

RECEIVED
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

2020 JUN 30 P 3:51

STEVEN BAILEY, on behalf of himself and other
individuals similarly situated,

Plaintiffs,

against

AUBURN UNIVERSITY; and other affiliated entities and
individuals,

Defendant.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Case No. 3:20-cv-457-ECM-WC

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Named Plaintiff Steven Bailey (hereinafter "Plaintiff"), individually and on behalf of all others similarly situated, by his attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge.

NATURE OF THE ACTION

1. This class action is brought on behalf of Named Plaintiff Steven Bailey and those similarly situated who paid tuition and fees for the Spring 2020 semester at Auburn University. As a result of Defendant's response to the Novel Coronavirus Disease 2019 ("COVID-19") Plaintiffs did not receive the benefit and services for which they bargained for when they provided payment for tuition and various fees.

2. Plaintiffs and Defendant entered into a contract where Plaintiffs would provide payment in the form of tuition and fees and Defendant would provide in-person educational services, experiences, opportunities, and other related services.

3. On or around March 12, 2020, Auburn University canceled all in-person education and transitioned to complete online education, effective March 16, 2020 through April 10, 2020.

On or around March 20, 2020, Auburn University announced that the cancellation of in-person education would continue for the remainder of the Spring 2020 semester.

4. Based on these closures Defendant have failed to uphold their end of the contract to provide in-person educational services and other related collegiate experiences and services.

5. Despite Defendant's failure to provide the services and experiences as bargained for Defendant has not offered proportionate refunds of the tuition and fees that Plaintiff and the Class had paid.

FACTS

6. Plaintiff and Class Members are individuals that paid tuition and fees for the Spring Semester 2020 to Auburn University.

7. Defendant accepted Plaintiff's and Class Members' payments in exchange for educational services, experiences, and opportunities as detailed in Defendant's marketing, advertisements, and other public representations.

8. Based on the academic schedule, the Spring 2020 semester at Auburn University commenced on or around Jan. 8, 2020 and was scheduled to conclude on or around May 1, 2020.

9. Plaintiff Steven Bailey was an undergraduate student during the Spring 2020 semester. Auburn University charged Plaintiff approximately \$15,562.00 in tuition and fees during the Spring 2020 semester, which included a charge of \$838.00 for student services fees. Additionally, Defendant charged Plaintiff an additional \$2,160.00 in College/School fees for the Spring 2020 semester.

10. Plaintiffs paid tuition and fees for in-person educational services, experiences, opportunities, and other related collegiate services for the entire period beginning in or around January 2020 through May 2020.

11. According to publicly available information, the average undergraduate tuition and fee costs for the Spring 2020 semester at Auburn University for an Alabama resident is approximately \$4,908.00 in tuition, \$838.00 in Student Service fees, and up to \$3,800.00 in College/School fees, based on the student's major. The average undergraduate tuition and fee costs for the Spring 2020 semester at Auburn University for a non-Alabama resident is approximately \$14,724.00 in tuition, \$838.00 in Student Service fees, and up to \$3,800.00 in College/School fees, based on the student's major.

12. According to publicly available information, the average graduate tuition and fee costs for the Spring 2020 semester at Auburn University for an Alabama resident is approximately \$4,914.00 in tuition, \$838.00 in Student Service fees, and up to \$5,283.00 in College/School fees, based on the student's major. The average graduate tuition and fee costs for the Spring 2020 semester at Auburn University for an non-Alabama resident is approximately \$14,742.00 in tuition, \$838.00 in Student Service fees, and up to \$5,283.00 in College/School fees, based on the student's major.

13. On or around March 12, 2020, Auburn University announced that because of COVID-19 they would suspend all in-person classes and transition to on-line learning until April 10, 2020. On March 20, 2020, Auburn University announced the cancelation of in-person education would extend to remainder of the Spring Semester 2020 and that all learning would continue online.

14. Defendant was unable to provide in-person educational experiences, services, and opportunities for approximately 44% of the Spring 2020 semester.

15. Prior to the suspension of in-person classes for the Spring 2020 semester, Plaintiff attended on-campus clubs.

16. As a result of Defendant's closure, Defendant has not complied with their

obligation to provide in-person educational services along with other experiences, opportunities, and services Plaintiff and the Class paid for.

17. Plaintiff and the Class did not enter into an agreement with Defendant for online education, but rather sought to receive in-person education from Defendant's institution.

18. Therefore, Plaintiff and Class Members are entitled to a pro-rata refund of the tuition and fees they paid to Defendant for in-person educational services as well as other marketed collegiate experiences and services that were not provided.

JURISDICTION AND VENUE

33. This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class, as defined below, is a citizen of a different state than Defendant, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

34. This court has personal jurisdiction over Defendant because Defendant maintains its principal place of business in this District.

35. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant's operate their primary campus within this district.

PARTIES

36. Plaintiff Steven Bailey is a student and a resident of Conyers, Georgia. Plaintiff was enrolled as a full-time undergraduate student at Auburn University during the Spring 2020 semester. Plaintiff has not received a refund of tuition despite the fact that the University has been shut down since on or about March 12, 2020.

37. Defendant Auburn University is a public university located at Auburn, AL 36849.

CLASS ALLEGATIONS

38. Plaintiff brings this matter on behalf of himself and those similarly situated who paid tuition and fees to Defendant during the Spring Semester 2020.

39. Plaintiffs were impacted by and damaged by this misconduct.

40. Accordingly, this action is ideally situated for class-wide resolution.

41. The Class is defined as all individuals who paid tuition and fees to Auburn University to receive in-person educational services, experiences, and opportunities during the Spring Semester 2020. (“Class”).

42. The Class is properly brought and should be maintained as a class action under FRCP 23 satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

43. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of individuals who are Class Members described above who have been damaged by Defendant’s breach of contract.

44. Commonality: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendant accepted money from Plaintiff and Class Members in exchange for a promise to provide services;
- b. Whether Defendant provided those services as bargained for;
- c. Whether Plaintiff and the Class Members are entitled to a pro-rata portion of the tuition and fees paid for services that were not provided.;
- d. Whether Defendant was unjustly enriched;
- e. Whether Defendant converted money from the Plaintiff and Class Members.

45. Typicality: Plaintiff is a member of the Class. Plaintiff’s claims are typical of the

claims of each Class Member in that every member of the Class was subject to Defendant's breach of contract, unjust enrichment and conversion. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

46. Adequacy: Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the Class Members he seeks to represent; his claims are common to all members of the Class and he has a strong interest in vindicating his rights; he has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and his counsel. Defendant has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

47. The Class is properly brought and should be maintained as a class action because a class action is superior to traditional litigation of this controversy. Common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendant's unjust practices.

48. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

49. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the Class Members may be relatively modest

compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive-if not totally impossible-to justify individual actions;

- c. When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Class and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
- h. Class Members' interests in individually controlling the prosecution of separate actions are outweighed by their interest in efficient resolution by single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendant's unjust practices.

50. Accordingly, this Class is properly brought and should be maintained as a class action under FRCP 23 because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

51. Plaintiff and the Class can maintain this action as a class action under FRCP 23(b)(1), (2), and (3).

FIRST CAUSE OF ACTION
BREACH OF CONTRACT
(On Behalf of Plaintiff and All Class Members)

52. Plaintiff, on behalf of himself and other members of the class, brings a common law claim for Breach of Contract.

53. By accepting payment, Defendant entered into contractual arrangements with Plaintiff and Class Members to provide educational services, experiences, opportunities, and related services for the Spring Semester 2020.

54. Plaintiff and Class Members' payment of tuition and fees were intended to cover in-person education, experiences, and services from January through May 2020.

55. Defendant received and retained the benefits of payment without providing those benefits to Plaintiff and Class Members.

56. As a direct and proximate result of Defendant's breach of contract Plaintiff and Class Members have been harmed by not receiving the educational experiences, opportunities, and services they paid for during the Spring Semester 2020.

57. Defendant is required to perform under the contract and COVID-19 does not excuse such performance. Therefore, Defendant should be required to return pro-rata shares of the tuition and fees paid by Plaintiff and Class Members that related to services that were not provided for after Auburn University shut down on or around March 12, 2020.

SECOND CAUSE OF ACTION
CONVERSION
(On Behalf of Plaintiff and All Class Members)

58. Plaintiff, on behalf of himself and other members of the Class, brings a common law claim for Conversion.

59. Plaintiff and Class Members have an ownership right to the in-person educational services based on their payment of tuition and fees for the Spring Semester 2020.

60. Defendant intentionally interfered with Plaintiff and the Class Members' ownership right when they canceled in-person instructions for the remainder of the Spring Semester 2020.

61. Plaintiff and the Class Members were damaged by Defendant's interference as they paid for educational services, experiences, opportunities, and other related services for the entirety of the Spring Semester 2020 which were not provided.

62. Plaintiff and the Class Members are entitled to a pro-rata share of the tuition and

fees they paid for but were not provided resulting from Defendant's interference.

THIRD CAUSE OF ACTION
COMMON LAW UNJUST ENRICHMENT
(On Behalf of Plaintiff and All Class Members in the Alternative)

63. Plaintiff, on behalf of himself and other members of the class, brings a common law claim for unjust enrichment.

64. Plaintiff and Class Members conferred financial benefits and paid substantial tuition and fees to Defendant for educational and related services for the Spring Semester 2020. As bargained for these tuition and fee payments were intended to cover in-person education throughout the entire Spring Semester 2020 of January through May 2020.

65. Defendant accepted the obligation to provide such services when they accepted payment.

66. Defendant retained these payments, despite Defendant's failing to provide the bargained for educational services, experiences, opportunities, and other related services for which the tuition and fees were collected to cover. Defendant should be required to return a pro-rated share of any Spring Semester 2020 tuition and fees, of which services were not provided as bargained for, since Auburn University shut down on or around March 12, 2020.

67. Under common law principles of unjust enrichment, it is inequitable for Defendant to retain the benefits conferred by Plaintiff's and Class Members' overpayments.

68. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

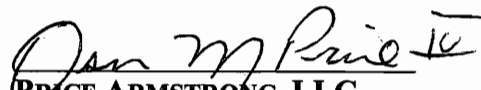
DEMANDS FOR RELIEF

69. Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under FRCP 23;
- (b) Awarding monetary damages, including treble damages;
- (c) Awarding punitive and treble damages;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including a reasonable allowance of attorney's fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (f) Granting such other and further relief as the Court may deem just and proper.

Dated: June 30, 2020
Carle Place, NY



PRICE ARMSTRONG, LLC

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bcohen@leedsbrownlaw.com
(To apply Pro Hac Vice)

Counsel for Plaintiff and the Putative Class



Bailey, Steven P
 Student ID#: 903761473
 Statement Date: 11-14-2019
 Due Date: 12-06-2019

Auburn University
 Office of Student Financial Services
 203 Mary Martin Hall
 Auburn University, AL. 36849-5119
 (334) 844-4634

TRANSACTION DATE	CODE	DESCRIPTION	CHARGE	CREDIT
		Previous Account Balance		0.00
		—CURRENT CHARGES/PAYMENTS—		
11-13-2019	202020	350 Dining Dollars		350.00
11-13-2019	202020	ENVD Professional Fees		2,160.00
11-13-2019	202020	Tuition Non-resident Undergraduate		15,562.00
CURRENT DUE			\$ 18,072.00	
TOTAL ACCOUNT BALANCE			\$ 18,072.00	

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

RECEIVED

I. (a) PLAINTIFFS

Steven Bailey

(b) County of Residence of First Listed Plaintiff **Rockdale, GA**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Oscar M. Price, IV
Price Armstrong, LLC
2226 1st Ave. S., Ste. 105 205.508.9598

DEFENDANTS

Auburn University

County of Residence of First Listed Defendant **Lee, AL**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

2020 JUN 30 P 3:51
U.S. DISTRICT COURT
MOBILE DISTRICT ALA.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)(A)

Brief description of cause:
Breach of contract class action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 06/30/2020 SIGNATURE OF ATTORNEY OF RECORD *Oscar M Price IV*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602058418
Cashier ID: imccullo
Transaction Date: 07/01/2020
Payer Name: PRICE ARMSTRONG

CIVIL FILING FEE
For: OSCAR M PRICE IV
Case/Party: D-ALM-3-20-CV-000457-001
Amount: \$400.00

CHECK
Check/Money Order Num: 1266
Amt Tendered: \$400.00

Total Due: \$400.00
Total Tendered: \$400.00
Change Amt: \$0.00

3:20-cv-00457

Bailey v. Auburn University