liberally and in favor of maintaining

²⁵ Pa. R. Civ. P. 1707.

²⁶ *Kern v. Lehigh Valley Hosp., Inc.*, 108 A.3d 1281, 1285 n.4 (Pa. Super. 2015).

²⁷ *Id.* (quoting *Clark v. Pfizer Inc.*, 990 A.2d 17, 24 (Pa. Super. 2010) (internal citation and quotation marks omitted) (emphasis added), appeal denied, 13 A.3d 473 (Pa. 2010)). Requiring an 'affirmative showing' that the requirements have been met for class certification is, however, inappropriate, because [of] 'the stage of proceedings at which the class certification is to be initially determined and the trial court's extensive supervisory powers over class actions obviate the need for a strict burden of proof.' " *Debbs v. Chrysler Corp.*, 810 A.2d 137, 154 (Pa. Super. 2002) (quoting *Janicik v. Prudential Ins. Co. of America*, 451 A.2d 451, 454-55 (Pa. Super. 1982)).

²⁸ *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1141 (Pa. Super. 1985) (citations omitted).

²⁹ *Sommers v. UPMC*, 185 A.3d 1065, 1074 (Pa. Super. 2018) (citing *Debbs, supra*, 810 A.2d at 154).

³⁰ *Debbs, supra*, 810 A.2d at 154 (citations omitted). A trial court's order granting, denying or revoking class certification "will not be disturbed on appeal, unless the court neglected to consider the requirements of the rules or abused its discretion in applying them." *DiLucido v. Terminix, Inc.*, 676 A.2d at 1237, 1240 (Pa. Super. 1996) (citing *D'Amelio, supra*, 500 A.2d at 1141 (citations omitted)). "An abuse of discretion exists when the trial court renders a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will." *King v. Pittsburgh Water and Sewer Auth.*, 139 A.3d 336, 345 (Pa. Commw. 2016) (citation omitted). " 'Abuse of discretion' is synonymous with a failure to exercise a sound, reasonable, and legal discretion. It is a strict legal term indicating that [an] appellate court is of opinion that there was commission of an error of law by the trial court. It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge, but means [a] clearly erroneous

a class action ... because such suits enable the assertion of claims that, in all likelihood, would not otherwise be litigated."³¹ When the court issues its order "certifying, refusing to certify or revoking a certification of a class action, the court shall set forth in an opinion accompanying the order the reasons for its decision on the matters specified in [the Rules of Civil Procedure], including findings of fact, conclusions of law and appropriate discussion."³²

If the court certifies a class action, it must provide a description of the class(es) certified,³³ and if it refuses to certify or later revokes certification previously granted, the action continues by or against the named parties alone.³⁴ In either case, the court retains considerable control over the action and can limit class status to particular issues or forms of relief or divide a class into subclasses for purposes of certifying, refusing to certify or revoking a class action.³⁵ An order certifying, decertifying or revoking a class action may be revoked, altered or amended by the court on its own motion or by motion of any party before a decision on the merits.³⁶

B. Numerosity: whether the class is so numerous that joinder of all members is impracticable.

A proposed class "must be both numerous and identifiable, and '[w]hether the class is sufficiently numerous is not dependent upon any arbitrary limit, but upon the

conclusion and judgment—one that is clearly against logic and [the] effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law.'" *Com. v. Powell*, 590 A.2d 1240, 1249 n.8 (Pa. 1991) (quoting Black's Law Dictionary, 5th Ed. (1979)).

³¹ *Sommers*, *supra*, 185 A.3d at 1074 (quoting *Weinberg v. Sun Co.*, 740 A.2d 1152, 1162 (Pa. Super. 1999), *rev'd in part on other grounds*, 777 A.2d 442 (Pa. 2001), (citations and quotation marks omitted)).

³² Pa. R. Civ. P. 1710(a).

³³ Pa. R. Civ. P. 1710(b).

³⁴ Pa. R. Civ. P. 1710(e).

³⁵ Pa. R. Civ. P. 1710(c).

³⁶ Pa. R. Civ. P. 1710(d).

facts of each case.’³⁷ There is no defined test for numerosity,³⁸ but “[a] class is sufficiently numerous when ‘the number of potential plaintiffs would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually.’³⁹ The certification proponent need not plead or prove the exact number of class members, as long as he is “ ‘able to define the class with some precision and [to] provide the court with sufficient indicia that more members exist than it would be practicable to join.’ ”⁴⁰

Plaintiffs’ proposed classes encompass all of the students who paid tuition and fees to Defendant and all other persons who paid tuition and fees on behalf of any of them. Plaintiffs contend that numerosity is satisfied (i) because the proposed classes are defined with sufficient precision and (ii) because, given that Defendant had more than 4,200 students registered for the Spring, 2020 semester, individual suits would pose a grave imposition on the resources of the court and the parties.⁴¹

Defendant argues that the Plaintiffs’ proposed class definitions are overly broad. The first proposed definitions include all persons who paid tuition or fees on behalf of any student. Defendant contends that this includes third parties with no contractual relationship of any kind with Defendant, that it would be impossible even to identify all potential class members, and that, as such, it would be impossible to give each class member notices required by the Rules of Civil Procedure. The second proposed definitions include only students. Defendant contends this

³⁷ *In re Sheriff's Excess Proceeds Litigation*, 98 A.3d 706, 732 (Pa. Commw. 2014) (quoting *Dunn v. Allegheny Cnty. Property Assessment App. and Rev.*, 794 A.2d 416, 423 (Pa. Commw. 2002)).

³⁸ *Muscarella v. Com.*, 239 A.3d 459, 467-68 (Pa. Commw. 2012).

³⁹ *Sheriff's Excess Proceeds Litigation*, *supra*, 98 A.3d at 732 (quoting *Keppley v. Sch. Dist. of Twin Valley*, 866 A.2d 1165, 1171 (Pa. Commw. 2005) (quoting *Baldassari v. Suburban Cable TV Co., Inc.*, 808 A.2d 184, 190 (Pa. Super. 2002))).

⁴⁰ *Id.*

⁴¹ Motion, ¶¶ 27-42.

definition is also inadequate because it includes both in-state and out-of-state students. Since in-state students pay the same tuition for in-person and online classes, those students—approximately ninety percent (90%) of Defendant's students—received the same value regardless of how their education was delivered and, accordingly have no damages.⁴²

The Court accepts the Defendant's concerns regarding Plaintiffs' first set of proposed classes—*i.e.*, those including any person who paid tuition or fees on behalf of a student. Because these individuals cannot be notified and, consequently, cannot receive required notices and because they have no enforceable contractual relationship with the Defendant,⁴³ the Court will not certify a class including such persons.

The Plaintiffs' alternate proposed classes—*i.e.*, those restricted to students of Defendant—are another matter. Defendant's argument that in-state students have no damages confuses "price" and "value." While the "price" of in-person and online classes may have been the same for Pennsylvania residents, that does not, *per se*, mean that the "value" of in-person and online classes was the same. Furthermore, it does not address the question of whether those students received the benefit of their bargains with the Defendant.⁴⁴

⁴² Response, at 8-9.

⁴³ The Court recognizes that it is possible that, in certain individual circumstances, persons who were not themselves students but who had an enforceable contractual relationship with Defendant to pay tuition or fees on behalf of and for the benefit of a student may have a claim against Defendant. Nothing here prohibits those persons from commencing individual actions, should they so desire, and the student(s) for whose benefit they paid tuition or fees may seek exclusion from the class pursuant to Pa. R. Civ. P. 1711(a), if appropriate.

⁴⁴ Generally, a successful plaintiff in a contract action is entitled to recover damages sufficient to provide him with the benefit of this bargain. See, *e.g.*, *Dibish v. Ameriprise Financial, Inc.*, 134 A.3d 1079, 1089 (Pa. Super. 2016). Determining the appropriate "benefit of the bargain" for each in-state student ultimately may prove to be an insurmountable burden from the perspective of damages; however, the Court is not in a position to address that question at this time, and the Defendant may raise it after merits discovery, if appropriate.

Because this Court's decision regarding certification should be made liberally and in favor of maintaining a class action, the Court finds that the Plaintiffs have demonstrated that their alternate proposed class is defined with sufficient precision and that more members exist than it would be practicable to join. The Court finds that Plaintiffs' first proposed classes—*i.e.*, those consisting of all persons who paid tuition or fees on behalf of a student—are not sufficiently defined due to the effective impossibility of determining which persons are members of those classes. The Court finds that the proposed classes consisting of “[a]ll students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay tuition for the Spring 2020 semester” and of “[a]ll students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay fees for the Spring 2020 semester” are sufficiently defined. Further, the Court finds that numerosity is satisfied with respect to these proposed classes, in that it would not be practicable to join more than 4,200 students in this litigation, and individual suits by them would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants.

C. Commonality: whether there are questions of law or fact common to the class.

A common issue of law or fact

will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent. The common question of fact [requirement] means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all.⁴⁵

⁴⁵ *Somers, supra*, 185 A.3d at 1076 (quoting *Clark, supra*, 990 A.2d at 24).

Claims arising out of a form contract generally satisfy the commonality requirement,⁴⁶ and claims arising out of different contracts “where the relevant contractual provisions raise common questions of law and fact and do not differ materially.”⁴⁷ While existence of individual questions of fact is not *per se* fatal to certification, a predominance of common issues shared by all class members is necessary to justify resolution of the controversy in a single proceeding.⁴⁸ “If ... each question of disputed fact has a different origin, a different manner of proof and to which there are different defenses, [a court] cannot consider them to be common questions of fact” for purposes of class certification.’⁴⁹

Plaintiffs contend that commonality is satisfied here because all proposed class members uniformly experienced Defendant's conduct in transitioning all students to online learning at the same time while refusing to refund any portion of the tuition and fees the students paid. Plaintiffs contend this raises common issues of law and fact, such as (i) whether Defendant was contractually obliged to provide in-person instruction and access to campus facilities and resources; (ii) if so, whether Defendant breached its contract; (iii) whether Defendant's refusal to refund any portion of the tuition and fees is unjust; and (iv) the fact and measure of damages. Plaintiffs assert these questions are capable of class-wide resolution and

⁴⁶ *Baldassari, supra*, 808 A.2d at 191 (citing *Janicik, supra*, 451 A.2d at 457).

⁴⁷ *Sharkus v. Blue Cross of Greater Philadelphia*, 431 A.2d 883, 886-87 (Pa. 1981).

⁴⁸ *Weismer v. Beech-Nut Nutrition Corp.*, 615 A.2d 428, 431 (Pa. Super. 1992). For example, varying damages claims do not necessarily preclude a class action where they arise out of a common claim. See, e.g., *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635, 639 (Pa. Super. 1985) (holding that a proposed class action is a fair and efficient method of adjudication, despite varying damages claims, where the damages arose out of a common claim—denial of no-fault work loss benefits to estates of retired persons who lost social security payments due to a fatal accident).

⁴⁹ *Eisen v. Independence Blue Cross*, 839 A.2d 369, 372 (Pa. Super. 2003) (quoting *Allegheny Cnty. Hous. Auth. v. Berry*, 487 A.2d 995, 997 (Pa. Super. 1985)).

involve common evidence and common questions and do not require individualized treatment of Plaintiffs or any other class member.⁵⁰

Defendant objects, contending that Plaintiffs fail to satisfy commonality because they “require individualized proof for each putative class member and will generate different answers depending on the student’s circumstances.” Defendant contends that the only agreement with students relates to financial responsibility and does not promise in-person learning and that its refund policies do not mandate refund in this situation. Defendant asserts that Plaintiffs’ contract claims rest on a variety of sources, including the Defendant’s promotional materials, and that these do not form a “contract” with Plaintiffs. Further, Defendant argues this presents significant problems for class certification purposes, as it will require analysis of the materials available to each student. Defendant raises a variety of defenses to the contract claim and contends that Plaintiffs will have difficulty proving damages because whether and to what extent each prospective class member suffered damages depends on individualized circumstances.⁵¹

Many of these objections go to the merits of the case. In analyzing commonality, a trial court abuses its discretion if it confuses liability and damages with commonality. The elements of proof necessary to establish class certification are distinct from those necessary to establish the merits of the underlying claims.⁵² In *Baldassari v. Suburban Cable TV Co., Inc.*,⁵³ the Superior Court considered a dispute involving a cable company that imposed uniform late fees on customers where the company did not first analyze whether its fees were reasonably related to

⁵⁰ Motion, ¶¶ 49-53.

⁵¹ Response, at 9-14.

⁵² *Baldassari, supra*, 808 A.2d at 191-93.

⁵³ *Id.*, 808 A.2d at 184.

the costs incurred and where the trial court found commonality was not satisfied because reasonableness depends on individual customer profiles. The trial court denied certification, on the basis that the plaintiff did not meet the commonality requirement because different proof would be required for each putative class member and inquiry into individual payment histories would be required to determine whether late fees were paid and, if so, whether they were reasonable under the circumstances. The Superior Court held that the trial court abused its discretion by focusing on the merits rather than on the common issues affecting all class members—the cable company’s late fee policy and whether that policy produced late fees disproportionate to the costs of collection. The Superior Court concluded

[plaintiff] has met his burden of proving commonality by establishing that [defendant] is capable of identifying most, if not all, members of the proposed class upon whom late fees were imposed, and by establishing that [defendant] applied the same late fee uniformly to the proposed class. We find that the trial court confused liability and damages with commonality, thereby abusing its discretion.⁵⁴

Defendant also contends that the facts surrounding its transition to online learning are not in dispute and that central questions at issue are not amenable to resolution via common evidence because they are dependent on individual concerns. According to Defendant, these issues are (i) whether Defendant agreed to provide in-person learning to its students; (ii) if so, whether, as a result of the shut-down, Defendant was obliged to provide a refund of some portion of tuition and fees paid; (iii) whether Defendant’s retention of tuition and fees was unjust; and (iv) whether proposed class members were injured by Defendant’s conduct. Defendant contends these all rely on individual proof, such as which of Defendant’s materials each class member considered when enrolling; whether each proposed class

⁵⁴ *Id.*, 808 A.2d at 191-93.

member paid tuition and fees and, if so, how much; whether each proposed class member paid in-state or out-of-state tuition; whether each proposed class member used campus facilities or was foreclosed from participating in some campus activity as a result of the shut-down; and whether each class members loss was "covered" by grants provided by government or Defendant.⁵⁵

Nevertheless, the Court finds that the Plaintiffs met their burden of establishing commonality at this stage of the litigation. The common issue is Defendant's transition from in-person to online learning and whether the putative class members suffered damages as a result. Defendant's arguments that some putative class members may not have expected in-person learning as a result of the shut down or that they suffered varying damages as a result of the tuition they paid or the character of the programs in which they were enrolled are unavailing at this stage of the litigation. As the parties have not yet engaged in merits discovery, the Court believes it would be inappropriate to engage these questions fully at this point. Discovery ultimately may demonstrate that the proposed classes should be narrowed, that they should be divided into subclasses, or that they should be decertified. Moreover, "[r]egarding damage amounts or scope of individual relief, it has been well established that if a 'common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude class certification.' "⁵⁶

Given the stage of the proceedings and the Plaintiffs' relaxed burden of proof, the Court believes that Plaintiffs have sufficiently established commonality, at least for now.

⁵⁵ Response, at 14-16.

⁵⁶ *Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 28 (Pa. 2011) (quoting *Weismer*, *supra*, 615 A.2d at 431).

D. Typicality: whether the claims or defenses of the representative parties are typical of the claims or defenses of the class.

The proposed class representative's claims are typical of the claims of the class when the representative's "overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that [his] pursuit of [his] interests will advance those of the proposed class."⁵⁷ "Typicality entails an inquiry into whether the named [plaintiff's] individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will be based."⁵⁸

Typicality does not require that the proposed representative's claims be identical to those of the class, and it may be established despite factual distinctions between the claims of the proposed representative and the proposed class.⁵⁹ Where the proposed representative and the class assert the same claims premised on similar facts and similar conduct of the defendant, typicality is established.⁶⁰ Moreover, as previously stated, varying amounts of damages among plaintiffs will not preclude class certification if a common source of liability has been clearly identified.⁶¹

Plaintiffs contend typicality is established here because the proposed class representative and the class members each contracted with Defendant for in-person, on-campus instruction, educational services and the use of campus facilities in exchange for payment of tuition and fees; because Defendant stopped providing those services to the proposed class representative and the class members in

⁵⁷ *Keppley, supra*, 866 A.2d at 1174 (citations omitted).

⁵⁸ *Buynak v. Dep't of Transp.*, 833 A.2d 1159 (Pa. Commw. 2003), alloc. denied, 859 A.2d 769 (Pa. 2004); *Klusman v. Bucks Cnty. Ct. of Common Pleas*, 564 A.2d 529, 531-33 (Pa. Commw. 1989).

⁵⁹ *Samuel-Bassett, supra*, 34 A.3d at 31.

⁶⁰ *Id.*

⁶¹ *Id.*, at 28.

March, 2020; because Defendant thereafter denied them in-person, on-campus instruction, educational services and the use of campus facilities; because, given that Defendant committed the same or similar improper acts against the proposed representative and all proposed class members, there is no advantage to proceeding with the claims individually; and because the expense and burden of litigation may be unjustifiable for individual actors.⁶²

Defendant contends in opposition that the proposed representative fails to establish typicality because he is an out-of-state student enrolled in a specific educational program that differs materially from many other students; because he received grant funds and other opportunities that could have mitigated his damages; and because his circumstances differ materially from that of most proposed class members.⁶³

The Court finds that the proposed representative has met the typicality requirement, given the stage of the proceedings and the burden of proof required for certification. It is apparent that the proposed representative and the class members each may have claims arising out of the same facts and the same conduct by the Defendant, notwithstanding that their damages may differ. The Court believes that the parties should proceed with merits discovery and that Defendant can make an appropriate motion should facts emerge warranting the same.

⁶² Motion, ¶¶ 77-83.

⁶³ Response, at 16-18.

E. Adequacy: whether the representative parties will fairly and adequately assert and protect the interests of the class.

In determining whether the proposed class representative will fairly and adequately assert and protect the interests of the class, the court must consider, among other things,

(1) whether the attorney for the representative parties will adequately represent the interests of the class, (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.⁶⁴

"Preliminarily, '[a] litigant must be a member of the class which he or she seeks to represent at the time the class is certified by the ... court' in order to ensure due process to the absent class members and to satisfy requirements of standing."⁶⁵

Here, the proposed class representative is a member of all of the proposed classes and alternate proposed classes.

1. Whether the attorney for the representative parties will adequately represent the interests of the class.

"[C]ourts will assume that members of the bar are skilled in their profession until the contrary is demonstrated."⁶⁶ In assessing adequacy of representation, a court will look to counsel's qualifications but may also infer adequacy from the pleadings, arguments, briefs and other submissions to the court, as well as from the attorney's conduct during the representation.⁶⁷

Plaintiffs contend that they are represented by knowledgeable counsel experienced in this type of litigation who will adequately represent the class as a whole and who are appropriately funded to do so. Plaintiffs further contend that their

⁶⁴ Pa. R. Civ. P. 1709.

⁶⁵ *Janicik, supra*, 451 A.2d at 458 (quoting *Sosna v. Iowa*, 95 S.Ct. 553, 559 (1975)).

⁶⁶ *Buynak, supra*, 833 A.2d at 1165.

⁶⁷ See, e.g., *id.*, at 1165-66; *Janicik, supra*, 451 A.2d at 459 ("Counsel's adequacy was not disputed, and the record suggests only high standards of professionalism in their advocacy").

local counsel are reliable and reputable. As such, they seek appointment of the firm of *Poulin Willey* as lead counsel and the firm of *Carpey Law* as liaison counsel.⁶⁸ Defendant does not appear to contest that the proposed class counsel will adequately represent the interests of the class.⁶⁹

Accordingly, based upon the proposed class counsels' resumes and their conduct to date in this litigation and upon Defendant's decision not to contest this point, the Court finds that the proposed class counsel will adequately represent the interests of the class.

2. Whether the representative parties have a conflict of interest in the maintenance of the class action.

There is scant authority in Pennsylvania law concerning a class representative's potential conflict of interest, although it is clear that a class representative cannot also serve as counsel to the class⁷⁰ or otherwise have a financial interest potentially adverse to class members.⁷¹ In general, however, a "conflict of interest" is "[a] real or seeming incompatibility between two interests that one possesses or is obligated to serve, esp[ecially] when one of those interests might benefit the person to whom both are entrusted."⁷² Because of the difficulty of

⁶⁸ Motion, ¶¶ 90-96.

⁶⁹ Response, at 18-19.

⁷⁰ Pa. R. Civ. P. 1709, Explanatory Comment-1977 ("A recent Federal decision has held that there is a conflict of interest where a lawyer is named as the representative party and a member of his firm is chosen as his counsel, if the amount of the potential attorney fee far outweighs the amount of the representative party's individual claim" (citing *Kramer v. Scientific Control Corp.*, 534 F.2d 1085 (3rd Cir. 1976)). See also *Murphy v. Harleysville Mut. Ins. Co.*, 422 A.2d 1097 (Pa. Super. 1980) ("First, we agree with the trial court that a conflict of interest exists with respect to Frank P. Murphy proceeding as the representative plaintiff and as co-counsel for the class of plaintiffs"), cert. denied 102 S. Ct. 395 (1981).

⁷¹ *Gocial v. Independence Blue Cross*, 827 A.2d 1216, 1220-21 (Pa. Super. 2003) (finding that the fact that a class representative was married to an attorney allegedly representing the class raised genuine conflict of interest concerns sufficient to render reasonable the defendant's request for production of documents seeking information potentially protected by the attorney-client and work product privileges, where such information may establish a conflict sufficient to block class certification).

⁷² *Black's Law Dictionary* (12th ed. 2024), conflict of interest. See also, e.g., *Cuyler v. Sullivan*, 100 S. Ct. 1708, 1719 (1980) ("a defendant who shows that a conflict of interest actually affected the

proving a negative, *i.e.*, that no conflict exists, “courts have generally presumed that no conflict of interest exists unless otherwise demonstrated, and have relied upon the adversary system and the court’s supervisory powers to expose and mitigate any conflict.”⁷³

Plaintiffs maintain that Plaintiff Michael Lawson is an appropriate class representative because he understands his responsibilities as a class representative and has spent significant time consulting with class counsel, responding to and complying with discovery requests and sitting for a deposition, during which he answered questions concerning his experiences at Defendant College and the claims he has raised.⁷⁴ Further, they contend Michael Lawson’s claims or defenses are similar to those of other proposed class members, in that he suffered the same or similar injury as a result of Defendant’s alleged breach of contract promising to deliver in-person learning and access to campus facilities and experiences and that Defendant’s refusal to refund any portion of tuition or fees paid affected him just as it affected other proposed class members.⁷⁵ Further, they assert that there is no evidence of any conflict of interest between him and the proposed class members.⁷⁶

Defendant contends that this is where Plaintiffs fail to establish the adequacy requirement. Defendant points to Plaintiff Michael Lawson’s status as an undergraduate, out-of-state student studying Diesel Technology. Defendant argues that Michael Lawson cannot adequately represent graduate students or students

adequacy of his representation need not demonstrate prejudice in order to obtain relief”); *Com. v. Veon*, 150 A.3d 435, 444-48 (Pa. 2016) (discussing financial conflicts in the context of the Ethics Act and clarifying when an act for one’s “private pecuniary benefit” interferes with one’s duty of loyalty to persons to whom one has fiduciary obligations).

⁷³ *Janicik, supra*, 451 A.2d at 459 (citations omitted).

⁷⁴ Response, ¶¶ 87-89.

⁷⁵ *Id.*, ¶ 10.

⁷⁶ *Id.*, at ¶ 91.

enrolled in other programs because the implied contract between the parties, if it exists, may be based on different considerations and because the relative value of in-person learning varies by course of study. Further, Defendant argues that because Plaintiff Michael Lawson is an out-of-state student engaged in a particular course of study, he did not pay the same tuition as the majority of the members of the proposed class.⁷⁷

The Court acknowledges that Plaintiff Michael Lawson's circumstances differ from that of many of the proposed class members for the reasons explained by the Defendant. At the same time, individual circumstances exist in every class action lawsuit. The question, then, becomes whether the nature and impact of those individual circumstances creates a conflict between the interests of the proposed class representative and those of the persons whom he seeks to represent.

Here, Defendant has not identified any particular conflict of interest between Plaintiff Michael Lawson and the members of the proposed classes beyond the circumstances created by their respective programs and residency status. As Michael Lawson and the members of the proposed classes were all in the same position with respect to the COVID-19 shutdown of Defendant's campus and were all allegedly injured by the same conduct of the Defendant, and bearing in mind the stage of the proceedings, the Court declines to find any conflict between the interests of Plaintiff Michael Lawson and those of the respective members of the proposed classes. Should facts emerge through discovery or otherwise pointing to a conflict between Plaintiff Michael Lawson and the members of the proposed classes,

⁷⁷ Response, at 18-19.

any party can make an appropriate motion later in the proceedings to address any such conflict.

Accordingly, the Court finds that the representative parties do not have a conflict of interest with members of the proposed classes that would affect representation of the proposed classes.

3. Whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

“ [T]o assure that the interests of the class will not be harmed’ the court must consider whether the representative parties ‘have or can acquire adequate financial resources’ to prepare the litigation and carry it to completion.”⁷⁸ It is permissible, and, indeed, not uncommon for counsel to advance costs of litigation, notwithstanding the dangers that might arise concerning counsel’s ensuing financial interest in recovery of any costs advanced.⁷⁹ Nevertheless, “[t]he dangers of the potential conflict of interest arising from counsel’s financing a class suit ... must be viewed realistically in light of the circumstances and the procedural safeguards inherent in class suits” because “[o]verly strict financing requirements would limit the class action to wealthy litigants, contrary to its purposes.”⁸⁰ Thus, lack of funding by the class representative, absent more, does not mandate refusal to certify a class action,⁸¹ and the rules permitting the court to oversee conduct of the litigation⁸² and

⁷⁸ *Janicik, supra*, 451 A.2d at 459 (quoting Pa. R. Civ. P. 1709(3); Pa. R. Civ. P. 1709, Explanatory Note).

⁷⁹ *Id.* (citations omitted).

⁸⁰ *Id.* (citing *Bartelson v. Dean Witter & Co.*, 86 F.R.D. 657 (E.D. Pa.1980)).

⁸¹ *Id.* (citing *Rode v. Emery Air Freight Corp.*, 76 F.R.D. 229 (W.D. Pa. 1977) (citing 3B J. Moore, *Federal Practice and Procedure*, § 23.07 (adequacy of representation depends on all circumstances)).

⁸² Pa. R. Civ. P. 1713 (authorizing a court to oversee the conduct of a class action).

requiring approval of any settlements⁸³ minimize any risks arising from an attorney's potential financial conflict.⁸⁴

Plaintiffs contend they have or can acquire adequate financial resources to pursue this litigation because their counsel are adequately funded to do so and because their contingent fee arrangement means they will not be liable for any fees or costs absent a positive outcome.⁸⁵ Defendant does not appear to contest that the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.⁸⁶

Accordingly, based upon the Plaintiffs' representations and upon Defendant's decision not to contest this point, the Court finds that the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

For the reasons explained above, the court finds that the proposed representative parties and proposed class counsel will fairly and adequately assert and protect the interests of the proposed classes.

F. Predominance: whether a class action provides a fair and efficient method for adjudication of the controversy.

In determining fairness and efficiency, "the court must balance the interests of the litigants, present and absent, and of the court system."⁸⁷ Where, as here, monetary recovery alone is sought, the court must consider, among other things,

(1) whether common questions of law or fact predominate over any question affecting only individual members; (2) the size of the class and the difficulties likely to be encountered in the management of the

⁸³ Pa. R. Civ. P. 1714 (requiring court approval for any compromise or settlement of a class action), 1715 (requiring provision in a settlement order for disbursement of residual funds, when applicable), 1717 (authorizing the court to fix the amount of counsel fees awarded in a class action).

⁸⁴ *Janicik, supra*, 451 A.2d at 459.

⁸⁵ Motion, ¶¶ 92, 94.

⁸⁶ Response, at 18-19.

⁸⁷ *Janicik, supra*, 451 A.2d at 461 (citations omitted).

action as a class action; (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct; [or] (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues; (5) whether the particular forum is appropriate for the litigation of the claims of the entire class; (6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions; [and] (7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.⁸⁸

These considerations are not exclusive, and the respective importance of each consideration varies according to the circumstances.⁸⁹ Moreover, in reviewing and evaluating these considerations, “[c]ourts should not strike this balance so harshly as to ‘viscerate the purposes of the class action device.’ ”⁹⁰

Unlike the Federal rules regarding class actions, Pennsylvania does not require that a class action be “superior” to alternative options for resolution of the controversy.⁹¹ The Rules’ failure to accord any particular weight to the several factors listed and the non-exclusivity of the list “impl[y] a great deal of discretion for the trial court” in evaluating the factors and rendering a decision concerning certification.⁹²

⁸⁸ Pa. R. Civ. P. 1708(a).

⁸⁹ *Janicik, supra*, 451 A.2d at 461 (citing Pa. R. Civ. P. 1708; *Katz v. Carte Blanche Corp.*, 496 F.2d 747 (3d Cir. 1974), cert. denied, 95 S. Ct. 152 (1975)).

⁹⁰ *Id.* (quoting *Scott v. Adal Corp.*, 419 A.2d 548, 552 (Pa. Super. 1980)).

⁹¹ *Debbs, supra*, 810 A.2d at 154 (quoting *Weinberg, supra*, 740 A.2d at 1162-63; Pa. R. Civ. P. 1708, Explanatory Comment—1977).

⁹² *Dickler v. Shearson Lehman Hutton, Inc.*, 596 A.2d 860, 866 (Pa. Super. 1991), alloc. denied 616 A.2d 984 (Pa. 1992).

1. Whether common questions of law or fact predominate over any question affecting only individual members.

For purposes of certification, common questions of law and fact must predominate over individual questions,⁹³ but existence of individual facts is not fatal to certification.⁹⁴ "The standard for showing predominance is more demanding than that for showing commonality,"⁹⁵ "but is not so strict as to vitiate Pennsylvania's policy favoring certification of class actions."⁹⁶ "The 'predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'"⁹⁷

Thus, a class consisting of members for whom **most** essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals for whom resolution of such elements does not advance the interests of the entire class.⁹⁸

"While the existence of individual questions essential to a class member's recovery is not necessarily fatal to the class, there must be a predominance of common issues shared by all class members which can be justly resolved in a single proceeding."⁹⁹

Moreover, as previously indicated, if a "common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude

⁹³ Pa. R. Civ. P. 1708(a)(1).

⁹⁴ *Samuel-Bassett*, *supra*, 34 A.3d at 23 (citing *Buynak*, *supra*, 833 A.2d at 1163).

⁹⁵ *Id.* (citing *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 311 (3d Cir. 2011)).

⁹⁶ *Id.* (citing *Eisen*, *supra*, 839 A.2d at 371).

⁹⁷ *Id.* (quoting *Amchem Prods., Inc. v. Windsor*, 117 S. Ct. 2231, (1997)).

⁹⁸ *Id.* (emphasis in original) (citing *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 666 (Pa. 2009) ("[c]lass members may assert a single common complaint even if they have not all suffered actual injury; demonstrating that all class members are subject to the same harm will suffice"); *Delaware County v. Mellon Fin. Corp.*, 914 A.2d 469, 475 (Pa. Commw. 2007) (existence of separate questions "essential" to individual claims does not foreclose class certification) (quoting *Weismer*, *supra*, 615 A.2d at 431); *Cook v. Highland Water & Sewer Auth.*, 530 A.2d 499, 505 (Pa. Commw. 1987) (internal citations omitted) ("Where a common source of liability can be clearly identified, varying amounts of damage among the plaintiffs will not preclude class certification. However, where there exist[] various intervening and possibly superseding causes of the damage, liability cannot be determined on a class-wide basis"))).

⁹⁹ *Weismer*, *supra*, 615 A.2d at 431.

class certification.”¹⁰⁰ Thus, for certification purposes, “ ‘demonstrating that all class members are subject to the same harm will suffice.’ ”¹⁰¹ As our Supreme court has explained concerning damages,

“Where damages issues are likely to require more individualized treatment, a judge has available a number of creative methods of managing questions of remedy in a manner that protects the defendant's rights while redressing harms to individual plaintiffs.” Among these are bifurcated trials for liability and damages and the use of special masters. We are not persuaded that it is appropriate to adopt what amounts to a *per se* rule that the prospect of individualized variations in damages alone required ruling against certification. On the issue of damages, for purposes of certification, there is no compelling reason to believe that the damages could not have been calculated based on information received from class members regarding their individual experiences ..., e.g., at further class proceedings or by a special master.¹⁰²

Plaintiffs argue that common questions of law and fact predominate over individual questions because the central issue is whether Defendant breached its contracts with its students or was unjustly enriched when it unilaterally switched from in-person to on-line education during the Spring, 2020 semester and barred students from access to its campus facilities and resources. Plaintiffs contend each prospective class member suffered the same harm for the same duration as a result of the acts or omissions of the Defendant. They argue the contractual arrangements are effectively identical for each prospective class member, that the nature of Defendant's alleged breach is also the same for each prospective class member, and that Defendant's defense is the same for each prospective class member. Plaintiffs maintain that their expert can support class-wide proof of damages.¹⁰³

¹⁰⁰ *Id.*

¹⁰¹ *Samuel-Bassett, supra*, 34 A.3d at 28 (quoting *Liss, supra*, 653 A.2d at 666 (quoting *Baldassari, supra*, 808 A.2d at 191 n.6)).

¹⁰² *Id.*, at 29-30 (quoting *Salvas v. Wal-Mart Stores, Inc.*, 893 N.E.2d 1187, 1212 (Mass. 2008) (citing 2 A. Conte & H.B. Newberg, *Class Actions* § 4.32, at 287-88 (4th ed.2002) (listing class action management techniques)).

¹⁰³ Motion, ¶¶ 62-68.

Defendant contends predominance is not satisfied because the breach of contract claims would require the Court to consider the contractual circumstances of each putative class member.¹⁰⁴ Essentially, Defendant contends that, in the absence of a written contract subscribed to by all class members, it will not be possible to address the contract claims without considering the materials considered and the terms agreed upon with respect to the implied contract claims of each of the proposed class members.¹⁰⁵ Furthermore, Defendant contends that there will be innumerable problems regarding damages, beginning with the fact that tuition differs among class members based upon residency and educational program. Furthermore, some prospective class members received grants or other considerations to offset their damages, if any. As the measure of damages in a contract action generally is the difference between the value received and the value contractually due, numerous individual factors would be required to be considered to determine damages, making this case unmanageable as a class action.¹⁰⁶ Defendant attacks Plaintiffs' damages expert as proposing a methodology of proving harm and damages on a class-wide basis that is inappropriate as a matter of law, complicated, untested, unreliable, and unable to avoid the predominance of individual issues. Defendant further contends that it creates an intraclass conflict because it favors Pennsylvania resident students at the expense of non-resident students.¹⁰⁷

While the Court cannot dismiss Defendant's concerns regarding damages out of hand, it must be noted that the parties have not engaged in merits discovery yet

¹⁰⁴ Response, at 19 (citing *Solomon v. Massachusetts Mut. Life Ins. Co.*, 47 D. & C.4th 36, 55 (C.P. Phila. Cnty. 2000)).

¹⁰⁵ *Id.*, at 19-20.

¹⁰⁶ *Id.*, at 20-22.

¹⁰⁷ *Id.*, at 22-29.

and, because of that, Plaintiffs' expert has not yet actually finalized his model or prepared his report concerning damages. For that reason, the Court believes that it would be premature to conclude that the damages model is inappropriate under the circumstances. The Court believes that the Plaintiffs have shown a common source of alleged liability. For purposes of certification, the Court finds that the Plaintiffs have shown that most of the essential elements of Plaintiffs' causes of action may be proven through simultaneous class-wide evidence. Accordingly, the Court finds that this consideration has a significant impact on whether a class action provides a fair and efficient method for adjudication of the controversy and that it militates in favor of certification.

2. *Whether the size of the class and the difficulties likely to be encountered in the management of the action as a class action favor certification.*

As previously indicated, the size of the proposed classes includes the approximately 4,200 students enrolled by Defendant during the Spring, 2020 semester who were transitioned from in-person to online instruction.¹⁰⁸ In terms of number of potential claimants, this action appears well suited for resolution as a class action. The Court is not aware of any particular difficulties likely to be encountered in management of this action that are materially different from the difficulties that would be encountered in any other action. Defendant has referenced differences among the proposed class members concerning their respective courses of study and residency status, among other things.¹⁰⁹ After merits discovery it may prove beneficial to divide the classes into sub-classes based upon these differences; however, at this present stage of the litigation, the Court does not believe that this

¹⁰⁸ See, *supra*, Part II.B.

¹⁰⁹ See, *supra*, Part II.E.2.

litigation presents any particularly difficult issues with respect to management of the proposed classes as compared with any other class action lawsuit.

Accordingly, the Court finds that this consideration has little impact on whether a class action provides a fair and efficient method for adjudication of the controversy.

3. Whether prosecution of separate actions by or against individual members of the class would create a risk of (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct; or (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

The Court believes that the risk of inconsistent or varying adjudications strongly favors certification. Ultimately, Defendant will be found or not found to be liable if there is a determination that Defendant breached a promise to deliver in-person education to the proposed class members and failed to do so, thereby causing damages to the proposed class members or if there is a determination that Defendant unjustly retained tuition and fees paid by the proposed class members. If these issues, which arise out of the same conduct by the Defendant, are litigated often enough, inconsistent or varying adjudications are a virtual certainty.

Inconsistent or varying adjudications, should they occur, easily could, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. While, in the strictest sense, inconsistent adjudications may not be dispositive of the interests of other members not parties to the adjudications, as claim preclusion

requires, *inter alia*, identity of the persons and parties to the actions,¹¹⁰ inconsistent adjudications easily could be dispositive as a practical matter. First, courts typically are loath to rule inconsistently in different cases when presented with the same issue. Secondly, issue preclusion may determine which claims or defenses the Defendant could raise in subsequent litigation,¹¹¹ thereby affecting subsequent litigants in unknown ways.

Accordingly, the Court finds that this consideration has a significant impact on whether a class action provides a fair and efficient method for adjudication of the controversy and that it militates in favor of certification.

4. Whether the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues favors certification.

The Court is unaware of any other litigation already commenced by or against members of the class involving any of the same issues. Therefore, this does not weigh in the Court's consideration of certification.

5. Whether this forum is appropriate for litigation of the claims of the entire class.

This Court has original jurisdiction over the dispute between the named parties and, because the Defendant is located within this Court's jurisdiction, over similar suits by other proposed class members.¹¹² The transactions or occurrences upon which Plaintiffs' claims, and similar claims by other class members, occurred, at least in part, within this judicial district, conferring venue here.¹¹³ Therefore, this

¹¹⁰ *Chada v. Chada*, 756 A.2d 39, 42 (Pa. Super. 2000).

¹¹¹ Issue preclusion applies where (1) the issue decided is identical to one presented in a prior case; (2) there was a final judgment on the merit; (3) the party against whom collateral estoppel is asserted was a party or in privity with a party in the prior case; (4) the party or person in privity had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination was essential to the judgment in the prior proceeding. *Id.*, at 42-43.

¹¹² See 42 Pa. C.S. § 931 (conferring original jurisdiction and venue in the courts of common pleas).

¹¹³ Generally, venue in a civil action is proper, *inter alia*, where the Defendant may be served, where the cause of action arose, or where a transaction or occurrence took place out of which it arose. Pa.

Court has jurisdiction and venue over the dispute between these parties and over similar disputes by the other proposed class members.

In determining whether this forum is appropriate in the context of class certification, the Court must consider “whether there is ‘no one common pleas court which would be better to hear the action.’”¹¹⁴ Because the Defendant is located in Lycoming County and conducts most of its operations here, it is likely that this is the only court of common pleas that would have jurisdiction over all of the proposed claims of this type by all of the proposed class members.¹¹⁵ As such, there is no one court of common pleas which would be better suited to hear this action.

Because this Court has jurisdiction over the dispute and the parties and proposed parties,¹¹⁶ because venue is proper here and may not be proper in any

R. Civ. P. 1006(a). The cause of action arose here, at least in part, and a transaction or occurrence out of which it arose occurred here. Moreover, Defendant is subject to service here. Pa. R. Civ. P. 424(2) (“Service of original process upon a corporation or similar entity [may] be made by handing a copy to ... the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity,” provided the person served is not a plaintiff in the action”); see also *Belfor Property Restoration v. Ravenwood Manor, LLC*, 305 A.3d 1085, 1089-91 (Pa. Super. 2023) (holding that original process could properly be served upon LLC by personal service upon the person in charge at its regular place of business or activity, notwithstanding that the LLC had a registered office in another location). Accordingly, venue is proper in this Court.

¹¹⁴ *Baldassari, supra*, 808 A.2d at 195 (quoting *Cambanis, supra*, 501 A.2d at 641 n. 19).

¹¹⁵ See Pa. R. Civ. P. 2179(a) (setting for venue for actions against a corporation or similar entity). Some proposed class members perhaps could commence a claim against Defendant in another court of common pleas or even in another state, as a claim may be commenced where “a transaction or occurrence took place out of which the cause of action arose,” Pa. R. Civ. P. 2179(a)(4); however, all claims can be commenced here, because Defendant’s principal place of business is here, Pa. R. Civ. P. 2179(a)(1), it regularly conducts business here, Pa. R. Civ. P. 2179(a)(2), the cause of action arose here, Pa. R. Civ. P. 2179(a)(3), and a transaction or occurrence out of which the cause of action arose occurred here. Pa. R. Civ. P. 2179(4).

¹¹⁶ The plaintiff and all of the proposed class members are students of the Defendant who paid tuition and fees for in-person learning at Defendant’s campus in Lycoming County. Generally, a court has personal jurisdiction of a defendant who regularly conducts an activity within its jurisdiction and who is subject to suit to enforce an obligation arising out of its activities there. See, e.g., *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 66 S. Ct. 154, 157-60 (1945) (“[T]he activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say

other court of common pleas as to Defendant and all members of the proposed classes,¹¹⁷ and because there is no one court of common pleas which would be better suited to hear this action, the Court finds that this forum is appropriate for litigation of the claims of the entire class. Accordingly, the Court finds that this consideration has a significant impact on whether a class action provides a fair and efficient method for adjudication of the controversy and that it militates in favor of certification.

6. Whether, in view of the complexities of the issues or the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions.

As Defendant has argued, the question of damages as to each class member ultimately may depend to a considerable extent on individual factors. In theory, if plaintiffs prevail in their suit, each class member is entitled to recover at least some portion of tuition and fees paid for the Spring, 2020 semester.¹¹⁸ Thus, if Plaintiffs prevail and recovery of a portion of tuition and fees is the appropriate measure of damages, each student would be entitled to recover a portion to be set by the finder-of-fact of the tuition and fees that student paid for the Spring, 2020 semester. Presumably, this amount would be anywhere from a few hundred to a few thousand dollars per student.

Liability does not depend on individual factors to the same extent. At the very least, liability will require Plaintiffs to prove either breach of contract or unjust

that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure”).

¹¹⁷ The Court is unaware of any other judicial district where some or all of the transactions or occurrences out of which this case arose with respect to every member of the proposed classes.

¹¹⁸ According to Defendant's news release, the average tuition and fees for two 15-credit semesters in the 2019-20 academic year was set to be \$17,160 for in-state students and \$24,510 for out-of-state students. "Board approves 2019-20 Penn College budget, tuition, fees," *Penn College News*, June 13, 2019.

enrichment. If this case were to proceed with separate claims filed by individual class members, each member of the proposed classes would be required, individually, to expend time, energy and resources establishing liability based upon Defendant's conduct that uniformly affected all of the members. Concomitantly, Defendant would be required to spend time, energy and resources defending multiple claims individually, when all of them arose out of many of the same transactions or occurrences.

Given the possibility that the measure of damages payable to each successful plaintiff could very well be limited to refund of a portion of the tuition and fees paid for the Spring, 2020 semester, the costs of litigation—potentially tens of thousands of dollars per individual class member—could easily be prohibitive as a practical matter for individual class members, relative to the prospect of recovery of a few hundred to a few thousand dollars. Accordingly, the Court finds that this consideration has a significant impact on whether a class action provides a fair and efficient method for adjudication of the controversy and that it militates in favor of certification.

7. Whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Although Defendant has argued that some or all of the potential class members may not be entitled to recover damages even upon proof of liability,¹¹⁹ these issues relating to damages require resolution by the finder-of-fact at trial, and

¹¹⁹ *E.g.*, Defendant has argued that there is little or no difference in value between in-person and online education in the cases of many, if not most, students by virtue of the programs in which they were enrolled and their academic performance and that the damages, if any, of many prospective class members have been mitigated or entirely offset by grants and other programs. Response, at 12-13.

it would be inappropriate for the Court to make definitive findings concerning damages at the certification stage of the proceedings. Nevertheless, as indicated in the preceding section of this Opinion, the Court can conclude that, should Plaintiffs prevail, each student very likely will be entitled to recover anywhere from a few hundred dollars to a few thousand dollars. There is no indication that the costs of administration of a class action would exceed this amount on a per student basis. Accordingly, the Court finds that this consideration has an impact on whether a class action provides a fair and efficient method for adjudication of the controversy and that it militates in favor of certification.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Court will certify the following classes: (1) a “Tuition Class,” defined as “[a]ll students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay tuition for the Spring 2020 semester;” and (2) a “Fees Class,” defined as “[a]ll students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay fees for the Spring 2020 semester.”

A. Findings of Fact.

1. Defendant is the Pennsylvania College of Technology, a university with its principal location in Williamsport, Lycoming County, Pennsylvania.
2. Plaintiff Michael James Lawson, Jr. and all Class Members were enrolled as students at Defendant Pennsylvania College of Technology for the Spring, 2020 semester.
3. Approximately 4,200 students were registered for in-person instruction and granted access to campus facilities and resources during the Spring, 2020 semester.
4. Defendant charges tuition and fees on a per credit basis to all students. These may vary depending on the student’s residency and course of study.

5. During the Spring, 2020 semester, Students had access to in-person instruction and campus facilities and resources until approximately mid-March, 2020.
6. In mid-March, 2020, in response to COVID-19, Penn College closed its campus and unilaterally transitioned all students to online education. After the campus closed, students no longer had access to in-person classes or to on-campus facilities, services and resources.
7. Defendant offered full pro-rated refunds for housing and board for the Spring, 2020 semester but did not offer any refunds for tuition or fees.
8. The classes certified are sufficiently defined.
9. The classes potentially consist of in excess of 4,000 students, and joinder of all potential class members into this action is impracticable.
10. The claims of the proposed class members arise out of the same alleged misconduct of the Defendant, which was uniformly experienced by all class members.
11. The class representative's claims with respect to the alleged misconduct of Defendant are similar to the claims of other class members.
12. The class representative is a member of the classes.
13. The class representative's counsel are knowledgeable and experienced in this type of litigation and are adequately funded to represent the interests of the class.
14. For purposes of certification, Defendant has not demonstrated that the class representative has a conflict of interest with other members of the classes that would prevent the class representative from adequately representing the classes as a whole.
15. The class representative has access to adequate financial resources to assure that the interests of the classes will not be harmed.
16. Plaintiffs have provided a declaration in support of their Motion supporting that damages can be calculated using a common methodology.

17. The parties have not yet engaged in merits discovery, so Plaintiffs have not finalized their damages model.

B. Conclusion of Law.

1. This Court has jurisdiction over the parties and the subject matter of this dispute, and venue is proper here.
2. The classes certified by the Court are so numerous that joinder of all members is impracticable.
3. Individual suits by class members, should they be filed, would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants.
4. Individual suits may not be filed, however, in view of the burdens of litigation and the potential damages available to individual plaintiffs.
5. There are questions of law or fact common to the classes.
6. The class members legal grievances are directly traceable to the same practice or course of conduct of the Defendant.
7. The claims or defenses of the representative party is typical of the claims or defenses of the class.
8. The representative party's overall position on the common issues is sufficiently aligned with that of absent class members to ensure that his pursuit of his interests will advance the interests of the class.
9. The representative parties will fairly and adequately assert and protect the interests of the class.
10. The attorney for the representative parties will adequately represent the interests of the class.
11. There is no conflict of interest that would prevent the representative party from adequately representing the interests of the class.
12. The representative party has or can acquire adequate financial resources to assure that the interests of the class will not be harmed.
13. A class action provides a fair and efficient method for adjudication of the controversy.
14. Common questions of law and fact predominate over individual questions.

15. The size of the classes and the difficulties likely to be encountered in management of a class action favor certification.
16. Prosecution of separate actions by or against individual members of the classes would create a risk of inconsistent or varying adjudications with respect to individual members of the classes which would confront the Defendant with incompatible standards of conduct and which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
17. This forum is appropriate for litigation of the claims of the entire classes.
18. In view of the complexities of the issues or the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions.
19. It is unlikely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.
20. For certification purposes, Plaintiffs have established each of the pre-requisites for a class action.

IV. CONCLUSION AND ORDER.

For the reasons explained above, Plaintiffs' Motion for Class Certification is GRANTED, and the following classes are certified:

- (1) The Tuition Class: All students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay tuition for the Spring 2020 semester; and
- (2) The Fees Class: All students enrolled in in-person classes at Pennsylvania College of Technology who paid or were obliged to pay fees for the Spring 2020 semester.

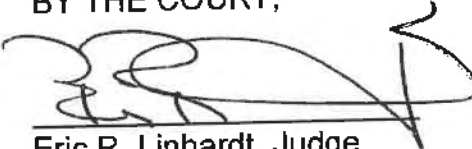
IT IS FURTHER ORDERED that Plaintiff Michael James Lawson, Jr. is APPOINTED as Class Representative and that his counsel, Poulin Willey Anastopoulo, LLC and Carpey Law Firm, LLC are APPOINTED as Class Counsel.

The Parties are hereby DIRECTED to meet and confer and to submit to the Court a proposed publication order and notice to advise all Class Members of this action and their rights within thirty (30) days.

The parties are FURTHER DIRECTED, within (30) days, either to submit a proposed scheduling Order to the Court concerning merits discovery and other case management deadlines or to submit a request to the Court for a scheduling conference if they are unable to agree upon such deadlines.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

cc: Paul J. Doolittle, Esq. (pauld@akimlawfirm.com) and Blake Abbott, Esq. (blake@akimlawfirm.com), *Poulin Willey Anastopoulos, LLC, 32 Ann Street, Charleston, SC 29403*
Stuart A. Carpey, Esq. (scarpey@carpeylaw.com), *Carpey Law, PC, 600 W. Germantown Pike, Suite 400, Plymouth Meeting, PA 19462*
Brian J. Bluth, Esq. (bbluth@mcclaw.com), *McCormick Law Firm*
James A. Morsch, Esq. (jim.morsch@saul.com), *Saul Ewing LLP, 161 North Clark Street, Suite 4200, Chicago, IL 60601*
Gary Weber, Esq., (gweber@mcclaw.com), *McCormick Law Firm (Lycoming Reporter)*