

Thomas A. Brown II (ID # 111992014)
John M. Bradham*
Peter B. Katzman*
MOREA SCHWARTZ BRADHAM
FRIEDMAN & BROWN LLP
444 Madison Avenue, 4th Floor
New York, New York 10022
(212) 695-8050

-AND-

TOPTANI LAW PLLC
Edward Toptani*
375 Pearl Street, Suite 1410
New York, New York 10038
(212) 699-8930

-AND-

ANASTOPOULO LAW FIRM, LLC
Eric M. Poulin*
Roy T. Willey, IV*
32 Ann Street
Charleston, SC 29403
(843)614-8888

ATTORNEYS FOR PLAINTIFF
**Pro Hac Vice Admission Pending*

ATHENA BROCK-MURRAY, individually	:	SUPERIOR COURT OF NEW JERSEY
and on behalf of all others similarly situated,	:	LAW DIVISION: UNION COUNTY
	:	DOCKET NO.: _____
Plaintiff,	:	
	:	Civil Action
v.	:	
	:	
KEAN UNIVERSITY,	:	
	:	<u>CLASS ACTION COMPLAINT</u>
Defendant.	:	
	:	

Plaintiff Athena Brock-Murray (“Plaintiff”) by and through undersigned counsel, brings this action against Kean University (“Defendant” or the “University”) on behalf of herself and all others similarly situated, and makes the following allegations based upon information, attorney investigation and belief, and upon Plaintiff’s own knowledge:

PRELIMINARY STATEMENT

1. Plaintiff brings this case as a result of Defendant’s decision to close campus, constructively evict students, and transition all classes to an online/remote format as a result of the Novel Coronavirus Disease (“COVID-19”).

2. While closing campus and transitioning to online classes was the right thing for Defendant to do, this decision deprived Plaintiff and the other members of the Class from recognizing the benefits of in-person instruction, access to campus facilities, student activities, and other benefits and services in exchange for which they had already paid fees and tuition.

3. Defendant has either refused to provide reimbursement for the tuition, fees and other costs that Defendant is no longer providing, or has provided inadequate and/or arbitrary reimbursement that does not fully compensate Plaintiff and members of the Classes for their loss.

4. This action seeks refunds of the amount Plaintiff and other members of the Classes are owed on a pro-rata basis, together with other damages as pled herein.

5. Plaintiff is not suing to recover monies paid by taxes to the University or for funds from the state coffers; rather, Plaintiff files suit against Kean University, which maintains separate institutional funds, for specific disgorgement of fees and monies paid by students and their parents, guardians, and families for services not received.

PARTIES

6. Defendant Kean University is an institution of higher learning located primarily in Union County New Jersey, with primary campuses in Union.

7. The University is governed by a 15-member Board of Trustees and, pursuant to N.J. Rev. Stat. § 18a:64-1 *et. seq.* operates with almost complete autonomy.

8. The Board of Trustees, on behalf of the University is statutorily empowered to, among other things, determine University policy; fix and determine tuition rates and student fees; and direct and control expenditures and transfers of funds appropriated to the college and tuition received by the college. N.J. Rev. Stat. § 18a:64-6.

9. Upon information and belief, Defendant is eligible to receive federal stimulus under the CARES Act. The CARES Act directs that approximately \$14 billion be distributed to colleges and universities based upon enrollment and requires that institutions must use at least half of the funds they receive to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to COVID-19.

10. Plaintiff is an individual and a resident and citizen of the state of New Jersey and resides at 1802 Ontario Avenue, Atlantic City, New Jersey 08401.

11. Plaintiff is currently enrolled as a full-time student in Defendant's undergraduate program, studying interior design.

12. Plaintiff has paid substantial tuition for the Spring 2020 semester either out of pocket or by utilizing student loan financing, or otherwise.

13. There are hundreds, if not thousands, of institutions of higher learning in this country.

14. Some institutions of higher learning provide curriculum and instruction that is offered on a remote basis through online programming which do not provide for physical attendance by the students.

15. Defendant's institution offers in-person, hands-on curriculum.

16. Plaintiff and members of the Proposed Tuition Class did not choose to attend another institution of higher learning, or to seek an online degree, but instead chose to attend Defendant's institution and enroll on an in-person basis.

17. Defendant markets the on-campus experience as a benefit of enrollment:¹

Kean's more than 130 academic, professional interest and philanthropic student groups add to the vibrant campus life. The University fields 14 Division III men's and women's athletic teams and has eight sports facilities, including Harwood Arena and Kean Alumni Stadium. Students also participate in a full schedule of intramural and recreational athletic activities.

18. Common sense would dictate that the level and quality of instruction an educator can provide through an online format is lower than the level and quality of instruction that can be provided in person.

19. Moreover, the true college experience encompasses much more than just the credit hours and degrees. The college experience consists of:

¹ <https://www.kean.edu/about>

- i. Face-to-face interaction with professors, mentors, and peers;
 - ii. Access to facilities such as computer labs, study rooms, laboratories, libraries, etc.;
 - iii. Student governance and student unions;
 - iv. Extra-curricular activities, groups, intramurals, etc.;
 - v. Student art, cultures, and other activities;
 - vi. Social development and independence;
 - vii. Hands-on learning and experimentation; and
 - viii. Networking and mentorship opportunities.
20. Plaintiff's education has changed from in-person, hands-on learning to online instruction.
21. Plaintiff's online instruction is not commensurate with the same classes being taught in person.
22. For example, only certain professors are conducting online lectures where students have an opportunity to interact. Some professors are merely uploading pre-recorded lectures and many are simply uploading assignments with no video instruction at all.
23. In addition to tuition, Plaintiff and members of the Fees Class were required to and did pay certain mandatory fees, including but not limited to:
- a. Athletic and Recreation Fee;
 - b. Student Government Fee; and
 - c. University Center Fee.
24. These are mandatory fees charged by the University for all students, including full- and part-time students; and graduate and undergraduate students.

25. Defendant advertises that the athletic and recreation fee is intended to support recreational and intramural programs, as well as the campus fitness centers and gymnasiums.²

26. Defendant advertises the student government fee as funding “diverse campus-wide programming that enhances the intellectual, cultural and personal growth of students...[and] works to develop students’ leadership skills on campus and prepare students for professional success.”³

27. Defendant advertises the University Center fee as providing funding for “various student programs,” including, but not limited to, computer lab software, University Center Game Room software, and salaries for student staffing.⁴

28. As a result of being moved off campus, Plaintiff and members of the Fees Class no longer have the benefit of the services for which these fees have been paid. For example, Plaintiff can no longer participate in recreational and intramural programs; no longer has access to campus fitness centers or gymnasiums; no longer benefits from campus intellectual and cultural programs; and can longer access the University Center computer lab or game room.

29. At Defendant’s request and direction, Plaintiff vacated on-campus housing on March 6, 2020, and has not lived on campus since, nor had access to any facilities or campus services since that date.

JURISDICTION AND VENUE

30. This Court has personal jurisdiction over Defendant because Defendant is domiciled in Union County, New Jersey and conducts business in Union County, New Jersey.

² https://www.kean.edu/offices/student-accounting/tuition-and-fees-2019-2020#ug_tuition

³ Id.

⁴ Id.

31. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the claims occurred in Union County, and because Defendant is an institution domiciled and doing business in Union County.

FACTUAL ALLEGATIONS

32. Upon information and belief, Defendant's Spring term began with the first day of classes on or about January 21, 2020.⁵

33. Upon information and belief, Defendant's Spring term was scheduled to conclude with the last day of examinations on or about May 13, 2020.⁶

34. Accordingly, Defendant's Spring semester was scheduled and contracted to consist of approximately 113 days.

35. Defendant's Spring break began on or about March 9, 2020 and was supposed to end on or about March 15, 2020, with students to resume in-person classes on Monday, March 16, 2020.⁷

36. However, as a result of the COVID-19 pandemic, Governor Murphy issued an order on March 16, 2020 (Order No. 104), requiring that all institutions of higher education cease in-person instruction by or before March 18, 2020, and move all classes to an online format.⁸

37. Defendant complied with this Order, which was the right thing to do. Plaintiff does not take issue with the University's prudent response to the COVID-19 pandemic, rather Plaintiff takes issue with Defendant's refusal to adjust tuition and fees accordingly.

38. Almost immediately, students began demanding refunds for the fees and charges demanded in this action.

⁵ <https://www.kean.edu/offices/registrar-office/academic-calendar#spring>

⁶ Id.

⁷ Id.

⁸ <https://nj.gov/infobank/eo/056murphy/pdf/EO-104.pdf>

39. As early as March 21, 2020, the students at Defendant's institution started a change.org petition seeking refunds similar to those sought in this action.⁹

40. The petition stated, in part:¹⁰

When we paid our tuition for Spring 2020, we were not signing away a check without reason. We paid our tuition for all that Kean was offering us in exchange for our money: in-class sessions to build relationships and form professional experience, to utilize campus resources such as printers, computer labs, the library, in-person tutoring and 1-on-1 speech guidance, engaging in clubs and greek life, participating in on-campus activities, networking, and much more. For some individuals, they paid a higher cost in order to dorm on campus, which has now been taken prohibited. We paid our tuition understanding its worth. But now, we've lost the majority of what we were promised in exchange for our payment.

41. The petition further stated:¹¹

Academically, many professors STILL have not converted the semester into an online platform and students are left paying for a class they are not necessarily learning from. The professors who have converted, and who are trying so hard to make this experience impactful, are still struggling to meet guidelines and leave us with effective material that we can utilize. Even if we are still being given assignments or attending a 'virtual class', it is no where near as valuable as the type of class we paid for.

42. As of the filing of this action, the petition has over 2,000 signatures which, upon information and belief, represents nearly 15% of Defendant's student body.

⁹ <https://www.change.org/p/partial-tuition-refund-for-kean-students>

¹⁰ Id.

¹¹ Id.

43. Although Defendant is still offering some level of academic instruction via online classes, Plaintiff and members of the proposed Tuition Class have been and will be deprived of the benefits of on campus learning, as set forth more fully above.

44. Moreover, Plaintiff and members of the proposed Fees Class have been and will be deprived of utilizing services for which they have already paid, such as access to campus facilities, and other opportunities.

45. Nonetheless, Defendant has refused and continues to refuse to offer any pro-rated discount or refund for such tuition and fees:¹²

The University will not be providing tuition reimbursement or prorating tuition for the Spring semester following the shift to remote education as a result of COVID-19. The University has provided a number of resources for students to participate in remote education. Please view the resources [here](#) and follow up if we can assist you further. We are here to help.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of R. 4:32 of the New Jersey Court Rules on behalf of the following Classes:

The Tuition Class:

All people who paid tuition for or on behalf of students enrolled in classes at the University for the Spring 2020 semester who were denied live in-person instruction and forced to use online distance learning platforms for the latter portion of that semester.

The Fees Class:

All people who paid fees for or on behalf of students enrolled in classes at the University for the Spring 2020 semester.

47. Excluded from the Classes are The Board of Trustees of the Kean University and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees,

¹² <https://www.kean.edu/coronavirus-information/kean-coronavirus-response-faq#student>

successors, or assigns; and the judicial officers, and their immediate family members, and Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

48. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

49. This action has been brought and may be properly maintained on behalf of the Class proposed herein under R. 4:32.

Numerosity: N.J. Ct. R. 4:32-1(a)(1)

50. The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Plaintiff is informed and believes there are thousands of members of the Class, the precise number being unknown to Plaintiff, but such number being ascertainable from Defendant's records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

Commonality and Predominance: N.J. Ct. R. 4:32-1 (a)(2)

51. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- i. Whether Defendant engaged in the conduct alleged herein;
- ii. Whether there is a difference in value between online distance learning and live in-person instruction;
- iii. Whether Defendant breached its contracts with Plaintiff and the other members of the Tuition Class by retaining the portion of their tuition representing the

- difference between the value of online distance learning and live in-person instruction;
- iv. Whether Defendant was unjustly enriched by retaining tuition payments of Plaintiff and the Tuition Class representing the difference between the value of online distance learning and live in-person instruction;
 - v. Whether Defendant breached its contracts with Plaintiff and the other members of the Fees Class by retaining fees without providing the services the fees were intended to cover;
 - vi. Whether Defendant was unjustly enriched by retaining fees of Plaintiff and the other members of the Fees Class without providing the services the fees were intended to cover;
 - vii. Whether certification of any or all of the classes proposed herein is appropriate under N.J. Ct. R. 4:32.
 - viii. Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
 - ix. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

Typicality: N.J. Ct. R. 4:32-1(a)(3)

52. Plaintiff's claim is typical of the other Class members' claims because, among other things, all Class members were similarly situated and were comparably injured through Defendant's wrongful conduct as set forth herein.

Adequacy: N.J. Ct. R. 4:32-1(a)(4)

53. Plaintiff is an adequate Class representative because her interests do not conflict

with the interests of other members of the Class she seeks to represent. Plaintiff has retained counsel competent and experienced in complex litigation; and Plaintiff intends to prosecute the action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and her counsel.

Superiority: N.J. Ct. R. 4:32-1 (b)(3)

54. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct.

55. Even if Class members could afford individual litigation, the Court system likely could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, comprehensive supervision by a single court, and finality of the litigation.

Certification of Specific Issues: N.J. Ct. R. 4:32-2(d)

56. To the extent that a Class does not meet the requirements of R. 43-1(b)(2) or (b)(3), Plaintiff seeks the certification of issues that will drive the litigation toward resolution.

Declaratory and Injunctive Relief: N.J. Ct. R. 4:32-1(b)(2)

57. The University has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and

declaratory relief, as described herein, with respect to the Class members as a whole.

**FOR A FIRST COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Tuition Class)**

58. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

59. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

60. Plaintiff and the Tuition Class entered into contracts with the University which provided that Plaintiff and other members of the Tuition Class would pay tuition for or on behalf of students and, in exchange, the University would provide live in-person instruction in a physical classroom.

61. Plaintiff and other members of the Tuition Class fulfilled their end of the bargain when they paid tuition for the Spring 2020 semester either out-of-pocket or by using student loan financing, or otherwise.

62. The University breached the contract with Plaintiff and the Tuition Class by moving all classes for the Spring 2020 semester to online distance learning platforms, without reducing or refunding tuition accordingly.

63. The University retained tuition monies paid by Plaintiff and other members of the Tuition Class, without providing them the full benefit of their bargain.

64. Plaintiff and other members of the Tuition Class have suffered damage as a direct and proximate result of Defendant's breach, including, but not limited to, being deprived of the value of the services the tuition was intended to cover, namely live in-person instruction in a physical classroom.

65. As a direct and proximate result of Defendant's breach, Plaintiff and the Tuition Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include, but not be limited to, disgorgement of the difference between the value of the online learning which is being provided versus the value of the live in-person instruction in a physical classroom that was contracted for.

**FOR A SECOND COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Tuition Class)**

66. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

67. Plaintiff brings this count on behalf of herself and other members of the Tuition Class.

68. The University has received a benefit at the expense of Plaintiff and other members of the Tuition Class to which it is not entitled.

69. Plaintiff and other members of the Tuition Class paid substantial tuition for live in-person instruction in physical classrooms and did not receive the full benefit of the bargain.

70. Plaintiff and other members of the Tuition Class conferred this benefit on Defendant when they paid the tuition.

71. Defendant has realized this benefit by accepting such payment.

72. Defendant has retained this benefit, even though Defendant has failed to provide the services for which the tuition was collected, making Defendant's retention unjust under the circumstances.

73. Equity and good conscience require that the University return a portion of the monies paid in tuition to Plaintiff and other members of the Tuition Class.

74. Defendant should be required to disgorge this unjust enrichment.

**FOR A THIRD COLLECTIVE CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff and Other Members of the Fees Class)**

75. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

76. Plaintiff brings this count on behalf of herself and other members of the Fees Class.

77. Plaintiff and the Fees Class entered into contracts with the University which provided that Plaintiff and other members of the Fees Class would pay certain fees for or on behalf of students and, in exchange, the University would provide services related to those fees, such as access to student activities, athletics, wellness centers, libraries, etc.

78. Plaintiff and other members of the Fees Class fulfilled their end of the bargain when they paid these fees for the Spring 2020 semester either out-of-pocket or by using student loan financing, or otherwise.

79. The University breached the contract with Plaintiff and the Fees Class by moving all classes for the Spring 2020 semester to online distance learning platforms, constructively evicting students from campus, and closing most campus buildings and facilities, without reducing or refunding fees accordingly.

80. The University retained fees paid by Plaintiff and other members of the Fees Class, without providing them the full benefit of their bargain.

81. Plaintiff and other members of the Fees Class have suffered damage as a direct and proximate result of Defendant's breach, including, but not limited to, being deprived of the value of the benefits and services the fees were intended to cover.

82. As a direct and proximate result of Defendant's breach, Plaintiff and the Fees Class are legally and equitably entitled to damages, to be decided by the trier of fact in this action, to include, but not be limited to, disgorgement of the pro-rata amount of fees that was collected but for which services were not provided.

**FOR A FOURTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT
(Plaintiff and Other Members of the Fees Class)**

83. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

84. Plaintiff brings this count on behalf of herself and other members of the Fees Class.

85. The University has received a benefit at the expense of Plaintiff and other members of the Fees Class to which it is not entitled.

86. Plaintiff and other members of the Fees Class paid substantial student fees for on campus benefits and services and did not receive the full benefit of the bargain.

87. Plaintiff and other members of the Fees Class conferred this benefit on Defendant when they paid the fees.

88. Defendant has realized this benefit by accepting such payment.

89. Defendant has retained this benefit, even though Defendant has failed to provide the services for which the fees were collected, making Defendant's retention unjust under the circumstances.

90. Equity and good conscience require that the University return a pro-rata portion of the monies paid in fees to Plaintiff and other members of the Fees Class.

91. Defendant should be required to disgorge this unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Classes, prays for judgment in their favor and against Defendant as follows:

- a. Certifying the Classes as proposed herein, designating Plaintiff as Class representative, and appointing undersigned counsel as Class Counsel;
- b. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this action;
- c. Declaring that Defendant has wrongfully kept monies paid for tuition and fees;
- d. Requiring that Defendant disgorge amounts wrongfully obtained for tuition and fees;
- e. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies paid for tuition and fees;
- f. Scheduling a trial by jury in this action;
- g. Awarding Plaintiff's reasonable attorney's fees, costs and expenses, as permitted by law;
- h. Awarding pre- and post-judgment interest on any amounts awarded, as permitted by law; and
- i. Awarding such other and further relief as may be just and proper.

Attorneys for Plaintiff

MOREA SCHWARTZ BRADHAM FRIEDMAN
& BROWN LLP

BY: /s/ Thomas A. Brown II
Thomas A. Brown II

John M. Bradham*
Peter B. Katzman*
444 Madison Avenue, 4th Floor
New York, New York 10022
(212) 695-8050

-AND-

TOPTANI LAW PLLC
Edward Toptani*
375 Pearl Street, Suite 1410
New York, New York 10038
(212) 699-8930

-AND-

ANASTOPOULO LAW FIRM, LLC
Eric M. Poulin*
Roy T. Willey, IV*
32 Ann Street
Charleston, SC 29403
(843)614-8888

**Pro Hac Vice Admission Pending*

Dated: May 13, 2020

Rule 4:5-1(b)(2) Certification

I hereby certify, pursuant to R. 4:5-1, that to my knowledge, no matter related to this one is currently pending in either litigation or arbitration. I hereby further certify that no other Court action or arbitration is contemplated by Plaintiff herein.

Attorneys for Plaintiff

MOREA SCHWARTZ BRADHAM FRIEDMAN
& BROWN LLP

BY: /s/ Thomas A. Brown II
Thomas A. Brown II

Dated: May 13, 2020

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-001568-20

Case Caption: BROCK-MURRAY ATHENA VS KEAN UNIVERSITY

Case Initiation Date: 05/13/2020

Attorney Name: THOMAS ALAN BROWN

Firm Name: MOREA SCHWARTZ BRADHAM FRIEDMAN & BROWN LLP

Address: 444 MADISON AVE 4TH FL NEW YORK NY 10022

Phone: 2126958050

Name of Party: PLAINTIFF : Brock-Murray, Athena

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Other(explain) Plaintiff is a student at Defendant's University.

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? YES **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

05/13/2020
Dated

/s/ THOMAS ALAN BROWN
Signed

