

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JODI FITTIPALDI and LEXI FITTIPALDI,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

MONMOUTH UNIVERSITY,

Defendant.

Civil Action No. 3:20-cv-05526-
MAS-ZNQ

**FIRST AMENDED CLASS
ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs Jodi Fittipaldi and Lexi Fittipaldi (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendant Monmouth University (“Monmouth” or “Defendant”). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

NATURE OF THE ACTION AND FACTS COMMON TO ALL CLAIMS

1. This is a class action lawsuit on behalf of all people who paid tuition and fees for the Spring 2020 academic semester at Monmouth, and who, because of Defendant’s response to the Novel Coronavirus Disease 2019 (“COVID-19”) pandemic, lost the benefit of the education for which they paid, and/or the services for which their fees were paid, without having their tuition and fees refunded to them.

2. Monmouth is a private university, with an enrollment of approximately 6,300 students, which is comprised of approximately 4,600 undergraduate students and 1,700 graduate students. The university offers approximately forty-four undergraduate majors, approximately nine “Bachelor’s + Master’s” programs, and six graduate schools each offering various graduate

programs.

3. On March 9, 2020, Monmouth, via letter from University President Dr. Patrick F. Leahy, announced that because of the global COVID-19 pandemic, all in-person, “hybrid,” and online classes would be suspended through the end of the week leading into spring break.¹

4. On March 12, 2020, Monmouth, via letter from Dr. Leahy, advised that it “made the decision to move to remote instruction and learning from March 23 through April 3.”² Students were instructed to vacate residence halls until April 3.

5. On March 17, 2020, Monmouth announced it was extending remote learning an additional week to April 10, 2020.³

6. On March 24, 2020, Monmouth announced that it would be continuing remote instruction and learning for the duration of the spring semester.⁴

7. Since March 9, 2020, Monmouth has not held any in-person classes. Classes that have continued have only been offered in an online format, with no in-person instruction.

8. Despite sending students home, transitioning to online instruction, and closing its campus, Monmouth continued to charge full tuition and fees for the Spring 2020 semester as if nothing had changed, continuing to reap the financial benefit of millions of dollars from students. Monmouth did so despite students’ complete inability to continue school as normal, occupy campus buildings and dormitories, or avail themselves of school programs and events. So while students enrolled and paid Defendant for a comprehensive academic experience, Defendant instead offered Plaintiffs and Class Members something far less; a limited online experience

¹ <https://www.monmouth.edu/covid-19/march-9-2020-classes-cancelled/> (last visited 5/4/20).

² <https://www.monmouth.edu/covid-19/march-12-2020/> (last visited 5/4/20).

³ <https://www.monmouth.edu/covid-19/march-17-2020/> (last visited 5/4/20).

⁴ <https://www.monmouth.edu/covid-19/march-24-2020/> (last visited 5/4/20).

presented by Google or Zoom, void of face-to-face faculty and peer interaction, separated from program resources, and barred from facilities vital to study. Students have been deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique. Plaintiffs, students and Class Members did not bargain for such an experience.

9. The online courses that Monmouth now provides as a replacement are neither the same service as in-person courses and educational experiences, nor are they of equivalent value. Research studies also reflect the lesser value of online instruction. Among other consequences, students enrolled in online college courses receive lower grades not only in those courses, but in courses during subsequent semesters as well. Students at Monmouth also rely on in-person discussion sessions and tutoring, among other things, to which they no longer have the same access.

10. Professors and university representatives from other universities have recognized that online-only instruction is inferior to in-person instruction. For example, Scott Galloway, who teaches marketing at NYU Stern School of Business, concedes:⁵

At universities, we're having constant meetings, and we've all adopted this narrative of "This is unprecedented, and we're in this together," which is Latin for "We're not lowering our prices, b*****s." Universities are still in a period of consensual hallucination with each saying, "We're going to maintain these prices for what has become, overnight, a dramatically less compelling product offering."

11. Galloway continued:

In fact, the coronavirus is forcing people to take a hard look at that \$51,000 tuition they're spending. Even wealthy people just can't swallow the jagged pill of tuition if it doesn't involve getting to send their kids away for four years. It's like, "Wait, my kid's going to be home most of the year? Staring at a computer screen?" There's this

⁵ James D. Walsh, "The Coming Disruption," New York Magazine, May 11, 2020, available at <https://nymag.com/intelligencer/2020/05/scott-galloway-future-of-college.html> (site last visited July 1, 2020).

horrific awakening being delivered via Zoom of just how substandard and overpriced education is at every level. I can't tell you the number of people who have asked me, "Should my kid consider taking a gap year?"⁶

12. Other professors agree students have suffered a loss with the transition to online classes. As a professor from another university commented, ". . . [students] had already rejected online education when they chose a traditional campus experience."⁷

13. Defendant breached its contract with Plaintiffs and Class Members because Plaintiffs specifically chose to enroll in in-person courses at Monmouth. Monmouth maintains an online portal, MyMU, which allows students and parents to review course information and register for classes. Defendant's representations on the portal constitute a contract between Plaintiffs and Monmouth. Defendant specifically stated, via the online portal, that the courses in which Lexi Fittipaldi enrolled would be held in person, and specified a particular room on campus where the course would be held. Monmouth breached that contract when it ceased offering in person classes on or around March 9, 2020.

14. Defendant breached its contract with Plaintiffs and Class Members because Plaintiffs specifically chose to enroll in in-person courses at Monmouth. Plaintiffs reviewed the details of the Spring Semester 2020 courses on Monmouth's online platform and course-registration portal, which represents a contract between Plaintiff and Monmouth. The online course-registration portal specifically stated that the courses in which Lexi Fittipaldi enrolled would be held in person, and specified a particular room on campus where the course would be held. Monmouth breached that contract when it ceased offering in person classes on or around

⁶ *Id.*

⁷ <https://www.washingtonpost.com/education/2020/04/04/these-washington-university-faculty-had-rejected-online-classes-until-coronavirus-heres-how-they-made-switch/>.

March 9, 2020.

15. Plaintiffs and the putative class are therefore entitled to a refund of tuition and fees for in-person educational services, facilities, access and/or opportunities that Defendant has not provided. Monmouth is profiting from COVID-19 while further burdening students and their families—many of whom have been laid off, become ill, lost loved ones, or are otherwise already bearing the brunt of the COVID-19 pandemic. The result is an enormous windfall to Monmouth. Both contract and equity demand that Monmouth disgorge its ill-gotten funds.

16. Defendant's actions have financially damaged Plaintiffs and Class Members. Plaintiffs bring this action because Plaintiffs and Class Members did not receive the full value of the access, programs, and services for which they paid, including the benefits of in-person instruction and the on-campus experience. They have lost the benefit of their bargain and/or suffered out-of-pocket losses while Defendant retains the complete sums of Plaintiffs' and the Class's payments. They are entitled to recover compensatory damages, attorneys' fees and costs. Accordingly, Plaintiffs bring this action to recover payments for pro-rated tuition, fees, access, programs, and services for which Monmouth was paid, but failed to deliver.

PARTIES

Plaintiff

17. Plaintiff Jodi Fittipaldi is a citizen of New Jersey who resides in Egg Harbor Township, New Jersey. Ms. Fittipaldi's daughter, Lexi Fittipaldi, is an undergraduate student at Monmouth, majoring in Cybersecurity. Ms. Fittipaldi's daughter is registered for 18 credits for the Spring 2020 semester. The total Spring 2020 semester tuition for Ms. Fittipaldi's daughter was approximately \$19,796. Ms. Fittipaldi paid approximately \$12,585 in cash and the balance

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