

STATE OF INDIANA     )     MARION COUNTY SUPERIOR/CIRCUIT COURT  
                              ) SS:  
COUNTY OF MARION    )     CAUSE NO. \_\_\_\_\_

KELLER J. MELLOWITZ, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

BALL STATE UNIVERSITY and BOARD OF  
TRUSTEES OF BALL STATE UNIVERSITY,

Defendants.

Class Action

Jury Demanded

**CLASS ACTION COMPLAINT**

Plaintiff Keller J. Mellowitz, by counsel, on behalf of himself and all others similarly situated, for his Proposed Class Action Complaint against Defendants Ball State University and Board of Trustees of Ball State University (collectively “Ball State”), alleges as follows:

1. This action seeks recovery of tuition and fees paid by Plaintiff and the members of the Proposed Class to Ball State and its agents for services that have not been provided as a result of Ball State sending students home, closing campus facilities, and cancelling in-person classes as a result of COVID-19.

2. The fees include, without limitation, in-person tuition, student services fees, university technology fees, student recreation fees, student health fees, and student transportation fees.

3. In March 2019, Ball State closed its on-campus services for which the fees were paid, thereby depriving Plaintiff and the members of the Proposed Class from accessing the facilities and services for which the fees were paid.

4. Plaintiff brings this proposed class action on behalf of himself and a Proposed Class of Ball State students, defined below, who paid fees to Ball State for services that were terminated or otherwise not provided prior to the conclusion of the Spring 2020 academic semester.

5. Plaintiff seeks certification of a Plaintiff Class and a judgment in favor of the Proposed Class for the monetary damages that he and the Proposed Class have and will suffer as a result of Ball State's conduct.

### **PARTIES**

6. Plaintiff Keller Mellowitz is and was an Indiana resident and citizen at all relevant times.

7. Plaintiff Keller Mellowitz's permanent county of residence and domicile is Marion County, Indiana.

8. Defendant Ball State University is a public research university located in Muncie, Indiana, with satellite campuses in Fishers, Indiana, and Indianapolis, Indiana.

9. Defendant, the Board of Trustees of Ball State University, is a body corporate authorized to sue and be sued on behalf of Ball State University.

10. Approximately 82.7% of students enrolled in Ball State are Indiana residents.

11. At the start of the Fall 2019 academic semester, Ball State had 22,541 enrolled students.

### **PREFERRED VENUE**

12. Preferred venue exists in Marion County, Indiana pursuant to Indiana Trial Rule 75(A)(5). *Cf. Bd. of Trs. of Purdue Univ. v. Severson*, 729 N.E.2d 1020, 1023 (Ind. Ct. App. 2000), *trans. denied*.

### **FACTUAL BACKGROUND**

13. Plaintiff and the members of the Proposed Class were enrolled in Ball State for its Spring 2020 academic semester.

14. In order to enroll, Plaintiff and the members of the Proposed Class were required to pay numerous fees to Ball State.

15. Plaintiff and the members of the Proposed Class paid all fees required by Ball State to be enrolled for the Spring 2020 academic semester.

16. Fees include, without limitation, in-person tuition, student services fees, university technology fees, student recreation fees, student health fees, and student transportation fees.

17. The services for which each fee was paid were terminated in or about March 2020.

18. The termination of and/or Ball State's failure to provide the services for which the fees were paid constitutes a material breach of contract by Ball State.

19. Plaintiff and the members of the Proposed Class are entitled to monetary damages resulting from the breach. In the alternative, Ball State has

been unjustly enriched by Ball State's retention of fees for services that it did not provide to Plaintiff and members of the Proposed Class.

### **CLASS ALLEGATIONS**

20. Plaintiff Keller Mellowitz seeks relief pursuant to Rule 23 of the Indiana Rules of Trial Procedure on behalf of himself and a Proposed Class of similarly situated persons.

21. The "Proposed Class" is defined as:

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

22. Plaintiff reserves the right to alter or amend this proposed definition as the lawsuit proceeds.

23. This action is properly maintainable as a class action under Trial Rule 23(A).

24. The Proposed Class consists of over twenty thousand persons, such that joinder of all Proposed Class members is impracticable.

25. There are questions of law and fact that are common to the Proposed Class members.

26. Ball State's termination of and/or failure to provide services for which fees were paid was the direct and proximate result of a systematic and common course of conduct directed toward Plaintiff and each member of the Proposed Class.

27. The claims of the Plaintiff are typical of the claims of the Proposed Class because they are based on the same nucleus of operative facts and legal

theories, and Plaintiff has no interests that are antagonistic to the interests of the Proposed Class members.

28. The Plaintiff is an adequate representative of the Proposed Class and has retained competent legal counsel experienced in class actions and complex litigation.

29. This action is properly maintainable as a class action under Trial Rule 23(B)(1), (2) & (3) because questions of law or fact common to the members of the Proposed Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

30. The questions of law and fact common to the Proposed Class predominate over any questions affecting only individual Proposed Class members, particularly because the focus of the litigation will be on the conduct of Ball State.

31. The predominant questions of law and fact in this litigation include, but are not limited to:

- a. Whether Ball State terminated or otherwise failed to provide services for which in-person tuition was charged, and whether Ball State failed and refused to issue refunds for those fees;
- b. Whether Ball State terminated or otherwise failed to provide services for which student services fees were charged, and whether Ball State failed and refused to issue refunds for those fees;
- c. Whether Ball State terminated or otherwise failed to provide services

for which university technology fees were charged, and whether Ball State failed and refused to issue refunds for those fees;

- d. Whether Ball State terminated or otherwise failed to provide services for which the student recreation fees were charged, and whether Ball State failed and refused to issue refunds for those fees;
- e. Whether Ball State terminated or otherwise failed to provide services for which student health fees were charged, and whether Ball State failed and refused to issue refunds for those fees;
- f. Whether Ball State terminated or otherwise failed to provide services for which student transportation fees were charged, and whether Ball State failed and refused to issue refunds for those fees;
- g. Whether Ball State terminated or otherwise failed to provide services for which other fees were charged, and whether Ball State failed and refused to issue refunds for those fees;
- h. Whether Ball State's conduct constituted a breach of contract;
- i. Whether Ball State was unjustly enriched by retention of the full fees paid by Plaintiff and the members of the Proposed Class; and
- j. The type and amount of relief to which the Plaintiff and Proposed Class members are entitled.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of thousands of individual lawsuits would not be economically feasible for individual Proposed Class members

and would cause a strain on judicial resources, yet each Proposed Class member would be required to prove an identical set of facts in order to recover damages.

33. On information and belief, no other persons who fall within the Proposed Class definition set forth above have initiated similar litigation, such that individual Proposed Class members do not wish to control the prosecution of separate actions.

34. This class action does not present any unique management difficulties.

### **CAUSES OF ACTION**

35. The following is a non-exhaustive list of causes of action supported by the facts of this case. *ARC Constr. Mgmt., LLC v. Zelenak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012) (“Under Indiana’s notice pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case.”). These causes of action shall not in any way limit the legal bases for liability or recovery in this case.

### **COUNT I BREACH OF CONTRACT**

36. Plaintiff incorporates the allegations set forth above as though set forth fully here.

37. Plaintiff and the members of the Proposed Class each entered into contractual relationships with Ball State for the provision of services and/or access to resources for which Ball State charged fees, and Plaintiff and the members of the Proposed Class each paid the fees.

38. Ball State terminated or otherwise failed to provide the services and/or

access to resources prior to the completion of the time period for which the fees were paid.

39. Ball State's termination and/or failing to provide the services and/or access to resources prior to the completion of the time period for which the fees were paid constitutes a material breach of contract.

40. Plaintiff and the Proposed Class are entitled to damages for Ball State's breaches.

**COUNT II  
IN THE ALTERNATIVE  
UNJUST ENRICHMENT/QUANTUM MERUIT**

41. Plaintiff incorporates the allegations set forth above as though set forth fully here.

42. This Count II is pleaded in the alternative to Count I.

43. To the extent there was no contract governing the payment of one or more of the fees paid by Plaintiff and the members of the Proposed Class to Ball State, Ball State has been unjustly enriched by retention of those fees.

44. Ball State terminated or otherwise failed to provide the services and/or access to resources prior to the completion of the time period for which Plaintiff and the members of the Proposed Class believed the fees were paid.

45. Because Ball State has not provided the services and/or access to resources for which Plaintiff and the members of the Proposed Class paid fees, Ball State's retention of the full amount of fees paid is unjust.



46. Plaintiff and the members of the Proposed Class are entitled to restitution for Ball State's unjust conduct.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, on behalf of himself and the Proposed Class, respectfully prays that the Court certify the Proposed Plaintiff Class pursuant to Indiana Rule 23(A) and (B)(1), (2), & (3) and enter orders and/or judgments against the Defendants and in favor of Plaintiff and the Proposed Class in an amount that will fairly compensate them for those losses and damages they have and will sustain as a result of Defendants' conduct.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and all others similarly-situated, respectfully demands a trial by jury.

Respectfully submitted,

*/s/ Eric S. Pavlack*  
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