

Plaintiffs,

v.

**MEMORANDUM OPINION**

MONMOUTH UNIVERSITY,

Defendant.

**SHIPP, District Judge**

This matter comes before the Court upon Defendant Monmouth University's ("Monmouth" or "Defendant") Motion to Dismiss (ECF No. 24) lead Plaintiffs Jodi and Lexi Fittipaldi's (collectively "Plaintiffs") Amended Complaint (ECF No. 20). Plaintiffs opposed the motion (ECF No. 25), and Defendant replied (ECF No. 27). Both Parties filed several Notices of Supplemental Authority and replies with the Court. (ECF Nos. 26, 28–35.) The Court has carefully considered the Parties' submissions and decides the matter without oral argument pursuant to Local Civil Rule 78.1. For the reasons set forth below, the Court grants in-part and denies in-part Defendant's Motion to Dismiss.

**I. BACKGROUND**

**A. Facts**

This matter is a putative class action brought "on behalf of all people who paid tuition and fees for the Spring 2020 academic semester at Monmouth" University. (Am. Compl. ¶ 1, ECF No. 20.) Monmouth is a private university with an enrollment of approximately 6,300 students,

the Spring 2020 semester. (*Id.*)

Monmouth, on its website and through other literature, seeks to advertise the on-campus experience at the university. (*Id.* ¶¶ 28, 29, 31, 38.) In various promotional materials, it discusses the benefits of its location, campus, facilities, and in-person learning programs. (*Id.*) Monmouth also maintains various departmental policies and handbooks outlining differences between online and in-person classes and emphasizing the importance of attendance. (*Id.* ¶¶ 35–39.) Furthermore, Monmouth provides students an academic catalog. (*See id.* ¶¶ 38 n.15, 64, 78, 82.) This catalog contains a disclaimer that reads “[t]he information provided herein does not provide an irrevocable contract between Monmouth University and the student.” (Ex. A to Mot. Dismiss, ECF No. 24-3.)

When choosing schools, Plaintiffs specifically sought “an on-campus experience [at Monmouth] for the variety of educational and extracurricular opportunities and benefits that only an in-person program can provide.” (Am. Compl. ¶ 19.) Accordingly, sometime prior to the Spring 2020 semester, Plaintiffs accessed an online portal where Lexi Fittipaldi registered for classes which were to be conducted on-campus. (*Id.* ¶¶ 13, 20.) The registration portal provided specified rooms on-campus where classes were to be held. (*Id.* ¶ 13.)

On March 9, 2020, Monmouth, via correspondence from the University President, suspended all classes in response to the COVID-19 pandemic. (*Id.* ¶ 3.) On March 12, 2020, via correspondence from the University President, Monmouth transitioned all classes to remote online instruction until April 3, 2020. (*Id.* ¶ 4.) While the switch to online learning was at first temporary,

61, 1857.) Students paid for access to these amenities. (*Id.* ¶ 56.)

While prorated refunds were given for unused room contracts, meal plans, and parking fees, no such refund was given to students for tuition or other fees. (*Id.* ¶ 6 n.4 (referring to a March 24 letter from University President Dr. Leahy articulating what refunds would be given)); *see also id.* ¶ 17.)<sup>1</sup> The Plaintiffs, therefore, were not refunded any of the \$19,796<sup>2</sup> they paid for the Spring 2020 semester. (*Id.* ¶ 17.)

## **B. Parties' Positions**

### **1. Plaintiffs' Position**

Plaintiffs allege that Monmouth's failure to provide in-person instruction despite Plaintiffs' payment of full-tuition expenses constitutes a breach of contract, unjust enrichment, conversion, and money had and received. (*Id.* ¶¶ 75–126.)

In particular, Plaintiffs allege that through its “website and in its handbooks, policy manuals, brochures, . . . online course portal, advertisements, and other promotional materials[,]” Monmouth promised students that in exchange for tuition they would receive “in-person educational services, experiences, opportunities, and other related services.” (*Id.* ¶¶ 78, 79.)

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<sup>1</sup> A court may consider documents outside of the pleadings when deciding a motion to dismiss if the documents are “integral to or explicitly relied upon in the complaint.” *McCauley v. Metro. Life Ins. Co.*, No. 18-7942, 2019 WL 145624, at \*3 (D.N.J. Jan. 8, 2019) (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997).) Here, Plaintiffs' Amended Complaint provided links and relied upon statements and decisions made by the University President and published by Monmouth on its website. Thus, they may be considered at this stage.

<sup>2</sup> It is unclear how the tuition payments break down, and what portion of students' tuition is attributable to actual course credits as opposed to the use of facilities and other services that students did not have access to while classes remained online.

On the same facts, as alternative theories of recovery, Plaintiffs seek damages resulting from unjust enrichment, conversion, and money had and received where Monmouth retained tuition monies for the Spring 2020 semester despite moving classes online and restricting access to campus. (*Id.* ¶¶ 102–26.)

## **2. Defendant’s Position**

In moving to dismiss, Defendant first argues that “Plaintiffs’ causes of action for breach of contract, breach of implied contract, unjust enrichment, conversion, and money had and received must be dismissed because they constitute claims for ‘educational malpractice,’ which are not actionable under New Jersey law.” (Def.’s Moving Br. 11, ECF No. 24-1.)

In the alternative, Defendant argues, Plaintiffs’ breach of contract claims, express and implied, must be dismissed because: (1) Plaintiffs do not plausibly identify any contract promising in-person instruction; (2) “Plaintiffs do not identify any meeting of the minds” between the parties; (3) “New Jersey courts have repeatedly refused to recognize the existence of an implied contractual relationship” stemming from student catalogs, manuals, or handbooks; (4) the reservation of rights provision in Monmouth’s academic catalog disposes of Plaintiffs’ contract-based claims; and (5) “Monmouth’s policy on tuition and fees recognizes that tuition is paid in exchange for a student’s ability to earn credits toward graduation[,]” not attend school in-person. (*Id.* at 20–25.)

As to Plaintiffs’ unjust enrichment claim, Defendant argues it fails for three reasons: (1) it is duplicative of the breach of contract claim; (2) “Plaintiffs do not adequately allege that

breach of contract claims and “do[es] not plausibly allege the essential element that Monmouth wrongfully exercised dominion and control over the tuition and fees . . . paid.” (*Id.* at 31–32.)

## II. LEGAL STANDARD

Rule 8 (a)(2)<sup>3</sup> “requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

A district court conducts a three-part analysis when considering a motion to dismiss pursuant to Rule 12(b)(6). *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). “First, the court must ‘tak[e] note of the elements a plaintiff must plead to state a claim.’” *Id.* (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)). Second, the court must accept as true all of the plaintiff’s well-pleaded factual allegations and construe the complaint in the light most favorable to the plaintiff. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). The court, however, may ignore legal conclusions or factually unsupported accusations that merely state “the[ ] defendant[ ] unlawfully[ ] harmed[ ] me.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Finally, the court must determine whether “the facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’” *Fowler*, 578 F.3d at 211 (quoting *Iqbal*, 556 U.S. at 679). A facially plausible claim “allows the court to draw

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<sup>3</sup> All references to a “Rule” or “Rules” hereinafter refer to the Federal Rules of Civil Procedure.

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