

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Steven Staubus, individually and on
behalf of all others similarly situated,

Court File No. _____

Plaintiffs,

v.

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Regents of the University of Minnesota,

Defendant.

Plaintiff Steven Staubus (“Staubus”) by and through his attorneys, individually and on behalf of all others similarly situated (the “Class”), bring the following Class Action Complaint (“Complaint”) against Regents of the University of Minnesota (“UMBOR” or “Defendant”). Plaintiff alleges as follows upon personal knowledge as to himself, his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. This is a class action brought on behalf of all people who paid costs towards mandatory and other additional fees for the Spring 2020 academic semester at University of Minnesota (“UM”) and who, because of UMBOR’s response and policies relating to the Novel Coronavirus Disease 2019 (“COVID-19”) pandemic, lost the benefits of the educational and experiential services for which their fees were paid, without having those fees and costs adequately refunded to them.

2. UM’s Spring 2020 semester began on January 21, 2020.

3. On or around March 16, 2020, UM President Joan Gabel announced that, because of the global COVID-19 pandemic, all classes would be moved online and conducted via online distance learning platforms for the remainder of the Spring 2020 semester.

4. Also, on or around March 16, 2020, UM additionally instructed students to move out of on-campus housing and return to their permanent addresses for the remainder of the semester.

5. While closing UM's campuses and transitioning to online classes was the proper response to the COVID-19 pandemic, this decision deprived Plaintiff and the other members of the Class from recognizing the benefits of access to campus facilities, student activities, and other benefits and services for which they had already paid fees.

6. Defendant has refused to provide proper reimbursement for the portion of the fees that fund the educational and experiential services that Defendant no longer provided as of March 16, 2020. Defendant has provided inadequate and/or arbitrary reimbursement for mandatory student fees and other additional fees that fund on-campus activities and services that Defendant was no longer providing, which does not fully compensate Plaintiff and members of the Class for their losses.

7. As a result, Defendant's actions have financially damaged Plaintiff and the Class Members. Plaintiff brings this action because Plaintiff and the Class Members did not receive the full value of the services paid. They have lost the benefit of their bargain and/or suffered out-of-pocket loss.

8. Plaintiff and other members of the Class are entitled to recover equitable damages in the form of disgorgement of fees owed on a pro-rata basis, together with other damages as pled herein.

PARTIES

9. Plaintiff Steven Staubus is a citizen and resident of the State of Illinois. Plaintiff is enrolled as a full-time undergraduate student at UM's Twin Cities campus.

10. Defendant Regents of the University of Minnesota is an entity created by law to act as the governing board of UM, with the final authority in all matters affecting UM, including exercising jurisdiction over UM's financial, educational, and other policies. UM's principal place of business is located in Minneapolis, Minnesota.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Minn. Stat. § 484.01.

12. Venue is proper in this Court because a substantial part of the events at issue in this lawsuit took place in Minneapolis, Minnesota, which is located in Hennepin County and the Fourth Judicial District.

FACTUAL BACKGROUND

I. UM Offers A Unique, On-Campus Educational Experience.

13. UM has a current enrollment of approximately 41,142 undergraduate students and 21,819 graduate, professional and non-degree seeking students at all of its campus locations throughout the state of Minnesota.¹

14. UM offers over 150 major options for undergraduate students to choose from, including subjects ranging from Communications Studies, Economics, and English to Biochemistry, Agriculture, and Environmental Systems Science and Sustainability.²

¹ University of Minnesota, Office of Institutional Research, *Official Enrollment Statistics*, University of Minnesota Official Enrollment Statistics Report (June 4, 2020), <https://oir.umn.edu/student/enrollment>

² *Admissions*, University of Minnesota, <https://admissions.tc.umn.edu/academics/index.html/> (last visited June 4, 2020).

15. The academic experience at UM relies on the benefits and resources of the in-person, on-campus experience in order to give students a well-rounded education. To accomplish this, UM utilizes hands-on instruction, which requires access to facilities, technology, and equipment.

16. A significant portion of UM's marketing focuses on the on-campus experience students receive as members of the Minnesota community.³ Specifically, UM boasts that the school is one of the only Big Ten universities within walking distance to a "dynamic metropolis," and how much students benefit from studying on their "twin campuses."⁴

17. Additionally, UM stresses the importance of its "state of the art" on-campus amenities to the student experience, including their multiple Recreation and Wellness Centers, which boasts a 400,000 square foot facility that "enrich[es] the campus experience."⁵

18. UM also encourages students to enhance their experience at UM by participating in on-campus wellness programs, sports clubs, student organizations, and various activities and events to enrich their experience and build connections to their community.⁶

II. The Spread of the COVID-19 Pandemic.

19. Due to an influx of thousands of new cases in China, on January 30, 2020, the World Health Organization officially declared COVID-19 a "public health emergency of international concern."⁷

³ *Why Minnesota*, University of Minnesota, <https://admissions.tc.umn.edu/opportunities/whychoose.html> (last visited June 4, 2020).

⁴ *Location*, University of Minnesota, <https://admissions.tc.umn.edu/twincities/index.html> (last visited June 4, 2020).

⁵ *Recreation and Wellness*, University of Minnesota, <http://recwell.umn.edu/> (last visited June 4, 2020).

⁶ *Student Life*, University of Minnesota, <https://twin-cities.umn.edu/student-life> (last visited June 4, 2020).

⁷ *Rolling updates on coronavirus disease (COVID-19)*, World Health Organization, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> (last visited May 21, 2020).

20. By March 11, 2020, the World Health Organization declared COVID-19 a pandemic.⁸

21. Travel and assembly restrictions began domestically in the United States on March 16, 2020, with seven counties in the San Francisco, California area announcing shelter-in-place and/or stay-at-home orders, which restricted all but essential travel.⁹ Other states, counties, and municipalities followed suit and issued their own shelter-in-place and/or stay-at-home orders.¹⁰

22. On or about March 6, 2020, the first case of COVID-19 was identified in the state of Minnesota.¹¹

23. On March 25, 2020, Minnesota Governor Tim Walz announced a stay-at-home order to reduce the spread of COVID-19 through the state.¹² Minnesota's statewide stay-at-home order first took effect on March 27, 2020 at 11:59 PM.¹³ Although Minnesota has slowly allowed non-essential businesses to reopen, as of the date of filing, Minnesota's peacetime emergency declaration remains in effect through June 12, 2020.¹⁴

⁸ Jamie Ducharme, *World Health Organization Declares COVID-19 a 'Pandemic.' Here's What That Means*, TIME (March 11, 2020), <https://time.com/5791661/who-coronavirus-pandemic-declaration/>.

⁹ Erin Allday, *Bay Area orders 'shelter in place,' only essential businesses open in 6 counties*, SAN FRANCISCO CHRONICLE (Mar. 16, 2020), <https://www.sfchronicle.com/local-politics/article/Bay-Area-must-shelter-in-place-Only-15135014.php>.

¹⁰ Jorge Ortiz and Grace Hauck, *Coronavirus in the US: How all 50 states are responding – and why eight still refuse to issue stay-at-home orders*, USA TODAY (Mar. 30, 2020), <https://www.usatoday.com/story/news/nation/2020/03/30/coronavirus-stay-home-shelter-in-place-orders-by-state/5092413002/>.

¹¹ KSTP News, *1st COVID-19 case confirmed in Minnesota*' ABC NEWS KSTP (Mar. 6, 2020), <https://kstp.com/medical/first-case-coronavirus-covid19-confirmed-minnesota-minnesota-department-of-health/5666902/>.

¹² *Coronavirus: Gov. Walz issues 2-week 'Stay at Home' order for Minnesota, asks for 'patience and understanding'*, TWINCITIES.COM (Mar. 25, 2020), <https://www.twincities.com/2020/03/25/coronavirus-mn-governor-walz-stay-at-home-order/>.

¹³ *Id.*

¹⁴ Callaghan, Peter, *Walz to let Minnesota's stay-at-home order expire, extends state of emergency another 30 days*, MINN POST (May 13, 2020), <https://www.minnpost.com/state-government/2020/05/walz-to-let-minnesotas-stay-at-home-order-expire-extends-state-of-emergency-another-30-days/>.

III. UM's Spring 2020 Semester was Upended by the COVID-19 Pandemic.

24. Spring semester classes at UM began on or about January 21, 2020.¹⁵ The Spring semester ended on or about May 13, 2020.¹⁶

25. On or around March 11, 2020, UM announced a series of actions in response to the COVID-19 pandemic, which included (1) extending spring break for students until March 18, 2020; (2) transitioning from face-to-face teaching to online instruction through at least April 1, 2020; (3) encouraging all UM students to return to and remain at their permanent home addresses until further notice.¹⁷

26. On or around March 16, 2020, UM announced further action, which included (1) announcing a transition to an alternative delivery of classes for the remainder of the semester; (2) directing all UM students to return to their permanent home addresses for the remainder of the semester; and (3) announcing the closure of certain UM facilities, including the Student Fitness Center.¹⁸

27. On or around March 25, 2020, UM announced that, to comply with Gov. Tim Walz's Stay-at-Home Order, UM would be restricting access to all campus facilities to essential personnel only, which included groups like the University of Minnesota public safety officers and emergency management and maintenance workers.¹⁹

28. Plaintiff and other Class Members departed campus for spring break on or around March 9, 2020, and they were not permitted to return to campus following their departure.

¹⁵ *Academic Calendar*, University of Minnesota, https://onestop.umn.edu/dates-and-deadlines?field_date_category_value=All&field_date_term_value=8 (last visited June 4, 2020).

¹⁶ *Id.*

¹⁷ E-Mail from Joan Gabel, President, University of Minnesota, to Plaintiff (Mar. 11, 2020) (Exhibit A).

¹⁸ E-Mail from Joan Gabel, President, University of Minnesota, to Plaintiff (Mar. 16, 2020) (Exhibit B).

¹⁹ E-Mail from Joan Gabel, President, University of Minnesota, to Plaintiff (Mar. 25, 2020) (Exhibit C).

29. On or around March 16, 2020, Plaintiff and other Class Members transitioned to entirely online learning platforms and completed the remainder of the Spring 2020 semester via online learning platforms.

IV. Defendant Has Failed to Adequately Reimburse Students for Restricted Access to Student Services.

30. Remote, online learning has deprived UM students of access to faculty, facilities, materials, equipment, services, and other critical learning and community-building opportunities that render the online experience an inherently unequal substitute for the in-person, on-campus educational experience that Plaintiff and other Class members selected when they paid Defendant mandatory student services fees and other additional fees for the Spring 2020 semester.

31. Plaintiff, a freshman at UM, was enrolled in nineteen (19) credit hours during the Spring 2020 semester.

32. In addition to tuition costs, Plaintiff and other Class members were required to pay a mandatory Student Services Fee for the Spring 2020 semester, which aimed to “enhance[] the student experience and provide[] services and support that benefits the campus community.”²⁰ The Student Services Fee includes fees for general activity, athletics and service, the TCF Bank Stadium, the Coffman Memorial Student Union, athletic and recreational facilities, health and wellness, instructional support, and campus enhancement.²¹

33. UM charges a consolidated, mandatory Student Services Fee, encompassing the fees listed in the above paragraph. All degree-seeking students, including undergraduate, graduate,

²⁰ *Student Services Fee*, University of Minnesota, <http://ssf.umn.edu/#:~:text=In%20the%202019%2D2020%20academic,Professional%20student%3A%20%24470.87> (last visited June 8, 2020).

²¹ *One Stop Student Service, Cost of Attendance Expense Categories*, University of Minnesota, <https://onestop.umn.edu/finances/cost-attendance-expense-categories> (last visited June 4, 2020).

and professional students, enrolled in six (6) credits or more paid \$454.24 in student services fees for the Spring 2020 semester.²²

34. In addition to the student services fee, each student pays a mandatory fee for student government representation. Undergraduate students paid a rate of \$2.46 for the Spring 2020 semester, graduate students paid a rate of \$10.36, and professional students paid a rate of \$16.63.

35. UM students are assessed other additional fees intended to enhance the on-campus experience, such as a Stadium Fee, a Capital Enhancement Fee, and a College of Liberal Arts (“CLA”) Collegiate Fee.

36. Plaintiff, enrolled in nineteen (19) credit hours, paid approximately \$454.24 in mandatory student services fees for the Spring 2020 semester.

37. Plaintiff was charged additional fees, including a Stadium Fee, Capital Enhancement Fee, Minnesota Student Association Fee, and CLA Collegiate Fee for the Spring 2020 semester, totaling \$333.46.

38. Plaintiff and other Class Members were effectively deprived of access to services and facilities funded by the mandatory Student Services Fees and additional fees beginning on March 9, 2020 and lasting throughout the remainder of the semester, which officially ended May 13, 2020. Plaintiff was deprived access to services for nine of the sixteen weeks of the semester.

39. On or about March 23, 2020, UM announced that it planned to issue a partial refund of housing and dining fees to all students no longer residing in their residence hall by April 1, with a flat credit of \$1,200 for the remainder of the semester.²³

²² *Cost of Attendance*, University of Minnesota Office of Admissions (last visited June 4, 2020), <https://admissions.tc.umn.edu/costsaid/tuition.html>.

²³ E-Mail from Joan Gabel, President, University of Minnesota, to Plaintiff (Mar. 23, 2020) (Exhibit D).

40. Following demands from UM students, on or about April 3, 2020, the UMBOR created and approved the Comprehensive Student Fee Refund Plan, which sought to enhance and outline UM's refund plan in response to the COVID-19 crisis.²⁴

41. Among further refunds for housing and dining contracts, the Comprehensive Student Fee Refund Plan provided students, including Plaintiff and other Class Members, with a 50% credit for the mandatory student services fee, from a period beginning March 28 through the last day of finals, on May 13, 2020.

42. The Comprehensive Student Fee Refund Plan failed to provide any refund for any additional fees, including Stadium Fees, Capital Enhancement Fees, or Collegiate Fees, such as Plaintiff's CLA Collegiate Fee.

43. The Comprehensive Student Fee Refund Plan failed to provide students any refund of fees paid for the period March 16, 2020, the date UM ordered students not to return to campus, through March 27, 2020.

44. To date, UM has refunded Plaintiff \$117.65 of fees paid toward the Spring 2020 student services fee and \$0.64 of fees paid towards the Minnesota Student Association Fee.

45. UM's proffered refund effectively amounts to a 25% refund of the mandatory Student Services Fees paid for the Spring 2020 semester, and a 0% refund of the total additional fees paid for the Spring 2020 semester.

46. Further, UM's refund of the Student Services Fees and other additional fees reflects an approximate 15% total reimbursement of fees for a semester in which Plaintiff and other Class Members were deprived of access to the services funded by the fees for over 50% of the semester.

²⁴ E-Mail from Joan Gabel, President, University of Minnesota, to Plaintiff (Apr. 3, 2020) (Exhibit E).

47. Defendant's proffered mandatory Student Services Fee reimbursement reflects a woefully inadequate reimbursement for mandatory fees paid for the Spring 2020 semester.

48. Through this lawsuit, Plaintiff and members of the Class seek Defendant's disgorgement of the pro-rated portion of mandatory student services fees and additional fees for educational and experiential services they did not receive for remainder of the Spring 2020 semester after classes moved online and access to on-campus services ceased.

CLASS ALLEGATIONS

49. Plaintiff brings this class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure, individually on behalf of the proposed class ("Class"):

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

50. Excluded from this class are Counsel for Plaintiff, anyone employed by Counsel for Plaintiff, and any judge to whom the case is assigned, as well as his or her employees and immediate family.

51. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Minnesota Rule of Civil Procedure 23.

52. The members of the putative Class are so numerous that individual joinder of all Class members is impracticable. According to Defendant's website, more than 60,000 students attend Defendant's university locations. The precise number of Class members is currently unknown to Plaintiff, but may be ascertained by Defendant's records.

53. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include US Mail, electronic mail, Internet postings, and/or published notice.

54. There is a well-defined commonality of interest in the substantial questions of law

and fact concerning and affecting the Class, which predominate over any individual questions, including:

- A. Whether Defendant engaged in the conduct alleged herein;
- B. Whether Defendant breached its contracts with Plaintiff and the other Class members by retaining fees without providing the services which the costs and fees were intended to cover;
- C. Whether Defendant was unjustly enriched by retaining fees of Plaintiff and the other Class members without providing the services which the fees were intended to cover;
- D. Whether certification of the Class is appropriate under Minn. R. Civ. P. 23.01 and 23.02;
- E. Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and
- F. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

55. Plaintiff also anticipates that Defendant will raise defenses that are common to the class.

56. Plaintiff's claims are typical of those of the putative Class members he seeks to represent. Defendant failed to properly and adequately reimburse Plaintiff for mandatory and additional fees paid for the Spring 2020 semester, like members of the putative Class. Plaintiff has the same interests and suffers from the same unlawful practices as the class members

57. Plaintiff will fairly and adequately protect the interests of all members of the Class, and there are no known conflicts of interest between Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.

58. This action is maintainable as a class action under Minn. R. Civ. P. 23.02, because Defendant has acted or refused to act on grounds generally applicable to the Class, thus making

the relief sought appropriate with respect to the Class as a whole.

59. This action is also maintainable as a class action under Minn. R. Civ. P. 23.02 because questions of law and fact common to the putative Class, such as those identified above, predominate over any individual questions and because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

60. Plaintiff intends to send notice to all members of the putative Class to the extent required by Rule 23.03. The names and contact information of Class members are readily available from Defendant's business records.

FIRST CAUSE OF ACTION
Breach of Contract

61. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

62. Plaintiff brings this claim individually and on behalf of other members of the Class.

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

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

65. UM breached the contract with Plaintiff and the Class by moving the second half of 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.

66. UM retained fees paid by Plaintiff and other members of the Class, without providing them with the benefit of their bargain.

67. Plaintiff and other members of the Class have been damaged 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.

68. As a direct and proximate result of Defendant's breach, Plaintiff and the 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.

SECOND CAUSE OF ACTION
Unjust Enrichment

69. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

70. Plaintiff brings this claim individually and on behalf of the other members of the Class.

71. UM has received a benefit at the expense of Plaintiff and other members of the Class to which it is not entitled.

72. Plaintiff and other members of the Class paid substantial mandatory student services fees and additional fees for on-campus benefits and services, and they did not receive the full benefit of that bargain.

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

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

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

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

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

THIRD CAUSE OF ACTION
Conversion

78. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

79. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

80. Plaintiff and members of the Class have an ownership right to on-campus services they were promised in exchange for their Spring 2020 semester mandatory fee payments to Defendant.

81. Defendant intentionally interfered with the rights of Plaintiff and members of the Class when it moved all classes to an online format and discontinued access to services for which fees were intended to pay.

82. Plaintiff and members of the Class demand the return of the pro-rated portion of any Spring 2020 mandatory fees for services discontinued since UM shut down in or around March 2020.

83. Defendant's retention of the fees paid by Plaintiff and members of the Class without providing the services for which they paid deprived Plaintiff and members of the Class of the benefits for which the fees paid.

84. This interference with the services for which Plaintiff and members of the Class paid damaged Plaintiff and Class members in that they paid mandatory fees for services that will not be provided.

85. Plaintiff and members of the Class are entitled to the return of pro-rated portion of any Spring 2020 mandatory fees for services not provided since UM shut down in or around March 16, 2020.

PRAYER FOR RELIEF

Wherefore, Plaintiff Steven Staubus, and members of the Class defined above, respectfully request that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Steven Staubus as a Class Representative, and appointing Stephan Zouras, LLP and Nichols Kaster PLLP as Class Counsel;
- B. Declaring that Defendant is financially responsible for notifying the Class members of the pendency of this suit;
- C. Declaring that Defendant has wrongfully kept the monies paid for fees for the Spring 2020 semester;
- D. Requiring that Defendant disgorge amounts wrongfully obtained for fees for the Spring 2020 semester;
- E. Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies paid for fees;
- F. Awarding Plaintiff and the Class their reasonable attorneys' fees, costs, and expenses;
- G. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and,

H. Awarding such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Date: June 11, 2020

Respectfully Submitted,

NICHOLS KASTER, PLLP

Matthew H. Morgan

Matthew H. Morgan, MN Bar No. 304657
Rebekah L. Bailey, MN Bar No. 387013
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
P: (612) 256-3200
F: (612) 338-4878
morgan@nka.com
bailey@nka.com

STEPHAN ZOURAS, LLP

Ryan F. Stephan*
James B. Zouras*
Catherine T. Mitchell*
100 N. Riverside Plaza, Suite 2150
Chicago, Illinois 60606
P: (312) 233.1550
F: (312)-233.1560
rstephan@stephanzouras.com
jzouras@stephanzouras.com
cmitchell@stephanzouras.com

**Pro Hac Vice Admission Forthcoming*
ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. § 549.211

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that I acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings, or to harass, or committed fraud upon, the Court.

Matthew H. Morgan

Matthew H. Morgan