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IN THE
COURT OF APPEALS OF INDIANA

The Trustees of Indiana University, *Appellant-Defendant,* v. Justin Spiegel, *Appellee-Plaintiff*	March 31, 2022 Court of Appeals Case No. 21A-CT-175 Interlocutory Appeal from the Monroe Circuit Court The Honorable Nathan G. Nikirk, Special Judge Trial Court Cause No. 53C06-2005-CT-771
The Trustees of Purdue University, *Appellant-Respondent,* v. Elijah Seslar, Zachary Church, Jordan Klebenow, and Luke McNally, *Appellees-Plaintiffs*	Interlocutory Appeal from the Tippecanoe Superior Court The Honorable Steven P. Meyer, Judge Trial Court Cause No. 79D02-2005-PL-59

Crone, Judge.

Case Summary

[1] In March 2020, as the deadly COVID-19 pandemic swept through Indiana, the governor issued a series of executive orders declaring a public health disaster emergency, imposing social-distancing and stay-at-home requirements, and allowing educational institutions to continue operations, but only for purposes of facilitating distance learning. Indiana University (IU) and Purdue University (Purdue) (the Universities) moved all in-person classes online for the rest of the

semester, closed campus facilities, and urged students to return to their homes. Students at the Universities (the Plaintiffs) filed class-action complaints, one against IU and two against Purdue, alleging that the Universities breached contractual promises for in-person instruction, services, activities, housing, and meals, and requesting prorated refunds of tuition, student fees, and room and board fees as damages. In the alternative, the complaints alleged that the Universities were unjustly enriched by retaining those funds. IU filed a motion for judgment on the pleadings, which was denied in full, and Purdue filed motions to dismiss for failure to state a claim, which were largely denied. In this consolidated appeal, the Universities argue that the trial courts erred in denying their motions. Finding no error, we affirm.

Facts and Procedural History

[2] The Universities are institutions of higher learning located in Indiana. Both offer "in-person, hands-on programs," as well as "fully online distance-learning programs," which are marketed and priced "as separate and distinct products." Appellants' App. Vol. 2 at 20 (Spiegel's complaint); Appellants' App. Vol. 3 at 39 (Seslar's complaint). In the spring of 2020, Justin Spiegel was enrolled as a full-time student in IU's undergraduate program at its Bloomington campus; Elijah Seslar was enrolled as a full-time student in Purdue's undergraduate program at its Fort Wayne campus; and Zachary Church, Jordan Klebenow, and Luke McNally were enrolled as full-time students in Purdue's undergraduate program at its West Lafayette campus. As a precondition of enrollment, the Plaintiffs paid tuition, mandatory student fees for various on-

campus activities, services, courses, and programs, and room and board fees for on-campus housing and meals.

[3] In March 2020, as the COVID-19 pandemic was spreading rapidly through Indiana and the rest of the country, Governor Eric Holcomb issued a series of executive orders declaring a public health disaster emergency, imposing social-distancing and stay-at-home requirements, allowing educational institutions to continue operations, but only for purposes of facilitating distance learning, and allowing travel to or from educational institutions for the limited purposes of receiving materials for distance learning, meals, and related services.[1] The Universities moved all in-person classes online for the rest of the spring semester, closed campus facilities, urged students who had already left campus for spring break not to return, and urged those still on campus to return to their permanent homes. IU announced that it would issue prorated refunds for room and board fees. Purdue announced that students would receive a $750 credit to their student accounts if they vacated residence halls by a certain date and also offered credits for the purchase of future meals.

[4] The spring semester for both Universities ended in May 2020. That same month, Spiegel filed a class-action complaint against IU's board of trustees. Spiegel alleged that IU breached contractual promises for in-person instruction,

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[1] We take judicial notice of the executive orders pursuant to Indiana Evidence Rule 201. The Universities cited the orders in their submissions below, and none of the Plaintiffs objected to the Universities' requests for the trial courts to take judicial notice of them.

services, and activities, and requested prorated refunds of tuition and student fees as damages. In the alternative, Spiegel alleged that IU was unjustly enriched by retaining those funds. IU filed an answer and a motion for judgment on the pleadings pursuant to Indiana Trial Rule 12(C). After a hearing, the trial court denied IU's motion.

[5] Also in May 2020, Seslar filed a class-action complaint against Purdue's board of trustees, raising claims similar to those raised in Spiegel's complaint and requesting similar relief. And in June 2020, Church, Klebenow, and McNally (the Church plaintiffs) filed a class-action complaint against Purdue's board of trustees, raising claims similar to those raised in the Spiegel and Seslar complaints, as well as breach-of-contract and unjust-enrichment claims regarding room and board fees. Seslar's and the Church plaintiffs' cases were consolidated, and Purdue filed motions to dismiss their complaints for failure to state a claim pursuant to Indiana Trial Rule 12(B)(6). After a hearing, the trial court denied Purdue's motion to dismiss Seslar's claims. The court granted Purdue's motion to dismiss the Church plaintiffs' breach-of-contract claim regarding program-specific fees and their unjust-enrichment claims regarding room and board fees, but denied the motion as to the remaining claims.

[6] The Church plaintiffs did not appeal the trial court's ruling. The Universities moved to certify the rulings in their respective cases for interlocutory appeal, which the trial courts granted. This Court accepted jurisdiction and consolidated the appeals. Additional facts will be provided below.

Discussion and Decision

[7] We review de novo a ruling on a motion for judgment on the pleadings. *Consol. Ins. Co. v. Nat'l Water Servs., Inc.*, 994 N.E.2d 1192, 1196 (Ind. Ct. App. 2013), *trans. denied*.[2] We accept the well-pled material facts alleged in the complaint as true, and we base our ruling solely on the pleadings, supplemented by any facts of which we may take judicial notice. *Id*. The pleadings include a complaint and an answer, as well as any written instruments attached to a pleading, pursuant to Indiana Trial Rule 9.2. *Id*. "A Rule 12(C) motion for judgment on the pleadings is to be granted 'only where it is clear from the face of the complaint that under no circumstances could relief be granted.'" *Id*. (quoting *Murray v. City of Lawrenceburg*, 925 N.E.2d 728, 731 (Ind. 2010)).

[8] Likewise, we review de novo a ruling on a motion to dismiss for failure to state a claim. *Shi v. Yi*, 921 N.E.2d 31, 36-37 (Ind. Ct. App. 2010). Such a motion tests the legal sufficiency of the complaint, i.e., whether the allegations in the complaint establish any set of circumstances under which the plaintiff would be entitled to relief. *Id*. at 37. Thus, while we do not test the sufficiency of the facts alleged as to their adequacy to provide recovery, we do test their sufficiency as to whether they have stated some factual scenario in which a legally actionable injury has occurred. *Id*. A court should accept the facts alleged in the complaint as true and draw every reasonable inference in the plaintiff's favor. *Id*.

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[2] Consequently, we need not give "close scrutiny" to the trial court's ruling in Spiegel's case "given that the court adopted [his] findings verbatim[,]" as IU suggests. Appellants' Br. at 48.

"However, a court need not accept as true allegations that are contradicted by other allegations or exhibits attached to or incorporated in the pleading. Courts also need not accept as true conclusory, nonfactual assertions or legal conclusions." *Id.* (citation omitted).

[9] Indiana Trial Rule 8(A) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *McCalment v. Eli Lilly & Co.*, 860 N.E.2d 884, 890 (Ind. Ct. App. 2007). "Although the plaintiff need not set out in precise detail the facts upon which the claim is based, he must still plead the operative facts necessary to set forth an actionable claim." *Id.* "A complaint's allegations are sufficient if they put a reasonable person on notice as to why plaintiff sues. Defendants thereafter may 'flesh out' the evidentiary facts through discovery[.]" *Capitol Neon Signs, Inc. v. Ind. Nat'l Bank*, 501 N.E.2d 1082, 1085 (Ind. Ct. App. 1986); *see also Tony v. Elkhart Cnty.*, 851 N.E.2d 1032, 1035 (Ind. Ct. App. 2006) ("A complaint is sufficient if it states any set of allegations, no matter how inartfully pleaded, upon which the trial court could have granted relief."). "We view motions to dismiss for failure to state a claim with disfavor because such motions undermine the policy of deciding causes of action on their merits." *Id.* "A dismissal under Trial Rule 12(B)(6) is improper unless it appears to a certainty that the plaintiff would not be entitled to relief under any set of facts." *King v. S.B.*, 837 N.E.2d 965, 966 (Ind. 2005).

[10] At this point, we observe that many similar COVID-related lawsuits against educational institutions have made (and are making) their way through state and federal courts across the country, and many rulings have been issued on

motions to dismiss and motions for judgment on the pleadings. As might be expected, the results of those decisions are literally all over the map, contingent on variables such as the nature of the plaintiffs' claims and the institutions' defenses, the procedural posture of each case, the relevant provisions of substantive law, the arguments made (or not made) by the parties before trial courts and appellate courts, and the applicable standard(s) of review. The Universities, the Plaintiffs, and amicus Independent Colleges of Indiana have cited, as persuasive authority, numerous decisions from other jurisdictions that purportedly compel a decision in their favor. Some of those decisions are more pertinent and persuasive than others and thus offer useful guidance, but, for the most part, basic principles of contract law and our well-settled standards of review are sufficient to resolve the issues presented in this appeal.

Section 1 – The Plaintiffs' complaints sufficiently state claims for breach of implied contract and unjust enrichment regarding tuition and student fees.

[11] As mentioned above, many of the Plaintiffs' claims are premised on a breach of contract. "We have held that '[a]n offer, acceptance, consideration, and a manifestation of mutual assent establish the existence of a contract.'" *Krieg v. Hieber*, 802 N.E.2d 938, 944 n.3 (Ind. Ct. App. 2004) (quoting *Homer v. Burman*, 743 N.E.2d 1144, 1146-47 (Ind. Ct. App. 2001)). "The concept of consideration is often encapsulated by the phrase 'bargained for exchange.'" *Id*. (quoting *DiMizio v. Romo*, 756 N.E.2d 1018, 1022 (Ind. Ct. App. 2001), *trans. denied* (2002)). With respect to mutual assent, we have stated that "[t]he intention of

the parties is a factual matter to be determined by the fact-finder from all of the circumstances." *Davis v. All American Siding & Windows, Inc.*, 897 N.E.2d 936, 942 (Ind. Ct. App. 2008), *trans. denied* (2009).

[12] "There are three general types of contracts—express, implied and constructive." *DiMizio*, 756 N.E.2d at 1024. "Express and implied contracts are very similar. They differ only in that an express contract is evidenced by spoken or written words while an implied contract is evidenced by the conduct of the parties." *Id*. (citation omitted). "An implied contract is equally as binding as an express contract." *In re Paternity of P.W.J.*, 846 N.E.2d 752, 760 (Ind. Ct. App. 2006), *clarified on reh'g* 850 N.E.2d 1024. "The final type of contract, a constructive contract, is also known as a quasi-contract or a contract implied at law." *DiMizio*, 756 N.E.2d at 1024. "It is a legal fiction used to refer to a situation where no contract actually exists but where justice nevertheless warrants a recovery under the circumstances as though there had been a promise." *Id*. at 1024-25 (citation and quotation marks omitted). "The issues of unjust enrichment and conferring a benefit arise in the context of a constructive contract." *Id*. at 1025.

[13] "To recover for a breach of contract, a plaintiff must prove that: (1) a contract existed, (2) the defendant breached the contract, and (3) the plaintiff suffered damage as a result of the defendant's breach." *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007). Whether the defendant breached the contract is a question of fact. *Rogier v. Am. Testing & Eng'g Corp.*, 734 N.E.2d 606, 621 (Ind. Ct. App. 2000), *trans. denied* (2001).

[14] The Universities do not dispute that contractual relationships existed between them and the Plaintiffs: implied contracts with respect to providing the Plaintiffs with educational instruction, services, and activities in exchange for tuition and student fees,[3] and express contracts with respect to providing the Church plaintiffs with housing and meals in exchange for room and board fees, which were governed by written contracts. Unlike defendants in similar cases, the Universities have not made specific arguments regarding specific student fees. *Cf. Chong v. Northeastern Univ.*, No. 20-10844-RGS, 2020 WL 7338499, at *4 (D. Mass. Dec. 14, 2020) (distinguishing fees that merely "support" certain facilities from those that allow access or admission to certain facilities or resources). Accordingly, we shall treat tuition and student fees as a package deal from this point forward.

[15] Regarding the implied contracts, the essence of the Plaintiffs' claims is that the Universities and the Plaintiffs bargained for in-person instruction, services, and activities in exchange for tuition and student fees, and that the Universities breached this agreement by transitioning to online instruction and closing campus facilities, thus depriving the Plaintiffs "of the benefit of the bargain for which they had already paid." Appellants' App. Vol. 3 at 53 (Seslar's

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[3] The Universities correctly observe that the Plaintiffs have not "allege[d] an express contract term requiring in-person education[.]" Appellants' Br. at 26.

complaint).[4] In their complaints, the Plaintiffs relied on statements on the Universities' websites and in the Universities' marketing materials, handbooks, course catalogs, and syllabi[5] in alleging that the Universities impliedly promised to provide in-person instruction, services, and activities.[6] *See, e.g.*, Appellants' App. Vol. 2 at 34-38 (mentioning IU's on-campus amenities, as well as references in IU's "Code of Student Rights, Responsibilities, & Conduct" to "classrooms, laboratories, libraries, and studios" being "the essential learning environments of the university" and students having the right of "access to faculty, academic technology, classrooms, libraries, presentations, and other

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[4] We reject the Universities' assertion that the Plaintiffs' claims sound in educational malpractice, which is not a recognized tort in Indiana. The Church plaintiffs' complaint comes the closest to making such a claim, *e.g.*, Appellants' App. Vol. 4 at 38 ("Church's online classes are not commensurate with the same courses being taught in-person."), but at bottom it alleges that they did not receive the benefit of their bargain with Purdue for in-person education, services, and activities. We also reject the Universities' assertion that the Plaintiffs are required to allege and prove that the Universities acted in bad faith. Students must prove bad faith in breach-of-contract cases involving matters of academic discipline and academic achievement, in which courts have traditionally granted universities deference, *Amaya v. Brater*, 981 N.E.2d 1235, 1240 (Ind. Ct. App. 2013) (citing *Gordon v. Purdue Univ.*, 862 N.E.2d 1244, 1251 (Ind. Ct. App. 2007)), *trans. denied*, but the Universities cite no precedent requiring proof of bad faith in breach-of-contract cases involving the provision of goods and services in an academic setting. *Cf. Old Nat'l Bank v. Kelly*, 31 N.E.3d 522, 531 (Ind. Ct. App. 2015) ("Indiana law does not impose a generalized duty of good faith and fair dealing on every contract; the recognition of an implied covenant is generally limited to employment contracts and insurance contracts."), *trans. denied*; *Kashmiri v. Regents of Univ. of Cal.*, 67 Cal. Rptr. 3d 635, 647 (Cal. Ct. App. 2007) (citations omitted) ("Courts have applied contract law flexibly to actions involving academic and disciplinary decisions by educational institutions because of the lack of a satisfactory standard of care by which to evaluate these decisions. Courts also have been reluctant to apply contract law to general promises or expectations. Courts have, however, not been hesitant to apply contract law when the educational institution makes a specific promise to provide an educational service, such as a failure to offer any classes or a failure to deliver a promised number of hours of instruction."), *rev. denied* (2008).

[5] Links to these documents are found in the Plaintiffs' complaints. Unfortunately, the drafters of the complaints did not use archived links, so readers are unable to view the documents in their original form, if at all.

[6] The Universities note that the "Plaintiffs have not identified a promise to educate in-person in the midst of a pandemic, including when such instruction would have been illegal[,]" Appellants' Br. at 26, but then they devote a significant portion of their brief to setting up and knocking down this straw man.

resources necessary for the learning process."); Appellants' App. Vol. 3 at 48-53 (mentioning Purdue's on-campus amenities, including "well-equipped classrooms, impressive research labs, [and] first-rate student housing"). The Plaintiffs also relied on the existence of the Universities' online degree programs, which are marketed separately from and priced "substantially less than" their on-campus degree programs. Appellants' App. Vol. 4 at 46 (alleging that Purdue accounting or business administration degree cost approximately $50,000 less for out-of-state residents in online program); Appellants' App. Vol. 2 at 31-32 (alleging that IU informatics degree cost over $13,000 less for resident students in online program). Additionally, the Plaintiffs relied on the parties' prior course of conduct during the 2020 spring semester. *See* Appellants' App. Vol. 2 at 38-39 ("That [IU] offered to provide, and [Spiegel] expected to receive, instruction on the physical campus is further evidenced by the parties' prior course of conduct[,]" i.e., "students attended physical classrooms to receive in-person instruction, and [IU] provided such in-person instruction"); Appellants' App. Vol. 3 at 52 (same regarding Purdue); *see also DiMizio*, 756 N.E.2d at 1024 (stating that implied contract is evidenced by parties' conduct).

[16] Drawing every reasonable inference in favor of the Plaintiffs, as we must, we conclude that these and similar additional factual allegations in the Plaintiffs' complaints, which must be accepted as true, are sufficient to state a claim that the Universities "intended to bind themselves to providing in-person education in exchange for retaining Plaintiffs' entire tuition payments for traditional on-campus degree programs." *Shaffer v. George Washington Univ.*, Nos. 21-7040 &

21-7064, 2022 WL 678086, at *5 (D.C. Cir. Mar. 8, 2022) (quotation marks omitted) (reversing dismissal of students' complaints raising similar allegations regarding breach of implied contract for payment of tuition for in-person instruction).[7] We reach the same conclusion with respect to the student fees, which are barely mentioned in the Universities' brief.[8] The terms of the implied contracts and the parties' intentions can be fleshed out in discovery. *Capitol Neon Signs*, 501 N.E.2d at 1085; *City of Indpls. v. Twin Lakes Enters., Inc.*, 568 N.E.2d 1073, 1079 (Ind. Ct. App. 1991); *Davis*, 897 N.E.2d at 942.[9]

[17] The complaints also sufficiently allege that the Universities breached the implied contracts by transitioning to online instruction and closing campus facilities, and that the Plaintiffs suffered damages as a result, i.e., "they were deprived of the value of the benefits, services and/or programs for which they

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[7] *Shaffer* reversed in pertinent part two cases that are cited repeatedly in the Universities' brief: *Shaffer v. George Washington University*, No. 20-1145, 2021 WL 1124607 (D.D.C. Mar. 24, 2021), and *Crawford v. Presidents & Directors of Georgetown College*, 537 F. Supp. 3d 8 (D.D.C. 2021). On March 16, 2022, the Universities submitted *Shaffer* as additional authority pursuant to Indiana Appellate Rule 48. We became aware of *Shaffer* on March 8, but we nevertheless commend counsel for fulfilling their duty of candor toward this tribunal.

[8] We note that the *Shaffer* court persuasively rejected a reservation-of-rights argument made by the universities in that case that is similar to one made by the Universities in this case. Because the Universities' argument appears in a footnote in their brief, we decline to address it further.

[9] We acknowledge the Universities' argument that some of the Plaintiffs' allegations contain marketing statements that are insufficient to create a contractual promise of in-person instruction. *See, e.g.*, Appellants' App. Vol. 2 at 33 (mentioning IU's landscape, architecture, and landmarks); Appellants' App. Vol. 3 at 50 (mentioning Purdue's cultural attractions). But the Plaintiffs' breach-of-contract claims are based on more than mere puffery, and, considered as a whole, they are sufficient to allege an implied promise of in-person instruction.

paid," as the Plaintiffs succinctly put it. Appellees' Br. at 39.[10] The Universities contend that the governor's executive orders made it legally impossible for them to fulfill their end of any bargain for in-person instruction, but assessing the viability of this affirmative defense is premature at this stage of the proceedings. If indeed the executive orders discharged the Universities' duty to perform their obligations under the contract, then "claims for unjust enrichment may lie." *Shaffer*, 2022 WL 678086, at *9 (quoting Restatement (Third) of Restitution and Unjust Enrichment § 34(1) ("A person who renders performance under a contract that is subject to avoidance by reason of mistake or supervening change of circumstances has a claim in restitution to recover the performance or its value, as necessary to prevent unjust enrichment.") and Restatement (Second) of Contracts § 272 cmt. b (discussing availability of restitution where party whose duty was "discharged because of impracticability of performance" already "received some of the other party's performance")); *see also DiMizio*, 756 N.E.2d at 1025 ("Unjust enrichment operates when there is no governing contract.").[11] Based on the foregoing, we affirm the denial of IU's motion for judgment on the pleadings in Spiegel's case and the denial of Purdue's motions to dismiss Seslar's and the Church plaintiffs' claims for breach of implied

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[10] The Universities assert that the Plaintiffs' alleged damages are too speculative, but this assertion is premised on their unsuccessful argument that the Plaintiffs' claims sound in educational malpractice. In any event, we reiterate that at the pleadings stage, "we do not test the sufficiency of the facts alleged with regards to their adequacy to provide recovery[.]" *Shi*, 921 N.E.2d at 37.

[11] The Universities do not challenge the substance of the Plaintiffs' unjust-enrichment claims, other than to note that such claims "are not available when the subject matter of those claims is governed by an enforceable contract." Appellants' Br. at 51 (citing *DiMizio*, 756 N.E.2d at 1024-25).

contract and unjust enrichment regarding the payment of tuition and student fees.

Section 2 – The Church plaintiffs' complaint sufficiently states claims for breach of express contract regarding room and board fees.

[18] The Church plaintiffs each signed a written "Residence Hall Contract," which states that in exchange for "payment of assessed rates[,]" Purdue agreed to provide housing and a meal plan for the 2019-2020 academic year, except during specified vacations "or in the event an emergency is declared by the University." Appellants' App. Vol. 4 at 64. Participation in a meal plan is a condition of the contract, except for students assigned to certain residence halls, and students could choose from a variety of meal plans. In their complaint, the Church plaintiffs alleged that they moved out of on-campus housing in March 2020 at Purdue's behest and did not return. They further alleged that Purdue breached the contract by not providing housing or meals for the rest of the semester, and they requested prorated refunds as damages.

[19] On appeal, Purdue argues that the Church plaintiffs' allegations are undermined by their own admissions elsewhere in their complaint that "some University housing would remain open for students who needed to remain on campus" and that "food options on campus would be continued." Appellants'

Br. at 49 (quoting Appellants' App. Vol. 4 at 43).[12] But in the very same paragraph of the complaint, the Church plaintiffs alleged that Purdue announced that "only students with extenuating circumstances would be permitted to remain in on-campus housing" and that on-campus food options "would be continued *on a very limited basis*." Appellants' App. Vol. 4 at 43 (emphasis added). There is no indication that the Church plaintiffs were among those students with "extenuating circumstances," and it is up to the trier of fact to determine whether offering "very limited" dining options was a breach of the parties' contracts.[13] *Rogier*, 734 N.E.2d at 621. In sum, we conclude that the Church plaintiffs' complaint sufficiently states claims for breach of express contract regarding room and board fees, and therefore we affirm the denial of Purdue's motion to dismiss those claims.[14]

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[12] Purdue does not mention the contract's "emergency" provision.

[13] *See* Appellants' App. Vol. 4 at 65 ("Students can choose from the 8-, 13-, Flex Unlimited 250, or Flex Unlimited 500 traditional meal plans. 8 or 13 meal swipes will be loaded each week for the 8- and 13- meal plans to use in any Purdue Dining & Catering location that accepts meal swipes. Meal swipes on the 8- and 13- meal plans must be used during the week in which they are valid or they will expire. Meal swipes in the Flex Unlimited Plans may be used without limit in the All-You-Care-To-Eat locations; in addition, swipes may be used up to 8 times per week in any of the PURDUE DINING QUICKLY (PDQ) swipe locations. PDQ meal swipes on unlimited meal plans must be used during the week in which they are valid or they will expire. Both the Flex Unlimited 250 and 500 meal plans include 8 guest meal swipes per semester that expire at the end of the contract."). It is also up to the trier of fact to determine whether the parties entered into a novation, as Purdue claims in a footnote in the Universities' brief. *See Rose Acre Farms, Inc. v. Cone*, 492 N.E.2d 61, 68 (Ind. Ct. App. 1986) ("A novation is a new contract made with the intent to extinguish one already in existence, and it contains four essential elements: (1) an existing and valid contract; (2) all parties must agree to the new contract; (3) the new contract must be valid; (4) the new contract must extinguish the old one."), *trans. denied*.

[14] As noted above, the Church plaintiffs did not appeal the dismissal of their unjust-enrichment claims regarding room and board fees, which *Shaffer* suggests might have been viable if it was legally impossible for Purdue to discharge its obligations under the contracts.

Section 3 – We decline to address the enforceability of Public Law 166-2021 for the first time on appeal.

[20] In April 2021, after the trial courts in this case issued their rulings and after the Universities filed a motion with this Court for consideration of their interlocutory appeals, the Indiana General Assembly enacted and Governor Holcomb signed Public Law 166-2021, which was made retroactive to March 1, 2020. Section 13 of the law, now codified at Indiana Code Section 34-12-5-7, provides that "[a] claimant may not bring, and a court may not certify, a class action lawsuit against a covered entity [i.e., the Universities] for loss or damages arising from COVID-19 in a contract, implied contract, quasi-contract, or unjust enrichment claim." The Universities and the amicus ask us to consider the enforceability of this statute as a court of first instance, citing the "overwhelming interest of judicial efficiency[.]" Appellants' Br. at 55.

[21] We decline their invitation. It is well settled that a party may not raise an issue for the first time on appeal. *Ball v. Jones*, 52 N.E.3d 813, 819 (Ind. Ct. App. 2016). It is also well settled that "an interlocutory appeal raises every issue presented by the order that is the subject of the appeal." *Tom-Wat, Inc. v. Fink*, 741 N.E.2d 343, 346 (Ind. 2001). Here, the issues presented by the trial court's orders are whether the Plaintiffs' complaints sufficiently state claims for breach of contract and unjust enrichment, not whether Public Law 166-2021 precludes the Plaintiffs from litigating their claims on a class basis. This issue was raised before the trial court in a similar case involving Ball State University, which is represented by the Universities' counsel; after a hearing, the court ruled in Ball

State's favor on February 11, 2022, and that ruling is currently being appealed. *Mellowitz v. Ball State Univ.*, No. 22A-PL-337 (Ind. Ct. App.) (notice of appeal filed Feb. 16, 2022). The Universities in this case may raise the statutory issue in due course before their respective trial courts, just as their counsel did in the Ball State case.[15]

[22] Affirmed.

Mathias, J., and Altice, J., concur.

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[15] By separate order, we grant the Plaintiffs' motion to strike Section V of the Universities' brief and deny the Universities' request to certify the Plaintiffs' challenge to the constitutionality of Public Law 166-2021.