STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
LYSANDRA SERRANO, SAVANNAH MCKENZIE, CASSANDRA AUNGST, SYDNEY BROWN, RYAN COUGHLIN, individually and on behalf of others similarly situated, Plaintiffs, vs. CHARLESTON SOUTHERN UNIVERSITY, Defendant.	)	Civil Action No. 2020-CP-10-02357 **ORDER GRANTING CHARLESTON SOUTHERN UNIVERSITY'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on a motion filed by Defendant Charleston Southern University on April 28, 2025, as amended on August 4, 2025, seeking summary judgment on all of Plaintiffs' claims ("CSU's Motion for Summary Judgment"). The Court has carefully reviewed the parties' filings and the arguments of counsel at the hearing on September 5, 2025. Having considered all arguments and submissions, the Court grants CSU's Motion for Summary Judgment for the reasons stated below.

FACTUAL BACKGROUND

In response to the COVID pandemic, CSU, like other colleges and universities in South Carolina and across the nation, closed its campus for a portion of the Spring 2020 semester to everyone except those with extenuating circumstances and transitioned all on-campus classes and services to virtual instruction beginning March 18, 2020. This decision was consistent with the executive orders issued by Governor Henry McMaster declaring a public health state of emergency in South Carolina, requiring all state-supported universities to close and transition to online

learning, limiting gatherings of three or more persons, requiring a multitude of private venues and facilities across the State to close, and implementing social distancing and a "stay-at-home" order. (Exhibit 1 to CSU's Brief in Support of its Motion for Summary Judgment ("Def.'s Exhibit").)

CSU initiated phased move-out procedures for its residential students on April 1, 2020. (Def.'s Exhibit 3.) At least 35 residential students with extenuating circumstances were allowed to stay on campus during the Spring 2020 semester. (*Id.*) Plaintiffs, who were all residential students during the Spring 2020 semester, did not request to stay on campus. CSU provided a $1482 room and board refund for the residential students who moved off campus. The room and board refund included $1,000 for room costs, as well as $482 in board costs that CSU avoided as a result of the closure, adjusted for housing stipends provided to some students.[1] (Def.'s Exhibit 34 at 35:22-25; Def.'s Exhibit 35 at 101:4-10.)

In response to the online transition, CSU extended its course withdrawal deadline to the end of the semester, meaning that students could withdraw without suffering any academic penalties, but without necessarily receiving a tuition refund. (Def.'s Exhibit 38.) Plaintiffs did not withdraw from any courses and continued their coursework, receiving all credits and advancing towards their degrees as scheduled.[2] Plaintiffs all earned high marks during the Spring 2020 semester; two Plaintiffs graduated in Spring 2020; the rest continued their education at CSU and graduated in later semesters. (Def.'s Exhibit 6.)

Plaintiffs were all full-time, traditional undergraduate students enrolled in 14–19 units during the Spring 2020 semester. Although Plaintiffs offer a damages model based upon the

[1] Three Plaintiffs received the full $1482, and two Plaintiffs' refunds were adjusted to account for CSU's institutional housing aid grants. (*Compare* Def.'s Exhibits 25–27 *with* Def.'s Exhibits 23–24.)

[2] Plaintiffs Aungst and Brown each took one online course that was already completed when CSU transitioned to online instruction on March 18, 2020. (Def.'s Exhibits 6, 7, & 22.)

assumption that they all paid $13,000 in tuition, no Plaintiff paid this full "list price" tuition. Instead, the record shows that CSU offered each Plaintiff a discount off of the $13,000 list price, such that each paid an individualized, flat-rate tuition. In contract terms, CSU offered the Plaintiffs a lower tuition, and they accepted. Plaintiffs do not deny that they accepted the lower tuition and they do not contend that they were liable for or otherwise responsible for paying the difference between the list price and their actual, discounted tuition. Also, the record shows that each Plaintiff received financial aid from other sources, such that the actual out-of-pocket tuition for each was far less than $13,000. Plaintiffs do not dispute that their out-of-pocket costs were reduced through such aid:[3]

- Aungst's discounted tuition was $7,500, which accounts for the $5,500 in institutional aid she received from CSU. She also received an endowed scholarship of $1,250 and a Coronavirus Aid Relief and Security Act ("CARES Act") refund of $1,100.[4] (Def.'s Exhibit 24, Aungst Student Account.) Thus, her total out-of-pocket tuition payment was $5,150. She took a courseload of 14 hours. Based on her out-of-pocket tuition and her courseload, her per-credit-hour rate was ***$367.86***.

[3] At the hearing for this motion, Plaintiffs' counsel argued that the Court cannot consider non-institutional aid, including awards from third-parties or the government, because they are collateral sources. The Court rejects Plaintiffs' argument because under South Carolina law, the collateral source rule only applies to tort claims. *See Bardsley v. Gov't Emps. Ins. Co.*, 405 S.C. 68, 78-79, 747 S.E.2d 436, 441-42 (2013). Further, Plaintiffs' damages expert agreed that discounts must be considered in calculating damages, as he did himself. (Def's Exhibit 19, Burkett Report at Burkett Exs. 2, 4, 6.) The Court need not address the collateral source's application to Plaintiff's conversion claim because it dismisses the claim on other grounds. *See infra* Section V.

[4] The CARES Act, which was signed into law on March 27, 2020, implemented a variety of programs to address issues related to the onset of the COVID-19 pandemic. *See* U.S. Dep't of the Treasury, *About the CARES Act and Consolidated Appropriations Act*, https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act. CSU used CARES Act funds, under CARES Act guidelines, to assist students who experienced a financial hardship campus closure. (Def.'s Exhibit 36, 11/20/24 CSU's Third Supp. Answers to Pls.' First Set of Interrogs. No. 11, pp. 13-14.) Specifically, the funds were used to assist with eligible expenses under CSU students' cost of attendance, such as food, housing, course material, technology, healthcare, and child care. (Def.'s Exhibit 37.)

- Brown's discounted tuition was $6,970[5], which accounts for the $6,500 in institutional aid she received from CSU. (Def.'s Exhibit 23, Brown Student Account.) She also received a Pell Grant of $1,872 and a CARES Act refund of $2,200. (*Id.*) Thus, her total out-of-pocket tuition payment was $2,998. She took a courseload of 19 hours. Based on her out-of-pocket tuition and her courseload, her per-credit-hour rate was ***$152.53***
- Coughlin's discounted tuition was $5,550, which accounts for the $7,450 he received from CSU in institutional aid. (Def.'s Exhibit 25, Coughlin Student Account). Thus, his total out-of-pocket tuition payment was $5,550. He took a courseload of 14 hours. Based on his out-of-pocket tuition and his courseload, his per-credit-hour rate was ***$396.43.***
- Sands' discounted tuition was $7,500, which accounts for the $5,500 CSU provided her in institutional aid. (Def.'s Exhibit 26, Sands Student Account.) She also received an institutional work-study grant, which she received although not being able to work after the pandemic. (Def.'s Exhibit 12, Sands Dep. at 84:16-85:4). She took a courseload of 16 hours. Based on her out-of-pocket tuition and her courseload, her per-credit-hour rate was ***$468.75***
- Serrano's discounted tuition was $9,500, which accounts for the $3500 CSU provided her in institutional aid. (Def.'s Exhibit 27, Serrano Student Account.) She also received $1,500 for a federal work-study grant and other scholarships. (*Id.*) She took a courseload of 17 hours. Based on her out-of-pocket tuition and her courseload, her per-credit-hour rate was ***$470.59***.

In addition to providing in-person instruction for most classes, CSU also provided Plaintiffs with options for some classes to be online from the outset of the Spring 2020 semester. Importantly, tuition for full-time undergraduate students was the same, regardless of whether the mode of instruction was in-person or online. (*See* Def.'s Exhibit 23, Schedule of Tuition & Fees; Def.'s Exhibit 22, Academic Policy R-65.) That is, the tuition for each student remained the same whether a student signed up for all in-person courses, all online courses, or a mix of in-person and online courses. For example, Brown and Aungst enrolled in a combination of in-person and online classes during the Spring 2020 semester, but their tuition was not affected by these choices. (Def.'s

[5] Unlike the other Plaintiffs, Brown's starting tuition was $13,470 (rather than $13,000) because she was enrolled in 19 credit hours, and tuition for each credit hour beyond 18 hours was $470 per hour. (Def.'s Exhibit 28**,** Schedule of Tuition and Fees, at CSU-00001.)

Exhibits 23 & 24, Student Account Printouts.) In fact, Brown was charged an additional $180 technology fee to enroll in an online course offered through CSU's College of Adult and Professional Studies ("CAPS"). (Def's Exhibit 23.) Each, therefore, paid at least the same per-credit-hour rate for their online courses as for their in-person courses, and sometimes they had to pay more to take online courses. The same was true in prior semesters as well.[6] Further, if Plaintiffs had taken less than a full-load of 12 credit hours, they would have paid an hourly rate of $470 per credit hour for in-person classes and a higher rate of $490 per hour for online courses, with an additional fee of $180 for CAPS online classes. (Def.'s Exhibit 28, Schedule of Tuition & Fees; Def.'s Exhibit 22, CSU's Online Academic Policy R-65) Part-time students, like CSU Online Program students, were also not eligible for institutional tuition discounts off of the hourly rate. (Exhibit 30 to CSU's Brief, Embler Aff. ¶ 11.)

Outside the traditional undergraduate program, CSU separately offers dedicated online bachelor's and master's degree programs. (Def.'s Exhibit 30, Aff. of Marc Embler, ¶¶ 4, 8, 9.) CSU differentiates these programs and their distinct enrollment requirements in its Online Academic Policy R-65.[7] (Def.'s Exhibit 22.) CSU Online Programs require application, admission, and requirements of admission separately from its traditional undergraduate courses of study. (*Id.*; Def.'s Exhibit 30, Embler Aff. ¶ 9.) CSU Online Program students are considered part-time

[6] Specifically, Cassandra Aungst took two other online classes in prior semesters. (Def.'s Exhibit 9, Aungst Dep. at 71:6-16; Def.'s Exhibit 6, Aungst Academic Tr. (CSCI 210 40 and HEAL 309 40) at CSU-01949); Def.'s Exhibit 20, Smith Expert Rpt. at 5-6, ¶ 34.) Plaintiff Sydney Brown took two other online classes in prior semesters (Def.'s Exhibit 6, Brown Academic Tr. (ENGL 202 45 and MUSI 464 40) at CSU-01952, 1953).) Plaintiff Coughlin also took an online class in a prior semester. (Def.'s Exhibit 6, Coughlin Academic Tr. (COMM 220 40) at CSU-01955); Def.'s Exhibit 11, Coughlin Dep. 39:16-17). Plaintiffs Aungst, Brown and Coughlin paid no less tuition in prior semesters when they took online courses. (Def.'s Exhibit 20, Smith Rpt. at 6, ¶ 34.)

[7] The CAPS program or other online-only courses of study will be referenced collectively as the "CSU Online Programs" and students in these programs will be referenced as "non-traditional students." Full-time undergraduate students will be referenced as "traditional students."

students (Def.'s Exhibit 30, Embler Aff. ¶ 11) and, therefore, pay per course credit, which was ***$490*** in the Spring 2020 semester, rather than a flat rate tuition. (Def's Exhibit 28.) In the Spring 2020 semester, CSU online students were not eligible to receive institutional aid from CSU, so they were not eligible for discounted tuition. (Def.'s Exhibit 30 ¶ 11); *see also* (Def.'s Exhibit 21, Faulkner Dep. at 42:9-10.)[8]

Lastly, all students—whether non-traditional, part-time, or traditional—had access to the CSU campus facilities, amenities, and activities, at no additional cost. (Def.'s Exhibit 30, Embler Aff. ¶ 15; Def.'s Exhibit 29, CSU Student Handbook (CSU-00553).) CSU also did not charge its traditional students a designated campus recreation or amenity fee in the Spring 2020 semester. (*See* Def.'s Exhibit 28, Schedule of Tuition and Fees; Def.'s Exhibits 23–27, Student Account Printouts.) Accordingly, there is no evidence in the record that non-traditional CSU students paid lower tuition or fees as a result of not having full access to CSU's campus, school activities, or on-campus amenities before the pandemic nor that Plaintiffs paid any premium in tuition or fees for having such access.

LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Rule 56(c) further mandates the entry of summary judgment against a party who

[8] Plaintiffs presented an exhibit at the summary judgment hearing to support an argument that online students are eligible for tuition discounts. However, the exhibit came from CSU's 2025 website and not from 2020. (Tr. of 9/5/25 Hr'g at 59:24-60:17.) Plaintiffs have not submitted any evidence related to CSU's policy on institutional tuition discounts for online-only students in the Spring 2020 semester to support their argument.

fails to make a sufficient showing of the existence of an element essential to a claim on which that party bears the burden of proof. *See Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citations and internal quotation marks omitted). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 335-36; *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 153-54, 758 S.E.2d 483, 492 (2014) ("[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.") (citation omitted). A party opposing a motion for summary judgment must "'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Hedgepath*, 348 S.C. at 354, 559 S.E.2d at 335.

FINDINGS

Having reviewed and carefully considered the parties' arguments and positions, the Court concludes that Plaintiffs have failed to establish a genuine issue of material fact or otherwise defeat CSU's Motion for Summary Judgment, and the Court finds that CSU is entitled to summary judgment in its favor on all of Plaintiffs' claims as a matter of law for the reasons outlined below.

I. CSU did not breach any contracts with Plaintiffs.

A. Plaintiffs failed to identify a specific contractual term that CSU breached, and therefore, CSU is entitled to summary judgment on causes of action for breach of contract.

"Under South Carolina law, in order to prevail on a breach of contract claim, the Plaintiff bears the burden of establishing the existence and terms of the contract [and] the Defendant's breach of one or more of the contractual terms . . . ." *Ferguson v. Waffle House, Inc.*, 18 F. Supp. 3d 705, 731 (D.S.C. May 8, 2014). Both Plaintiffs and CSU agree that they entered into a contract.

However, for Plaintiffs to succeed on their claims for breach of contract, they must point to identifiable contractual promises that CSU failed to honor. *See Hendricks v. Clemson Univ.*, 353 S.C. 449, 461, 578 S.E.2d 711, 717 (2003) (affirming and reinstating summary judgment when plaintiff "fail[ed] to point to any written promise from Clemson to ensure his athletic eligibility, and submit[ted] no real evidence to support his claim that such a promise was implied."). Based upon the record, the Court finds Plaintiffs have failed to show any such promises to support their claims for breach of contract.

(1) Plaintiffs failed to show that CSU promised to provide in-person educational instruction during a public health emergency.

Plaintiffs have not identified any specific contractual terms constituting an objective promise that CSU would provide in-person educational instruction at all times, even in a global pandemic. Plaintiffs' Complaint does not specify any such contractual term. In their brief and at the hearing on this motion, Plaintiffs identified only the following language in the second paragraph in Policy R-65, found in the CSU's Manual of Academic Policies and Procedures, to support their argument that CSU made such a promise: "[T]he academic leadership of CSU believes and affirms that it is in the best interest of traditional students to take when possible traditional face-to-face courses in a non-accelerated formats. This allows for the building of greater community, the integration of faith, and a full exploration of the goals and outcomes of a given course in the great tradition of academic inquiry." (Pls.' Mem. in Opp'n to Summ. J. at 5; Tr. of 9/5/25 Hr'g at 19:3-6) (quoting (Def.'s Exhibit 22, R-65, *Enrollment in Online Courses*.))

However, this language does not promise anything, although it does express a preference for traditional students to take classes in person "when possible." Plaintiffs argue that the third paragraph in Policy R-65 "describes the situations when it's not possible" to take face-to-face

classes.[9] On its face, however, the plain language of the paragraph does not indicate that it constitutes an exclusive list of exceptions to a CSU promise to make in-person instruction available to traditional students; the sentence on which Plaintiffs rely actually says, "and so on" when referring to the circumstances that can make in-person instruction impossible. (*Id.*) In no way does this language limit the scope of circumstances that may make face-to-face instruction impossible.

Accordingly, this evidence does not give rise to a genuine issue of material fact, and the Court finds as a matter of law CSU did not promise in Policy R-65 to provide traditional students in-person instruction during a pandemic. Further, because even Plaintiffs acknowledge that CSU made the correct decision in closing the campus and moving to online instruction under the circumstances, there is also no genuine issue of material fact as to whether it was "possible" for CSU to keep the campus open and provide in-person classes in the Spring 2020 semester.[10]

Plaintiffs also agreed that they were responsible for reading and knowing CSU's policies, University Catalog, and Student Handbook. (Def.'s Exhibit 39, Financial Responsibility Agreement, CSU-02369), and in the Financial Responsibility Agreement, Plaintiffs expressly

[9] The relevant language in paragraph at issue states as follows: "At the same time, the university realizes that for many students (particularly those non-traditional students who make up the majority of the online student body) the rigors of the academy must be balanced with full-time employment, the demands of family, and so on. Although the university works to provide a full experience for online students, including academic support, integration of faith and learning, and offering a number of their service, online programs are nevertheless different and thus the online student body has different demands." (Def.'s Exhibit 22, R-65, *Enrollment in Online Courses*.)

[10] It is difficult to reconcile Plaintiffs' argument that CSU did not perform as it promised with Plaintiffs' acknowledgement that CSU had to close the campus during the pandemic. Plaintiffs directly conceded in their brief and again at oral arguments, they understand and agree with CSU's campus closure in response to COVID-19. (*See* Pls.' Br. at 2 ("CSU, understandably, closed its campus as well as its dorms and cafeterias in response to the Covid-19 Pandemic. To be clear, Plaintiffs take no issue with CSU closing its campus as well as its dorms and cafeterias in response to Covid-19.") (emphasis in original); *id.* at 16 n.7) ("Again, Plaintiffs do not fault CSU for closing its campus on March 18, 2020 in response to the Covid Pandemic.")); Tr. of 9/5/25 Hr'g at 37:7-9 ("And by the way, we don't fault them for shutting down the campus. I want to be very clear though about that. We appreciate the situation.").

agreed that they were responsible for "all tuition and fees" unless they dropped the classes by the last date to drop/add classes. (*Id.*) CSU also publishes specific procedures for seeking refunds. (*Id.*) It is undisputed that Plaintiffs did not drop any classes at any time during the Spring 2020 semester and did not follow the contractual process for seeking a refund, so under the plain terms of their contract with CSU, they are not entitled to a tuition refund.

(2) Plaintiffs failed to show that they paid a "premium" tuition for their in-person classes.

Plaintiffs also argue in support of their claim for breach of contract that because they paid a "premium" tuition for in-person classes, CSU's adjustment to online classes during the COVID-19 pandemic entitles them to a refund. However, this argument fails because the undisputed facts do not support that Plaintiffs paid a premium at all. In the Spring 2020 semester, Plaintiffs—all full-time traditional students—did not pay per the credit hour. Rather, they paid one flat-rate amount for 12 through 18 credit hours, regardless of whether the credit hours were in person, online, or a combination.

Plaintiffs' argument that they paid a premium is based not on the record, but on a hypothetical traditional student who paid the full listed tuition of $13,000.[11] While that amount

[11] Specifically, the testimony from CSU President Keith Faulkner that Plaintiffs rely for their "premium" argument is based on a hypothetical student who paid the full $13,000 tuition. *See* Def.'s Ex. 4, Faulkner Tr. at 67:13-69:12 (Q: And I understand your whole discount issue. But if there's one student that's paying full freight [of $13,000], and there probably is at least one student, that person is paying more than double to make that election, right? MR. BRUNSON: Object to the form. Q: To be in person? A: Theoretically they are paying more for that experience, yes, to have an on-campus experience.") The record shows that none of the Plaintiffs match the facts of this hypothetical student, however. Similarly, other CSU deponents' testimony fails to address the five Plaintiffs or create a factual issue. *See* Pl.'s Brief at 5–6 (citing Pls.' Exhibits G, H, I, J, K). Melanie Hilton, for example, testifies that she did not set tuition prices and "honestly do[es] not know" why flat-rate tuition is listed at $13,000 vs. $490 for online, "how they came to that number or what was included in that" and "cannot speak to that [difference]" and, in response to Plaintiff's counsel asking if it is for the ability to take classes on campus, she states "I guess. I – I can't tell you why it's priced that way." (Pls.' J, Ex. 32:4-11; 33:3-8; 34:1-6.) Testimony based on hypothetical scenarios and speculation is insufficient to create a factual dispute.

may yield a higher per credit hour rate than the $490 per credit hour CSU charged its part-time online students, the comparison is irrelevant for the purposes of this motion. The Court's analysis is limited to the five Plaintiffs to whom this motion is addressed—not a theoretical student who paid full tuition but is not a party. The record clearly shows that none of the Plaintiffs paid $13,000 in tuition. In fact, when considering what each Plaintiff paid per-credit hour for the Spring 2020 semester, each paid *less* than $490 per credit hour.[12] *See supra* Facts, pp. 3–4. Therefore, there is no genuine dispute of material fact regarding whether Plaintiffs paid a "premium" rate compared to online students—they did not.[13] They paid less.

The Court, therefore, finds Plaintiffs argument that they entered into a contract with CSU by paying a premium tuition for in-person instruction and campus access is not supported by the record and does not create a genuine issue of material fact.

[12] At the hearing for this motion, Plaintiffs' counsel argued that the Court cannot consider non-institutional aid, including awards from third-parties or the government, because they are collateral sources. The Court rejects Plaintiffs' argument because the collateral source rule only applies to tort claims. *See Bardsley v. Gov't Emps. Ins. Co.*, 405 S.C. 68, 78–79, 747 S.E.2d 436, 441–42 (2013). The Court need not address its application to Plaintiff's conversion claim because it dismisses that claim on other grounds. *See infra* Section V. Further, Plaintiffs' damages expert agreed that discounts must be considered in calculating damages, as he did himself. (*See* Def.'s Exhibit 19, Burkett Expert Report.)

[13] Plaintiffs do not identify a specific contractual promise under which they agreed to pay a premium in exchange for guaranteed access to the campus and in-person instruction at any time, let alone in the event of a pandemic emergency. The lack of evidence that Plaintiffs paid a premium further underscores the absence of any relevant contractual promise that CSU breached. The testimony Plaintiffs rely on for the "value" of being on CSU's campus is grounded in sentiment and intangible benefits, but it plainly does not give rise to a contractual promise. The record does not demonstrate that full-time traditional students were promised special access to campus or paid an extra fee for on-campus amenities. Additionally, while it was not possible for CSU to gather its students together in one place for classes and other events, CSU continued to deliver virtual instruction, academic and counseling services, chapel services, and other spiritual life and recreational events. (Exhibits 14 & 15 to CSU's Brief.)

(3) Plaintiffs failed to show that CSU promised to provide room and board during a public health emergency.

Plaintiffs also do not identify any specific contractual terms constituting an objective promise that CSU would provide room and board even during a state and national public health state of emergency or that they would be entitled to a refund if they were prevented from occupying their room due to an act of God, such as a pandemic. Plaintiffs identify two contractual provisions in the Student Housing Contract to support their argument that CSU promised them student housing and meals during the pandemic:

- "This application includes a binding contractual agreement between you and the Department of Residence Life at [CSU] and entitles you to an on-campus housing assignment." (Def.'s Exhibit 32, Charleston Southern University 2019-2020 University Housing Student Contract, CSU-06920.)
- "Residents receive a room . . . for the full academic year." (*Id.* at CSU-06921.)

Both of these promises in the Student Housing Contract entitle students to an "assignment" of a room "for the full academic year," but other terms of the contract qualify these promises. Specifically, Section 9 of the Housing Contract (titled "Housing Fees and Financial Responsibilities") provides that the student "specifically agrees to pay the housing fee in full . . . whether or not the resident actually utilizes the assigned space" (*id.* § 9(a), CSU-06923) and "[i]f the student attends class and fails to occupy the assigned room, the full cost of space and meal plan will nonetheless be due." (*id.* § 9(b).) Plaintiffs expressly acknowledged their agreement to these terms when entering the Housing Contracts ("By entering your full name below, you verify you have read and agree to the CSU housing contract and its terms as outlined above.") (Def.'s Exhibit 32, CSU Housing Contract at CSU-06926.)

Plaintiffs argue that these terms in Section 9 are limited to conditions caused by the students, such as suspension or withdrawal (citing Section 11 of the Housing Contract[14]) and that the contract could only be cancelled prior to occupancy (citing Section 8[15]). The language of Sections 8 and 11 are clear and do not qualify the term "fail to occupy" by, for example, stating that if there is a good reason why a student fails to occupy the room (such as a pandemic or hurricane), they will receive a refund. Rather, the contract places the risk of loss from any failure to occupy the room on the student, not on CSU. As the South Carolina Supreme Court has instructed:

> It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, and, in the absence of any ground for denying enforcement, to enforcing or giving effect to the contract as made, that is, to enforce or give effect to the contract as made without regard to its wisdom or folly, to the apparent unreasonableness of the terms, or to the fact that the rights of the parties are not carefully guarded, as the court cannot supply material stipulations

---

[14] Section 11 of the Housing Contract, "**Release from the Agreement**," states as follows:

a. Applicable housing fees will be charged to residents who check out of a room voluntarily, do not withdraw from the University, and remain registered for at least one academic credit during a term within the agreement period.

b. If a resident withdraws from the University and remains withdrawn from the full academic term, and checks out properly, the resident will be charged housing fees based on the date of his or her occupancy. If a resident withdraws during the fall term and re-enrolls and is registered for classes during the spring term, this agreement will remain in effect and the resident will be charged full housing fees as applicable. A new assignment will be based on availability at the time of re-admittance.

c. CSU reserves the right to terminate this contract if payments are not received by the required due date and/or assess an additional fee to any unpaid balance in accordance with University policy.

[15] Section 8 of the Housing Contract, "**Cancellation prior to occupancy**," states as follows:

a. Cancellation of this application prior to occupancy is only valid if received in writing via postal mail, BUCmail, or hand delivery, according to the schedule of applicable dates. Only the student who entered into this contract or the parent who signed the contract on behalf of a resident under the age of 18, may submit a cancellation request. The date of the receipt as recorded by CSU staff will serve as he date of official notification.

b. Cancellation prior to occupancy will result in loss of the non-refundable $100 housing prepayment, regardless of the date of cancellation.

> or read into the contract words which it does not contain so as to change the meaning of words contained in the contract.

McPherson v. J. E. Sirrine & Co., 206 S.C. 183, 206, 33 S.E.2d 501, 510 (1945).

Plaintiffs also argue that the Housing Contract is ambiguous.[16] The Court disagrees. "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. It is a question of law for the court whether the language of a contract is ambiguous." *Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 196, 791 S.E.2d 321, 327 (Ct. App. 2016) (citations omitted). Plaintiffs do not show that any term of the contract may "reasonably be understood in more ways than one." Rather, Plaintiffs' ambiguity argument is entirely based on what is not in the contract. Plaintiffs argue that (1) no language in the Housing Contract allows CSU to remove all students from housing and refuse a refund; (2) no language addresses protocols and or expectations in the case of an institution-wise public health emergency or a blanket closure of all campus housing; and (3) no language addresses the charge or refund policy as a result of an involuntary closure of housing.

A contract is not rendered ambiguous, however, merely because it is silent as to certain eventualities. *See Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "If the contract's language is clear and unambiguous, the language alone determines its force and effect. When a contract is unambiguous, a court must construe its provisions according to the terms used." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). As discussed above, the contract terms specifically state, and Plaintiffs agreed by signing the contract, that they must pay the housing fee in full whether or not they actually utilized the space, and they

[16] Although Plaintiffs argue the contract is ambiguous, they do not indicate what the consequence would be if the Court were to find an ambiguous term, other than to say if it is a contract of adhesion, it should be construed against CSU as the drafter.

also agreed that "[i]f the student attends class and fails to occupy the assigned room, the full cost of space and meal plan will nonetheless be due." (*See supra* Section I(A)(2); *see also* Housing Contract §§ 9 (a), (b).) Plaintiffs have not identified how this language is capable of being understood in more ways than one, or that its meaning is obscure through indefiniteness of expression, or that the language has double meaning. *See Nicholson v. Nicholson*, 378 S.C. 523, 533, 663 S.E.2d 74, 79 (Ct. App. 2008); *Davis v. Davis*, 372 S.C. 64, 76, 641 S.E.2d 446, 452 (Ct. App. 2006). Without an ambiguous term specified, there is nothing for the Court to construe.

Finally, Plaintiffs argue that the CSU contract is one of adhesion. "[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26–27, 644 S.E.2d 663, 669 (2007) (citing *Munoz v. Green Tree Fin. Corp.,* 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001)). Plaintiffs argue, therefore, that because the Housing Contract is an adhesion contract, it must be construed against the drafter. (Pls.' Brief at p. 12 (citing *S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80, 562 S.E.2d 482, 484 (Ct. App. 2002).) However, that rule of construction only applies if there is an ambiguity in the contract terms. *Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134. Because the Court finds no ambiguity, that rule does not apply to the Housing Contract.[17]

---

[17] Even if there were an ambiguity in the contract, Plaintiffs have not met their burden of proving that the Housing Contract is one of adhesion. Plaintiffs argue that the Housing Contract is an adhesion contract because on-campus housing is offered to incoming students on a "take-it-or-leave-it" basis. On-campus housing, however, was not mandatory for all students because the Contract had several exemptions. (CSU Housing Contract, ¶ 1(3), CSU-06920.) More to the point for purposes of this motion, on-campus housing was not mandatory for any of the Plaintiffs—all of whom had reached the age of 20 or who had lived in the residence hall for four consecutive, major semesters prior to the Spring 2020 semester. (Def.'s Exhibit 6, Pls.' Academic Transcripts, CSU-01948-1963.) Therefore, Plaintiffs—well-educated, accomplished young adults who were close to graduation—were free to walk away from signing a contract for room and board that they believed to be unfair by finding housing elsewhere.

(4) Plaintiffs failed to show that CSU promised to provide an open campus during a national public health emergency.

Plaintiffs are also unable to identify any specific contractual terms constituting an objective promise that CSU would provide open campus access during a pandemic or that students are entitled to a refund under such exigent circumstances. Plaintiffs maintain that three contract provisions constitute evidence of a contract whereby CSU agreed to provide Plaintiff with an on-campus experience: (1) CSU's Student Handbook "policies promote a campus community and an environment conductive to being a successful student." (Plaintiffs' Exhibit Y, Student Application Submission at CSU-00308.); (2) CSU's "mission" was "Promoting Academic Excellence in a Christian Environment" (Def.'s Exhibit 29, Student Handbook at CSU 00520); and (3) "[T]he academic leadership of [CSU] believes and affirms that it is in the best interest of traditional students to take, when possible, traditional face-to-face courses in non-accelerated formats. . . . [t]his allows for the building of greater community, the integration of faith, and a full exploration of the goals and outcomes of a given course in the great tradition of academic inquiry . . . Although the university works to provide a full experience for online students . . . online programs are nevertheless different and thus the online student body has different demands." (Def.'s Exhibit 22, Academic Policy R-65, *Enrollment in Online Courses,* CSU-07447.)

Only the third example has potentially relevant language. This is the same language the Court previously found insufficient to create a contractual promise and which is qualified by the words "when possible," such that it is not a promise to perform when performance is not possible, as noted *supra* Section I(A)(1).[18] These same rulings apply here to Plaintiffs' claim that this language required CSU to keep the campus open or to provide refunds.

[18] The Court also finds, as is set forth below, that because performance of the housing contracts was impossible, CSU's obligation, if any, was discharged. *See infra* Section I(D).

B. Plaintiffs failed to show that CSU breached an implied contract.

For an implied contract to arise, as with an express contract, "[t]he parties must manifest their mutual assent to all essential terms of the contract . . . . Therefore, [the plaintiff] must prove [the defendant's] assent by conduct to all those terms essential to create a binding contract." *Stanley Smith & Sons v. Limestone Coll.*, 283 S.C. 430, 434, 322 S.E.2d 474, 477 (Ct. App. 1984).

In their breach of implied contract claim, in addition to relying on the same documents discussed above that the Court has found to be insufficient, Plaintiffs allege that CSU had a history of providing and encouraging on-campus instruction and experiences to its full-time traditional students, giving rise to an implied contract. That alleged course of conduct, however, does not relate to CSU's conduct and dealings during emergency situations. It is undisputed that in prior emergency conditions during Plaintiffs' matriculation at CSU—during hurricanes—the University evacuated students and closed the campus, without refunding tuition or room and board. (Def.'s Exhibit 9, Aungst Dep. at 42:10-21; 43:16-21; Def.'s Exhibit 10, Brown Dep. at 50:10-52:21; Def.'s Exhibit 11, Coughlin Dep. at 87:13-25; 92:4-10; Exhibit 12, Sands Dep. at 42:9-24; 45:8-11; Def.'s Exhibit 13, Serrano Dep., at 62:8-63:1.) That is the applicable course of conduct between the parties during public emergencies, and it obviously does not give rise to an implied contract requiring a refund under the circumstances presented here.

Plaintiffs rely on *Shaffer v. George Washington University*, 27 F.4th 754 (D.C. Cir. 2022), which consolidated cases brought against two universities that moved from in-person to online instruction, to support their argument that the parties' course of conduct supports a finding of an implied contract. Plaintiffs' reliance on this case is misplaced for two critical reasons. First, the case was before the court on motions to dismiss for failure to state a claim, seeking to dismiss complaints against two universities for tuition refunds based on the schools' pivot to online

learning during the COVID pandemic. Therefore, as the court noted, "[a]t this early stage of the litigation, Plaintiffs need only allege 'sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face."' *Id.* at 763. The legal standard, therefore, was much different from the summary judgment standard at issue here. At that stage, the *Shaffer* court allowed claims of implied contract to go forward based on the allegations in the complaint, but acknowledged "that the Universities will likely have compelling arguments to offer that the pandemic and resulting government shutdown orders discharged their duties to perform these alleged promises.". *Id.* at 760. Here, the Court is not limited to consideration of the allegations in the complaint. Second, in *Shaffer*, the course of conduct was based entirely on the universities' historic practice of providing on-campus education, whereas here, CSU has shown evidence of more specific courses of dealing with its students based on its historic practices of shutting down campus without issuing refunds during public emergencies.

Because Plaintiffs have not shown that the parties had mutual intent to enter into an implied contract to provide refunds if CSU failed to provide in-person instruction, room and board, and an open campus under all circumstances—including a pandemic—and Plaintiffs have not shown a course of conduct to support an implied contract, CSU is entitled to summary judgment as a matter of law on Plaintiffs' causes of action for breach of implied contract.

C. CSU reserved the right to modify its courses, policies, and procedures.

In addition to the foregoing, CSU expressly reserved the right to amend its course offerings, policies, and procedures at any time. CSU's Undergraduate Catalog reserved its right to change the way it provided education, housing, and facilities to its students. The reservations gave CSU that right, as follows:

> The provisions of the Undergraduate Catalog, also referred to as "the catalog," are not to be regarded as an irrevocable contract. **The Trustees, Faculty and/or**

> **administration reserve the right to create, modify, or revoke University regulations and other information at any time without notification.**[19]

(Def.'s Exhibit 31, CSU's Undergraduate Catalog at 1 (CSU-01383) (emphasis added)).

CSU's Housing Contract, in the section titled "University Rights," states as follows:

> **The University reserves the right to make other rules and regulations from time to time, as deemed necessary and proper for the safety . . . of residence halls, or for securing the comfort and welfare of all occupants, and to make sure rules and regulations [are] a part of this contract, with sufficient notice from the University.**

(Def.'s Exhibit 32, CSU's 2019-2020 University Housing Student Contract, at § 15(d) (CSU-06925-06926) (emphasis added).

The Housing Contract also has the following reservation of rights:

> **Additionally, the University reserves the right to remove resident students when a student's physical or emotional health . . . place unmanageable risks on the individual or University.**

(Def.'s Exhibit 32, CSU's 2019-2020 University Housing Student Contract, at § 15(b) (CSU-06925)) (emphasis added).

Plaintiffs argue that CSU's reservations of rights are deficient because they fail to address the students' rights when CSU makes major changes such as those that CSU implemented during the pandemic. However, they cite no authority for the proposition that a reservation of rights must specify the rights of all parties when enacting major changes under such provisions.

[19] The reservation of rights provision in the Undergraduate Catalog also gives a link for the students to locate the Policies and Procedures manual as follows: "A copy of the academic Policy and Procedures manual is located in the Office of the Registrar, and is also available online at www.charlestonsouthern.edu (under Academics click Registrar)." (Def.'s Exhibit 31, CSU's Undergraduate Catalog at 1 (CSU-01383.)

Plaintiffs also argue that the reservations of rights were adhesion contract provisions that made the contract unconscionable. Plaintiffs, however, have failed to plead unconscionability—let alone meet their burden to prove unconscionability. *See Finch v. Lowe's Home Centers, LLC*, No. 3:20-cv-02981-JMC, 2021 WL 2982863, at *9 (D.S.C July 21, 2021); *Payne v. Amazon.com, Inc.*, No. 2:17-CV-2313-PMD, 2018 WL 4489275, at *3 (D.S.C. July 25, 2018). "[U]nconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions *together with* terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). "Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract." *Gladden v. Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884–85 (2013) (citation omitted).

Plaintiffs fail to establish that the terms of the reservations of rights are not "so oppressive that no reasonable person would make them and no fair person would accept them." Instead, Plaintiffs offer only hypotheticals based on speculation of what *could* happen under the contract provisions, not what *did* happen—arguing that these provisions would allow CSU to shut down campus regardless of the circumstances, while not contesting the decision CSU made under the circumstances it faced. Although Plaintiffs claim that "[n]o reasonable person would agree to blanket provisions such as these," in this case four accomplished and educated people voluntarily chose to enter into the contracts with these terms and, after confirming that they read and agreed

to the contracts, signed them. Undoubtedly, they did so expecting that CSU would exercise its rights judiciously and in good faith, and never once do Plaintiffs question CSU's decisions or its exercise of good faith during the Spring 2020 semester. *See* Tr. of 9/5/25 Hr'g at 37:7–9 (Plaintiffs' counsel stating, "[W]e don't fault them for shutting down the campus. I want to be very clear about that. We appreciate the situation."); Pls.' Br. at 2 ("CSU, understandably, closed its campus as well as its dorms and cafeterias in response to the Covid-19 Pandemic. To be clear, Plaintiffs take no issue with CSU closing its campus as well as its dorms and cafeterias in response to Covid-19.")

Nothing in the record suggests that when CSU decided to alter the manner in which it delivered instruction and other services it did so capriciously or maliciously; instead the record shows, and Plaintiffs do not contest, that CSU acted deliberatively and carefully to protect students and other members of the CSU family.[20]

Accordingly, the reservations of rights in CSU's contracts effectively allowed the University to make changes in the method of instruction and closing the campus. For this additional reason, CSU is entitled to summary judgment on Plaintiffs' breach of contract claims as a matter of law.

D. Even if CSU had a duty to keep the campus open and conduct classes in person, the duty was excused under the doctrine of impossibility.

The Court also finds that CSU's performance under its contracts with Plaintiffs was rendered impossible as a matter of law, and therefore its performance obligations, if any, are deemed discharged. A party to a contract must perform its obligations under the contract unless its

[20] To the extent Plaintiffs are arguing that the Housing or Reservations of Rights did not fall within their expectations, the South Carolina Supreme Court found that the creation of a "realistic expectations" test establishing limitations on the enforcement of adhesion contracts to be unwarranted and unnecessary extension of South Carolina law. *S. Atl. Fin. Servs., Inc. v. Middleton*, 356 S.C. 444, 447-48, 590 S.E.2d 27, 29-30 (2003).

performance is rendered impossible by an act of God, the law, or by a third party. *Evans v. State*, 344 S.C. 60, 67, 543 S.E.2d 547, 551 (2001); *Pearce-Young-Angel Co. v. Charles R. Allen, Inc.*, 213 S.C. 578, 591, 50 S.E.2d 698, 703 (1948). Beginning on March 13, 2020, Governor Henry D. McMaster declared that the State of South Carolina was in a public health state of emergency due to the threat of the 2019 Novel Coronavirus.[21] The Governor followed with a series of additional Executive Orders limiting the number of people who could gather in one place to three people, closing a number of venues and facilities across the State such as those on CSU's campus that are the subject of this lawsuit, and implementing social distancing and a "stay-at-home" order.[22]

Plaintiffs do not dispute that CSU could not have followed the orders while remaining open to students. To the contrary, as noted above, in the introduction of their brief in opposition to CSU's motion for summary judgment, Plaintiffs admitted that they understood, agreed, and had no issue with CSU's closing its campus, dorms, and cafeterias in response to COVID-19. (Pls.' Br. at 2, 16 n.7; Tr. of 9/5/25 Hr'g at 37:7-9.)

[21] Def.'s Exhibit 1, 3/13/20 Executive Order No. 2020-08; 3/28/20 Executive Order No. 2020-15 (second state of emergency order); 4/12/20 Executive Order No. 2020-23 (third state of emergency order).

[22] Def.'s Exhibit 1, 3/23/20 Executive Order No. 2020-13) (allowing public officials to prohibit or disperse any gathering of three or more people—except in their homes—if it was determined that the gathering would pose a threat to public health); *id.*, 3/31/20 Executive Order No. 2020-17 (informing that the President of the United States, at Governor McMaster's request, had declared the existence of a "major disaster" in South Carolina related to the COVID pandemic and closing concert venues, theaters, auditoriums, performing arts centers, venues operated by social clubs, and sports, fitness, and exercise centers, spectator sports and sports that involved placing people in proximity to and within less than six feet of another person or that required use of shared sporting apparatus and equipment); *id.*, 3/31/20 Executive Order No. 2020-17 ("Closure of Non-Essential Businesses, Venues, Facilities, Services, and Activities for Public Use," requiring, among other things, that "any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective 'social distancing' practices"); and *id.*, 4/6/20 Executive Order No. 2020-21 (issuing a "stay-at-home" mandate).

Plaintiffs nonetheless submit that Executive Order No. 2020-15, filed March 20, 2020, did not mandate that private universities must close, and CSU has not argued otherwise. That Order, however, does declare a state of emergency in this State. Further, the other Executive Orders cited by CSU did, in fact, require closure to comply with the Orders, and Plaintiffs have not disputed that.

Under the emergency circumstances and Governor's orders, the Court finds that keeping the University campus open and keeping students in the dorms, cafeterias, and classrooms was not legally possible. Therefore, even if Plaintiffs were able to identify a contractual term obligating CSU to provide in-person instruction, housing, meals, and on-campus services, the global pandemic and Governor McMaster's executive orders would have substantially frustrated the purpose of any such alleged contract, making performance impossible. "If a party by his contract charges himself with an obligation possible to be performed, he must make it good, unless its performance is rendered impossible by an act of God, the law, or other party." *Jones v. Bates*, 241 S.C. 189, 193, 127 S.E.2d 618, 619 (1962) (emphasis added) (citing *Pearce-Young-Angel Co.*). Thus, the Court finds that the doctrine of impossibility excused CSU's performance as a matter of law, and Plaintiffs have not demonstrated that they were damaged, as discussed in the next section.

E. Plaintiffs have not been damaged because they did not pay less for online classes.

The Court finds that all of Plaintiffs' claims for tuition and fee refunds fail because Plaintiffs do not show they were damaged, which is essential to all of their claims for these losses. *See Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). As detailed above, no Plaintiff paid a premium tuition. *See supra* Section I(A)(2), Each received significant discounts and financial aid that substantially reduced the amount of their out-of-pocket tuition–whether viewed as a flat rate or on an hourly basis. Specifically, the undisputed record

reflects that when accounting for discounts and financial aid, each Plaintiff paid less than $490 per hour.[23] Plaintiffs' only measure of tuition-related damages is the difference between the amount of tuition they paid and the amount they would have paid for online courses. Because none paid more for in-person classes than they would have for online courses, Plaintiffs have no damages. The Court therefore grants summary judgment as to all claims.

II. Plaintiffs' tuition claims are barred by the educational malpractice doctrine.

In *Hendricks v. Clemson University*, 353 S.C. 449, 459-61, 578 S.E.2d 711, 716-17 (2003), the South Carolina Supreme Court followed the majority of states that had considered the issue of educational malpractice and refused to recognize tort and contract claims brought by students alleging an inadequate education or deficiency of education-related services. The *Hendricks* court based its decision on three policy grounds: "(1) the lack of a satisfactory standard of care by which to evaluate educators, (2) the inherent uncertainties of the cause and nature of damages, and (3) the potential for a flood of litigation against already beleaguered schools." *Id.* at 457, 578 S.E.2d at 715.

Although Plaintiffs argue that their claims do not involve teaching quality or educational malpractice, the record in this case shows otherwise. For example, multiple pages in the Complaint are devoted to the allegedly inferior quality of online education. (Defs.' Exhibit 16, Third Am. Compl. ¶¶ 13, 60, 62-66, 67, 69.) More importantly, Plaintiffs Brown, Sands, and Serrano testified that they are seeking damages for what they claim to be the inferior quality of education they received from online classes (Defs.' Exhibit 10, Brown Dep. at 117:7-118:22; Exhibit 12, Sands

[23] Further, even if Plaintiffs had been part-time students paying by the hour without access to discounts and aid, they would have paid an hourly rate of $470 per credit hour for in-person classes as compared to $490 per hour for online courses, often with an additional fee of $180. (*See supra* Facts, p. 5.)

Dep. at 19:19-20:9; Exhibit 13, Serrano Dep. at 64:23-65:12; 66:4-69:24). Accordingly, the claims for tuition and fee refunds asserted by Brown, Sands, and Serrano are squarely barred by the education malpractice doctrine.

Plaintiffs Coughlin and Aungst were less direct. They testified not that their education during the Spring 2020 semester was inferior, but that it was "different" than what they paid for. (Defs.' Exhibit 11, Coughlin Dep. at 36:19-37:2; 217:1-14; Defs.' Exhibit 9, Aungst Dep. at 39:3-9; 17:14-17, 39:2-40:1, 67:2-19, 90:3-9.) These Plaintiffs maintain they were deprived of on-campus, in-person classroom experiences, such as being in the Christian community and having access to places and events (for example, access to pools, Sweet 16 events, sporting events, library, chapel, and other events) (Tr. of 9/5/25 Hr'g at 55:15- 23.) They claim that losses arising from loss of these college experiences are not barred by the educational malpractice doctrine. The Court, however, finds these claims equally barred for the same policy reasons that supported the ruling in *Hendricks*.

To an even greater degree than classroom-related educational malpractice claims, claims for an inferior on-campus experience lack any meaningful standard of care or reliable means for calculating damages. These uncertainties are evident in the damages Plaintiffs are seeking. Perhaps because of the inherent impossibility of quantifying damages arising from the college experiences the COVID pandemic prevented them from having, Plaintiffs' only measure of damages in the record purports to compare tuition rates *only for classroom activities*–that is, by comparing tuition for in-person with tuition for online studies. There is no logical connection, however, between a student having access to the swimming pool or baseball games and taking their classes in person or online, particularly where, as here, online students have the same access to campus activities as do traditional students. Notably, Plaintiffs do not provide a damages model

that compares tuition they actually paid for a full campus experience and the tuition they would have paid without having access to the campus activities that they enjoyed. In fact, the exact same damages model is used for the three plaintiffs who seek losses from their inferior classroom experience as with the two Plaintiffs who only claim their campus life experience was different than what they expected. Plainly, just as in *Hendricks*, these types of collegiate experience damages are hopelessly intangible and speculative. *See Road, LLC v. Beaufort Cnty.*, 433 S.C. 164, 176, 857 S.E.2d 371, 377 (Ct. App. 2021) (noting "neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation" (citation omitted)). To allow these claims to stand, the Court would be required "to engage in just the type of subjective analysis that courts prohibiting educational malpractice claims in tort and contract have avoided." *Hendricks*, 353 S.C. at 461, 578 S.E.2d at 717. The Court declines to do so, as it violates every policy reason the Supreme Court identified as underlying the prohibition against claims for educational malpractice.

For these reasons, the Court finds that CSU is entitled to summary judgment as a matter of law as to all claims seeking tuition and fee related damages.

III. Plaintiffs acquiesced to virtual instruction.

"If a party stands by and sees another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position, his silence is acquiescence, and it estops him from later seeking relief." *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987); *Acosta v. Dist. Bd. of Trustees of Miami-Dade Cmty. Coll.,* 905 So. 2d 226, 228–29 (Fla. Dist. Ct. App. 2005) (finding acquiescence to higher tuition by commencing the college's program, satisfying all course requirements, and eventually graduating).

Plaintiffs do not dispute that they voluntarily remained enrolled in their courses after CSU shifted to virtual instruction for the remainder of the Spring 2020 semester as a result of the pandemic, continued their Spring 2020 semester coursework online, did not pursue any alternative options—such as withdrawing and accepting CSU's invitation to complete their classes the following fall semester without any academic penalty and/or pursuing a refund under the applicable policies.[24] In fact, Plaintiffs all failed to claim a breach or ask for reimbursement until after CSU provided the classes that allowed them uninterrupted progress towards their degrees.[25]

Plaintiffs have not shown a genuine issue of material fact as to their acquiescence to online instruction and closing the campus without refunding the tuition and fees they seek in this lawsuit. Therefore, the Court finds as a matter of law that Plaintiffs acquiesced to the changes CSU made as a result of the pandemic and are not entitled to any additional refunds for tuition or fees.

IV. Plaintiffs are not entitled to unjust enrichment.

Unjust enrichment is not an available remedy when a relationship is governed by contract. *See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424-25, 559 S.E.2d 362, 364-65 (Ct. App. 2001) (affirming summary judgment on unjust enrichment claim because the

[24] *See* Def.'s Exhibit 31, CSU Undergraduate Catalog, at CSU-01449-01450; CSU-01464-01465; CSU-01406-01407; CSU-07361.

[25] Defs.' Exhibit 17, Pls.' Answers to CSU's First Set of Interrogs. & Reqs, for Produc. (7/2/24 (Aungst, Brown, Sands, Serrano) and 7/23/24 (Coughlin); Aungst Resp. to Reqs. for Produc. at No. 16 ("Plaintiff does not recall requesting any refunds . . . ."); Brown Interrog. Answer at No. 18 ("Plaintiff did not reach out to Defendant for a refund at any time during her enrollment."); Brown Resp. to Reqs. for Produc. at No. 16; Coughlin Interrog. Answer at No. 18 ("Plaintiff did not reach out to Defendant for a refund at any time during his enrollment . . . ."); Coughlin Resp. to Reqs. for Produc. at No. 16; Sands Interrog. Answer at No. 18 ("Plaintiff did not reach out to Defendant for a refund at any time during her enrollment."); Serrano Interrog. Answer at No. 18 (stating only that she requested a detailed and itemized statement of her refund, not that she requested a refund).

parties' pleadings admitted the existence of a valid written contract covering the same subject matter); *R.L. Mlazgar Assocs., Inc. v. HLI Sols., Inc.*, No. 6:22-CV-04729-JDA, 2025 WL 2224039, at *10 (D.S.C. Aug. 5, 2025) (dismissing unjust enrichment claim under Rule 12(b)(6), although the plaintiff argued that the claim was an alternative remedy, because the parties agreed a valid contract existed, which governed the subject matter in dispute). Here, the parties agree that a valid contract exists and that it governs their dispute, and Plaintiff is seeking the same alleged damages for both claims. Therefore, as a matter of law, Plaintiffs are not entitled to seek damages for unjust enrichment. Further, as the Court found above, Plaintiffs have not been damaged, so their unjust enrichment claim must fail.

V. Plaintiffs cannot recover for conversion.

"Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003) (affirming summary judgment when the borrower had no right to possess a certificate of deposit at the time the bank took possession of the CD) (quotations omitted). To establish conversion, "it is essential that the plaintiff establish either title to or right to the possession of the personal property." *Id.* Conversion cannot arise from the defendant's exercise of a legal right over the property. *Richardson's Rest., Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991).

Conversion is generally unavailable when money is at issue, "unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Richardson's Rest.*, 304 S.C. at 294, 403 S.E.2d at 672; *SmartLinx Sols., LLC v. Zeif*, No. 2:21-CV-711-BHH, 2024 WL 1406014, at *17 (D.S.C. Apr. 2, 2024) (granting summary judgment on a conversion claim and

stating that "conversion applies to money only when 'there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff.'"); *Vercon Constr., Inc. v. Highland Mortg. Co.*, No. 3:03-1370-JFA, 2005 WL 6158875, at *4 (D.S.C. July 21, 2005), *aff'd*, 187 F. App'x 264 (4th Cir. 2006) ("[T]he retainage in this case does not constitute the type of 'money' which is subject to conversion. The retainage is not an identifiable or separate item. **There is no evidence in the record that the retainage was separately maintained by [the defendant] and not commingled with other funds.**") (emphasis added) (citations omitted).

Plaintiffs rely principally on *Moore v. Weinberg*, 383 S.C. 583, 681 S.E.2d 875 (2009), to support their claim for conversion of money paid to CSU during the 2020 Spring semester. The *Weinberg* case concerned a lawyer who forgot that a specific amount of money in his escrow account was to be disbursed to the plaintiff and instead paid the money to another client and for attorney's fees. There, the court did not grant summary judgment to the plaintiff, finding that a genuine issue of material fact existed.[26] *Id.* at 589, 681 S.E.2d at 878–79. Plaintiffs also cite *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 498–99, 392 S.E.2d 789, 792–93 (1990), where the court found that the plaintiff sufficiently established, by affidavit, a determinate amount of money that was converted and could also identify into which account the sums were deposited. *Id.* at 498–99, 392 S.E.2d at 792–93.

Unlike in those cases, Plaintiffs have not identified a separate, identifiable fund that was separately maintained and not comingled with other funds. Also, Plaintiffs have not shown any evidence of ownership or any right to possession of funds in CSU's bank account or that CSU was not authorized to keep those funds.

[26] The court did not set forth any facts or reasoning for its decision, so this Court cannot apply the *Weinberg* case to make a finding on the summary judgment motion in this case.

Therefore, as a matter of law, CSU is entitled to summary judgment on Plaintiffs' claims for conversion of money they paid to CSU in 2025.

CONCLUSION

For the foregoing reasons, it is hereby ordered that CSU's Motion for Summary Judgment is granted in all respects, final judgment is entered in favor of CSU, and Plaintiffs' Motion for Class Certification, which is pending before the Court, is denied as moot.

IT IS SO ORDERED.

This the 9th day of January, 2026.

_____

The Honorable Jennifer B. McCoy
Circuit Court Judge

Charleston Common Pleas

Case Caption: Jessica Taylor , plaintiff, et al VS Charleston Southern University

Case Number: 2020CP1002357

Type: Order/Summary Judgment

So Ordered

s/Jennifer B. McCoy #2764