

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BROOKE RYAN, individually and on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	No. 20-cv-02164-JMG
	:	
v.	:	CLASS ACTION
	:	
TEMPLE UNIVERSITY,	:	
	:	
Defendant.	:	
	:	
CHRISTINA FUSCA, individually and on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	No. 20-CV-03434-JMG
	:	
v.	:	CLASS ACTION
	:	
TEMPLE UNIVERSITY,	:	
	:	
Defendant.	:	

**DEFENDANT TEMPLE UNIVERSITY’S
ANSWER TO PLAINTIFFS’ CONSOLIDATED
SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant Temple University- Of The Commonwealth System of Higher Education, the proper corporate name of Temple University (“Temple”), hereby answers the Consolidated Second Amended Class Action Complaint and Demand for Jury Trial (“Complaint”) of Plaintiffs Brooke Ryan and Christina Fusca (collectively, “Plaintiffs”) and asserts its affirmative defenses as follows. Except for the specific allegations or portions of allegations expressly admitted to below, Temple denies each and every other allegation, portion of allegation, and characterization

of the facts in this Complaint, and specifically denies any and all wrongdoing or liability to Plaintiffs and members of the purported classes of persons on whose behalf the Complaint is said to be brought. For ease of reference, Temple follows the same headings, format, and numbering used by Plaintiffs in the Complaint. Temple's use of such headings, format, and numbering is in no way an admission of their contents or accuracy. Temple reserves all rights to amend its answer and affirmative defenses as necessary.

PRELIMINARY STATEMENT

1. To the extent that paragraph 1 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 1.

2. Denied.

3. Denied.

4. To the extent that paragraph 4 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 4.

PARTIES

5. Temple admits that it is an institution of higher learning and that its main campus is located in Philadelphia, Pennsylvania.

6. Admitted in part and denied in part. By way of further answer, Temple admits that it receives an annual non-preferred appropriation and in consideration for that amount, it offers a discounted tuition as set forth in the Temple University - Commonwealth Act, which speaks for itself. *See* 24 P.S. § 2510-1 *et seq.* Temple admits that it operates under a charter. Pursuant to the Temple University – Commonwealth Act, Temple's Board of Trustees includes 36 voting

members, “together with the Governor of the State, the Superintendent of the Department of Public Instruction, and the Mayor of the City of Philadelphia[.]” 24 P.S. § 2510-4(a). “Twelve of the trustees [are] designated Commonwealth trustees and four [are] appointed by the Governor, with the advice and consent of two-thirds of all of the members of the Senate, four by the President pro tempore of the Senate, and four by the Speaker of the House of Representatives.” *Id.* § 2510-4(b). Except as stated, Temple denies the allegations set forth in paragraph 6.

7. Admitted in part and denied in part. Temple admits that, pursuant to the Temple University - Commonwealth Act, “[t]he entire management, control and conduct of the instructional, administrative, and financial affairs of the university is . . . vested in the board of trustees. The board may exercise all the powers and franchises of the university and make by-laws for their own government, as well as for the university.” *Id.* § 2510-5. Except as stated, Temple denies the allegations set forth in paragraph 7.

8. Admitted in part and denied in part. Temple admits that it is not part of the Pennsylvania State System of Higher Education. Temple is a “State-related institution in the Commonwealth system of higher education.” 24 Pa. Stat. Ann. § 2510-2. Temple admits that it receives Commonwealth funding. Except as stated, Temple denies the allegations set forth in paragraph 8.

9. Denied.

10. Admitted in part and denied in part. Temple admits that it received approximately \$14 million in CARES Act funding. To the extent that Paragraph 10 purports to set forth requirements under the CARES Act, the allegation is a legal conclusion to which no response is required. To the extent that a response is nonetheless deemed to be required, except as stated, Temple denies the allegations set forth in paragraph 10.

11. The allegations set forth in paragraph 11 purport to characterize information from Temple's website, which speaks for itself. To the extent that a response is nonetheless deemed to be required, Temple denies that it received federal aid on April 11, 2020. Temple admits that, as of its May 11, 2020, CARES Act report, it estimated that 25,262 Temple students were eligible to receive Emergency Financial Aid Grants under the CARES Act, and that it had not yet distributed CARES Act money to students. Temple began such distribution on May 12, 2020. As of February 5, 2021, Temple had distributed more than \$14 million in Emergency Financial Aid Grants to more than 14,000 students under Section 18004(a)(1) of the CARES Act.

12. To the extent that paragraph 12 purports to set forth requirements under the CARES Act, the allegation is a legal conclusion to which no response is required. Except as stated, Temple denies the allegations set forth in paragraph 12. By way of further answer, Temple issued multiple public reports related to its CARES Act spending.

13. Temple admits that Plaintiff Brooke Ryan was a resident of the Commonwealth of Pennsylvania during the Spring 2020 semester. Except as stated, Temple lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13, and, on that basis, denies them.

14. Temple admits that Plaintiff Christina Fusca was a resident of the Commonwealth of Pennsylvania during the Spring 2020 semester. Except as stated, Temple lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14, and, on that basis, denies them.

15. Admitted.

16. Admitted.

JURISDICTION AND VENUE

17. In response to the allegations referenced in paragraph 17, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 16.

18. Based on the allegations set forth in the Complaint, Temple does not contest that this Court has subject matter jurisdiction over this action. Temple admits Plaintiffs purport to bring this lawsuit as a class action but denies that Plaintiffs are legally entitled to do so and denies that such class could be certified. To the extent that the allegations in paragraph 18 state legal conclusions, no response is required. Except as stated, Temple denies the allegations set forth in paragraph 18.

19. Based on the allegations set forth in the Complaint, Temple does not contest that this Court has personal jurisdiction over Temple.

20. Based on the allegations set forth in the Complaint, Temple does not contest that venue is proper in this district.

BACKGROUND FACTS

21. In response to the allegations referenced in paragraph 21, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 20.

22. Temple admits that, during the Spring 2020 academic semester, Plaintiffs were enrolled as full-time students at Temple.

23. Admitted in part and denied in part. Temple admits that Plaintiffs were required to pay tuition pursuant to certain deadlines published by the Office of the Bursar for the Spring 2020 semester. By way of further answer, Plaintiff Ryan received scholarships and grants that

partially funded her Spring 2020 tuition and also received a CARES Act grant. Except as stated, Temple denies the allegations set forth in paragraph 23.

24. Admitted.

25. Admitted.

26. Admitted in part and denied in part. Temple admits that it offers online courses in certain programs. Except as stated, Temple denies the allegations set forth in paragraph 26.

27. Temple lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27, and, on that basis, denies them.

28. Denied.

29. Paragraph 29 states a legal conclusion to which no response is required. To the extent that a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 29.

30. Admitted in part and denied in part. Temple admits it moved from in-person learning to online instruction during the Spring 2020 term given the circumstances of the COVID-19 pandemic. Except as stated, Temple denies the allegations set forth in paragraph 30.

31. Denied.

32. Temple admits that, for the Spring 2020 semester, it assessed a University Services Fee. Except as stated, Temple denies the allegations set forth in paragraph 32.

33. The allegations set forth in paragraph 33 purport to characterize information from Temple's website regarding the Spring 2020 semester, which speaks for itself. To the extent that a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 33.

34. Denied.

35. Denied. By way of further answer, Temple charges some course-specific fees, including lab fees.

36. Denied.

37. Temple lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37, and, on that basis, denies them.

38. Admitted in part and denied in part. Temple admits that it did not provide all students with refunds of tuition and the University Services Fee for the post-March 16 part of the Spring 2020 semester. Due to Temple's migration of classroom teaching to virtual instruction, students were able to continue with their same classes and instructors, receive full course credits, and keep progressing toward their degrees without delay. In addition, after the onset of the pandemic, Temple continued to provide remote access to many student services and facilities, including Student Health Services, Tuttleman Counseling Services, Disability Resources and Services, the Writing Center, Academic Advisory services, Library Services, Career Center Services, the Wellness Resource Center, and the Student Success Center. Except as stated, Temple denies the allegations set forth in paragraph 38.

FACTUAL ALLEGATIONS

39. In response to the allegations referenced in paragraph 39, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 38.

40. Admitted.

41. Admitted.

42. Denied.

43. The allegations set forth in paragraph 43 purport to characterize information from Temple's website, which speaks for itself. To the extent that a response is nonetheless deemed to be required, Temple admits that it migrated classroom teaching to virtual instruction for its Philadelphia campus beginning on or about March 16, 2020. Except as stated, Temple denies the allegations set forth in paragraph 43.

44. The allegations set forth in paragraph 44 purport to characterize information from Temple's website, which speaks for itself. To the extent that a response is nonetheless deemed to be required, Temple admits that it asked students to vacate Temple housing as soon as possible. Except as stated, Temple denies the allegations set forth in paragraph 44.

45. Denied.

46. The allegations set forth in paragraph 46 purport to characterize information from Temple's website regarding the Spring 2020 semester, which speaks for itself. To the extent that a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 46.

47. Denied.

48. Denied.

49. Admitted in part and denied in part. Temple admits that it did not provide all students with refunds of tuition for the post-March 16 part of the Spring 2020 semester. Due to Temple's migration of classroom teaching to virtual instruction, students were able to continue with their same classes and instructors, receive full course credits, and keep progressing toward their degrees without delay. Except as stated, Temple denies the allegations of paragraph 49.

50. Admitted in part and denied in part. Temple admits that it implemented a tuition freeze for the Fall 2020 semester. Temple denies that it did so “[i]n recognition of that there is a decrease in benefit being provided to the students.”

51. To the extent that the allegations in paragraph 51 quote from language on the Temple website, the website speaks for itself. Except as stated, Temple denies the allegations set forth in paragraph 51.

52. Denied.

53. Denied.

54. Paragraph 54 consists of Plaintiffs’ characterization of this action, to which no response is required.

CLASS ACTION ALLEGATIONS

55. In response to the allegations referenced in paragraph 55, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 54.

56. To the extent that paragraph 56 consists of Plaintiffs’ characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 56, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

57. To the extent that paragraph 57 consists of Plaintiffs’ characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 57, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

58. Paragraph 58 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 58, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

59. Paragraph 59 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 59, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Numerosity: Fed. R. Civ. P. 23(a)(1)

60. Temple denies the allegations set forth in paragraph 60, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Commonality and Predominance: Fed. R. Civ. P. 23(a)(2)

61. Temple denies the allegations set forth in paragraph 61, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Typicality: Fed. R. Civ. P. 23(a)(3)

62. Temple denies the allegations set forth in paragraph 62, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Adequacy: Fed. R. Civ. P. 23(a)(4)

63. Temple denies the allegations set forth in paragraph 63, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Superiority: Fed. R. Civ. P. 23(b)(3)

64. Temple denies the allegations set forth in paragraph 64, and specifically denies this action may or should be maintained or properly prosecuted as a class action. Temple further denies that Plaintiffs and/or any members of the purported classes on whose behalf the Complaint is said to be brought are entitled to any award of damages or any other relief of any kind.

65. Temple denies the allegations set forth in paragraph 65, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Certification of Specific Issues: Fed. R. Civ. P. 23(c)(4)

66. To the extent that paragraph 66 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 66, and specifically denies this action may or should be maintained or properly prosecuted as a class action.

Declaratory and Injunctive Relief: Fed. R. Civ. P. 23(b)(2)

67. Temple denies the allegations set forth in paragraph 67, and specifically denies this action may or should be maintained or properly prosecuted as a class action. Temple further denies that Plaintiffs and/or any members of the purported classes on whose behalf the Complaint is said to be brought are entitled to any declaratory or injunctive relief, or to any other relief of any kind.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT**

(Plaintiffs and Other Members of the Tuition Class)

68. In response to the allegations set forth in paragraph 68, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 67.

69. To the extent paragraph 69 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 69.

70. Denied.

71. Denied.

72. Paragraph 72 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 72.

73. Paragraph 73 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 73.

74. Admitted in part and denied in part. Temple admits that paragraph 74 selectively quotes from the website cited in footnote 14. Except as stated, Temple denies the allegations set forth in paragraph 74.

75. Admitted in part and denied in part. Temple admits that it recruits potential students through certain Temple webpages and through various other materials, like brochures. Except as stated, Temple denies the allegations set forth in paragraph 75.

76. Denied.

77. Admitted in part and denied in part. Temple admits that it offers certain classes and programs online. Except as stated, Temple denies the allegations set forth in paragraph 77.

78. Temple admits that it maintains a web page dedicated to its online offerings.

79. Admitted in part and denied in part. Temple admits that it has recruiting materials that reference its campus and the surrounding area, as well as student activities and facilities. Except as stated, Temple denies the allegations set forth in paragraph 79.

80. Temple admits that paragraph 80 selectively quotes from the websites cited in footnote 15. Except as stated, Temple denies the allegations set forth in paragraph 80.

81. Temple admits that paragraph 81 selectively quotes from Temple's 2019-2020 Undergraduate Bulletin. Except as stated, Temple denies the allegations set forth in paragraph 81.

82. Temple admits that paragraph 82 selectively quotes from Temple's 2019-2020 Undergraduate Bulletin. Except as stated, Temple denies the allegations set forth in paragraph 82.

83. Temple admits that paragraph 83 selectively quotes from Temple's 2019-2020 Undergraduate Bulletin. Except as stated, Temple denies the allegations set forth in paragraph 83.

84. Paragraph 84 consists of Plaintiffs' characterization of Temple's website, to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 84.

85. Temple admits that paragraph 85 selectively quotes from Temple's website. Temple denies that statements on its website constitute "promises." Except as stated, Temple denies the allegations set forth in paragraph 85.

86. Admitted in part and denied in part. Temple admits that it maintains a number of social media accounts. Except as stated, Temple denies the allegations set forth in paragraph 86.

87. Denied.

88. Admitted in part and denied in part. Temple admits that on March 11, 2020, it issued a statement that is cited in footnote 19 of the Complaint. The content of the statement speaks for itself. Except as stated, Temple denies the allegations set forth in paragraph 88.

89. Temple lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 89, and, on that basis, denies them.

90. Admitted in part and denied in part. Temple admits that an applicant who is offered admission receives communications from Temple. Except as stated, Temple denies the allegations set forth in paragraph 90.

91. Admitted in part and denied in part. Temple admits that an applicant who is offered admission receives an official offer letter. Temple admits that paragraph 91 selectively quotes an offer letter from Temple. Except as stated, Temple denies the allegations set forth in paragraph 91.

92. Admitted in part and denied in part. Temple admits that paragraph 92 selectively quotes from the website cited in footnote 20 of the Complaint. Except as stated, Temple denies the allegations set forth in paragraph 92.

93. Admitted in part and denied in part. Temple admits that it publishes a webpage for admitted students, the content of which speaks for itself. No admitted student is required to attend "Experience Temple Day," and some do not. Except as stated, Temple denies the allegations set forth in paragraph 93.

94. Admitted in part and denied in part. Temple admits that “Experience Temple Day” events include campus tours and possible interactions with faculty and current students. Except as stated, Temple denies the allegations set forth in paragraph 94.

95. Admitted in part and denied in part. Temple admits that after an admitted student accepts the offer of admission, he or she receives additional communications. Except as stated, Temple denies the allegations set forth in paragraph 95.

96. Admitted in part and denied in part. Temple admits that new students are required to attend an orientation program prior to the start of their first semester. Except as stated, Temple denies the allegations set forth in paragraph 96.

97. Admitted in part and denied in part. Temple admits that students who matriculate at Temple are required to complete registration in order to access campus resources, including the selection of courses in which to enroll by the published deadlines. Except as stated, Temple denies the allegations set forth in paragraph 97.

98. Admitted in part and denied in part. Temple admits that it lists tuition rates for undergraduate and graduate programs on its website. In addition, Temple lists separate tuition rates for each program for Pennsylvania residents and out of state residents. Temple also lists the fee structure for the University Services Fee, which is based on the semester and the number of credits in which a student is enrolled. Except as stated, Temple denies the allegations set forth in paragraph 98.

99. Denied. By way of further answer, Temple’s tuition rates for the 2019-2020 academic year are available in its 2019-2020 Bulletin, beginning on page 122, which can be found at https://bulletin.temple.edu/archives/2019_2020_Undergraduate_Temple.pdf.

100. Denied.

101. Denied.

102. Temple admits that the TUportal provides class descriptions and information regarding meeting time and classroom. Except as stated, Temple denies the allegations set forth in paragraph 102.

103. Paragraph 103 consists of Plaintiffs' characterization of unspecified "various departmental policies and handbooks," to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 103.

104. Paragraph 104 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 104.

105. Admitted in part and denied in part. Temple admits that certain courses it offered during the Spring 2020 semester began utilizing in-person instruction as the primary mode of instruction. Except as stated, Temple denies the allegations set forth in paragraph 105.

106. Admitted in part and denied in part. Temple admits that certain courses it offered during the Spring 2020 semester began utilizing in-person instruction as the primary mode of instruction. Except as stated, Temple denies the allegations set forth in paragraph 106.

107. Admitted in part and denied in part. Temple admits that some students received documents that referenced class schedules, locations, and attendance requirements. Except as stated, Temple denies the allegations set forth in paragraph 107.

108. Admitted in part and denied in part. Temple denies that students ever have unrestricted access to the "full" campus. However, Temple admits that for the Spring 2020 semester, various facilities and services located on the Temple Philadelphia campus were

generally open to students prior to any COVID-related closures. Except as stated, Temple denies the allegations set forth in paragraph 108.

109. Paragraph 109 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 109.

110. Denied.

111. Denied.

112. The allegations set forth in paragraph 112 purport to characterize Temple's policies, which speak for themselves. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 112.

113. Paragraph 113 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 113.

114. Paragraph 114 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 114.

115. Paragraph 115 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 115.

116. Paragraph 116 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 116.

117. Paragraph 117 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 117.

118. Paragraph 118 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 118.

119. Paragraph 119 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 119.

120. Paragraph 120 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 120.

121. Paragraph 121 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 121.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT**

(Plaintiffs and Other Members of the Tuition Class)

122. In response to the allegations set forth in paragraph 122, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 121.

123. To the extent paragraph 123 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 123.

124. Paragraph 124 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 124.

125. Paragraph 125 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 125.

126. Paragraph 126 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 126.

127. Paragraph 127 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 127.

128. Paragraph 128 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 128.

129. Paragraph 129 states a number of legal conclusions to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 129.

130. Paragraph 130 states a number of legal conclusions to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 130.

131. Denied.

132. Denied.

133. Paragraph 133 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 133.

134. Paragraph 134 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 134.

135. Admitted in part and denied in part. Temple admits that it received aid from the federal government. Except as stated, Temple denies the allegations set forth in paragraph 135.

136. Paragraph 136 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 136.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT**

(Plaintiffs and Other Members of the Fees Class)

137. In response to the allegations set forth in paragraph 137, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 136.

138. To the extent paragraph 138 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 138.

139. Admitted in part and denied in part. Temple admits that it charges a University Services Fee each semester, the amount of which is based on the number of credit hours for which a student is registered. Except as stated, Temple denies the allegations set forth in paragraph 139.

140. Admitted in part and denied in part. Temple admits that some of its publications and its website describe the University Services Fee. Except as stated, Temple denies the allegations set forth in paragraph 140.

141. Denied.

142. The allegations set forth in paragraph 142 purport to characterize information from Temple's website, which speaks for itself. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 142.

143. Paragraph 143 states a number of legal conclusions to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 143.

144. Denied. By way of further answer, after the onset of the pandemic, Temple continued to provide remote access to many student services and facilities, including Student Health Services, Tuttleman Counseling Services, Disability Resources and Services, the Writing Center, Academic Advisory services, Library Services, Career Center Services, the Wellness Resource Center, and the Student Success Center.

145. Paragraph 145 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 145.

146. Paragraph 146 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 146.

147. Paragraph 147 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 147.

148. Paragraph 148 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 148.

149. Paragraph 149 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 149.

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT**

(Plaintiffs and Other Members of the Fees Class)

150. In response to the allegations set forth in paragraph 150, Temple re-states and incorporates by reference its responses to the allegations made in the preceding paragraphs 1 to 149.

151. To the extent paragraph 151 consists of Plaintiffs' characterization of this action, no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 151.

152. Paragraph 152 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 152.

153. Paragraph 153 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 153.

154. Paragraph 154 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 154.

155. Paragraph 155 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 155.

156. Paragraph 156 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 156.

157. Paragraph 157 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 157.

158. Denied.

159. Denied.

160. Paragraph 160 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 160.

161. Paragraph 161 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 161.

162. Admitted in part and denied in part. Temple admits that it received aid from the federal government. Except as stated, Temple denies the allegations set forth in paragraph 162.

163. Paragraph 163 states a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required, Temple denies the allegations set forth in paragraph 163.

PRAYER FOR RELIEF

Temple denies the allegations set forth in this paragraph, and specifically denies that it is liable to Plaintiffs or to any member of the putative classes in any manner whatsoever. Temple denies that Plaintiffs or any member of the putative classes on whose behalf the Complaint is said to be brought are entitled to proceed in this action as a class pursuant to Fed. R. Civ. P. 23 and denies that this action is maintainable pursuant to that rule. Temple further denies that Plaintiffs or any member of the putative classes on whose behalf the Complaint is said to be brought are entitled to any award of damages, any costs or expenses of this litigation, any attorneys' fees, any pre- or post-judgment interest, or any other relief of any kind.

Except to the extent an allegation has been expressly admitted herein, Temple denies each and every allegation set forth in the Complaint.

ANSWER TO JURY DEMAND

Plaintiffs' request for a trial by jury does not require a response from Temple.

TEMPLE'S AFFIRMATIVE DEFENSES

Temple raises the following defenses and affirmative defenses without waiver of any others that may be available to it and without assuming any burden that it would not otherwise bear. Temple specifically reserves the right to raise any additional affirmative defenses at any time during the pendency of these proceedings, including any and all which may come to light through discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint and each claim contained therein fail to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(No Standing)

Plaintiffs' claims and the claims of the members of the putative classes are barred to the extent Plaintiffs and the members of the putative classes lack constitutional, statutory, or class standing to assert claims against Temple.

THIRD AFFIRMATIVE DEFENSE

(No Damages or Injury)

Plaintiffs' claims and the claims of the members of the putative classes are barred to the extent Plaintiffs and the members of the putative classes did not sustain any actual or legally cognizable injury. Plaintiffs' claims and the claims of the putative classes are further barred in whole or in part to the extent Plaintiffs and members of the putative classes received financial aid and did not pay the tuition and fees at issue, either in full or in part.

FOURTH AFFIRMATIVE DEFENSE

(Speculative Damages)

Plaintiffs' claims and the claims of the putative classes are barred because the alleged damages, if any, are speculative and uncertain, and because of the impossibility of ascertaining and allocating those alleged damages, the fact and extent of such damages being expressly denied by Temple.

FIFTH AFFIRMATIVE DEFENSE

(No Express or Implied Contract)

Temple did not contract with Plaintiffs to provide refunds of tuition or the University Services Fee in the event of a pandemic that necessitated a transition to online instruction and the closure of campus.

SIXTH AFFIRMATIVE DEFENSE

(Financial Responsibility Agreement)

Plaintiffs' claims and the claims of the members of the putative classes are barred by the Financial Responsibility Agreement and the Tuition and Fees Policy.

SEVENTH AFFIRMATIVE DEFENSE

(Disclaimer and Reservation of Rights)

Plaintiffs' claims and the claims of the members of the putative classes are barred by the disclaimers and reservation of rights in Temple's Bulletins.

EIGHTH AFFIRMATIVE DEFENSE

(No specific, identifiable promise)

Plaintiffs' claims and the claims of the members of the putative classes are barred under Pennsylvania law because the Complaint fails to identify any specific, identifiable promise that Temple failed to honor.

NINTH AFFIRMATIVE DEFENSE

(Educational Malpractice)

Plaintiffs' claims and the claims of the members of the putative classes are barred by the educational malpractice doctrine.

TENTH AFFIRMATIVE DEFENSE

(Substantial Performance)

Temple substantially performed any and all contracts, implied or express, with Plaintiffs. Temple continued to provide instruction to Plaintiffs and the members of the putative classes, and also continued to provide remote access to many services to students.

ELEVENTH AFFIRMATIVE DEFENSE

(No Breach of Contract)

Temple did not breach the terms of any contract, express or implied.

TWELFTH AFFIRMATIVE DEFENSE

(Force Majeure and Impossibility of Performance)

Plaintiffs' claims and the claims of the members of the putative classes are barred in whole or in part by the doctrines of *force majeure*, excused performance, impossibility, frustration of purpose, and impracticability.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver and Novation)

Plaintiffs' claims and the claims of the members of the putative classes are barred in whole or in part by the doctrines of waiver and novation.

FOURTEENTH AFFIRMATIVE DEFENSE

(Voluntary Payment Doctrine and Estoppel)

Plaintiffs' claims and the claims of the members of the putative classes are barred by the voluntary payment doctrine and the doctrine of estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

In the event that Plaintiffs and the members of the putative classes have sustained damages as alleged in the Complaint, which Temple denies, discovery or investigation may reveal that Plaintiffs' claims and the claims of the members of the putative classes are barred or reduced in whole or in part to the extent that Plaintiffs or the members of the putative classes failed to mitigate any damages allegedly sustained.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Plaintiffs and the members of the putative classes would be unjustly enriched if awarded any damages. Due to Temple's migration of classroom teaching to virtual instruction during the pandemic, students were able to continue with their same classes and instructors, receive full course credits, and keep progressing toward their degrees without delay. In addition, Temple continued to provide remote access to many student services and facilities, including Student Health Services, Tuttleman Counseling Services, Disability Resources and Services, the Writing Center, Academic Advisory services, Library Services, Career Center Services, the Wellness Resource Center, and the Student Success Center. Moreover, the pandemic's financial impact on Temple exceeded the tuition and fee revenue for the remote portion of the Spring 2020 semester.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Set Off)

To the extent that Plaintiffs and the members of the putative classes are entitled to recover any damages, such damages should be set off by any payments that Plaintiffs or members of the putative classes received, any refunds already provided to Plaintiffs or members

of the putative classes, any monies Plaintiffs or members of the putative classes owe Temple, and any monies or things of value provided to Plaintiffs or members of the putative classes in connection with the Spring 2020 semester.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Equitable Relief)

Plaintiffs and the members of the putative classes have an adequate remedy at law and are not entitled to equitable relief.

NINETEENTH AFFIRMATIVE DEFENSE

(Existence of Express Contract)

The unjust enrichment claims of Plaintiffs and of the members of the putative classes are barred because an express contract exists between the parties.

TWENTIETH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

Plaintiffs' claims and the claims of the members of the putative classes are barred by the doctrines of accord and satisfaction, payment, release, and/or discharge.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Satisfy Fed. R. Civ. P. 23)

Plaintiffs' claims and the claims of the members of the putative classes are barred in whole or in part because they cannot satisfy all of the requirements for maintaining a class action under Fed. R. Civ. P. 23, including, but not limited to, commonality, typicality, predominance and superiority, and certification of the proposed classes would result in a denial of due process to Temple and the members of the putative classes.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Additional Defenses)

Temple reserves the right to amend this Answer to add any and all affirmative defenses available to it under federal and state law which may be later found applicable to this action.

PRAYER FOR RELIEF

Wherefore, having fully answered and defended, Temple prays for judgment as follows:

- A. That Plaintiffs take nothing by or under their Complaint;
- B. That no class be certified as to any of the claims made in Plaintiffs' Complaint;
- C. That judgment be entered for Temple and against Plaintiffs on each and every claim set forth in Plaintiffs' Complaint;
- D. That Temple recover its costs of suit; and
- E. For such other and further relief as the Court deems just and proper.

Dated: October 4, 2023

Respectfully submitted,

/s/ Roberta D. Liebenberg

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