

STATE OF MICHIGAN
IN THE SUPREME COURT

KEVIN HARRIGAN,

Plaintiff/Appellant,

v.

EASTERN MICHIGAN UNIVERSITY, and
BOARD OF REGENTS OF EASTERN
MICHIGAN UNIVERSITY,

Defendants/Appellees.

Supreme Court No. 164214
(consolidated with No. 164213)

Court of Appeals No. 355377
Court of Claims No. 20-000075-MK

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**APPENDIX TO APPELLEE EASTERN MICHIGAN UNIVERSITY'S
SUPPLEMENTAL BRIEF**

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APPENDIX A

RECEIVED

STATE OF MICHIGAN
COURT OF CLAIMS

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KEVIN HORRIGAN, and all others
similarly situated,

Plaintiff,

v.

EASTERN MICHIGAN UNIVERSITY
and BOARD OF REGENTS OF
EASTERN MICHIGAN UNIVERSITY,

Defendants.

CASE NO. 20- 000075 -MK

HON. Helly

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THERE IS NO PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE TRANSACTION OR OCCURRENCE ALLEGED IN THIS COMPLAINT.

VERIFIED CLASS ACTION COMPLAINT

Plaintiff KEVIN HORRIGAN (“Plaintiff”), by and through his counsel, brings this action against the Defendants EASTERN MICHIGAN UNIVERSITY and the BOARD OF REGENTS OF EASTERN MICHIGAN UNIVERSITY (“Defendants” or the “University”) on behalf of himself and those similarly situated, and makes the following allegations based on information, attorney investigation, and belief, except as to the allegations pertaining to the Plaintiff personally, which are founded on his respective knowledge.

INTRODUCTION

1. Plaintiff brings this case against Defendants to demand remediation of the Defendants’ refusal to provide adequate restitution for tuition, room and board, fees, and other applicable costs after the Plaintiff and similarly situated students were forced to leave the University due to the Novel Coronavirus Disease of 2019 (“COVID-19”) pandemic. As a result of this refusal, the Plaintiff and similarly situated students lost the benefits of in-person instruction, housing, meals, and student activities for which they had already paid or been charged by the University for an entire semester. Plaintiff and similarly situated students seek refunds of the amounts they paid on a pro-rata basis or an equivalent reduction in amounts owing as well as other damages to be elaborated on herein.

BACKGROUND

2. On or around March 11, 2020, the University announced that because of the COVID-19 pandemic, all classes would be moved online for the remainder of the Winter 2020 semester. Defendants instructed students who lived in University residence halls and other on-campus University housing to return to their permanent places of residence if they could. Certain

residence halls would remain open with limited dining options for students who had no choice but to remain on campus. On information and belief, most students in University housing have complied with the directive to leave campus and have since been locked out of their University residences. Even if remaining in on-campus housing were an option for students with no other place to go, residence halls and other campus housing are not designed to safely house students in the event of a pandemic. In order to stay safe, unless there are absolutely no other options, students must move out to practice safe, social distancing.

3. Despite the cancellation of live in-person instruction, the constructive eviction of students at the University for the remainder of the semester, and the cessation of all campus activities for at least the same time period, the University has not offered adequate refunds or reductions in outstanding charges for tuition, room and board, and fees charged to cover the cost of certain on-campus services which will no longer be available to students. With respect to room and board, the University has merely offered a credit for students who followed its directive to move out of residence halls. The credit will be calculated from March 31, the date residence halls were officially closed, through the end of the semester. The University is also offering a \$500 credit to students who commit to remaining in University housing for the Fall 2020 semester. However, these credits are not commensurate with the financial losses sustained by students and their families.

4. A significant portion of the semester (which spans from January 6, 2020 through April 27, 2020) remained when the University directed students to move out of University housing in March.

5. The University's decision to transition to online classes, to encourage students to leave University housing and to restrict dining services were responsible decisions to make, but it

is unfair and unlawful for the University to retain full tuition and fees, to retain a substantial part of prepaid amounts for room and board costs along with other fees and to refuse to reduce any outstanding charges, effectively passing the losses on to the students and their families. Other higher education institutions across the United States that also have switched to online learning and requested that their students leave campus have recognized the upheaval and financial harm to students and their families from these decisions and have provided appropriate refunds and reductions in outstanding charges. The University, unfortunately, has not followed the pattern of many of its peers.

6. Accordingly, the University has improperly retained money paid by Plaintiff and the other members of the Classes (defined in Paragraph 46 below), and failed to adequately reduce outstanding charges, for tuition, room and board, and fees, even though the University is not offering the benefits secured by the payments. When the University sent its students home in the wake of a global pandemic, the school improperly retained funds for services it is not providing and continued to seek recovery of all outstanding charges. The University's actions are unlawful and unfair, and equity demands disgorgement of funds paid and a commensurate reduction in any outstanding charges.

7. Plaintiff brings this class action for damages, injunctive, declaratory, and equitable relief, and any other available remedies, resulting from the University's illegal and unfair conduct, namely retaining full tuition, retaining a disproportionate share of the costs of room and board paid by Plaintiff and the other members of the Classes, retaining the full amount paid for fees, and refusing to adjust outstanding charges, even though Plaintiff and other members of the Classes have been forced to move off campus.

8. This lawsuit also seeks disgorgement of: partial tuition for the Winter 2020 semester; the prorated unused portion of room and board; and, unused fees that Plaintiff and other members of the Classes paid, but for which they (or the students on behalf of whom they paid) will not be provided the benefit.

PARTIES

Plaintiff

9. Plaintiff Kevin Horrigan is a resident of the state of Ohio. He is a student at the University. Plaintiff is an environmental science major.

10. Plaintiff enrolled in the University for the Winter 2020 semester and lived in University housing. Plaintiff financed a portion of his education with scholarships and student loans. The remaining balance of the cost for tuition, room, board and fees for the entire Winter 2020 semester was paid by Plaintiff and his family out-of-pocket.

11. Plaintiff's education has transitioned from in-person to online learning as part of students and non-essential personnel being forced to evacuate the University's campuses. Plaintiff's online classes are not commensurate with the same courses being taught in-person. Plaintiff is now missing the benefit of in-person interaction with professors. Plaintiff has not been provided with an adequate refund of tuition.

12. Plaintiff moved out of on-campus housing at the behest of the University. Indeed, the sudden change of living arrangements for the Plaintiff was in keeping with the University's direction that any student who could move home or to a different location should do so. Plaintiff has not resided in on-campus housing since he left campus in March of 2020. Plaintiff has not received an adequate refund or reduction in outstanding charges of the payments for room and board.

13. Plaintiff paid for a meal plan for the Winter 2020 semester, the benefits of which will no longer be received. Plaintiff has not been provided an adequate refund or reduction in outstanding charges.

14. Plaintiff also has been charged for certain fees for the entire Winter 2020 semester, the benefits of which will no longer be received. Plaintiff has not been provided an adequate refund of his payments or a reduction in outstanding charges.

Defendants

15. Defendant, Eastern Michigan University, is a public research university located in Ypsilanti, Michigan.

16. Defendant, the Board of Regents of Eastern Michigan University, is a body corporate authorized to sue and be sued on behalf of Eastern Michigan University with respect to its responsibilities governing the University.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this action pursuant to MCL 600.6419(1)(a), because the University is a department of the State.

18. This Court has jurisdiction pursuant to MCR 2.605 because Plaintiff and the proposed members of the Classes seek a declaratory judgment, there is an actual controversy between the parties, and the Court would have jurisdiction if relief other than a declaratory judgment were sought.

19. This Court has jurisdiction over this action and venue is proper because at least some of the events giving rise to these causes of action occurred in Washtenaw County, Michigan and at least some of the injuries suffered by Plaintiff and the proposed members of the Classes occurred and will continue to occur in Washtenaw County, Michigan.

FACTUAL ALLEGATIONS

Plaintiff and Other Members of the Classes Have Been Charged the Full Cost of Tuition, Room and Board, and/or Fees for the Semester of Winter 2020

20. Plaintiff and members of the Classes are individuals who were charged the cost of tuition, room and board, and/or fees for the University's semester in Winter of 2020.

21. Winter semester classes at the University began on January 6, 2020. Final exams for the semester are scheduled to end on or around April 27, 2020. Prior to the COVID-19 outbreak, students were scheduled to move out of their residences during or around the last week of April 2020; however, because of the COVID-19 outbreak, Plaintiff and other members of the Classes moved out in the middle of March.

22. For freshmen, tuition at the University for the 2019-2020 academic year starts at \$13,125 for Michigan and Ohio residents. Other out of state students were charged higher tuition rates. Approximate room and board costs at the University for the year start at \$9,680 for shared occupancy of a double room with the lowest price meal plan.

23. Tuition and fees listed and described in the above paragraphs are provided by way of example; total damage amounts – which may include other fees not listed herein – will be proven at trial. There are also fees which are not included in the cost of tuition, which are separately discussed above and throughout this Complaint.

In Response to COVID-19, the University Gets It Half Right: Students Are Forced to Leave Campus, But the University Does Not Provide A Refund or Reduction in Outstanding Charges for Partial Tuition, Room and Board, and Fees

24. Beginning in January of 2020, COVID-19 began presenting American cities and universities with an unprecedented, modern-day challenge.

25. In March 2020, several U.S. cities, states, and municipalities began calling for social distancing to slow the spread of COVID-19. Eventually, some cities, states, and

municipalities ordered citizens and residents to “shelter-at-home,” effectively requiring them to stay home, other than to receive essential services.

26. In March 2020, the University announced that all Winter 2020 classes would be moved to online learning platforms. Additionally, students who could leave campus residence halls at the University were directed to do so, as the school announced that it was closing residence halls and only students with extenuating circumstances would be permitted to remain in on-campus housing. Food options for students who needed to remain on campus would be continued on a very limited basis.

27. The University has retained the payments made by Plaintiff and the other members of the Classes for tuition for live in-person instruction and fees, while failing to provide the services for which those fees were paid. The University has retained a disproportionate amount of sums paid for room and board. The University has also not adequately reduced outstanding charges assessed against, but not yet paid by, some members of the Classes for tuition, room and board, and fees.

28. Various members of the Classes have demanded a refund or reduction in outstanding charges for the unused amounts of funds paid for tuition, for room and board, and fees. The University has made clear that it will not reduce outstanding charges or return any tuition or fees, and will not adequately reduce payments for room and board.

29. Through this lawsuit, Plaintiff seeks for himself and the other members of the Classes: a reduction in outstanding charges and a partial refund of tuition representing the difference in value of a half semester of live in-person instruction versus the value of a half semester of online distance learning; a reduction in outstanding charges and the return of the unused portion of room and board costs proportionate to the amount of time that remained in the

Winter 2020 semester when students were forced to move out of their on-campus housing; and, a reduction in outstanding charges and the full refund of the unused portion of each meal contract and a refund of a prorated share of fees.

The University Failed to Reduce Charges and Refund Partial Tuition: The Difference in Value of Online Education vs. Live In-Person Instruction in Brick and Mortar Classrooms

30. University students were not offered a reduction in outstanding charges or a partial refund of tuition representing the difference in value between online distance learning platforms and live in-person instruction in brick and mortar classrooms.

31. As noted in a July 9, 2017 study by Eric Betting and Susanna Loeb of the Brookings Institute (the “Brookings Study”)¹, the promises of online courses are “far from fully realized”:

- While online courses can improve access, they are challenging, especially for the “least well-prepared students” who “consistently perform worse in an online setting than they do in face-to-face classrooms.”
- Taking courses online “increases their likelihood of dropping out and otherwise impedes progress through college.”

32. Of note, the Brookings Study uses data from DeVry University, comparing DeVry’s online and in-person courses. The results are telling and provide evidence that students learn less in the online setting:

¹ <https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/>.

- Taking courses online reduces student grades by 0.44 points on the traditional four-point grading scale, a 0.33 standard deviation decline relative to taking courses in-person.
- Specifically, students taking the course in-person earned roughly a B- (2.8) grade on average while if they had taken it online, they would have earned a C (2.4).
- Taking a course online reduces a student's GPA the following term by 0.15 points, with larger drops of 0.42 points and 0.32 points respectively in the next term's grades for courses taken in the same subject area or for courses in which the online course is a prerequisite.
- The study also found that taking a course online, instead of in-person, increases the probability that the student will drop out of school, citing that students are approximately 9% less likely to remain enrolled in the semester after taking an online course.

33. The Brookings Study concludes that the “analyses provide evidence that students in online courses perform substantially worse than students in traditional in-person courses and that experiences in these online courses impact performance in future classes and their likelihood of dropping out of college as well. The negative effects of online course-taking are far stronger for students with lower prior GPA.”

34. In addition to the value of live in-person instruction, students are more successful academically and otherwise when living in university residence halls.² “The truth of the matter is that campus housing provides a great deal of return to the students who chose to live in the residence halls. This has been demonstrated through multiple studies over multiple years.”³

35. Several studies demonstrated that living in a residence hall had a positive impact on degree attainment and that on-campus students were more likely to stay in school and graduate than commuter students.⁴ “The data are very clear – the impact of higher education increases

² <https://theconversation.com/why-there-is-value-in-on-campus-living-45691>

³ Id.

⁴ Id.

dramatically when students are enrolled in a college that engages them in a robust campus life program, especially in a college where they live on campus and are constantly interacting with a range of people and ideas.”⁵

36. While Plaintiff acknowledges the necessity of the University’s efforts to continue delivering education in a format other than in-person classes, the value (and cost) of online classes is less than in-classroom instruction, with labs, seminars and office hours.

37. Plaintiff and members of the Classes who were charged tuition for live in-person instruction in brick and mortar classrooms that were forced to use online distance learning platforms for the remainder of the Winter 2020 semester did not get the full benefit of what they bargained for when they agreed to pay tuition for the Winter 2020 semester.

The University Failed to Reduce Outstanding Charges or Refund Prorated Room and Board Payments

38. While social distancing is recommended by healthcare professionals and the Center for Disease Control and Prevention (“CDC”), the resulting financial impact on students and families is significant.

39. University students were informed that they would receive a credit to their student account as long as they moved out of residence halls by a set date. Students who lived in University housing and contracted for a meal plan would receive a credit calculated from March 31 through the end of the semester.

40. In a message to students dated March 19, 2020, the University stated the following:

Housing and Dining Services are offering students who have moved out by 5 p.m. March 31, 2020, and students who purchased a meal plan this semester, a credit to help account for these charges. The amount of the housing or meal plan credit will be calculated based on the March 31 residence hall closure date through the end of the winter semester. The credit will be applied to the student’s account. If a student

⁵ https://www.huffpost.com/entry/the-value-of-campus-life_b_57f3e995e4b03d61445c7443

commits to remain in housing next fall, an additional University housing grant in the amount of \$500 will to [sic] applied to their fall 2020 housing account. Normal University refund procedures apply. Visit Student Business Services refund page for complete information. Processing the entire population of students living in campus housing and on meal plans will take some time, and we ask for your patience. It is important to remember the unprecedented time we are in and the state of emergency that surrounds, and affects, all of our actions. Students should monitor their campus email for information and timing about the housing and dining credit opportunity. For any student who receives Federal financial aid, it is strongly encouraged you contact EMU Financial Aid at financial_aid@emich.edu to see how this credit may impact your financial aid determination. You are responsible for investigating and understanding any potential impact. Institutional funds covering student room and board -- including student-athletic scholarships, Presidential Scholarships, Residential Advisor housing grants, and others -- are not subject to this credit. The credit is meant to apply to cover out-of-pocket costs only. We appreciate your patience and understanding as we work through new processes and details as quickly as possible in light of the health crisis.

41. The delayed refund is insufficient because it does not fully reduce outstanding charges or refund the full prorated, unused portion of room and board payments for the portion of the semester when students were no longer on campus.

42. In addition to the price of tuition, housing, costs and fees, Plaintiff and members of the Classes were charged for on-campus meals. After students were directed to leave, they lost access to the food being served on campus. The University has failed to adequately reduce outstanding charges or reimburse students on a prorated basis for the amounts paid for unused meals.

Student Fees

43. In addition to the failure to reimburse tuition and to adequately reimburse payments for room and board, the University failed to offer students a reduction in outstanding charges or a refund of any of the fees they were charged for the semester that were unused or for which they had not received a benefit.

44. This is so even though most University buildings were closed and all student activities were canceled for the remainder of the Winter 2020 semester.

CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action as a class action, pursuant to Michigan Court Rule 3.501, individually on behalf of the proposed classes (“Classes”) enumerated in the following paragraph, under Class Definitions.

46. **Class Definitions.** Plaintiff brings this case for damages, equitable relief and disgorgement, on behalf of three Classes, defined as:

Tuition Class: All people who were charged for or paid tuition for students enrolled in classes at the University for the Winter 2020 semester who were denied live in-person instruction and forced to use online distance learning platforms for the last quarter of the 2019-2020 academic year (the “Tuition Class”).

Room and Board Class: All people who were charged for or paid the costs of room and board (housing and meals) for students enrolled in classes at the University for the Winter 2020 semester who moved out of their on-campus housing prior to the completion of that semester because of the University’s policies and announcements related to COVID-19 (the “Room and Board Class”).

Fee Class: All people who were charged for or paid fees for or on behalf of students enrolled in classes at the University for the Winter 2020 semester (the “Fee Class”).

47. Excluded from the Classes are: the Board of Regents of Eastern Michigan University, and any of its respective members and their family members; the judicial officers assigned to this matter, and their immediate family members; and, Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class Definitions, as appropriate, during the course of this litigation.

48. This action has been brought and may properly be maintained on behalf of the Classes proposed herein under the criteria of Michigan Court Rule 3.501.

49. **Numerosity – Michigan Court Rule 3.501(A)(1)(a).** The number of members of each of the Classes is so numerous that individual joinder of all members of the Classes is impracticable. The precise number of members of the Classes is unknown to Plaintiff, but may be ascertained from the University's records. Members of the Classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

50. **Commonality – Michigan Court Rule 3.501(A)(1)(b).** This action involves questions of law and fact common to the Classes, which predominate over any individual questions, including:

- a. Whether Defendants engaged in the conduct alleged herein;
- b. Whether there is a difference in value between online distance learning and live in-person instruction;
- c. Whether the University breached its contracts with Plaintiff and the other Tuition Class members by retaining the portion of their tuition representing the difference between the value of one half a semester of online distance learning and the value of one half a semester of live in-person instruction in brick and mortar classrooms and by refusing to reduce outstanding charges;
- d. Whether the University was unjustly enriched by retaining tuition payments and refusing to reduce outstanding charges of Plaintiff and the Tuition Class representing the difference in value of one half a semester of online distance learning and the value of one half a semester of live in-person instruction in brick and mortar classrooms;

- e. Whether the University breached its contracts with Plaintiff and the other members of the Room and Board Class who entered into housing agreements by not adequately reducing outstanding charges or refunding the full prorated amount of housing expenses and whether the University breached its contracts with Plaintiff and the other Class members by not adequately reducing outstanding charges and by retaining costs for food and on-campus dining without providing those services which the costs were intended to cover;
- f. Whether the University was unjustly enriched by not reducing outstanding charges and by retaining payments of Plaintiff and the other Room and Board Class members while they (or the students on whose behalf they paid) moved out of their on-campus housing;
- g. Whether the University breached its contracts with Plaintiff and the other Fee Class members by not reducing outstanding charges and by retaining fees without providing the services which the fees were intended to cover;
- h. Whether the University was unjustly enriched by not reducing outstanding charges and by retaining fees of Plaintiff and the other Fee Class members without providing the services which the fees were intended to cover;
- i. Whether certification of any or all the Room and Board Class, Fee Class and/or Tuition Class is appropriate under Michigan Court Rule 3.501;
- j. Whether Class members are entitled to declaratory, equitable, or injunctive relief, and/or other relief; and

- k. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

51. **Typicality – Michigan Court Rule 3.501(A)(1)(c)**. Plaintiff's claims are typical of the claims of the other members of the Classes because Plaintiff and the other members each paid for tuition, room and board, fees and certain other costs associated with the Winter 2020 semester at the University but were not provided the services that those fees and costs were meant to cover. Plaintiff and the other members of the Classes suffered damages – namely, the loss of their payments – as a direct and proximate result of the same wrongful conduct in which the University engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the other members of the Classes.

52. **Adequacy of Representation – Michigan Court Rule 3.501(A)(1)(d)**. Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Classes who he seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by Plaintiff and his counsel.

53. **Superiority of Adjudication as a Class Action – Michigan Court Rules 3.501(A)(1)(e) and 3.501(A)(2)**. Because of the aforementioned, and in an effort to preserve judicial economy, this case will be best maintained as a Class Action, which is superior to other methods of individual adjudication of claims.

54. **Declaratory and Injunctive Relief – Michigan Court Rule 3.501(A)(2)(b)**. The University has acted or refused to act on grounds generally applicable to Plaintiff and the other

members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members as a whole.

SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT (Plaintiff and Other Members of the Tuition Class)

55. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

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

57. Plaintiff and the Tuition Class entered into contracts with the University (the contracts are in the University's possession) which provided that Plaintiff and other members of the Tuition Class would pay tuition, and in exchange, the University would provide live in-person instruction in a brick and mortar classroom.

58. Plaintiff and other members of the Tuition Class fulfilled their end of the bargain when they accepted charges and paid tuition for the Winter 2020 semester either out-of-pocket or by using student loan financing.

59. The University breached the contract with Plaintiff and the Tuition Class by moving the second half of all classes for the Winter 2020 semester to online distance learning platforms and refusing to reduce outstanding charges or refund tuition costs paid by Plaintiff and other members of the Tuition Class.

60. Plaintiff and other members of the Tuition Class have been damaged in that they have been deprived of the value of the services the tuition was intended to cover – live in-person instruction in brick and mortar classrooms – while the University retained those fees and refused to reduce outstanding charges.

61. Plaintiff and other members of the Tuition Class are entitled to a refund and a commensurate reduction in outstanding charges.

62. Plaintiff and other members of the Tuition Class are also entitled to disgorgement of the difference between the value of one half a semester of online learning versus the value of one half a semester of live in-person instruction in brick and mortar classrooms.

THIRD CLAIM FOR RELIEF

BREACH OF CONTRACT

(Plaintiff and Other Members of the Room and Board Class)

63. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

64. Plaintiff brings this claim individually and on behalf of the other members of the Room and Board Class.

65. Plaintiff and other members of the Room and Board Class entered into contracts in the form of agreements with the University (the contracts are in the University's possession), that provided that Plaintiff and other members of the Room and Board Class would pay for room and board and, in exchange, the University would provide housing and meals in its residence halls and other campus affiliated-housing.

66. Plaintiff and other members of the Room and Board Class fulfilled their end of the bargain when they accepted charges or paid amounts due and owing for their residence hall or other housing for the semester. Plaintiff and other members of the Room and Board Class were not provided housing for the entire semester; accordingly, Plaintiff and other members of the Room and Board Class are entitled to a reduction in outstanding charges or a refund.

67. Plaintiff and the other members of the Room and Board Class are entitled to an equitable remedy in the event of a breach – here: disgorgement of the unused days of housing costs already charged.

68. The University has refused to adequately reduce outstanding charges and retained funds paid by Plaintiff and other members of the Room and Board Class for their Winter 2020 residence hall housing, without providing the benefit of their bargain.

69. Plaintiff and other members of the Room and Board Class have been damaged in that they have been deprived of the value they paid for residence hall housing and meals while the University retained that value.

FOURTH CLAIM FOR RELIEF

BREACH OF CONTRACT (Plaintiff and Other Members of the Fee Class)

70. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

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

72. Plaintiff and the Fee Class entered into contracts with the University (the contracts are in the University's possession), which provided that Plaintiff and other members of the Fee Class would pay various fees, and in exchange, the University would provide services to students.

73. The University has refused to reduce outstanding charges and has retained the money paid by Plaintiff and the other members of the Fee Class, without providing them the benefit of their bargain.

74. Plaintiff and the other members of the Fee Class have been damaged in that they have been deprived of the value of the services the fees they paid were intended to cover, while the University refused to reduce outstanding charges and provide refunds.

75. Plaintiff and other members of the Fee Class are entitled to an equitable remedy – here: disgorgement of the prorated, unused amounts of fees already charged and collected.

FIFTH CLAIM FOR RELIEF

UNJUST ENRICHMENT (Plaintiff and Other Members of the Tuition Class)

76. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

77. Plaintiff brings this claim individually and on behalf of the other members of the Tuition Class and in the alternative to the breach of contract claim brought on behalf of Plaintiff and the other members of the Tuition Class.

78. The University has received a benefit at the expense of Plaintiff and other members of the Tuition Class to which it is not entitled. Plaintiff and other members of the Tuition Class accepted charges and paid substantial tuition for live in-person instruction in brick and mortar classrooms and did not receive the full benefit of their bargain. Accordingly, the University should reduce outstanding charges and return a portion of money paid for tuition for the Winter 2020 semester by Plaintiff and other members of the Tuition Class. Equity demands the return of the difference between the value of one half of one semester of instruction on online distance learning platforms versus the value of one half of one semester of live in-person instruction in brick and mortar classrooms.

79. The University has been unjustly enriched by refusing to refund money paid by Plaintiff and other members of the Tuition Class for live in-person instruction in brick and mortar

classrooms without providing the services for which those funds were to be paid. Equity requires that the University return a portion of the amounts paid in tuition to Plaintiff and other members of the Tuition Class.

SIXTH CLAIM FOR RELIEF

**UNJUST ENRICHMENT
(Plaintiff and Other Members of the Room and Board Class)**

80. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

81. Plaintiff brings this claim individually and on behalf of the other members of the Room and Board Class and in the alternative to the breach of contract claim brought on behalf of Plaintiff and the other members of the Room and Board Class.

82. The University has received a benefit to which it is not entitled at the expense of Plaintiff and other members of the Room and Board Class. Plaintiff and other members of the Room and Board Class accepted charges and paid for room and board and did not receive the full benefit of their bargain. Accordingly, the University should reduce outstanding charges and return the unused amounts paid for room and board for the Winter 2020 semester by Plaintiff and other members of the Room and Board Class. Equity demands a reduction in outstanding charges and the return of the prorated, unused amounts paid by Plaintiff and other members of the Room and Board Class.

83. The University has been unjustly enriched by refusing to refund the amounts paid by Plaintiff and other members of the Room and Board Class for residence hall housing for the semester while not providing the housing and meals for which those funds were to be paid. Equity requires the University to return the full prorated unused amounts charged to Plaintiff and other members of the Room and Board Class for their housing and meal expenses.

SEVENTH CLAIM FOR RELIEF

**UNJUST ENRICHMENT
(Plaintiff and Other Members of the Fee Class)**

84. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully set forth herein.

85. Plaintiff brings this claim individually and on behalf of the other members of the Fee Class, respectively, and in alternative to the breach of contract claim brought on behalf of Plaintiff and the other members of the Fee Class.

86. The University has received a benefit to which it is not entitled at the expense of Plaintiff and other members of the Fee Class. Plaintiff and other members of the Fee Class paid University fees and did not receive the full benefit of their bargain when the school shut down most facilities. Accordingly, the University should return a prorated amount of funds paid for fees for the Winter 2020 semester by Plaintiff and other members of the Fee Class. Equity demands the return of these amounts paid by Plaintiff and other members of the Fee Class.

87. Plaintiff and the other members of the Fee Class were charged for and paid fees for or on behalf of students, which were intended to cover the cost of services for the Winter 2020 semester. In exchange, students were entitled to receive Fee-related services for the entire semester.

88. The University stopped providing the services these fees were intended to cover.

89. The University has refused to refund fees paid by Plaintiff and other members of the Fee Class, without providing the services for which they were paid and, as such, has been enriched.

90. The University has been unjustly enriched by retaining the fees paid by Plaintiff and the other members of the Fee Class for the semester while not providing the services for which

those fees were intended. Equity requires that the University return the fees paid by Plaintiff and the other members of the Fee Class.

PRAYER FOR RELIEF

91. Plaintiff, individually and on behalf of the other members of the Classes, respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- A. Certifying the Classes as requested herein, designating Plaintiff as class representative, and appointing the undersigned counsel as Class Counsel;
- B. Declaring that the University is financially responsible for notifying the members of the Classes of the pendency of this suit;
- C. Declaring that the University has wrongfully refused to reduce outstanding charges and has wrongfully kept funds paid for tuition, room and board, and fees;
- D. Requiring that the University disgorge amounts wrongfully obtained for on-campus tuition, room and board, and fees.
- E. Requiring the University to reduce outstanding charges for tuition, room and board, and fees.
- F. Awarding injunctive relief as permitted by law or equity, including enjoining the University from refusing to reduce outstanding charges and from retaining the prorated, unused amounts paid for tuition, room and board, and fees;
- G. Awarding Plaintiff's reasonable attorney's fees, costs and expenses;
- H. Awarding pre- and post-judgment interest on any amounts awarded; and
- I. Awarding such other and further relief as may be just and proper.

April 30, 2020

Respectfully submitted,

FINK BRESSACK



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Attorneys for Plaintiff and Proposed Classes

VERIFICATION

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge and belief.

/s/ Kevin Horrigan

APPENDIX B

Financial Responsibility Statement

PAYMENT OF FEES/PROMISE TO PAY

I understand that when I register for any class at Eastern Michigan University (EMU) or receive any service from Eastern Michigan University I accept full responsibility to pay all tuition, fees and other associated costs assessed as a result of my registration and/or receipt of services. I further understand and agree that my registration and acceptance of these terms constitutes a promissory note agreement (i.e., a financial obligation in the form of an educational loan as defined by the U.S. Bankruptcy Code at 11 U.S.C. §523(a)(8)) in which Eastern Michigan University is providing me educational services, deferring some or all of my payment obligation for those services, and I promise to pay for all assessed tuition, fees and other associated costs by the published or assigned due date.)

I understand and agree that if I drop or withdraw from some or all of the classes for which I register, I will be responsible for paying all or a portion of tuition and fees in accordance with the published dates and deadlines schedule at <https://www.emich.edu/registrar/calendars/index.php>. I have read the terms and conditions of the published tuition refund schedule and understand those terms are incorporated herein by reference. I further understand that my failure to attend class or receive a bill does not absolve me of my financial responsibility as described above.

I Understand that if I'm not planning to attend, it is my responsibility to drop my classes as Eastern Michigan University will not automatically withdraw me from my registration.

DELINQUENT ACCOUNT/COLLECTION

Financial Hold: I understand and agree that if I fail to pay my student account bill or any monies due and owing Eastern Michigan University by the scheduled due date, Eastern Michigan University will place a financial hold on my student account, preventing me from registering for future classes, requesting transcripts, or receiving my diploma.

Late Payment Charge: I understand and agree that if I fail to pay my student account bill or any monies due and owing Eastern Michigan University by the scheduled due date, Eastern Michigan University will assess late payment and/or finance charges at the Board approved rate on the past due portion of my student account until my past due account is paid in full.

Collection Agency Fees: I understand and accept that if I fail to pay my student account bill or any monies due and owing Eastern Michigan University by the scheduled due date, and fail to make acceptable payment arrangements to bring my account current, Eastern Michigan University may refer my delinquent account to a collection agency and/or reported to National Credit Reporting Agencies. I further understand that if Eastern Michigan University refers my student account balance to a third party for collection, a collection fee will be assessed and will be due in full at the time of the referral to the third party. The collection fee will be calculated at the maximum amount permitted by applicable law, but not to exceed 33.33 percent of the amount outstanding. For purposes of this provision, the third party may be a debt collection company or an attorney. If a lawsuit is filed to recover an outstanding balance, I shall also be

responsible for any costs/fees associated with the lawsuit such as court costs/fees or other applicable costs/fees. I understand that my delinquent account including but not limited to tuition, fees, books, fines, room, and meals may be reported to one or more national credit bureaus by EMU or the collections agency it uses. I understand that EMU will use my Social Security number for internal/external credit reporting and collection purposes for all charges incurred against the account.

COMMUNICATION

Method of Communication: I understand and agree that Eastern Michigan University uses e-mail as an official method of communication with me, and that therefore I am responsible for reading the e-mails I receive from Eastern Michigan University on a timely basis.

Contact: I understand Eastern Michigan University and its agents and contractors will contact me at my current and any future cellular phone number(s), email address(es) or wireless device(s) regarding my delinquent student account(s)/loan(s), any other debt I owe to Eastern Michigan University, or to receive general information from Eastern Michigan University. I authorize Eastern Michigan University and its agents and contractors to use automated telephone dialing equipment, artificial or pre-recorded voice or text messages, and personal calls and emails, in their efforts to contact me. Furthermore, I understand that I may withdraw my consent to call my cellular telephone using automated telephone dialing equipment by submitting this completed and signed request ([insert link here](#)) to The Controller's Office.

Updating Contact Information: I understand and agree that I am responsible for keeping Eastern Michigan University records up to date with my current physical addresses, email addresses, and phone numbers by accessing the my.emich tab where you can make address changes online by logging into your my.emich account, click on 'Student' tab then click on 'Personal Information' tab and choose 'Update Addresses and Phones' or by visiting a Service EMU location. Upon leaving Eastern Michigan University for any reason, it is my responsibility to provide Eastern Michigan University with updated contact information for purposes of continued communication regarding any amounts that remain due and owing along with other information to Eastern Michigan University.

FINANCIAL AID

I understand that aid described as "estimated" on my Financial Aid Award does not represent actual or guaranteed payment, but is an estimate of the aid I may receive if I meet all requirements stipulated by that aid program.

I understand that my Financial Aid Award is contingent upon my continued enrollment and attendance in each class upon which my financial aid eligibility was calculated. If I drop or withdraw from any class before completion, I understand that my financial aid eligibility may decrease and some or all of the financial aid awarded to me may be revoked.

If some or all of my financial aid is revoked because I dropped or withdrew from classes, failed,

or neglected to attend class, I agree to repay all revoked aid that was disbursed to my account and resulted in a credit balance that was refunded to me.

I understand that financial aid I receive will be used to pay any and all charges assessed to my account at Eastern Michigan University such as tuition, fees, campus housing and meal plans, student health insurance, service fees, fines, or any other amount, in accordance with the terms of the aid program.

Federal Aid: I understand that any federal Title IV financial aid that I receive, except for Federal Work Study wages, will first be applied to any outstanding balance on my account for tuition, fees, room and board. Title IV financial aid includes aid from the Pell Grant, Supplemental Educational Opportunity Grant (SEOG), Direct Loan, PLUS Loan, Perkins Loan, and TEACH Grant programs. **Prizes, Awards, Scholarships, Grants:** I understand that all prizes, awards, scholarships and grants awarded to me by Eastern Michigan University will be credited to my student account and applied toward any outstanding balance. I further understand that my receipt of a prize, award, scholarship or grant is considered a financial resource according to federal Title IV financial aid regulations, and may therefore reduce my eligibility for other federal and/or state financial aid (i.e., loans, grants, Federal Work Study) which, if already disbursed to my student account, must be reversed and returned to the aid source.

METHOD OF BILLING

I understand that Eastern Michigan University uses electronic billing (e-bill) as its official billing method, and therefore I am responsible for viewing and paying my student account e-bill by the scheduled due date. I further understand that failure to review my e-bill does not constitute a valid reason for not paying my bill on time. E-bill information is available at <https://www.emich.edu/sbs/billing-payments/index.php>

BILLING ERRORS

I understand that administrative, clerical or technical billing errors do not absolve me of my financial responsibility to pay the correct amount of tuition, fees and other associated financial obligations assessed as a result of my registration at Eastern Michigan University.

RETURNED PAYMENTS/FAILED PAYMENT AGREEMENTS

If a payment made to my student account is returned by the bank for any reason, I agree to repay the original amount of the payment plus a returned payment fee at the Board approved rate. I understand that multiple returned payments will subject me to the terms and conditions of the EMU [returned check policy](#). Failure to comply with the terms of any payment plan or agreement I sign with Eastern Michigan University may result in cancellation of my classes and/or suspension of my eligibility to register for future classes at Eastern Michigan University.

WITHDRAWAL

If I decide to change my registration at Eastern Michigan University, I will follow the instructions at <https://www.emich.edu/registrar/registration/dropwithdrawl.php> which I understand and agree are incorporated herein by reference.

PRIVACY RIGHTS & RESPONSIBILITIES

I understand that Eastern Michigan University is bound by the [Family Educational Rights and Privacy Act \(FERPA\)](#) which limits the circumstances where Eastern Michigan University may release any information from my education record without my written permission. I understand I may provide EMU with permission to share information from my education record with someone else but, I must provide written permission by following the procedure outlined at <https://www.emich.edu/registrar/forms/ferpa.php> I further understand that I may revoke my permission at any time as instructed in the same procedure.

STUDENT AGE

I understand and agree that if I am younger than the applicable age of majority when I execute this agreement that the educational services provided by Eastern Michigan University are a necessity, and I am contractually obligated pursuant to the “doctrine of necessities.”

ENTIRE AGREEMENT


I understand that Eastern Michigan University does not drop classes for non-payment or non-attendance and I am responsible for all associated tuition and fees.

The above agreement, in its entirety, supersedes all prior understandings, representations, negotiations and correspondence between the student and Eastern Michigan University, constitutes the entire agreement between the parties with respect to the matters described, and shall not be modified or affected by any course of dealing or course of performance. This agreement may be modified by Eastern Michigan University if the modification is signed by me. Any modification is specifically limited to those policies and/or terms addressed in the modification.

This agreement shall be governed in all respects by the laws of the State of Michigan without regard to any conflict of choice of law principles which are required for the on-going business of the University. I hereby submit to personal jurisdiction in the State of Michigan.

COMMENT CENTRAL

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Comment Type	FINRESP	Restrict Update	Y	Created	WWW_USER	11/14/2019
Originator	STAC	Purge	N	Last Updated	WWW_USER	11/14/2019
Term	202020	End Date				
Comment	Financial Responsibility Agreement for term 202020 was signed on 14-NOV-2019 at 08:03AM					

RECEIVED by MSC 3/14/2023 9:20:40 AM

APPENDIX C

Eastern Michigan University

Housing and Dining Service Contract

Academic Year 2019-20

Read carefully! You are entering into a legally binding contract with the University that encompasses the full academic year, September through April. Do not submit this contract unless you can guarantee that you have the necessary financial resources either through personal funds and/or financial aid funding to cover all of your tuition, room, and board costs for both the fall and winter semesters.

You agree to accept the conditions contained in this contract for the full academic year which includes BOTH the fall and winter semesters.

Fall

Occupancy availability: Saturday, August 31, 2019 – Saturday, 9:00 am , December 21, 2019

Meal availability: Wednesday, September 4, 2019 – Tuesday, November 26, 2019
Monday, December 2, 2019 – Friday, December 20, 2019

Winter

Occupancy availability: Sunday, January 5, 2020– Saturday at 12 noon, February 22, 2020
Sunday, March 1, 2020 – Tuesday at 12 noon, April 28, 2020

Meal availability: Monday, January 6, 2020– Friday, February 21, 2020
Monday, March 1, 2020 – Monday, April 27, 2020

Terms and Conditions

This is your Housing and Dining Service contract agreement. If you choose to live on campus, you are responsible for knowing the terms and conditions that are presented and you agree that you are prepared to meet the financial obligations.

It is the responsibility of the student to know and comply with the information contained in the contract. Once you agree to the contract terms you may proceed with the application process.

This contract outlines the terms and conditions upon which room and board in Eastern Michigan University residence halls and apartments is contracted with a student (called RESIDENT) by the University's Board of Regents, being the constitutional and statutory board of control of Eastern Michigan University (called UNIVERSITY). The contract is for the entire 2019-20 academic year which is defined as both the Fall and Winter semesters.

FEES AND CONTRACT TERMINATION

1. A non-refundable \$150 prepayment paid to the UNIVERSITY must be submitted when completing the application in order to select a space.
2. RESIDENT may cancel the contract prior to moving into the assigned space in the fall by requesting a cancellation, in writing only, to the Housing and Residence Life office. Written cancellation must be sent via the student's EMU email account to housing@emich.edu. Cancellation of the contract, regardless of the reason, will result in a forfeiture of the prepayment.
3. The UNIVERSITY reserves the right to change room and board rates if such change is necessary.
4. The terms of this contract are for the entire 2019-20 academic year (both Fall and Winter semesters). If the RESIDENT will no longer be an enrolled student, the RESIDENT must apply for a contract release with the Housing and Residence Life office. Releases are granted for the following reasons only: withdrawal from EMU, transfer to another school, student teaching, graduation, study abroad, part-time status (6 hours or less).
5. The contract will NOT be terminated for an enrolled RESIDENT to move off campus, fraternity/sorority house, or to commute from home during the period of this contract.
6. If an enrolled RESIDENT chooses to move out of the residence hall/apartment without an approved release, the RESIDENT continues to be financially responsible for all room and board charges for the remainder of the 2019-20 academic year.
7. If a RESIDENT meets the criteria for an approved release as referred to in Number 4 above, the contract will terminate and the RESIDENT will no longer be entitled to any services provided for including the meal plan.

- 8.** RESIDENT will not be released from the terms of the contract due to withdrawal from the University if later he or she re-enrolls during the contract period. RESIDENT will be responsible for room and board charges for the remainder of the contract period.
- 9.** It is considered a violation of the contract to move from an assigned room/apartment to another room/apartment without the approval of the Housing and Residence Life office.
- 10.** Not properly checking out of the residence hall/apartment and/or not returning the keys upon check-out will result in a \$50 improper checkout fee as well as charges for a lock change and key replacement.
- 11.** The UNIVERSITY reserves the right to terminate this contract and take possession of an assigned space for violation of either this contract or of UNIVERSITY policies or regulations. No refunds are given if the university dismisses or suspends a RESIDENT for discipline issues. A RESIDENT dismissed for behavior or conduct violations will continue to be responsible for the room and board charges for the duration of the academic year.
- 12.** The UNIVERSITY reserves the right, when necessary, to remove a RESIDENT's personal items from the room/apartment and store them for 30 days which will result in additional storage fees as applicable. At the end of 30 days any unclaimed personal items will be discarded and RESIDENT will not be entitled to compensation for the value of these items.
- 13.** The UNIVERSITY reserves the right to not renew a RESIDENT's contract for the following year based on continued disruption to the community or multiple violations to the Code of Community Responsibility or Housing and Residence Life Rules and Policies.

CONDITIONS OF ASSIGNMENT

- 13.** The UNIVERSITY requires that RESIDENT be enrolled and remain enrolled in at least seven (7) credit hours for undergraduate students or three (3) credit hours for graduate students for the duration of each semester. The UNIVERSITY reserves the right to terminate the contract for any RESIDENT that falls below the required credit hour minimum.
- 14.** RESIDENTS returning for the Winter 2020 semester must be in good financial standing and be registered for winter classes no later than December 20, 2019.
- 15.** Submission of this contract does NOT guarantee accommodation in the residence halls/apartments if the contract and prepayment are received after capacity has been reached.
- 16.** The UNIVERSITY does not discriminate on the basis of race, color, religion, sexual orientation, disability, or ethnic background in the assignment of residence hall/apartment space.
- 17.** RESIDENTS requesting disability-related accommodations with respect to housing and/or dining must register with the Disability Resource Center and submit supporting documentation to determine their eligibility.
- 18.** The UNIVERSITY reserves the right, when necessary, to convert an assigned single room to a double room in order to provide space when demand is above anticipated numbers.
- 19.** The UNIVERSITY has the right to reassign a confirmed room/apartment if RESIDENT has not yet moved in after three days of the official move-in date.
- 20.** Should a vacancy occur in a double room assignment at any time throughout the contract period, regardless of the reason, the RESIDENT agrees to either accept another roommate or be assessed the increased single rate.
- 21.** This agreement is for a space within the campus housing system and is not for a particular type or size of room, building, or area. The UNIVERSITY reserves the right to reassign or remove a resident from university housing for reasons of health, safety, welfare, failure to remain actively enrolled, or if the student poses a significant disruption to the on-campus housing community. This may be done on a temporary or permanent basis.
- 22.** The room and board rate may be pro-rated if a RESIDENT is approved for a contract release pursuant to the terms of this contract. No pro-rate will be given, however, if the RESIDENT moves out during the last two weeks of any given semester.

GENERAL CONDITIONS

- 23.** The RESIDENT agrees to comply with the rules and regulations which may be adopted by the UNIVERSITY for the residence hall/apartment program and with the terms of the University's Code of Community Responsibility and the Guide to Campus Living located at <http://www.emich.edu/residencelife>.
- 24.** No RESIDENT is permitted to transfer his or her assignment to another person. No unauthorized persons are permitted to reside in the room/apartment. No pets are permitted in the residence halls or Brown/Munson. Cats are permitted only in limited designated apartments in Cornell or Westview for an additional fee.
- 25.** The RESIDENT will not use the residence hall room/apartment or public areas in and around the halls or apartments in a way which is detrimental to the best interest and welfare of the UNIVERSITY community.

26. No RESIDENT or guest of any RESIDENT may use RESIDENT's assigned room/apartment or any public area of the residence hall, to offer any goods or services for sale.
27. The RESIDENT is prohibited from keeping firearms, weapons, gunpowder, or other substances which might endanger the health and safety of any person in the residence hall/apartments.
28. Portable air conditioners are not permitted in any of the residence halls or Brown/Munson. Air conditioners may not be installed by RESIDENTS at any time. Cornell Courts, Westview, or 601 West Forest RESIDENTS can apply to have an AC unit. RESIDENTS in those locations must provide AC units that meet University standards and complete the proper written request form. The University has final determination of the installation AC units.
29. The UNIVERSITY reserves the right to enter and inspect rooms/apartments for pest control, health, maintenance, and security reasons, or to remove UNIVERSITY property, and reassign rooms as necessary. RESIDENT agrees to follow directives that support these functions.
30. The UNIVERSITY is not responsible for the loss of or damage to any personal property of the RESIDENT or his/her guests. RESIDENT is strongly encouraged to purchase appropriate renter's insurance for their personal property if the family's household policy does not cover the property while it is located at the university.
31. The RESIDENT will keep the premises and public areas clean and free from dirt, garbage, and trash and is responsible for the cleaning charges, repair and replacement of any item damaged because of the acts or omissions of the RESIDENT or the RESIDENT's guest, invitee, or agent. Any necessary repairs or replacements will be made by the UNIVERSITY and be paid for by the RESIDENT or, in the case of public area damage, by the RESIDENTS of the involved floor.
32. The RESIDENT will report any maintenance, cleaning, or pest issues immediately to housing and residence life staff or through the work order process. Damage or repairs related to on-going concerns not reported, may be billed to the RESIDENT.
33. All rooms in the Residence Halls and Apartments are annually certified bedbug free prior to the start of the fall semester. If the RESIDENT or UNIVERSITY becomes aware of an infestation of bed bugs or another pest, the RESIDENT agrees to comply with Housing & Residence Life protocol to address it.
34. The times set forth for performance of this agreement are subject to change due to extreme weather, strikes, lockout, or other labor disputes and disorders which may affect the health or safety of students or affect the educational function of the institution. The UNIVERSITY reserves the right to offer these room and board services at different dates and times provided that when services are offered, the dates will be in conformity with the purpose for which the RESIDENT entered into the agreement.
35. No smoking is permitted anywhere within the residence halls or University Apartments. The entire Eastern Michigan University campus is tobacco free.

DINING PLANS

36. A meal plan is **REQUIRED** for all students living in the residence halls. Meal plans are optional for students living in University Apartments and the Village (excludes freshmen athletes).
37. To change a meal plan RESIDENT can e-mail a request to housing@emich.edu.
38. No changes to the meal plan will be accepted after September 15, 2019 for the Fall semester or January 15, 2020 for the Winter semester.
39. Refunds are not given for missed or unused meals.