

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NABOR CAMARENA, Individually
and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

BAYLOR UNIVERSITY and BOARD
OF REGENTS OF BAYLOR
UNIVERSITY,

Defendants.

Case No: 3:20-cv-01436

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Nabor Camarena (“Plaintiff”), individually and on behalf of all other similarly situated individuals (collectively, the “Class,” as more fully defined below), brings this class action complaint against Baylor University (“Baylor” or the “University”) and the Board of Regents of Baylor University (“Regents,” collectively with Baylor, “Defendants”). Plaintiff makes the following allegations upon personal knowledge as to his own acts and upon information and belief and his attorneys’ investigation as to all other matters.

I. NATURE OF THE ACTION

1. This is a class action brought on behalf of Plaintiff and other similarly situated individuals who have paid tuition and fees for on-campus courses at Baylor University and who have not been refunded a prorated portion thereof after Baylor abruptly closed its doors to students and shifted to substandard online instruction due to the Coronavirus Disease 2019 (“COVID-19”).

2. Plaintiff and these other proposed Class members are students, families,

and student guarantors who paid millions of dollars in tuition and fees at Baylor (the “Class”) and who, as a result of Defendants’ wrongful acts, (i) have not received refunds or reimbursements for the unused services for which they paid; and/or (ii) have not received any refund or reimbursement for the decreased value of the education that Defendants began providing when classes transitioned from in-person instruction to an entirely untested online and less valuable format.

3. Plaintiff and other Class members have lost the benefits of the education, services, extra-curricular opportunities, and other experiences that Defendants promised them. Despite failing to fulfill their obligations, Defendants are currently unlawfully retaining and refusing to fully or partially refund Plaintiff’s tuition and mandatory fees, despite the dramatically lower quality and less valuable education and services Defendants provided for the second half of the Spring 2020 semester.

4. Plaintiff and similarly situated individuals are entitled to have Defendants disgorge in full the portions of their payments for unused services and to refund their tuition payments for substandard classes. Plaintiff brings this class action for injunctive, declaratory and equitable relief, and any other available remedies, resulting from Defendants’ illegal, inequitable, and unfair retention of the funds paid by Plaintiff and the other individuals in the proposed Class.

5. Specifically, through this lawsuit, Plaintiff seeks—for himself and the other Class members—Defendants’ disgorgement and/or refund of (i) the prorated, unused portion of mandatory fees, proportionate to the amount of time that remained in the Spring 2020 semester when the campus was shut down, classes moved online and campus services ceased being provided in full; and/or (ii) a refund of a percentage of tuition based on students no longer being able to attend classes in-person and instead being offered a far inferior online learning experience.

II. PARTIES

A. Plaintiff

6. Plaintiff Nabor Camarena is a resident of Dallas, Texas. Mr. Camarena is a third-year undergraduate student studying Nursing at Baylor University's Louise Herrington School of Nursing which is located in Dallas, Dallas County, Texas. Plaintiff paid tuition and fees to Defendant for the Spring 2020 semester.

B. Defendants

7. Baylor University is a private corporation located in Texas. In fall 2019, Baylor enrolled 14,108 undergraduate and 3,925 graduate/professional students, for a total enrollment of 18,033. In the 2018 fiscal year, Baylor had an endowment of \$1.31 billion. As a result, Baylor was recently ranked the 84th richest university in the nation.¹

8. The Board of Regents of Baylor University is the governing body of Defendant Baylor University. The business and affairs of the University are under the sole management and control of the Board of Regents who have and may exercise all of the powers and authority of a board of Regents under and pursuant to Chapter 22 of the Texas Business Organizations Code.

III. JURISDICTION AND VENUE

9. This Court has original jurisdiction under 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5,000,000, exclusive of interests and costs, and because at least one member of the Class defined below is a citizen of a state other than Texas.

10. This Court has personal jurisdiction over Defendants because Defendants maintain their principal places of business in Texas.

¹ <https://thebestschools.org/features/richest-universities-endowments-generosity-research/> (last visited June 5, 2020).

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendant Baylor resides in this District and because a substantial part of the events and omissions giving rise to the claim occurred in this District.

IV. FACTUAL ALLEGATIONS

12. Baylor University is a prestigious, private, Baptist university which attracts students from all over the nation and globe. Baylor University's schools and programs are located in Dallas, Houston, Austin and Waco. In the 2020 edition of U.S. News & World Report's Best Colleges, Baylor was ranked the 79th in the best "National Universities" category. It also tied for 20th for "Best Undergraduate Teaching."

13. Across the Baylor website, the University regularly touts its many accolades, particularly in teaching:

Baylor University enjoys high standing among many national rating services that evaluate quality of education, research activity, affordability, baccalaureate value, and athletic excellence. These rankings recognize not only Baylor as a whole, but also our many respected schools and departments, which are led by our gifted, award-winning professors. Their awards are too numerous to include.²

14. Baylor students can choose from 127 undergraduate degree programs, 78 master's programs, two education special programs, and 46 doctoral programs across 12 academic divisions. Additionally, Baylor University is home to Texas's first official law school, Baylor Law.

15. The majority of Baylor programs and courses are offered exclusively through in-person, on-campus courses. Prior to the COVID-19-related campus closure, the University offered only 15 programs—all graduate—online.³

² <https://www.baylor.edu/about/index.php?id=88794> (last visited June 5, 2020).

³ <https://www.baylor.edu/online/> (last visited June 5, 2020).

16. Although Baylor claims to be a “great value,” the University is very expensive, no matter the program. For the 2019-2020 academic year, undergraduate students taking 12 hours or more per semester paid \$42,842 in tuition and \$4,722 in a mandatory “General Student Fee.” Meanwhile full-time graduate students paid \$38,270 in tuition and \$4,136 in mandatory fees. Additionally, for the 39% of students who live on campus, they also paid for room (\$7,583) and meals (\$5,832). Finally, some students paid optional fees (for a parking permit, yearbook, etc.⁴) and/or additional fees for specific courses or labs.

17. Baylor justifies its high cost by touting its “integrated education known for leadership, service, Christian faith, and the total development of students,” as well as its “vibrant campus community,” which “blend[s] interdisciplinary research with an international reputation for educational excellence and a faculty commitment to teaching and scholarship.” As the University website proclaims, “[a]t Baylor, students are challenged to think beyond the classroom by actively participating in domestic and global research, engaging in study abroad opportunities, and utilizing the resources of the university to lay the groundwork for a successful future.”

18. As part of this holistic academic experience, Baylor students are promised the opportunity to access what the University calls “top-tier academics.” Between “gifted, award-winning professors” and small class sizes—which average just 26 students—the University tells students that “it’s easy to develop a strong working relationship with each of your instructors.” Additionally, the University emphasizes that it “provides students numerous opportunities to participate in cutting-edge research.”

19. In addition to its academics, Baylor advertises its campus—which it claims is “one of the most beautiful in the country”—and the campus life that goes

⁴ <https://www.baylor.edu/sfs/index.php?id=936935> (last visited June 5, 2020).

along with it. The main campus is home to 330 clubs and organizations, including 40 national and local sororities and fraternities, as well as 19 varsity sport teams.

The Vibrant Baylor Campus

The Baylor campus is considered one of the most beautiful in the country.



20. Students can also participate in a wide range of volunteer opportunities, with Baylor students, faculty, and staff completing more than 150,000 hours of community service locally each year.

At Baylor, service is integrated into the fabric of campus life, grounded in a Christian understanding of hospitality that motivates humble service to all. This exists within the classroom, where world-class faculty commit themselves to the education of Baylor students.⁵

21. Moreover, Baylor markets its many unique “traditions,” including, among many others, an annual Homecoming—which “has grown to be the largest

⁵ <https://www.baylor.edu/about/index.php?id=88784> (last visited June 5, 2020).

collegiate Homecoming celebration in the United States”—and Christmas celebration.

22. Baylor students have access to a wide range of services, as well as “state-of-the-art facilities that blend historic beauty with innovative function.” For student services, Baylor students typically have full access to career counseling, diversity and inclusion resources, resident chaplains, and much more.

23. The Dallas Baylor campus where Plaintiff is enrolled provides its students with comparable—and in many cases, the exact same—amenities and opportunities as students on Baylor’s larger Waco campus. First, updated and renovated in 2018, the Nursing School’s “modern” four-story facility, which is located in the heart of downtown Dallas, across the street from the University Medical Center, provides students with:

active learning classrooms for professors to deliver state-of-the-art instruction through innovative active learning methodologies, student-friendly common areas and quiet study lounges, a large learning resource center (open 24-hours a day, 7-days a week), the Barnabus Success Center for tutoring, testing and studying, the Jeff Mills Family Techpoint to provide IT assistance for students, the Ken & Alice Starr Chapel to inspire faithful reflection, the Tom A. and Suzanne Martin cafe for refreshments, the Sunderland Foundation activity room, the McLane Family grand auditorium to host speakers, events and instruction, plus offices for faculty and administration and the Tom A. and Suzanne Martin student services suite.⁶

24. In addition to these academic facilities, services and supports, Nursing School students have robust non-academic opportunities at their disposal in Dallas. For instance, at the Nursing School’s Tom Landry Fitness Center, a comprehensive fitness facility, students can swim, play racquetball and basketball, jog and run on

⁶ <https://www.baylor.edu/nursing/> (last visited June 3, 2020).

the center's tracks, and much more. Moreover, Nursing School students can leverage multiple personal counseling services, from informal counseling with the Chaplain to professional services provided through Sparrow House Counseling.

25. Dallas campus students are encouraged to partake in traditions, events, and more. "Students are provided with information regarding Waco campus events and activities such as football games, the annual Pigskin Revue, and All University Sing, Dia del Oso, as well as cultural activities and events occurring in the Dallas Metroplex area."⁷ In fact, students at the Nursing School are entitled to free athletic tickets to all home games at the University's Waco campus.

26. In exchange for the promise of high-quality teaching and academics, coupled with the on-campus opportunities, services, facilities, and traditions detailed above, among others, Plaintiff was charged \$20,530 in tuition for the Spring 2020 semester to attend the University's Nursing School in Dallas. Additionally, Plaintiff was charged a \$2,261 "General Student Fee-Nursing" and a \$250 "Course or Lab Fee."

27. In response to COVID-19, on or around March 11, 2020, while Baylor students were on spring break, the University announced its intention to extend spring break by an additional week (March 16-20) and thereafter suspend all in-person classes for two weeks. Between March 23 through April 3, classes would shift to an untested entirely online instruction format. Additionally, for three weeks, all student meetings and activities would be canceled. Days later, on March 13, 2020, Baylor announced that all University conferences and large gatherings were also suspended through April 3.

28. Then, on March 16, 2020, the University shared with students, parents, faculty, and staff that it would continue online delivery of all courses through the

⁷ <https://www.baylor.edu/nursing/doc.php/328068.pdf> (last visited June 3, 2020).

end of the Spring 2020 semester, and encouraged students—even those living on-campus—not to return to campus following spring break. At this time, Baylor also extended the suspension of all University activities, events, conferences, and large gatherings through the end of the semester.

29. A week later, on March 23, 2020, the University announced that it would close down several campus facilities to visitors⁸ This order was later extended to April 21.⁹

30. As a result of these decisions, since spring break began on March 7, 2020, Plaintiff and other Baylor students have been denied the bargained-for in-person instruction and access to facilities, technology, services, resources, and other benefits for which Plaintiff and Class members contracted when they paid Defendants tuition and mandatory fees for the Spring 2020 semester.

31. Plaintiff has not attended any in-person classes since March 6, 2020. Instead, all his classes have been moved online.

32. Plaintiff has neither received nor been offered any refund or reimbursement for the tuition and fees that he paid for the Spring 2020 semester.

33. In fact, Baylor has maintained that it will not issue any tuition or fee refunds, posting the following on an FAQ:

While COVID-19 has forced Baylor to change the course delivery for the last half of the semester, students are still enrolled in the same courses with their respective professors and will receive full academic credit on their spring 2020 transcripts for classes completed during this time of online instruction. As such, the University will not be providing a tuition refund.

34. This is true even for labs, which require additional fees.

Baylor faculty have transitioned and adapted their courses for online

⁸ <https://www.baylor.edu/lib/news.php?action=story&story=217986> (last visited May 15, 2020).

⁹ <https://www.baylor.edu/coronavirus/news.php?action=story&story=218250> (last visited May 15, 2020).

delivery and have created - to the best of their abilities - an equivalent method of delivery for lab work. Students will receive full academic credit on their spring 2020 transcripts for classes completed during this time of online instruction. As such, lab fees will not be refunded.

35. Finally, Baylor has explained that it will not refund any portion of the General Student Fee for the Spring 2020 semester, alleging that “the University’s support operations remain open” and that “students can still utilize the University Libraries, Health Services and Baylor Counseling Services, remotely.”

36. But, Plaintiff and Class members did not contract and pay Defendants simply for Baylor students to receive full academic credit on their transcripts or to have access to online library services—they contracted and paid to receive the holistic, integrated, in-person, top-tier educational experience which Baylor marketed and guaranteed to them. Since the campus closure and forced shift to online learning, not to mention the full-week reduction in the Spring 2020 semester, students have not received such an education.

37. First, the semester was cut short by a full week, denying students of a sizable portion of the content they should have learned, assignments they should have completed, feedback they should have received, and opportunities they should have had. For example, in a March 13 email to students, faculty, staff, and parents, Defendants explained that, for the week-long extension to spring break, no academic assignments would be due and faculty should “refrain from additional assignments.”¹⁰ Despite this week-long pause in instruction and assignments, Baylor’s “academic calendar remain[ed] unchanged as it relates to finals and commencement at this time.”¹¹ In other words, students simply lost a full week of instruction—instruction for which Plaintiff and Class members had paid.

¹⁰ <https://www.baylor.edu/president/news.php?action=story&story=217992> (last visited May, 14 2020).

¹¹ *Id.*

38. Second, with the campus gradually closing down beginning in mid-March, Baylor students lost access to the facilities, resources, services, activities, and other benefits covered by their tuition and fee payments. By being forced to move home, students could no longer use the University's physical facilities, such as the campus Chapel, fitness centers, libraries, and McLane Student Life Center, among many others. Moreover, students were also denied the opportunity to participate and/or attend any further University traditions, activities, events, and conferences, including sporting events, volunteer opportunities, and much more.

39. Despite the University's claim that it is providing some services "remotely," students simply do not have access to the same range of opportunities available to them during the first half of the Spring 2020 semester.

40. Indeed, in a March 16, 2020 email to students, faculty, staff, and parents, Defendants admitted as much: "[W]e strongly encourage students that you not return to campus or to Waco, as **available activities and services are becoming more and more limited**."¹²

41. Finally, the online "classes" that have been offered to students since March 23, 2020 are nowhere close in quality to the on-campus courses in which thousands of Baylor students had enrolled—and for which Plaintiff and Class members had paid—for the Spring 2020 semester. Rather, they were watered-down, overpriced, bubble-gum and duct-tape substitutes that were shoehorned at the last minute into an online format. This was true for all courses, but especially so for disciplines where hands-on, in-person instruction is critical, such as dance, visual arts, design, music, engineering, and lab-based science courses.

42. For example, for his undergraduate Nursing program, Plaintiff was

¹² <https://www.baylor.edu/president/news.php?action=story&story=218018> (last visited May 15, 2020) (emphasis added).

enrolled in—and paid additional fees for—multiple labs and clinical courses during the Spring 2020 semester. But, with the transition to online instruction, Plaintiff’s previously hands-on courses shifted to far inferior online lectures and activities. In fact, his courses diminished in quality so significantly that Baylor has suggested that Plaintiff and his classmates return to campus prior to the fall semester to complete their clinical coursework. That is, Defendants acknowledge that students did not receive the coursework they should have but, rather than issue refunds, are asking students to spend their own time, energy, and resources to make up for it.

43. Even for non-clinical and lab courses, the forced shift to remote learning has been disruptive, and resulted in sub-par instruction for Baylor students.

44. Notably, the online courses into which students were thrown were not *designed* to be administered online. As a result, University instructors had to reinvent the wheel mid-course and, for many, teach online for the very first time. In a March 11, 2020 email to faculty, Defendants recognized this, writing:

I understand that **we are asking you midway through the semester to rethink how you teach**...I thank you in advance for your willingness to **adapt and explore alternative teaching methods** while still providing quality teaching to your students.¹³

45. The result is that Baylor students were on the receiving end of a weeks-long, glorified trial and error of online instruction, which was far from the award-winning and highly touted teaching for which Plaintiff and Class members paid.

46. Lastly, prior to the March 2020 campus closure, Defendants all but admitted that most of their programs simply could *not* be delivered successfully online. In fact, Defendants did not previously offer *any* undergraduate degrees, and made available only a handful of its graduate programs for online delivery. By

¹³ <https://www.baylor.edu/provost/news.php?action=story&story=217929> (last visited May 14, 2020)(emphasis added).

providing such limited online offerings, Defendants acknowledged that they was not in a position to deliver all of its programs in a virtual format. Yet, since Defendants abruptly closed all campuses in mid-March 2020, they have suddenly forced *all* students into online courses, without providing any sort of reimbursement to Plaintiff and Class members.

47. Even if the transition to online instruction had been appropriate and smooth for all courses—and had not involved cutting a full week of teaching—the fact remains that, in making tuition and fee payments for the Spring 2020 semester, Plaintiff and the Class did not pay only for a full semester of instruction; they paid for holistic, on-campus “integrated education” that Defendants marketed to them. The fees and tuition that Plaintiff and the Class paid to Defendants were predicated, for example, on students’ ability to: have constant, face-to-face interaction with and feedback from peers, mentors, professors and guest lecturers; use technology, libraries and laboratories; participate in and attend spectator sports and athletic programs; get involved in student government, student unions, arts programs and activities and other extracurricular groups; access student health services; develop independence; build a professional network; and develop mentors, among other things.

48. In paying their tuition and fee bills, Plaintiff and Class members contracted for a full semester’s worth of high-quality, in-person courses taught by experienced teachers in a “vibrant campus community,” complete with robust activities, resources, services, and opportunities for students. But, by abruptly closing down the University in March 2020, cutting a week of instruction from the semester, transitioning all in-person classes to online teaching (whether faculty were equipped to do so or not), sending students home, and thereby significantly reducing services and opportunities available to students, Defendants have not delivered the

educational services, facilities, technology, programming, activities, and other resources for which Plaintiff and Class members contracted. Plaintiff and the proposed Class are therefore entitled to a prorated refund of tuition and fees for the duration of Baylor's COVID-19-related closure for the education and services that Defendants have not provided, or which Defendants have provided in a severely diminished manner.

49. Yet, despite shortening the Spring 2020 semester by a full week, failing to hold any in-person classes since March 6, 2020, forcing students to take untested online classes that are less valuable than in-person instruction, and denying students access to a wide range of on-campus benefits, Defendants have not offered to refund any amount of tuition or mandatory fees to Plaintiff and Class members.

50. Making matters worse, the University has received more than \$10 million in government funding through the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, half of which is federally mandated to go toward students who are in need of emergency financial assistance.¹⁴ Although the University received this influx of federal funds, Defendants refuse to refund or reimburse Plaintiff and the Class any of the fees or tuition they paid for the in-person education and services that were no longer provided to Baylor students beginning in mid-March.

51. Plaintiff and other Class members have lost the benefits of the education, services, extra-curricular opportunities, and other experiences that Defendants promised. Despite failing to fulfill their obligations, Defendants are currently unlawfully retaining and refusing to fully or partially refund Plaintiff's tuition and mandatory fees, despite the dramatically lower quality and less valuable

¹⁴ <https://www2.ed.gov/about/offices/list/ope/allocationsforsection18004a1ofcaresact.pdf> (last visited May 15, 2020).

education and services Defendants provided for the second half of the Spring 2020 semester.

52. Essentially, Plaintiff and Class members paid Defendants for access to buildings and facilities that students were not permitted to enter, equipment and technology that they could not use, and events, traditions, and extra-curricular activities in which they could not participate, among other things.

53. Additionally, Plaintiff and Class members paid Defendants for a level of instruction and course content, which, due to the abbreviated Spring 2020 semester and abrupt, haphazard shift to online learning, were not fully delivered. Defendants are thus profiting from COVID-19, asking students and their families—many of whom have been laid off, become ill, lost loved ones, or are otherwise suffering significantly—to bear the financial brunt of the pandemic. The result is an enormous windfall to Defendants. Both contract and equity demand that Defendants disgorge funds to which they are not fairly entitled.

V. CLASS ACTION ALLEGATIONS

54. Pursuant to Fed. R. Civ. P. 23(a), (b)(2), (b)(3), and/or (c)(4), Plaintiff brings this action on behalf of herself and the following Class:

All persons who (i) paid tuition, mandatory fees, and/or other costs to Baylor University for an in-person class or classes to be conducted during the Spring 2020 semester and/or subsequent terms, and (ii) did not receive the in-person education for which they paid.

55. The following persons and entities are excluded from the Class: Defendants and their officers, directors, employees, subsidiaries, and affiliates; all members of the Board of Regents of Baylor University; judges assigned to this case and any members of their immediate families; and the parties' counsel in this litigation. Plaintiff reserves the right to modify, change, or expand the class definition, including by proposing additional subclasses, based upon discovery and

further investigation.

56. A class action is a superior means to ensure the fair and efficient adjudication of this case. The damages suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of the claims described herein against Defendants. Moreover, individualized actions would run the risk of creating inconsistent or contradictory judgments arising from the same set of facts and would increase the likely delay and expense to all parties involved and the Court itself. By contrast, by proceeding as a class action, the claims at issue can be adjudicated efficiently through economies of scale.

57. **Numerosity.** In accordance with Fed. R. Civ. P. 23(a)(1), the members the proposed Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Although the precise number of Class members is unknown presently to Plaintiff, the Class is presumed to number more than 18,000 people and is easily ascertainable through enrollment and financial records maintained by Defendants.

58. **Commonality and Predominance.** In accordance with Fed. R. Civ. P. 23(a)(1) and (b)(3), this action involves questions of law and fact common to the Class that predominate over any individual questions specific to any Class member. These include:

- a. whether Defendants accepted money from the Class;
- b. whether Defendants retained money from the Class for services they did not render, or only partially rendered;
- c. whether Defendants entered into a contract with the Class;
- d. whether Defendants breached their contract with the Class;
- e. whether Defendants benefitted from the money they accepted from the Class;
- f. whether the value of educational and other services Defendants provided to the Class were commensurate with their price;

- g. whether certification of the Class is appropriate under Fed. R. Civ. P. 23;
- h. whether Class members 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 Class members.

59. **Typicality.** Pursuant to Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of the other Class members' claims because Plaintiff and the other Class members each paid for tuition costs associated with the Spring 2020 semester but were not provided the services that those costs were meant to cover. Each suffered damages in the form of their lost tuition and other monies paid to Defendants, and the claims all arise from the same Baylor University practices and course of conduct. There are no defenses available that are unique to the Plaintiff.

60. **Adequacy of Representation.** In accordance with Fed. R. Civ. P. 23(a)(4), Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other proposed Class members. Moreover, Plaintiff has retained counsel competent and experienced in complex class action litigation, and he intends to prosecute this action vigorously on behalf of his fellow Class members. Plaintiff has no interests that are antagonistic to those of the Class and he will fairly and adequately protect the proposed Class' rights along with counsel.

COUNT I

Breach of Contract

61. Plaintiff repeats and alleges the allegations in Paragraphs 1-58 above, as if fully alleged herein.

62. Plaintiff brings this claim individually and on behalf of the other members of the Class.

63. Plaintiff and the other members of the Class entered into binding

contracts with Baylor University through Defendants, for which Defendants were the direct beneficiary, which provided that Plaintiff and the other members of the Class would pay tuition and fees, to Defendants, in exchange for on-campus educational, extracurricular, and social facilities and experiences.

64. These contracts were formed by multiple documents when students bid by formally registering for courses offered by Defendants, in light of the quoted tuition and fees pertaining to such registration, and Defendants thereafter accepted those bids, or registrations, by sending bills for tuition and fees to Plaintiff and Class members. At this time, written contracts arose.

65. As part of their contracts with the University, and, in exchange for adequate consideration that Plaintiff and members of the proposed Class provided, Defendants promised to provide on-campus educational services to Plaintiff and Class members.

66. Ever since closing its campus in mid-March 2020, Defendants have failed to provide the services that they were obligated to perform under their contracts with Plaintiff and the proposed Class. Defendants have retained tuition and fee payments paid by Plaintiff and the other members of the Class without providing them the promised benefits.

67. By contrast, Plaintiff and the other members of the Class fulfilled their end of the bargain when they paid the monies due and owing for their full tuition and fees.

68. The tuition and fee payments that Plaintiff and the proposed Class paid were intended to cover in-person educational and extra-curricular services. Defendants, however, have improperly retained the funds Plaintiff and the proposed Class paid without providing them the services and other benefits due under the contracts.

69. Plaintiff and members of the Class have suffered damages as a direct and proximate result of Defendants' breach, including being deprived of the education, experience, and services that they were promised and expected to obtain, and for which they have paid. They are entitled to damages including but not limited to prorated reimbursement of the tuition, fees, and other expenses that were collected by Defendants for services that Defendants failed to deliver fully.

70. Defendants' performance under the contracts is not excused because of COVID-19. Even if performance was excused or impossible, Defendants would nevertheless be required to return the funds received for services and/or goods that they did not provide.

COUNT II

Restitution Based On Quasi-Contract

71. Plaintiff repeats and allege the allegations in Paragraphs 1-68, above, as if fully alleged herein.

72. Plaintiff brings this claim individually and on behalf of the other members of the Class in the alternative to the breach of contract claim brought in Count I.

73. Plaintiff and other members of the proposed Class conferred a benefit or enrichment on Defendants by paying tuition and fees to Defendants, which was beneficial to Defendants, at the expense of Plaintiff and the other members of the Class.

74. Plaintiff and the other members of the Class paid tuition and fees and did not receive the full benefit of their bargain from Defendants, thus resulting in their damages.

75. Defendants have retained the benefit paid by Plaintiff and the Class despite their failure to provide the services for which the benefit was paid.

76. There is no justification or cause for Defendants' failure to return the portion of the tuition and fees that Defendants have unjustifiably kept for themselves even though they failed to complete the services for which Plaintiff and the Class provided the funds to Defendants.

77. Accordingly, Defendants have been unjustly enriched and should pay as restitution a prorated portion of the funds that Plaintiff and the proposed Class paid for tuition and fees for the duration of the campus closure.

COUNT III

Conversion

78. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-75, above, as if fully alleged herein.

79. Plaintiff brings this claim individually and on behalf of the Class.

80. Plaintiff and the other members of the Class have a right to the in-person educational and extra-curricular services that they were supposed to be provided in exchange for their payments to Defendant.

81. Defendants intentionally interfered with the rights of Plaintiff and the other members of the proposed Class when they retained payments intended to pay for on-campus classes, facilities, and activities, while moving all classes to an online, remote learning format and discontinued or services and access to facilities for which Plaintiff and the members of the proposed Class had paid.

82. Defendants deprived Plaintiff and the other members of the Class of their tuition and fee payments or of the right to the services for which their payments were intended to be used.

83. Class members demanded the return of the prorated, unused tuition and fee payments for the duration of the campus closure.

84. Defendants' retention of the tuition and fees paid by Plaintiff and the

other members of the Class without providing the services for which they paid deprived Plaintiff and the other members of the Class of the benefits for which the payments were paid. This interference with the services for which Plaintiff and the other members of the Class paid damaged Plaintiff and the other members of the Class in that they paid for services that were not and will not be provided.

85. Plaintiff and the other members of the Class are entitled to the return of prorated unused portion of the tuition and fees paid, through the end of campus closure and forced transition to online learning.

VI. PRAYER FOR RELIEF

86. Plaintiff, individually and on behalf of the members of the Class, respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- a. Certifying the Class as requested herein, designating Plaintiff as Class representative, and appointing the undersigned counsel as Class Counsel and Local Counsel;
- b. Declaring that Defendants are financially responsible for notifying the Class members of the pendency of this suit;
- c. Declaring that Defendants wrongfully kept monies paid by the Class;
- d. Awarding injunctive relief and restitution as permitted by law or equity;
- e. Awarding Plaintiff's reasonable attorneys' fees, costs, and expenses;
- f. Awarding pre- and post-judgment interest on any amounts awarded; and
- g. Awarding such other and further relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all causes of action so triable.

Dated: June 5, 2020

Respectfully submitted,

/s/ Joe Kendall

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**pro hac vice forthcoming*

Attorneys for Plaintiff and the Class

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.)

I. (a) PLAINTIFFS

NABOR CAMARENA, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Dallas (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joe Kendall, Kendall Law Group, PLLC, 3811 Turtle Creek Blvd., Suite 1450, Dallas, TX 75219; (214) 744-3000

DEFENDANTS

BAYLOR UNIVERSITY and BOARD OF REGENTS OF BAYLOR UNIVERSITY

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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:

Class Action for Breach of Contract for Overpayment of Tuition and Fees

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 SIGNATURE OF ATTORNEY OF RECORD

06/05/2020 /s/ Joe Kendall

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE