

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MATTHEW RABINOWITZ, on behalf of himself and
other individuals similarly situated,

Plaintiffs,

against

AMERICAN UNIVERSITY; and other affiliated entities
and individuals,

Defendants.

Case No.

**CLASS ACTION AND PRIVATE
ATTORNEY GENERAL
COMPLAINT**

JURY TRIAL DEMANDED

Named Plaintiff Matthew Rabinowitz (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated and the general public of the District of Columbia, 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 Matthew Rabinowitz and those similarly situated who paid tuition and fees for the Spring 2020 semester at American University and the general public of the District of Columbia. As a result of Defendants’ 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 Defendants entered into a contract where Plaintiffs would provide payment in the form of tuition and fees and Defendants would provide in-person educational services, experiences, opportunities, and other related services.

3. On or around March 11, 2020, American University canceled all in-person education and transitioned to complete online education, following Spring Break recess.

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

5. Despite Defendants' failure to provide the services and experiences as bargained for, Defendants have not offered any refund 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 at American University.

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

8. Defendants have marketed, advertised, and sold their educational services to the general public of the District of Columbia.

9. Based on the academic schedule, the Spring 2020 semester at American University commenced on or around January 13, 2020 and was scheduled to conclude on or around May 5, 2020.

10. Plaintiff Matthew Rabinowitz was an undergraduate student during the Spring 2020 semester. American University charged Plaintiff approximately \$24,535.00 in tuition during the Spring 2020 semester. Additionally, Plaintiff paid, including through scholarships, a total of approximately \$24,944.50 inclusive of tuition and other various fees for the Spring 2020 semester.

11. 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 mid-May 2020.

12. On or around March 11, 2020, American University announced that because of COVID-19 they would suspend all in-person classes for the remainder of the Spring Semester 2020 beginning on or around March 16, 2020 (following Spring Break recess) and that all learning would transition to online.

13. Defendants were unable to provide in-person educational experiences, services, and opportunities for approximately 45% of the Spring 2020 semester.

14. Prior to the suspension of in-person classes for the Spring 2020 semester, Plaintiff was involved in student activities and/or clubs.

15. As a result of Defendants' closure, Defendants have not complied with their obligation to provide in-person educational services along with other experiences, opportunities, and services Plaintiff and the Class paid for.

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

17. Therefore, Plaintiff and Class Members are entitled to a pro-rata refund of the tuition and fees they paid to Defendants 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 Defendants, 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 Defendants because Defendants maintains its principal place of business in this District.

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

PARTIES

36. Plaintiff Matthew Rabinowitz is a student and a resident of Minneapolis, Minnesota 55407. Plaintiff was enrolled as a full-time undergraduate student at American University during the Spring 2020 semester. Plaintiff has not received a refund of tuition and fees paid to Defendants, despite the fact that the University has been shut down since on or about March 11, 2020.

37. Defendant American University is a private university located at 4400 Massachusetts Avenue, NW, Washington, DC 20016.

38. Upon information and belief, The Board of Trustees is the governing body of American University.

CLASS ALLEGATIONS

39. Plaintiff brings this matter on behalf of himself and those similarly situated. As detailed in this Complaint, Defendants failed to provide the in-person education services the Plaintiffs paid tuition and fees to receive during the Spring Semester 2020.

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

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

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

43. 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:

44. 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 Defendants breach of contract.

45. 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 Defendants accepted money from Plaintiff and Class Members in exchange for a promise to provide services;
- b. Whether Defendants provided those services as bargained for;
- c. Whether Defendants' services have been unlawfully, unfairly, and deceptively sold pursuant to D.C. Code § 28-3904;
- d. 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.;
- e. Whether Defendants were unjustly enriched;
- f. Whether Defendants converted money from the Plaintiff and Class Members.

46. 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 Defendants breach of contract, unjust enrichment and conversion. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

47. 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. Defendants have 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.

48. The Class is properly brought and should be maintained as a class action under FRCP 23 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 Defendants' deceptive and misleading practices.

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

50. 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 Defendants' 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 Defendants' deceptive and discriminatory consumer practices.

51. 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.

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

53. Plaintiff acts for the benefit of the general public as a Private Attorney General for claims in this action arising under the CPPA, which expressly authorizes an individual to act "on behalf of both the individual and the general public... seeking relief from the use of a trade practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased...." D.C. Code § 28-3905(k)(1)(B).

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

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

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

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

57. Defendants received and retained the benefits without providing those benefits to Plaintiff and Class Members.

58. As a direct and proximate result of Defendants' 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.

59. Defendants are required to perform under the contract and COVID-19 does not excuse such performance. Therefore, Defendants 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 American University shut down on or around March 11, 2020.

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

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

61. 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.

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

63. Plaintiff and the Class Members were damaged by Defendants' interference as they paid for educational experiences and services for the entirety of the Spring Semester 2020, which were not provided.

64. 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 Defendants' interference.

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

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

66. Plaintiff and Class Members conferred financial benefits and paid substantial tuition and fees to Defendants 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.

67. Defendants accepted the obligation to provide such services when they accepted payment.

68. Defendants retained these payments, despite Defendants' failing to provide the bargained for educational experiences and services for which the tuition and fees were collected to cover. Defendants 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 American University shut down on or around March 11, 2020.

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

70. 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.

FOURTH CAUSE OF ACTION
UNLAWFUL AND DECEPTIVE TRADE PRACTICES
IN VIOLATION OF THE CPPA

(On Behalf of Plaintiff, All Class Members, and on behalf of the General Public of the District of Columbia)

71. Plaintiff, on behalf of himself, other Class Members, and the general public of the District of Columbia, files this action pursuant to D.C. Code § 28-3905(k).

72. When the CPPA was enacted in 1976, it gave the Department of Consumer and Regulatory Affairs (“DCRA”) the role of “principal consumer protection agency of the District of Columbia government.” Section 28-3902(a). The statute contemplated that DCRA would have broad authority to investigate unlawful trade practices and adjudicate consumer complaints.

73. However, beginning in 1994, because of budget shortfalls, the City Council indefinitely suspended the DCRA’s enforcement authority. In April 1999, the Antitrust, Trade Regulation and Consumer Affairs Section of the D.C. Bar published a report that recommended changes in the consumer protection enforcement mechanism.

74. That report cited “critical shortfalls” in the District’s consumer protection system and noted that “[s]uspension of DCRA’s authority removed the primary mechanism for halting unlawful trade practices, and prohibited D.C.’s consumer protection agency from enforcing the law,” and that “public interest organizations, and the bar do not have an enumerated authority to halt illegal practices through injunctive relief and disgorgement of ill-gotten gain in the public interest.” The report recommended that public interest organizations and the private bar “be statutorily enabled to seek injunctive relief and disgorgement of illegal proceeds.”

75. Following the issuance of the Bar Report, the City Council amended the CPPA in late 2000 (effective 2001). The changes included permitting a “person” (as opposed to a “consumer”) to bring a case in court and eliminating the requirement that such a lawsuit be filed

by someone who “suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department.” The District’s 2000 budget act continued “defunding” DCRA consumer protection, demonstrating intent to place enforcement in private hands.

76. On January 25, 2013, the D.C. Council enacted the Consumer Protection Amendment Act of 2011, which became effective on April 23, 2013. Among other things, the amendments added provisions allowing “testers” to bring claims on behalf of the general public. The amendments also added a provision specifying that the CPPA establishes an enforceable right to truthful information from merchants.

77. Plaintiff, on behalf of himself, other Class Members, and the general public of the District of Columbia, files this action pursuant to D.C. Code § 28-3905(k) for Defendants’ unfair and deceptive practices.

78. Defendants’ online education, paid for by Plaintiff and Class Members, contradicted representation made about their educational services, including that Plaintiff and the Class Members would receive in-person educational services, experiences, and opportunities, constituting an unfair and deceptive trade practice pursuant to DC Code § 28-3904 in that Defendant:

- a. Represented that goods or services have characteristics, uses, and benefits that they do not have;
- b. Represented that its services are of a particular standard, quality, and style when, in fact, they are of another;
- c. Misrepresented as to a material fact that has a tendency to mislead;
- d. Failed to state a material fact that tended to mislead;

- e. Used innuendo or ambiguity as to a material fact, which has a tendency to mislead;
- f. Made unconscionable terms or provisions of a sale as demonstrated by, among other factors, the gross disparity between the price of the services and the value of the services measured by the price at which similar services are readily obtainable in transactions by like buyers;
- g. Otherwise misleads.

79. The above material misrepresentations and omissions affect the general public's ability to comparison shop for higher education programs by materially misleading about the contents and quality of the educational services, experiences, and opportunities offered at American University.

80. Defendants' cancellation of in-person education and complete transition to online-only education, was in direct contradiction to the representations made in Defendants' marketing, advertisements, and other public representations. Defendants' misrepresentations and omissions regarding the availability of in-person educational services is an unfair and deceptive trade practice pursuant to D.C. Code § 28-3904.

81. Defendants' misrepresentations and omissions regarding the nature of their educational services constitute an unfair trade practice. This is so because Defendants' marketing (1) offends public policy, and (2) is immoral, unethical, oppressive, and unscrupulous.

82. Defendants' misrepresentations and omissions are also unfair in that they resulted in economic harm of a nature that could not have been reasonably avoided by consumers such as Plaintiff and Class Members.

83. As a result of these material misrepresentations, Plaintiff suffered financial loss in that he would not have paid the tuition and fees for the Spring 2020 Semester or would have paid a much lower amount in tuition.

84. D.C. Code § 28-3901(c) establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

85. As a result of Defendants' unfair and deceptive trade practices detailed herein, Plaintiff and consumers in the District of Columbia were deprived of truthful information regarding American University's educational services, experiences, and opportunities offered.

86. Plaintiff and the Class Members seek actual damages, statutory damages, punitive damages, injunctive relief, and reasonable attorney's fees for himself and Class Members.

DEMANDS FOR RELIEF

87. 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 damages;
- (c) Awarding treble damages or statutory damages, whichever is greater for Plaintiff and the Class Members' CPPA claims;
- (d) Awarding punitive and treble damages;
- (e) 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;

- (f) Granting an injunction against Defendants to ensure they change their marketing practices to accurately reflect the nature of the educational services, experiences, and opportunities it provides; and
- (g) Granting such other and further relief as the Court may deem just and proper.

Dated: June 2, 2020

Respectfully submitted,

/s/ Jason S. Rathod

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Counsel for Plaintiff and the Putative Class

<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran’s Benefits 160 Stockholder’s Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: