

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DISTRICT**

<p>XIMENA MIRANDA 166 Stanhope Street Brooklyn, NY 11237</p> <p><i>On behalf of herself and those similarly situated,</i></p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>XAVIER UNIVERSITY 3800 Victory Parkway Cincinnati, OH 45207</p> <p style="text-align: right;">Defendant.</p>	<p>Case No.</p> <p>Judge</p> <p style="text-align: center;"><u>CLASS ACTION COMPLAINT</u></p> <p style="text-align: center;">JURY DEMANDED</p>
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Plaintiff Ximena Miranda (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Xavier University (“Xavier” or “Defendant”) for breach of contract, unjust enrichment, and promissory estoppel.

INTRODUCTION

1. Plaintiff is a student at Xavier where she is enrolled in Xavier’s College of Nursing Accelerated Bachelor of Science in Nursing (“ABSN”) program.
2. The ABSN program is intended to “follow[] a comprehensive, fast-paced sequence of online and onsite curriculum over four, full-time semesters.”¹

¹ <https://acceleratednursing.xavier.edu/accelerated-nursing-program/>, last accessed 6/24/2020.

3. The ABSN curriculum contains three key parallel learning components: online classes, lab simulation, and actual clinical training. These parallel components are set up to complement each other as each goes from basic to more advanced.² Put another way, a student completing only one or two of the parallel components misses crucial nursing education. In line with this approach, Xavier's handbook states: "If a student withdraws from either a theory or a clinical course, the student must withdraw from the co-requisite course."³

4. For such comprehensive training, Plaintiff and the Class Members paid approximately \$13,500 per semester, in addition to a variety of fees, including student activity fees and professional liability insurance for the onsite curriculum.

5. In March of 2020, Xavier stopped providing its onsite curriculum and switched to a fully remote learning experience that involves no hands-on training. While students enrolled and paid Xavier for a comprehensive academic experience, Xavier instead offers Plaintiff and the Class Members something far less: a limited online experience presented by Google or Zoom, devoid of face-to-face faculty and peer interaction, separated from program resources, and barred from facilities vital to study. Plaintiff and the Class Members did not bargain for such an experience.

6. Despite no longer providing the important "onsite curriculum" that students are promised, Xavier did not reduce its tuition. In fact, starting in May 2020, Xavier increased tuition for ABSN students.

² "The BSN program (four year BSN and ABSN curriculum is designed to progress the students from foundation courses to those with more advanced concepts and principles. Therefore, the faculty believes that courses should be taken and successfully completed in the sequence established in the curriculum." Xavier University Combined Undergraduate Nursing Handbook, p. 54 (available at <https://www.xavier.edu/college-of-nursing/current-students/combined-undergrad-nurs-2019---2020-updated3.pdf>), last accessed June 29, 2020.

³ *Id.*

7. In addition to tuition, ABSN students have not been refunded for annual “student activity fees” and “professional liability insurance fees” that no longer provide a cognizable benefit to ABSN students.

8. Xavier’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 for and did not receive the benefits of in-person instruction. Moreover, by switching to online in lieu of onsite courses, while increasing tuition costs for the summer semester, Xavier is being unjustly enriched by students who have paid Xavier money that equity demands should rightfully belong to Plaintiff and the Class Members. Plaintiff and the Class Members have lost the benefit of their bargain and/or suffered out-of-pocket loss. Accordingly, Plaintiff seeks reimbursement of tuition and fees on behalf of herself and the Class Members.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005 (“CAFA”), because at least one member of the Class is a citizen of a different state than Defendants, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

10. Venue is appropriate because Xavier’s principal place of business is in Cincinnati, Hamilton County, Ohio.

THE PARTIES

11. Defendant Xavier University is a private university incorporated as a non-profit corporation in the State of Ohio. Its headquarters and principal place of business are in Cincinnati, Ohio.

12. Plaintiff is domiciled in the State of New York. She currently lives and is enrolled as a student at Xavier University in Cincinnati, Ohio within Xavier's College of Nursing ABSN Program.

13. Plaintiff enrolled in Xavier's ABSN program in January of 2020 and her anticipated graduation date is May of 2021. She incurred substantial federal student loans to pay for this education.

14. Following graduation, Plaintiff would like to work as an emergency room nurse.

15. When Plaintiff started looking for ABSN programs, Xavier was one of the first schools to reach out. Plaintiff spoke with Xavier's admissions coach and was advised to review Xavier's website. Plaintiff noticed that the website emphasized Xavier's hands-on learning approach and included videos of previous nursing students highlighting the clinical and lab experience provided by Xavier.

16. Plaintiff chose to enroll in the ABSN program at Xavier, in part, because Xavier's classes are typically smaller than classes at similar institutions, thus allowing professors to teach skills one-on-one with no rush. Furthermore, Xavier's simulation lab and skilled lab promised to offer important hands-on practice before practicing on real patients. Lastly, Xavier promised clinical placements in prestigious hospitals throughout Cincinnati.

17. But for the hands-on lab and clinical learning experience promised by Xavier, Plaintiff would not have enrolled in Xavier's ABSN program.

18. Despite paying full tuition and not receiving a refund, in Plaintiff's first semester alone, she estimates that she missed out on over 300 hours of hands-on learning experience.

19. Plaintiff was required to pay an annual "student activity fee" to Xavier that has not been refunded even though there are currently no student activities.

20. Plaintiff was required to pay a professional liability insurance fee to Xavier in January of 2020 and May of 2020. The insurance fee is intended to provide her with insurance coverage during her clinical learning experiences. This has not been refunded even though Xavier no longer offers clinical learning experiences.

FACTUAL ALLEGATIONS

21. Xavier's ABSN program is an accelerated program comprised of 63 credit hours over four, full-time semesters. This means that the entire program is completed in as few as 16 months. Once the program is completed, ABSN students receive a bachelor's degree in nursing (BSN), something that typically takes four years to achieve.

22. Each year, Xavier admits roughly 360 new students to the ABSN program (i.e., 120 new students each January, May, and August). Because the ABSN program takes 16 months to complete, there are roughly 480 students in the ABSN program at any given time.

23. The accelerated timeline for earning the degree is possible because Xavier's ABSN program is reserved for students who previously earned a non-nursing bachelor's degree. This allows Xavier to offer ABSN students an accelerated learning experience focused solely on nursing.

24. Xavier divides its ABSN coursework into three components: online classes, onsite labs, and clinical placements. The online course work is designed to teach "the fundamentals and theories of the profession" to help "set the foundation for your nursing education." However, Xavier is clear to state that "it's important to note that **it is impossible to earn a BSN 100%**

online...During nursing skills and simulation labs, our clinical instructors will teach out how to put the core concepts you learned online into practice.”⁴

25. Xavier’s “onsite curriculum” is vital to the success of its ABSN program. Offered in carefully planned conjunction with academic coursework, this onsite curriculum allows students to experience what would otherwise be taught only through textbooks and lectures. Without it, nursing students would be forced to enter real medical practice without any prior real experience or patient interaction. Without it, graduates are significantly less qualified to practice nursing and are much less competitive in the market for professional employment.

26. ABSN students take different classes in each of their four semesters. However, each semester includes in-person, hands-on learning through simulation labs and/or clinical experience.

27. Xavier repeatedly emphasizes the importance of its “onsite curriculum” in its marketing material. This onsite curriculum is two-thirds of the three key components to Xavier’s ABSN program.

28. The first of these two key components is the onsite skills and simulation labs. This hands-on coursework “serv[es] as a bridge between online coursework and clinical practica,” and is where Xavier’s “top-notch clinical instructors teach you how to put nursing theory into practice.”⁵ Among the skills practiced: Monitoring blood pressure, giving shots, dressing puncture wounds, caring for tracheotomies, inserting feeding tubes, administering intravenous therapy, and setting up oxygen delivery.

⁴ <https://acceleratednursing.xavier.edu/accelerated-nursing-program/online-coursework/>, last accessed June 26, 2020 (emphasis added).

⁵ <https://acceleratednursing.xavier.edu/accelerated-nursing-program/nursing-simulation-labs/>, last accessed June 29, 2020.

29. Xavier's skills lab program uses advanced computerized manikin simulations so that students can "actively engage in patient assessment and treatment." The simulations are recorded, and the professors then walk through the students' actions afterwards. "Simulation debriefings are invaluable because they allow you to learn from and correct your mistakes under the guidance of faculty."

30. Xavier's skills lab is touted as doing "a great job in preparing you for clinical practice." Moreover, "[t]hese experiences can also expose you to high-pressure critical care situations that are not available through clinicals." Because the labs are only simulations, they allow the students to practice in a "risk-free learning environment."

31. The importance of in-person attendance is shown through the grading rubric for these courses. For example, for Nursing 301 – Nursing Concepts in Mental Health I Practicum, Clinical Performance Evaluations count for 35%, while Virtual Labs counts for 5% of the grade. As another example, for Nursing 203 – Foundations of Nursing Practice II Practicum, Final Lab Practicum Evaluation is 25%, Clinical Performance Evaluation is 15%, and Lab Guides and Attendance is 10% of the grade.

32. These representations, copied below, formed the basis for Plaintiff and other Class Members' understanding of what Xavier offered for nursing skills laboratories:⁶

⁶ *Id.*

NURSING SKILLS LAB

Replicating a hospital room environment, our nursing skills lab lets you practice the application of nursing theory across the patient lifespan. Under the guidance of faculty, you and a small group of peers will perform fundamental nursing skills on full-body medical manikins and various clinical task trainers.

Through the lab, you will learn a variety of nursing interventions, including how to:

- Monitor blood pressure
- Give intramuscular injections
- Dress a puncture wound
- Provide tracheotomy care
- Insert a nasogastric tube
- Administer intravenous therapy
- Setup oxygen delivery

During the [16-month Accelerated BSN program](#), you can expect to attend labs two and three days a week. You can also use the lab outside of course-related activities to practice and hone your nursing skills.

NURSING SIMULATION LAB

Getting you as close as possible to real-life clinical situations, our nursing simulation lab takes your nursing competency to the next level by way of a computerized medical manikin. Able to simulate a variety of symptoms, from blood loss to breathing difficulty, the manikin lets you actively engage in patient assessment and treatment. Under faculty control, the manikin can also ask questions and replicate bodily responses to procedures, such as intubation and catheterization.



We record these simulations so that you and your instructor can debrief on your clinical performance. Simulation debriefings are invaluable because they allow you to learn from and correct your mistakes under the guidance of faculty. As you progress in the ABSN program, the intent will be for you to lead these debriefings, explaining the rationale behind your approach prior to receiving feedback.

Because they require you to think on your feet and act on instinct, nursing simulations do a great job in preparing you for clinical practice. These experiences can also expose you to high-pressure critical care situations that are not available through clinicals.

[Contact us](#) to learn more about the nursing skills and simulation labs inside our ABSN Learning

33. The final component—clinical rotations—“play a significant role in your education, and we provide some of the best placements of any nursing school in Ohio.”⁷ Key to this is the promise that “[e]very accelerated BSN clinical supports a specific learning objective. As the online courses and nursing labs advance, so does the complexity of your clinicals. By and large, clinicals are active learning environments where you get to perform the tasks a nurse would typically do in a given situation.”

34. These clinicals “begin the first semester” and have the students working in small groups “alongside experienced nurses to gain a real-world understanding of how nursing theory applies to the care of individuals, families, and communities.” As part of these clinicals, Xavier “guarantee[s] your placement in a quality clinical environment.”

35. These representations, copied below, formed the basis for Plaintiff and other Class Members’ understanding of what Xavier offered for clinical skills courses:⁸

ACCELERATED BSN CLINICALS AT LOCAL HEALTH CARE FACILITIES

Clinical rotations play a significant role in your education, and we provide some of the best placements of any nursing school in Ohio. Whether you’re a student in our Cincinnati, Cleveland, or Columbus [ABSN program](#), you can expect to complete your accelerated BSN clinicals in top local health care facilities.

Every accelerated BSN clinical supports a specific learning objective. As the online courses and nursing labs advance, so does the complexity of your clinicals. By and large, clinicals are active learning environments where you get to perform the tasks a nurse would typically do in a given situation.

⁷ <https://acceleratednursing.xavier.edu/accelerated-nursing-program/hospital-clinicals/>, last accessed 6/29/2020.

⁸ *Id.*

CLINICAL PRACTICE AREAS



Nursing Clinical Rotations

Watch later Share

NURSING CLINICALS

During your accelerated BSN clinicals, which begin the first semester, you and a small group of peers will work alongside experienced nurses to gain a real-world understanding of how nursing theory applies to the care of individuals, families, and communities.

Our diverse clinical placement sites, which include hospitals, nursing homes, and outpatient facilities, allow you to gain practical experience in a variety of health care sectors and specialties. You'll also learn how to interact with and care for patients across the health care continuum. Areas of practice include:

- Adult health
- Community health
- Mental health
- Obstetrics
- Pediatrics

During the final weeks of the program, you'll participate in a role transition experience that allows you to gain concentrated clinical experience working alongside a registered nurse (preceptor). You'll work the same shifts as this nurse, and as you refine your nursing skills, you'll start to take an active, if not primary, role in patient care.

CLINICAL PLACEMENTS

Like most nursing schools, we can't guarantee placement in a specific facility. We can, however, guarantee your placement in a quality clinical environment that promotes your personal and professional development. After all, all of our [health care partners](#) have a reputation for delivering exceptional patient care.

While there's never a promise of employment, you should go into every accelerated BSN clinical with your best foot forward. Because as a Xavier ABSN student, you'll be able to network with some of the best health care providers in Ohio—individuals who can serve as a professional reference or future employer.

[Contact us](#) to learn more about our accelerated BSN clinicals.



36. YouTube videos posted to Xavier's website also stress the importance of the hands-on learning experience promised to ABSN students. Examples of Xavier's statements include:

- a. "The purpose of skills lab is to give you an introduction to nursing procedures that you will do on patients."⁹

⁹ <https://www.youtube.com/watch?v=ki-PDG96FEQ&feature=youtu.be>, posted to <https://acceleratednursing.xavier.edu/accelerated-nursing-program/nursing-simulation-labs/>, last accessed 6/24/2020.

- b. “The first clinical you’re really working on vitals, head-to-toe assessments. They try to assign you a patient that is specific to what you are learning that week.”¹⁰ and,
- c. “Skills labs are incredibly helpful for the learning process...Graduating as a Xavier nurse I’ll feel prepared. I’ll feel like hospitals will fight over me.”¹¹

37. Xavier represents that, “After graduating from our ABSN program, you’ll be prepared to sit for the NCLEX-RN exam with confidence and enter the profession as a *practice-ready nurse*.”¹² However, it is not possible to become a “practice-ready nurse” without ever practicing, let alone seeing in person, the physical procedures nurses are regularly expected to perform.

38. Although COVID-19 has impacted the teaching methods and facilities available to nursing programs, Xavier was **not** required to suspend clinical placements for its ABSN students. In fact, the Ohio Board of Nursing has encouraged “academic-practice partnerships between health care facilities and pre-license RN and PN nursing education programs during the COVID-19 emergency in order to meet academic and workforce needs...”¹³

39. Because the clinical practice involves learning and practicing vital nursing skills in real life medical settings with real patients, ABSN students are required to pay Xavier a fee for professional liability insurance. Because clinical practice for ABSN students has been discontinued, ABSN students receive no benefit from the professional liability insurance fee paid to Xavier. However, Xavier has not reimbursed any portion of the professional liability insurance

¹⁰ <https://www.youtube.com/watch?v=G8FYVjKf41g&feature=youtu.be>, posted to <https://acceleratednursing.xavier.edu/accelerated-nursing-program/hospital-clinicals/>, last accessed 6/24/2020.

¹¹ https://www.youtube.com/watch?v=5A_BvYRuB84&feature=youtu.be, posted to <https://acceleratednursing.xavier.edu/accelerated-nursing-program/>, last accessed 6/24/2020.

¹² *Id.*, last accessed 6/25/2020 (emphasis added).

¹³ <https://nursing.ohio.gov/wp-content/uploads/2020/04/Practice-Academic-Partnerships.pdf>, last accessed 6/25/2020.

fees paid by ABSN students in January. Xavier also charged ABSN students for professional liability insurance in May of 2020.

40. Despite no longer providing important hands-on learning experiences, Xavier continues to charge full tuition to ABSN students. In fact, starting in May of 2020, Xavier increased the cost of each credit hour from \$880 to \$900.

41. Xavier also has not refunded students for the annual \$115 “student activity fee” despite the fact that there are currently no “student activities” that ABSN students are able to take part in.

42. Moreover, despite no longer providing the hands-on learning programs and the benefits those programs provide, Xavier charged the full amount for these programs, in effect taking Plaintiff and the Class Members’ money without providing any real benefit for that money.

43. Without the hands-on learning experience promised through Xavier’s ABSN program, the remote learning provided to students loses value because students cannot conceptualize what they have learned through real life practice. As clearly set out by Xavier, each of the three components to the ABSN education—online theory, onsite practice, and onsite clinicals—are taught from basic to advanced in conjunction with the other two. Advanced theory provides little education without advanced hands-on experience. But that incrementally advancing hands-on experience is exactly where Xavier is failing. As a result, Plaintiff and the Class Members, unable to engage in the hands-on learning at the core of Xavier’s ABSN program, have lost at least a semester of their studies, in both time and in the money they paid for tuition and other fees.

CLASS ALLEGATIONS

44. Under Rule 23(a), (b)(2), (b)(1)(A), and (b)(3), Plaintiff brings this action on behalf of herself and the Class, initially defined as follows:

All individuals enrolled as a student in Xavier University’s College of Nursing Accelerated Bachelor of Science in Nursing Program who paid tuition and fees to Xavier but were not provided with onsite, in-person education through simulated and/or clinical settings.

45. The “Relevant Time Period” is the largest period allowed by law.

46. Excluded from the Class are Defendant, its employees, officers, directors, legal representatives, heirs, successors, and wholly or partially owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

47. The definition of the Class is unambiguous, and Plaintiff is a member of the Class she seeks to represent.

48. While the exact number of Class Members is unknown to Plaintiff at this time, on information and belief, Defendant Xavier has roughly 480 students enrolled in its ABSN program at any given time.

49. Plaintiff’s claims are typical of the claims of the other members of the Class. Plaintiff and the other Class Members paid full tuition to Xavier after bargaining for an educational experience that emphasized in-person, hands-on learning. Yet, Plaintiff and the Class Members received only online education. Furthermore, Plaintiff and each of the Class Members paid Xavier a “student activity fee” and fee for professional liability insurance that provides no cognizable benefit as a result of the fact that Plaintiff and the Class Members no longer receive access to clinical education settings or on-campus student activities.

50. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action litigation.

51. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making it appropriate for the Court to render final injunctive relief regarding the Class as a whole. Specifically, Defendant continued to collect and/or failed to refund tuition and fees from Class Members even though it is aware that the retention of such funds is unlawful and/or inequitable.

52. Common questions of law and fact exist as to all Class Members and predominate over any questions solely affecting individual members thereof. Among the common questions of law and fact are the following:

- a. Did Xavier engage in the conduct alleged?
- b. Does Xavier have a policy and/or procedure of denying refunds, in whole or in part, to Plaintiff and the Class Members?
- c. Did Xavier breach identical contracts with Plaintiff and the Class Members?
- d. Did Xavier fail to honor identical promises to Plaintiff and the Class Members?
- e. Did Xavier retain funds that justice and equity demand be returned to Plaintiff and the Class Members?
- f. What is the nature and extent of damages and other remedies to which the conduct of Xavier entitles Plaintiff and the Class Members?

53. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class Members is impracticable. The prosecution of separate actions by individual Class Members would impose heavy burdens upon courts, Class Members, and Defendant, and would create the risk of inconsistent adjudications of

questions of law and fact common to the Class. Defendant has acted on grounds generally applicable to the class such that the final injunctive relief sought is appropriate respecting the Class as a whole. In addition, the allegations contain herein show that common questions of law and fact predominate over any questions affecting individual Class members and a class action is therefore superior to other available methods for fairly and efficiently adjudicating the controversy. A class action would achieve substantial economies of time, effort, and expense, and would assure uniformity as to persons similarly situated without sacrificing procedural fairness. Plaintiff and the proposed Class satisfy the requirements of Rule 23(b)(1)(A), (b)(2), and/or (b)(3).

CAUSES OF ACTION

COUNT I – BREACH OF CONTRACT

54. All other paragraphs are fully re-alleged and incorporated herein.

55. Plaintiff and the Class Members entered into identical, binding contracts with Xavier.

56. Under their contracts with Xavier, Plaintiff and the Class Members paid Xavier tuition and fees for Xavier to provide onsite, in-person education through simulated and/or clinical settings. The contracts also entitled Plaintiff and the Class Members to access on campus facilities and take part in student activities.

57. For example, Xavier explicitly “guarantee[d]” placement in a quality clinical environment.¹⁴

58. Plaintiff and the Class Members have fulfilled all obligations, having paid Xavier tuition and fees for at least one semester of the ABSN program.

¹⁴ <https://acceleratednursing.xavier.edu/accelerated-nursing-program/hospital-clinicals/>, last accessed 6/24/2020.

59. However, Xavier has breached such contracts, failed to provide those services and/or has not otherwise performed as required by the contract between Plaintiff and the Class Members and Xavier. Xavier has moved all classes to online classes and has restricted or eliminated Plaintiff and the Class Members' ability to access university facilities and/or take part in student activities. In doing so, Xavier has and continues to deprive Plaintiff and the Class Members from the benefit of their bargains with Xavier.

60. As evidenced by the allegations herein, Xavier's breaches of contract and subsequent failure to remedy such breaches were committed in bad faith.

61. Plaintiff and other Class Members have suffered damages as a direct and proximate result of Xavier's breaches of contract, in an amount to be determined at trial.

COUNT II – UNJUST ENRICHMENT

62. All other paragraphs are fully re-alleged and incorporated herein, except for paragraphs 54 to 61.

63. At all times relevant hereto, Plaintiff and the Class Members directly conferred non-gratuitous benefits on Xavier, *i.e.*, monetary payments for tuition and fees, including in part on a credit-hour-by-credit-hour basis, so that Plaintiff and the Class Members could avail themselves of in-person educational opportunities, student activities, and utilize campus facilities.

64. Xavier knew of the benefits conferred on it by Plaintiff and the Class Members and accepted or retained the payments premised upon the existence of services it no longer provided or has refused to provide. In effect, Xavier charged Plaintiff and the Class Members for certain benefits and then unilaterally provided benefits worth substantially less, but kept the difference in value.

65. Xavier knows that it does not have any lawful right to retain such tuition and fees paid by Plaintiff and Class Members.

66. Xavier's retention of tuition and fees is unjust under the circumstances of this case because the acceptance of such payments was premised upon the existence of services that Xavier no longer provides, making it wholly inequitable for Xavier to improperly retain the benefits of Plaintiff and the other Class Members' payments and entitling Plaintiff and the other Class Members who made such payment to full restitution, including interest, in an amount to be determined at trial.

67. Allowing Xavier to retain the aforementioned payments violates fundamental principles of fairness and equity.

COUNT III – PROMISSORY ESTOPPEL

68. All other paragraphs are fully re-alleged and incorporated herein, except for paragraphs 54 to 61.

69. As detailed throughout this Complaint, Xavier made clear, unambiguous, and uniform promises to Plaintiff and the Class Members that it would provide onsite, in-person education and learning experiences through simulated and/or clinical settings.

70. Xavier also promised that Plaintiff and the Class Members would have the ability to take part in student activities and have access to campus facilities.

71. Xavier knew or should have reasonably expected Plaintiff and the Class Members would rely on these promises due to the emphasis Xavier placed on onsite and/or in person experiences in its marketing, recruitment, and informational material (as detailed throughout this Complaint).

72. Xavier broke its promises to Plaintiff and the Class Members when it discontinued student activities.

73. Xavier broke its promises to Plaintiff and the Class Members when it discontinued or failed to provide in-person, hands-on learning experiences in simulated and/or clinical settings.

74. Plaintiff and the Class Members relied on these promises to their detriment when they paid tuition and fees.

75. Injustice can only be avoided by enforcement of Xavier's promises and/or payment in the form of restitution and/or damages in an amount to be determined at trial.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for the following judgment,

- a. Certification of the action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure, and appointment of Plaintiff as Class Representative and her counsel of record as Class Counsel;
- b. Appropriate injunctive relief as permitted by law or equity, including an order enjoining Xavier from retaining and/or charging tuition and fees for services it does not provide or benefits that students do not receive;
- c. Awarding Plaintiff and Class Members damages in an amount to be determined at trial;
- d. Requiring Xavier to make full restitution to Plaintiff and the Class Members who paid tuition and fees for services they did not receive;
- e. Awarding pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law;
- f. The costs of bringing this suit, including reasonable attorneys' fees; and

- g. Awarding any such other and further legal and equitable relief as this Court may deem just and proper.

Respectfully submitted,

/s/ W.B. Markovits

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JURY DEMAND

Plaintiff hereby requests a trial by jury on all claims triable to a jury.

/s/ W.B. Markovits

W.B. Markovits (0018514)