

**NOT FOR PUBLICATION**

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

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

Plaintiffs,

v.

MONMOUTH UNIVERSITY,

Defendant.

Civil Action No. 20-5526 (MAS) (DEA)

**MEMORANDUM OPINION**

**SHIPP, District Judge**

This matter comes before the Court on Defendant Monmouth University’s (“Monmouth”) Motion for Reconsideration of this Court’s June 1, 2021 Memorandum Opinion and Order (the “Opinion”). (ECF No. 39.) Plaintiffs Jodi and Lexi Fittipaldi (“Plaintiffs”) opposed (ECF No. 41), and Monmouth did not reply. The Court has carefully considered the parties’ submissions and decides the motion without oral argument under Local Civil Rule 78.1. For the reasons below, the Court grants in-part and denies in-part Monmouth’s Motion.

**I. BACKGROUND**

The Court adopts the factual background set forth in its Opinion and adds detail to that background here. As in its Opinion, the Court accepts as true all factual allegations in Plaintiff’s

First Amended Complaint. *See Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2018) (citing *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)).<sup>1</sup>

### A. Factual Background

Like so many others over the past two years, this backstory finds its roots in the novel coronavirus. A serious threat to public health, the World Health Organization declared the coronavirus a public health emergency in late January 2020. (First Am. Compl. (“FAC”) ¶ 48, ECF No. 20.) In response to that declaration and the spread of the coronavirus in New Jersey, Governor Murphy declared a state of emergency and enacted a series of executive orders. Most salient here, on March 16, 2020, Governor Murphy issued Executive Order 104, which mandated that “[a]ll institutions of higher education shall cease in-person instruction beginning on Wednesday, March 18, 2020, and shall cease such in-person instruction as long as this Order remains in effect.” N.J. Exec. Order 104, at 5 (Mar. 16, 2020). Governor Murphy reiterated that mandate in another executive order issued five days later. *See* N.J. Exec. Order 107, at 10 (Mar. 21, 2020). Alongside other universities across New Jersey, Defendant Monmouth complied with these executive orders, cancelling all in-person classes and shutting its doors on March 9, 2020. (FAC ¶¶ 3-7.)

This lawsuit followed. Plaintiff Lexi Fittipaldi is enrolled at Monmouth and is majoring in Cybersecurity, which “relies extensively on in-person instruction, meaningful student presentations, peer collaboration, and access to university facilities.” (*Id.* ¶ 18.) She alleges that she chose to enroll in Monmouth’s Cybersecurity program because of the “on-campus experience,” including “the variety of educational and extracurricular opportunities.” (*Id.* ¶ 19.) Plaintiff Jodi

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<sup>1</sup> Although Plaintiffs have filed a Second Amended Complaint, the Court draws the following facts from the First Amended Complaint, which was operative when the Court issued its Opinion.

Fittipaldi is Lexi's mother and helped pay for her daughter's education. (*Id.* ¶ 17.) Specifically, Lexi enrolled in 18 credits at Monmouth in the spring 2020 semester for \$19,796; Jodi paid roughly \$12,500 out-of-pocket, and Lexi financed the rest. (*Id.* ¶¶ 17-18.) Regarding the courses Lexi chose for the spring semester and the consequent tuition payments, Plaintiffs' First Amended Complaint alleges that "Plaintiffs would not have paid as much, if any, tuition and fees for the Spring 2020 semester at Monmouth had they known that the courses would not, in fact, be taught in-person." (*Id.* ¶ 20.)

To that end, several allegations buttress the significance of in-person education to both Plaintiffs and Monmouth. For example, the First Amended Complaint cites to two webpages from the Monmouth University website, which were "the primary means through which [Monmouth] target[ed] prospective students." (*Id.* ¶¶ 29, 31, 35.) A sampling of the first webpage, entitled "Why Monmouth, Why Now," highlights the benefits of an in-person experience at Monmouth:

- From athletics to clubs, fraternity and sorority life, to social gatherings and multicultural activities, Monmouth University has staked a place among the top private universities.
- With new academic buildings and residence halls, Monmouth provides new students with a rewarding and meaningful college experience.
- Come visit our 170-acre campus, and you'll quickly feel our warm, friendly atmosphere and experience our historic architecture mingled among new academic buildings and residence halls.
- Given Monmouth's coastal location and its proximity to cities like New York and Philadelphia, students enjoy easy access to many cultural and recreational opportunities.

(*Id.* ¶ 29.) The second, called "Location is Everything," is more to-the-point, noting that Monmouth has a "location that directly impacts and enhances learning experiences every day."

(*Id.* ¶ 31.) As part of the enhanced learning experience, Monmouth touted the "clear ocean waters

at the beach through the Urban Coast Institute,” “[g]roup excursions” and “internship opportunities” in New York City and Philadelphia, and “Monmouth’s 168-acre campus full of wide green lawns and historic yet state-of-the-art facilities.” (*Id.*) Indeed, Monmouth advertised that its “location can lead you to opportunities anywhere in the world.” (*Id.*)

Echoing those advertisements, Monmouth recognized the premium it placed on an in-person experience. For example, Plaintiffs’ First Amended Complaint alleges that, before the pandemic, Monmouth did not offer online undergraduate degrees and offered limited undergraduate and graduate virtual coursework. (*Id.* ¶¶ 36, 58.) According to the First Amended Complaint, “[b]y offering such limited course and programs online, [Monmouth] acknowledged that virtual education is a unique format and, moreover, that [it] was not prepared to deliver the breadth of programs and degrees it offers on-campus in a virtual format.” (*Id.* ¶ 58.) As another example, the First Amended Complaint alleges that Monmouth’s pre-pandemic attendance policy stressed the significance of in-person learning by requiring students to physically attend and participate in classroom courses. (*Id.* ¶ 38.) As a final example, Plaintiffs’ First Amended Complaint alleges that, during the pandemic, in the summer 2020 semester, Monmouth reduced the cost for virtual courses by 15% vis-à-vis in-person courses—thereby “demonstrat[ing] [Monmouth’s] own belief that the online-only courses are worth less than in-person courses.” (*Id.* ¶ 39.)

Advertising and in-person premium notwithstanding, Monmouth was unable to offer in-person classes for part of the spring 2020 semester due to Governor Murphy’s executive orders. (*See id.* ¶ 54.) Although the State forced Monmouth to switch to virtual courses, Monmouth continued to charge the in-person tuition and fees for the spring 2020 semester. (*Id.* ¶ 41.) According to Plaintiffs’ First Amended Complaint, however, Monmouth’s decision to charge the

same tuition and fees ignored that Plaintiffs never received the benefits of the in-person premium. (*Id.* ¶¶ 55-59.) Specifically, Plaintiffs’ First Amended Complaint alleges that Plaintiffs never received the benefits of “in-person learning from . . . peers and school faculty,” “use of on-campus facilities,” “laboratory and research experience,” and “attendance at on-campus events.” (*Id.* ¶ 59; *see also id.* ¶ 55 (“[Monmouth] has not delivered the educational services, facilities, access and/or opportunities that Plaintiff[s] and the putative class contracted and paid for.”).) As a result of these deprivations, Plaintiffs’ First Amended Complaint requests “a refund of tuition and fees for services, facilities, access and/or opportunities that [Monmouth] has not provided.” (*Id.* ¶ 55.)

### **B. The Court’s June 1, 2021 Opinion**

Plaintiffs’ First Amended Complaint proceeded primarily under a breach-of-contract theory, whereby Monmouth breached an express or implied contract with Plaintiffs by failing to offer in-person education. *See Fittipaldi v. Monmouth Univ.*, No. 20-5526, 2021 WL 2210740, at \*2 (D.N.J. June 1, 2021), ECF No. 37. Plaintiffs alternatively alleged claims for unjust enrichment, conversion, and money had and received. *Id.* In response, Monmouth moved to dismiss Plaintiffs’ First Amended Complaint, arguing, among other reasons, that Plaintiffs had alleged no express contract between the parties and that New Jersey law did not recognize implied contracts between universities and students. *See id.* Further, Monmouth argued that the Court should dismiss Plaintiffs’ remaining claims as duplicative or derivative of Plaintiffs’ breach-of-contract claim. *See id.* at \*3.

The Court resolved Monmouth’s motion to dismiss in its Opinion. There, as relevant here, the Court agreed with Monmouth that Plaintiffs could not proceed under an express or implied breach-of-contract theory. *See id.* at \*8. Relying on the Law Division’s decision in *Beukas v. Board of Trustees of Fairleigh Dickinson University*, the Court concluded that Plaintiffs’ traditional breach-of-contract theory failed as a matter of law but that Plaintiffs could proceed under a theory

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