

Return Date: No return date scheduled
Hearing Date: 4/2/2021 10:00 AM - 10:00 AM
Courtroom Number: 2410
Location: District 1 Court
Cook County, IL

12-Person Jury

FILED
12/2/2020 7:12 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2020CH07046

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION**

11338563

JAMES TULLMAN, individually and on behalf of
similarly situated individuals,

Plaintiff,

v.

THE UNIVERSITY OF ILLINOIS SYSTEM,
UNIVERSITY OF ILLINOIS BOARD OF
TRUSTEES, and DONALD J. EDWARDS,

Defendants.

Case No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff James Tullman, alleges on personal knowledge against Defendants University of Illinois System¹ (“University”), University of Illinois Board of Trustees (“Board”), and Donald J. Edwards in his official capacity as a member of the Board (collectively, “Defendants”) as follows:

NATURE OF THE CASE

1. This is an action against Defendants for inverse condemnation / violation of the Illinois Constitutional takings clause, and violation of the United States Constitutional takings and due process clause.

2. Specifically, as set forth more fully below, Plaintiff and the members of the Classes enrolled in the University for access to on-campus facilities and in-person educational instruction together with the on-campus college experience, and pre-paid for those services in the form of tuition, room and board, and other fees.

¹ Including all Universities, branches and/or campuses within the System.

3. As a result of decisions made by Defendants concerning their response to COVID-19, starting in or around March 2020, Defendants failed to deliver the services that Plaintiff and the members of the Classes previously paid for. Defendants' conduct amounts to inverse condemnation of Plaintiff's property and a violation of the Constitutional takings and due process clauses.

4. As a result, Plaintiff and the members of the Classes are entitled to injunctive relief, just compensation, a refund, and/or restitution on tuition, room and board, and fees paid for services, facilities, access and/or opportunities not delivered.

JURISDICTION AND VENUE

5. This is a class action complaint for inverse condemnation / violation of the Illinois Constitutional takings clause, and violation of the United States Constitutional takings and due process clause. Plaintiff alleges that a cause of action exists under state law for the conduct of complained of herein.

6. Venue is proper under 735 ILCS 5/2-101 of the Illinois Code of Civil Procedure, as a substantial portion of the transactions giving rise to the causes of action pleaded occurred in Cook County.

PARTIES

7. Plaintiff James Tullman is a citizen and resident of New York and his daughter was enrolled as a student at The University of Illinois at Urbana-Champaign during the Spring 2020 and Summer 2020 semesters.

8. Defendant University of Illinois System is a public university system consisting of University of Illinois – Chicago, University of Illinois – Springfield, and University of Illinois – Urbana-Champaign.

9. Defendant University of Illinois Board of Trustees is a corporate body that can sue and be sued, and is responsible for the governance of the System, including setting tuition and fees. Defendant Donald J. Edwards is the chair of the Board.

FACTS

University Background Information

10. Plaintiff brings this action as a result of Defendants' decision not to issue appropriate refunds and/or restitution for the Spring 2020 semester, or any other semester effected by Covid-19 by canceling in-person/on-campus classes and changing all classes to an online/remote format, closing most campus buildings, and requiring all students who could leave campus to do so.

11. To encourage and solicit prospective students to enroll at the University for on-campus learning and to use the campus facilities, the University, through its website and other marketing materials promotes the benefits of its on-campus experience, encouraging prospective students to apply to the University and join its on-campus life and education experience. In fact, on its website, the University discusses its activities, culture and traditions, and states: "The college experience extends beyond the walls of the classroom..." (See Exhibit A, also at <https://admissions.illinois.edu/Discover/Campus-Life/activities>).

12. Through its website, the University encouraged prospective enrollees to visit its campuses as part of its inducement of prospective students to apply to the University and join its on-campus life and education experience (See Exhibit B, also at https://web.archive.org/web/20190706073953if_/https://admissions.illinois.edu/visit).

13. In order to attend the University for on-campus learning, prospective students are required to complete its application process which is explained on its website (*See Exhibit C, also at <https://admissions.illinois.edu/Apply/Freshman/process>*).

14. After each prospective student of the University submits his/her application, on its website, the University describes its process for reviewing submitted applications (*See Exhibit D, also at <https://admissions.illinois.edu/Apply/Freshman/review>*).

15. The process for admission for transfer students and other non-freshman applicants is virtually the same as described above.

16. After completing the University's application and after consideration by the University, successful applicants, including Plaintiff Tullman's daughter, receive a letter of acceptance along with instructions to be followed in order to matriculate at the University for on-campus learning. Additionally, after a student has been accepted for admission to the University, its website sets forth the "...simple steps to complete your enrollment." (*See Exhibit E, also at <https://admissions.illinois.edu/Apply/admitted>*).

17. Plaintiff Tullman's daughter's application and acceptance letter to the University are not attached because the application was completed online. Upon information and belief, the University is in possession of all applications and acceptance letters for prospective class members, including Plaintiff Tullman's daughter.

18. As a condition for prospective students at the University to receive access to campus facilities and on-campus learning, each person (including Plaintiff Tullman's daughter) is required to pay tuition and certain fees, and for those that choose to live on campus and participate in the University's meal plan, payment of those additional fees. Tuition at the University for the 2019-2020 academic year starts at \$12,036 for an in-state resident, starts at \$29,178 for an out-of-

state resident, and starts at \$30,052 for an international student (*See Exhibit F*). These rates may be higher depending on each student's major. Room and Board fees (which includes a fee to participate in a dining plan) at the University for the year were approximately \$15,000 (*see Exhibit G*). The University also offers a stand-alone meal plan for a fee of between \$2,192 and \$6,202 for the 2019-2020 academic year (*See Exhibit H*).

19. The tuition charged by the University, as set forth above, is for in-person on-campus instruction and for access to the campus facilities and amenities.

20. In addition to tuition, the University students may be charged various fees, including, but not limited to: (1) Academic Facility Maintenance Fund Assessment, (2) General Fee, (3) Service Fee, (4) Health Service Fee, (5) Health Insurance Fee, (6) Library and Information Technology Fee, (7) Transportation Fee, and (8) Student-Initiated Fees (*See Exhibit I*, also at <https://registrar.illinois.edu/tuition-fees/fee-info/>). The University estimated these fees at more than \$4,000 for the Fall 2019-Spring 2020 school year.²

21. Plaintiff Tullman's daughter was enrolled as a full-time student for the Spring 2020 semester at the University.

22. As a precondition for enrollment, Plaintiff was required to and did pay tuition and fees, as did members of the Classes.

23. There are hundreds, if not thousands, of institutions of higher learning in this country.

24. Many institutions of higher learning offer curriculum and instruction that is offered on a remote basis through online learning which do not provide for physical attendance by the students, and generally charge lower tuition rates.

² See <https://cost.illinois.edu/Home/Cost/R/U/Compare/FullTime/120198?ViewYearFirst=1>

25. The University offers an in-person, hands on curriculum.

26. Plaintiff Tullman's daughter and members of the Classes did not choose to attend another institution of higher learning, but instead chose to attend the University and enroll in an in-person basis at a significantly higher tuition.

27. The tuition and fees for in-person instruction at the University are higher than tuition and fees for online institutions because such costs cover not just the academic instruction, but encompass an entirely different experience which includes, but is not limited to:

- (a) Face to face interaction with professors, mentors, and peers;
- (b) Access to facilities such as computer labs, study rooms, laboratories, and libraries;
- (c) Student governance and student unions;
- (d) Extra-curricular activities, groups, and intramurals;
- (e) Student art, cultures, and other activities;
- (f) University sporting events;
- (g) Social development and independence;
- (h) Hands on learning and experimentation; and
- (i) Networking and mentorship opportunities.

28. Plaintiff Tullman's daughter enrolled at the University to earn a degree that included taking courses at the campus with live teacher and peer interaction and access to the campus facilities and amenities.

29. Defendants use an educational calendar of two semesters, fall and spring. The Spring 2020 semester ran from January 21, 2020 through May 6, 2020, plus a period for final exams.

The University's Actions Regarding COVID-19

30. On March 11, 2020, Defendants announced that all classes were moving to “alternative course delivery” (*i.e.*, online) after Spring Break.

31. Spring Break occurred on March 14, 2020 through March 22, 2020.

32. On March 16, 2020, Defendants announced that they were suspending face-to-face instruction for the rest of the Spring 2020 semester. Defendants also announced they intended to resume instruction using “alternative delivery methods” beginning Monday, March 23, 2020.

33. Also, on March 16, 2020, Defendants announced they were requiring all students who could safely do so, to return to their permanent home address to take their classes for the rest of the semester. No “move out by” date was included in this announcement.

34. On or about March 17, 2020, Defendants announced that they had cancelled graduation ceremonies previously scheduled for May 16, 2020 and instead would be mailing diplomas to Spring 2020 graduates.

35. On March 20, 2020, Defendants announced that all students living on campus needed to vacate campus by March 21, 2020 at 2:00 p.m.

36. On March 24, 2020, Defendants announced that some courses would be switched to “pass/no pass” (also referred to as “PP/NP”) grading rather than standard course grading (A/B/C/D/F). As announced, for those courses switched to “pass/no pass” grading by Defendants, there was no option for Plaintiff Tullman’s daughter or other students at the University of Illinois to select standard course grading.

37. As described in the Academic Policy Modifications – Spring 2020 from the Office of the Provost, “[c]ourses assessed as PP/NP will not affect student GPA. This could be detrimental to students who were expecting to earn a high grade in the course. Programs with

licensure requirements might be affected by PP/NP grading.” This announcement also states: “Although we have indications that external stakeholders (employers, graduate schools) will not penalize students for PP/NP, we cannot guarantee that this will be universally true.”

38. Defendants suspended or restricted in-person on-campus activities and closed most of the campus to its students.

39. Plaintiff Tullman’s daughter and members of the Classes were deprived of the benefits of on-campus learning and the use of campus facilities and amenities as set forth more fully herein.

40. In their April 10, 2020 communication, Defendants discussed certain billing adjustments already in process related to University Housing (including dining), and certain downward adjustments to Student Service and Campus Transportation fees to reflect the loss of access. In this communication, Defendants admit that some campus fees are not being adjusted.

41. Despite Defendants’ cancellation of live in-person instruction, its eviction of students from campus facilities for the remainder of the Spring 2020 semester, and the cancellation of all campus activities, Defendants have not offered adequate refunds or restitution of tuition, room and board, and fees paid to cover the cost of on-campus services that were no longer provided to students.

42. To date, Defendants have failed and continue to fail to refund any portion of Plaintiff’s and the Class members’ Spring 2020 semester tuition payments or to provide any restitution.

43. Moreover, Plaintiff Tullman’s daughter and members of the Classes were deprived of fully utilizing services for which they already paid, including, but not limited to, access to campus facilities and other opportunities.

44. To date, Defendants have failed to adequately and properly refund various fees to Plaintiff and the members of the Classes for university services which Defendants failed to provide as previously agreed upon or to provide any adequate or proper restitution.

45. To date, Defendants have failed to adequately and properly refund room and board fees paid made by Plaintiff and the members of the Class for services which Defendants failed to provide as previously agreed upon or to provide any adequate or proper restitution.

46. The University's Summer 2020 semester was remote online only, with no discount or refund of tuition or fees.

47. Regarding the Fall 2020 semester, the University was on campus "with as much in-person instruction as restrictions of space, health and safety allow." After Fall Break, however, the University finished the Fall 2020 semester remotely.

The University's Financial Resources

48. The University of Illinois and U of I Foundation have a combined active endowment of \$2.82 billion as of June 30, 2019 and raised \$462.9 million in fiscal year 2019 fundraising campaign.

49. In addition to its endowment, tuition income and other revenue, the Federal Government also responded to the COVID-19 pandemic in ways that benefited the University and covered costs associated with the disruption by instituting the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act").

50. To assist colleges and universities and their students, the CARES Act includes funding to assist college students whose lives and educations have been disrupted by COVID-19. Colleges and universities can distribute the cash grants to students to use on course materials, technology, food, housing, healthcare, and childcare. The funding flows to the states who then

distribute the funds to colleges and universities (that have completed an application). The CARES Act requires that approximately half the funds received by colleges and universities be distributed to its students. The use of the other half of CARES Act funds received by colleges and universities is limited and specific, as stated in an April 21, 2020 letter from Betsy DeVos, the Secretary of Education, to college and university presidents³:

[T]he CARES Act allows your institution to use up to one-half of the total funds received... to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus.

51. Upon information and belief, through the CARES Act, the U.S. Department of Education (“DOE”) allocated \$63,054,655 to the University of which the minimum allocation to be awarded for emergency financial aid grants to University students was \$31,527.328.

52. On or about April 15, 2020 the University signed, certified, and returned an assurance the school will use at least 50% of the funds received from the CARES Act to provide Emergency Financial Aid Grants to students.⁴

APPLICABLE SUBSTANTIVE LAW

53. Defendants are obligated to uphold the Illinois Constitution and the United States Constitution.

54. By retaining 100% of the various fees pre-paid by Plaintiff and the Class, and by denying in-person learning and on-campus benefits and opportunities, Defendants have violated the Illinois Constitution, Article I, §§ 2 and 15, and the United States Constitution’s Fifth and Fourteenth Amendments. Plaintiff and members of the Classes are entitled to a pro-rated refund or restitution of tuition, housing, and mandatory fees for the duration of the University’s COVID-

³ See <https://www2.ed.gov/about/offices/list/ope/heerfinstitutionalcoverletter.pdf>.

⁴ See <https://covid19.illinois.edu/more-information/reports/cares-act-reporting/>

19 related closures for the in-person education and on-campus services and opportunities that Plaintiff and members of the Classes have been denied.

55. Illinois's substantive laws apply to the proposed Classes, as defined herein.

56. Illinois's substantive laws may be constitutionally applied to the claims of Plaintiff and the Classes under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. Illinois has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiff and members of the Classes, thereby creating state interests that ensure that the choice of Illinois state law is not arbitrary or unfair. Furthermore, the circumstances that relate to the disputed transaction(s) occurred primarily and substantially in Illinois.

57. The University is located in Illinois.

58. All live in-person instruction occurs in Illinois, and all University housing for students is located in Illinois.

59. All fee payments for Tuition, Fees, and Room and Board are sent to the University in Illinois.

60. All of the University's statements regarding Tuition, Fees, and Room and Board cited throughout this Complaint were made in and emanated from Illinois.

61. The application of Illinois's laws to the Class members is appropriate under Illinois's choice-of-law rules because Illinois has significant contacts to the claims of Plaintiff and the Class, and Illinois has a greater interest in applying its laws here than any other interested state.

CLASS REPRESENTATION ALLEGATIONS

62. Plaintiff brings this action on behalf of himself and for the following classes of persons defined as:

The Tuition and Fees Class:

All people who paid tuition and fees for or on behalf of students enrolled in classes at the University for the Spring 2020 semester but were denied access to campus facilities, live in-person instruction, and/or the items for which the fees were paid and forced to use online distance learning platforms for a portion of the time for which the tuition was paid. This Class includes all people who in addition to paying tuition and fees for or on behalf of students enrolled in classes at the University for the Spring 2020 semester, paid tuition and fees for or on behalf of students enrolled in classes at the University for subsequent semesters but were denied access to campus facilities and live in-person instruction and forced to use online distance learning platforms for a portion of the time for which the tuition was paid.

The Room and Board Class:

All people who paid the costs of room and board (housing and meals) for students enrolled in classes at the University for the Spring 2020 semester who were instructed to move out of their on-campus housing prior to the completion of that semester by the University. This Class includes all people who paid the cost for housing only (without a meal plan) and all people who paid the cost of a meal plan (without housing costs). This Class includes all people who paid the costs of room and board (housing and meals) for students enrolled in classes at the University for subsequent semesters and did not receive their full benefits during those semesters.

63. Excluded from the Classes are Defendants, and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and the judicial officers, and their immediate family members, and Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

64. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff and members of the Classes can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

65. This action has been brought and may be properly maintained on behalf of the Classes proposed herein under the laws of the State of Illinois.

66. Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described herein, with respect to members of the Classes as a whole.

Numerosity

67. The members of the Classes are so numerous and geographically dispersed that individual joinder of all members of the Classes is impracticable. Plaintiff is informed and believe that there are thousands of members of the Classes and includes all students who enrolled at any school or department of Defendants for the 2020 Spring semester or thereafter, as defined above, the precise number being unknown to Plaintiff, but such number being ascertainable from Defendants' records. The members of the Classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include the use of Defendants' own student records, U.S. mail, electronic mail, internet postings, and/or published notice.

Commonality and Predominance

68. This action involves common questions of law and fact, which predominate over any questions affecting individual members of the Classes, including, without limitation:

- (a) Whether Defendants engaged in the conduct alleged herein;
- (b) Whether Defendants complied with the Constitutional requirements for seizing and retaining Plaintiff's and the other members of the Tuition and Fees Class' property without providing the services that the tuition and fees was intended to cover;
- (c) Whether Defendants afforded Plaintiff and the other Tuition and Fees Class members notice and due process before seizing and retaining their property;

- (d) Whether Defendants complied with the Constitutional requirements for seizing and retaining Plaintiff's and the other members of the Room and Board Classes property without providing the services that the room and board was intended to cover;
- (e) Whether Defendants afforded Plaintiff and the other Room and Board Class members notice and due process before seizing and retaining their property;
- (f) Whether the Defendants should be compelled to provide restitution to the various Classes for monies paid for various services which were not fully provided;
- (g) Whether certification of any or all of the Classes proposed herein is appropriate;
- (h) Whether members of the Classes are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
- (i) The amount and nature of relief to be awarded to Plaintiff and the other members of the Classes.

Typicality

69. Plaintiff's claims are typical of the other members of the Classes' claims because, among other things, all members of the Classes were similarly situated and were comparably injured through Defendants' wrongful conduct as set forth herein.

Adequacy

70. Plaintiff is an adequate representative of the Classes because his interests do not conflict with the interests of other members of the Classes he seeks to represent. Plaintiff has retained counsel competent and experienced in complex litigation; and Plaintiff intends to

prosecute the action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiff and his counsel.

Superiority

71. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The entitlement to just compensation, and damages or other financial detriment suffered by Plaintiff and other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Classes to individually seek redress for Defendants' wrongful conduct.

72. Even if Class members could afford individual litigation, the Court system likely could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, comprehensive supervision by a single court, and finality of the litigation.

73. The prosecution of separate actions by or against individual members of the Classes would create a risk of inconsistent or varying adjudications that would confront Defendants with incompatible standards of conduct.

74. The dollar amount of the individual claims is insufficient to support separate actions; thus, a multitude of potential claimants have small potential damages that require aggregation in order to be pursued.

75. This lawsuit is manageable as a class action because the proofs are essentially the same for all members of the Classes on all of the principal issues.

76. Defendants' conduct was the same as to all members of the Class.

77. The members of the Classes do not have a significant interest in controlling the prosecution of separate actions involving the subject matter of this litigation, especially because the individual claims are too small individually to warrant litigating their claims on an individual basis.

FOR A FIRST COLLECTIVE CAUSE OF ACTION

(VIOLATION OF THE TAKINGS CLAUSE - 42 U.S.C. § 1983)

78. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

79. Plaintiff brings this count on behalf of the Tuition and Fees Class.

80. The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." U.S. Const. Amend. V. The Takings Clause is made applicable to the states through the Fourteenth Amendment. *See* U.S. Const. Amend. XIV; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942, 198 L. Ed. 2d 497 (2017) (citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897)). Thus, the takings clause of the U.S. Constitution prohibits states, and state agencies and officers like the Defendants, from taking private property for public use without just compensation.

81. Takings claims may properly be brought against state agencies and are not barred by sovereign immunity.

82. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, Defendants received payment of tuition and fees from private citizens, as consideration for the benefit of receiving in-person course instruction and other

on-campus benefits. The funds in issue are thus private in nature but held by a public entity. Plaintiff and the other members of the Tuition and Fees Class have a protected property right in all sums they paid to the University.

83. Plaintiff and members of the Tuition and Fees Class also have a protected property interest in continued contracted for services.

84. Defendants violated the takings clause by failing to provide the contracted for services and failing to return to Plaintiff and members of the Tuition and Fees Class that portion of the tuition and fees for which they received nothing, or significantly less than what they bargained for in return. Neither Plaintiff nor the other Tuition and Fees Class members have made a knowing and voluntary waiver of their constitutional right under the Fifth Amendment to be paid just compensation for the taking of their property rights in those funds.

85. Thus, Plaintiff and the Tuition Class are entitled to injunctive relief for the return of the monies paid to Defendant for services which were not provided, and for injunctive relief preventing Defendants from charging full in-person on-campus tuition and fees in exchange for online-only education and limited access to campus.

FOR A SECOND COLLECTIVE CAUSE OF ACTION

(VIOLATION OF DUE PROCESS

42 U.S.C. § 1983 and ILLINOIS CONSTITUTION, ARTICLE 1, § 2)

86. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

87. Plaintiff brings this count on behalf of the Tuition and Fees Class.

88. Government actors must provide adequate due process procedures when depriving citizens of protected property interests. U.S. Const. Amend. XIV; Illinois Const. Art. I, § 2.

89. The due process clauses of the U.S. and Illinois Constitutions prohibit the State of Illinois and the governmental agencies that it creates, such as the Board and University, from depriving citizens of a protected property interest without due process of law.

90. Plaintiff and the Tuition and Fees Class members had a constitutionally protected property interest in the tuition and fees they paid for in-person education and opportunities and use of other University facilities and services but were denied due to the actions of Defendants.

91. Defendants took action affecting Plaintiff and the other Tuition and Fees Class members' constitutionally protected property interests by retaining amounts from Plaintiff and the Tuition and Fees Class members' payment of tuition and fees.

92. Defendants deprived Plaintiff and the other Tuition and Fees Class members of their protected property interests without due process of law by, for example:

- a. Failing to provide notice of how refunds and/or restitution could be obtained from Defendants for the property belonging to Plaintiff and the members of the Tuition and Fees Class but unlawfully retained by Defendants.
- b. Failing to design and implement criteria by which the tuition and fees can be refunded to Plaintiff and the Tuition and Fees Class in light of the University decisions to cease or severely limit all on-campus activities starting on or about March 11, 2020; and
- c. Failing to design and implement a mechanism by which Plaintiff and the other Tuition and Fees Class members can obtain a refund of the tuition and fees in light of the University decisions to cease or severely limit all on-campus activities starting on or about March 11, 2020.

93. Defendants' failure to comply with the requirements of due process has resulted in substantial detriment to the Plaintiff and the Tuition and Fees Class.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
(INVERSE CONDEMNATION / VIOLATION OF THE TAKINGS CLAUSE
ILLINOIS CONSTITUTION, ARTICLE 1, § 15)**

94. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

95. Plaintiff brings this count on behalf of the Tuition and Fees Class.

96. Article I, § 15 of the Illinois Constitution provides that “[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law.” Illinois Const. Art. 1, § 15. Thus, the takings clause of the Illinois Constitution prohibits the state, and state agencies like the Board and University, from taking private property for public use without just compensation.

97. Takings claims may properly be brought against state agencies and are not barred by sovereign immunity.

98. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, Defendants received payment of tuition and fees from private citizens, as consideration for the benefit of receiving in-person course instruction and other on-campus benefits. The funds in issue are thus private in nature but held by a public entity. Plaintiff and the other members of the Tuition and Fees Class have a protected property right in all sums they paid to the University.

99. Plaintiff and members of the Tuition and Fees Class also have a protected property interest in continued contracted for services.

100. Defendants violated the takings clause and committed inverse condemnation by failing to provide contracted for services and failing to return to Plaintiff and members of the Tuition and Fees Class that portion of the tuition and fees for which they did not receive what they bargained for. Neither Plaintiff nor the other Tuition and Fees Class members have made a knowing and voluntary waiver of their constitutional right under the Illinois Constitution to be paid just compensation for the taking of their property rights in those funds.

101. Thus, Plaintiff and the Tuition and Fees Class are entitled to just compensation for the taking of their property.

FOR A FOURTH COLLECTIVE CAUSE OF ACTION
(VIOLATION OF THE TAKINGS CLAUSE - 42 U.S.C. § 1983)

102. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

103. Plaintiff brings this count on behalf of the Room and Board Class, including those class members who paid fees for a meal plan.

104. The Takings Clause of the Fifth Amendment provides that private property shall not “be taken for public use, without just compensation.” U.S. Const. Amend. V. The Takings Clause is made applicable to the states through the Fourteenth Amendment. *See* U.S. Const. Amend. XIV; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942, 198 L. Ed. 2d 497 (2017) (citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897)). Thus, the takings clause of the U.S. Constitution prohibits states, and state agencies like the Board and University, from taking private property for public use without just compensation.

105. Takings claims may properly be brought against state agencies and are not barred by sovereign immunity.

106. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, Defendants received payment of Room and/or Board from private citizens. The funds are thus private in nature but held by a public entity. Plaintiff and the other members of the Room and Board Class have a protected property right in all sums they paid to Defendants.

107. Defendants violated the takings clause by failing to return to Plaintiff and members of the Room and Board Class that portion of the room and/or board for which they received nothing, or significantly less than what they bargained for in return. Neither Plaintiff nor the other Room and Board Class members have made a knowing and voluntary waiver of their constitutional right under the Fifth Amendment to be paid just compensation for the taking of their property rights in those funds.

108. Thus, Plaintiff and the Room and Board Class are entitled to injunctive relief for the return of the monies paid to Defendant for services which were not provided, and for injunctive relief preventing Defendant from charging full in-person on-campus tuition and fees in exchange for online-only education and limited access to campus.

FOR AN FIFTH COLLECTIVE CAUSE OF ACTION

(VIOLATION OF DUE PROCESS –

42 U.S.C. § 1983 and ILLINOIS CONSTITUTION, ARTICLE 1, § 2)

109. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

110. Plaintiff brings this count on behalf of the Room and Board Class, including those class members who paid fees for a meal plan.

111. Government actors must provide adequate due process procedures when depriving citizens of protected property interests. U.S. Const. Amend. XIV; Illinois Const. Art. I, § 2.

112. The due process clauses of the U.S. and Illinois Constitutions prohibit the State of Illinois and the governmental agencies that it creates, such as Defendants, from depriving citizens of a protected property interest without due process of law.

113. Plaintiff and the Room and Board Class members had a constitutionally protected property interest in the Room and Board they paid but were denied due to the actions of the Defendants.

114. Defendants took action affecting Plaintiff and the other Room and Board Class members' constitutionally protected property interests by retaining amounts from Plaintiff's and the Class members' payment of room and board.

115. Defendants deprived Plaintiff and the other Room and Board Class members of their protected property interests without due process of law by, for example:

- a. Failing to provide timely notice to Plaintiff and the Room and Board Class, whose identity and contact information Defendants either knew, or by exercise or reasonable diligence should have known, of the refundable nature of the room and board;
- b. Failing to design and implement criteria by which the room and board can be refunded to Plaintiff and the Room and Board Class in light of the University decisions to cease or severely limit all on-campus activities starting on or about March 11, 2020; and
- c. Failing to design and implement a mechanism by which Plaintiff and the other Room and Board Class members can obtain a refund room and board in light of the University decisions to cease or severely limit all on-campus activities starting on or about March 11, 2020.

116. Defendants' failure to comply with the requirements of due process has resulted in substantial detriment to the Plaintiff and the Room and Board Class.

FOR A SIXTH COLLECTIVE CAUSE OF ACTION
(INVERSE CONDEMNATION / VIOLATION OF THE TAKINGS CLAUSE
ILLINOIS CONSTITUTION, ARTICLE 1, § 15)

117. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

118. Plaintiff brings this count on behalf of the Room and Board Class (including a meal plan).

119. Article I, § 15 of the Illinois Constitution provides that “[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law.” Illinois Const. Art. 1, § 15. Thus, the takings clause of the Illinois Constitution prohibits the state, and state agencies like the Board and University, from taking private property for public use without just compensation.

120. Takings claims may properly be brought against state agencies and are not barred by sovereign immunity.

121. Common law has recognized that there is a property right by an owner in funds held in an account managed by another. Here, Defendants received payment of Room and/or Board from private citizens. The funds are thus private in nature but held by a public entity. Plaintiff and the other members of the Room and Board Class have a protected property right in all sums they paid to Defendants.

122. Defendants violated the takings clause by failing to return to Plaintiff and members of the Room and Board Class that portion of the room and/or board for which they received nothing, or significantly less than what they bargained for in return. Neither Plaintiff nor the other

Room and Board Class members have made a knowing and voluntary waiver of their constitutional right under the Fifth Amendment to be paid just compensation for the taking of their property rights in those funds.

123. Thus, Plaintiff and the Room and Board Class are entitled to just compensation for the taking of their property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Classes, pray for judgment in their favor and against Defendants as follows:

- A. Certifying the Classes as proposed herein, designating Plaintiff as the Class representative, and appointing undersigned counsel as Class Counsel;
- B. Declaring that Defendants are financially responsible for notifying the Class members of the pendency of this action;
- C. Declaring that Defendants have wrongfully kept monies paid for tuition and fees;
- D. Requiring that Defendants disgorge amounts wrongfully obtained for tuition and fees and/or compelling Defendants to make restitution to Plaintiff and members of the Classes;
- E. Declaring that Defendants have wrongfully kept monies paid for room and board;
- F. Requiring that Defendants disgorge amounts wrongfully obtained for tuition and fees and/or compelling Defendants to make restitution to Plaintiff and members of the Classes;
- G. Awarding just compensation to Plaintiff and members of the Classes;
- H. Awarding restitution to Plaintiff and members of the Classes;
- I. Awarding injunctive relief as permitted by law or equity, including enjoining Defendants from retaining the pro-rated, unused monies paid for tuition and fees, and from continuing to charge full in-person on-campus tuition and fees in exchange for online only education and limited campus access;

- J. Awarding Plaintiff's reasonable attorney's fees, costs, and expenses, as permitted by law;
- K. Awarding pre and post judgment interest on any amounts awarded, as permitted by law; and
- L. Awarding such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demand a trial by jury on all issues so triable.

Dated: December 2, 2020

CARLSON LYNCH LLP

By: Katrina Carroll
Kyle A. Shamberg
Katrina Carroll
Nicholas R. Lange
111 W. Washington Street, Suite 1240
Chicago, IL 60602
Telephone: (312) 750-1265
Email: kshamberg@carlsonlynch.com
Email: kcarroll@carlsonlynch.com
Email: nlange@carlsonlynch.com
Firm ID: 63746

CARLSON LYNCH LLP

Edward Ciolko
Nicholas Colella
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243
Fax: (412) 231-0246
Email: eciolko@carlsonlynch.com
Email: ncolella@carlsonlynch.com

LEEDS BROWN LAW, P.C.

Jeffrey K. Brown (to apply Pro Hac Vice)
Michael A. Tompkins (to apply Pro Hac Vice)
Brett R. Cohen (to apply Pro Hac Vice)
1 Old Country Road, Suite 347
Carle Place, NY 11514

Tel: (516)873-9550
Email: jbrown@leedsbrownlaw.com
Email: mtompkins@leedsbrownlaw.com

Attorneys for Plaintiff