

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Chanel Adavenaixx, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

Howard University,

*Defendant.*

Civil Action No. 1:23-cv-00663-DLF

**ANSWER AND AFFIRMATIVE DEFENSES OF HOWARD UNIVERSITY  
TO PLAINTIFF’S CLASS ACTION COMPLAINT**

Defendant Howard University (“Howard”) answers plaintiff’s Class Action Complaint (ECF No. 1) (“Complaint”) and asserts its affirmative defenses as set forth below. Except for the specific allegations or portions of allegations expressly admitted to below, Howard denies each and every other allegation, portion of allegation, and characterization of facts in the complaint (including the headings, titles, added emphases, footnotes, and any unnumbered paragraphs in the complaint, to the extent a response is required). Howard specifically denies any and all wrongdoing or liability to plaintiff and members of the purported class of persons on whose behalf the Complaint is said to be brought.

Howard reserves all rights to amend its Answer and Affirmative Defenses as necessary.

**ANSWERS TO NUMBERED PARAGRAPHS**

1. The allegations in Paragraph 1 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits that plaintiff purports to bring this lawsuit as a class action, but denies that plaintiff is legally entitled to do so and denies that a class could be certified. Howard denies the remaining allegations in Paragraph 1.

2. In response to the allegations in Paragraph 2, Howard admits that it is a private,

federally chartered historically black university (“HBCU”) in Washington, D.C., with an enrollment of approximately 11,000 students (which may vary on an academic year basis), offering more than 120 areas of study within 13 schools and colleges and three campuses in Washington, D.C., and one satellite campus in Beltsville, Maryland.

3. The allegations in Paragraph 3 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 3.

4. In response to the allegations in Paragraph 4, Howard admits that it provides its Course Catalog for the benefit of its students. Howard denies the remaining allegations in Paragraph 4.

5. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 relating to whether and when plaintiff and any putative class members viewed Howard’s Course Catalog and therefore denies them. Howard denies the remaining allegations in Paragraph 5.

6. In response to the allegations in Paragraph 6, Howard admits that the Course Catalog provides its students with information regarding the courses offered, the relevant department, credit hours, and classroom activities. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 6 relating to whether plaintiff and any putative class members were provided with Howard’s Course Catalog and therefore denies them. Howard denies the remaining allegations in Paragraph 6.

7. The allegations in Paragraph 7 purport to characterize statements appearing on Howard’s website. Because Howard’s website speaks for itself, no further response is required. To the extent a response is required, Howard admits that on March 16, 2020, Howard announced via letter from Howard’s President Wayne A.I. Frederick, M.D., MBA, that Howard was to

suspend “face-to-face instruction of courses at Howard University for the remainder of the Spring, 2020 semester and courses will continue to transition to remote and online instruction following the scheduled Spring Break.” Howard denies the remaining allegations in Paragraph 7.

8. Howard denies the allegations in Paragraph 8.

9. Howard denies the allegations in Paragraph 9.

10. Howard denies the allegations in Paragraph 10.

11. The allegations in Paragraph 11 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 11.

12. The allegations in Paragraph 12 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 12.

13. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 13 relating to plaintiff’s current residence and therefore denies them. Howard admits that during the Spring 2020 semester, plaintiff was an undergraduate student in Howard’s School of Communications with a major in Media, Journalism and Film and a minor in Business Administration, and that plaintiff graduated at the end of the Spring 2022 semester after completing her undergraduate degree requirements. Howard denies the remaining allegations in Paragraph 13.

14. In response to the allegations in Paragraph 14, Howard admits that it is a private university with its principal place of business at 2400 Sixth Street NW, Washington, D.C. 20059.

15. The allegations in Paragraph 15 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 15.

16. The allegations in Paragraph 16 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 16.

17. Howard lacks knowledge or information sufficient to form a belief as to the

allegations in Paragraph 17 relating to plaintiff's current residence and therefore denies them. The remaining allegations in Paragraph 17 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the remaining allegations in Paragraph 17.

18. In response to the allegations in Paragraph 18, Howard denies that plaintiff paid the cost of tuition and other mandatory fees for the Spring 2020 Semester at Howard. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 relating to whether putative class members paid the cost of tuition and other mandatory fees for the Spring 2020 semester at Howard and therefore denies them. Howard denies the remaining allegations in Paragraph 18.

19. In response to the allegations in Paragraph 19, Howard admits that pursuant to the published Academic Calendar, Spring 2020 semester classes at Howard were scheduled to begin on or about January 13, 2020, and Spring 2020 semester classes and final exams were scheduled to end on or around May 8, 2020.

20. In response to the allegations in Paragraph 20, Howard denies that plaintiff paid the cost of tuition and other mandatory fees for the Spring 2020 Semester at Howard. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 20 relating to whether putative class members paid the cost of tuition and other mandatory fees for the Spring 2020 semester at Howard and therefore denies them. Howard denies the remaining allegations in Paragraph 20.

21. In response to the allegations in Paragraph 21, upon information and belief, Howard admits that undergraduate tuition for the Spring 2020 Semester at Howard was approximately \$12,483. Howard lacks knowledge or information sufficient to form a belief as to the allegations that "mandatory undergraduate fees are \$970 per semester" given the vagueness of these allegations and therefore denies them.

22. Howard generally denies the allegations in Paragraph 22 referring to graduate programs are relevant to plaintiff's claims. To the extent a response is required, Howard admits that graduate tuition for the Spring 2020 semester at Howard varies based on the program.

23. Howard generally denies the allegations in Paragraph 23 referring to graduate programs are relevant to plaintiff's claims. To the extent a response is required, Howard admits that it also charges mandatory fees for graduate programs, which vary depending on the program.

24. The allegations in Paragraph 24 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 24.

25. The allegations in Paragraph 25 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 25.

26. The allegations in Paragraph 26 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 26.

27. The allegations in Paragraph 27 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 27.

28. The allegations in Paragraph 28 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 28.

29. The allegations in Paragraph 29 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further

response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 29.

30. The allegations in Paragraph 30 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 30.

31. The allegations in Paragraph 31 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies the allegations in Paragraph 31.

32. The allegations in Paragraph 32 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 32.

33. The allegations in Paragraph 33 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 33.

34. The allegations in Paragraph 34 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 34.

35. The allegations in Paragraph 35 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further

response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 35.

36. The allegations in Paragraph 36 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 36.

37. The allegations in Paragraph 37 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 37.

38. The allegations in Paragraph 38 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 38.

39. The allegations in Paragraph 39 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 39.

40. The allegations in Paragraph 40 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 40.

41. The allegations in Paragraph 41 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further

response is required. To the extent a response is required, Howard denies that its Course Catalog contains the alleged promise and denies the remaining allegations in Paragraph 41.

42. In response to the allegations in Paragraph 42, Howard denies that its Course Catalog contains any promises relating to in-person instruction and activities. The remaining allegations in Paragraph 42 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the remaining allegations in Paragraph 42.

43. In response to the allegations in Paragraph 43, Howard admits that on March 16, 2020, Howard announced that because of the global COVID-19 pandemic, including declarations of a public emergency and public health emergency by District of Columbia Mayor Muriel Bowser on March 11, 2020, classes would transition to remote and online format following the scheduled Spring Break.

44. Howard denies the allegations in Paragraph 44.

45. The allegations in Paragraph 45 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 45.

46. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 46 and therefore denies them.

47. Howard denies the allegations in Paragraph 47.

48. The allegations in Paragraph 48 purport to characterize statements made on Howard's website. Howard's website speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies the allegations about its website in Paragraph 48. Howard denies the remaining allegations in Paragraph 48.

49. The allegations in Paragraph 49 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits plaintiff purports to bring this lawsuit as a class action, but denies that plaintiff is legally entitled to do so and denies that a class



could be certified. Howard denies the remaining allegations in Paragraph 49.

50. The allegations in Paragraph 50 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits plaintiff purports to bring this lawsuit as a class action, but denies that plaintiff is legally entitled to do so and denies that a class could be certified. Howard denies the remaining allegations in Paragraph 50.

51. The allegations in Paragraph 51 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits plaintiff purports to represent a subclass consisting of class members who reside in Nevada, but denies that plaintiff is legally entitled to do so and denies that a subclass could be certified. Howard denies the remaining allegations in Paragraph 51.

52. The allegations in Paragraph 52 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 52.

53. The allegations in Paragraph 53 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 53.

54. The allegations in Paragraph 54 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 54.

55. The allegations in Paragraph 55 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 55.

56. The allegations in Paragraph 56 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 56.

57. The allegations in Paragraph 57 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 57.

58. The allegations in Paragraph 58 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 58.

59. In response to Paragraph 59, Howard repeats and incorporates its responses to all of the allegations in the preceding paragraphs.

60. The allegations in Paragraph 60 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits plaintiff purports to bring this lawsuit individually and on behalf of a putative class and subclass, but denies that plaintiff is legally entitled to do so and denies a class or subclass could be certified. Howard the remaining denies the allegations in Paragraph 60.

61. The allegations in Paragraph 61 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 61.

62. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 62 relating to whether and when plaintiff and any putative class members viewed Howard's Course Catalog and therefore denies them. The remaining allegations in Paragraph 62 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the remaining allegations in Paragraph 62.

63. In response to the allegations in Paragraph 63, Howard admits that the Course Catalog provides its students with information regarding the courses offered, the relevant department, credit hours, and classroom activities. Howard lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 63 relating to whether plaintiff and any putative class members were provided with Howard's Course Catalog and therefore denies them. Howard denies the remaining allegations in Paragraph 63.

64. Howard denies the allegations in Paragraph 64.

65. Howard denies the allegations in Paragraph 65 that "[t]uition for the Spring 2020 Semester was intended to cover in-person educational services from January through May 2020." The remaining allegations in Paragraph 65 state legal conclusions as to which no response is

required. To the extent a response is required, Howard denies the remaining allegations in Paragraph 65.

66. The allegations in the first two sentences in Paragraph 66 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in the first two sentences in Paragraph 66. The remaining allegations in Paragraph 66 purport to characterize statements made in Howard's Course Catalog. Howard's Course Catalog speaks for itself and therefore no further response is required. To the extent a response is required, Howard denies the remaining allegations in Paragraph 66.

67. The allegations in Paragraph 67 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 67.

68. The allegations in Paragraph 68 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 68.

69. The allegations in Paragraph 69 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 69.

70. The allegations in Paragraph 70 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 70.

71. The allegations in Paragraph 71 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 71.

72. In response to Paragraph 72, Howard repeats and incorporates its responses to all of the allegations in the preceding paragraphs.

73. The allegations in Paragraph 73 state legal conclusions as to which no response is required. To the extent a response is required, Howard admits plaintiff purports to bring this lawsuit individually and on behalf of a putative class and subclass, but denies that plaintiff is legally entitled to do so and denies that a class or subclass could be certified. Howard denies

remaining the allegations in Paragraph 73.

74. The allegations in the first sentence in Paragraph 74 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in the first sentence of Paragraph 74. Howard denies the remaining allegations in Paragraph 74.

75. The allegations in Paragraph 75 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 75.

76. The allegations in Paragraph 76 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 76.

77. The allegations in Paragraph 77 state legal conclusions as to which no response is required. To the extent a response is required, Howard denies the allegations in Paragraph 77.

**ANSWER TO PRAYER FOR RELIEF**

Plaintiff's prayer for relief contains requests for relief as to which no response is required. Howard also points out the ruling by the D.C. Circuit in *Shaffer v. George Washington Univ.*, 27 F.4th 754 (D.C. Cir. 2022), which, among other things, rejected claims for breach of express contract. To the extent a response is required, Howard denies that plaintiff and/or any of the members of the purported class and subclass on whose behalf the Complaint is said to be brought are entitled to any of the relief prayed for in the Complaint or to any relief whatsoever. Howard denies that plaintiff and/or any members of the purported class and subclass on whose behalf the Complaint is said to be brought are entitled to proceed in this action as a class pursuant to Federal Rule of Civil Procedure 23, and denies that this action is maintainable pursuant to that Rule. Howard further denies that plaintiff and/or any members of the purported class and subclass on whose behalf the Complaint is said to be brought are entitled to any award of damages, costs or expenses of this litigation, attorneys' fees, pre-judgment interest, restitution, equitable monetary relief, injunctive relief, or any other relief of any kind.

**ANSWER TO JURY DEMAND**

Plaintiff's request for a trial by jury does not require a response from Howard.

**AFFIRMATIVE AND OTHER DEFENSES**

Howard raises the following affirmative and other defenses without waiver of any others that may be available to it. Howard specifically reserves the right to raise any additional affirmative and other defenses at any time during the pendency of these proceedings, including any and all which may come to light through discovery or otherwise. In alleging these affirmative and other defenses, Howard does not assume any burden of proof, persuasion, or production not otherwise legally assigned it. Without admitting any of the allegations in the complaint, Howard asserts the following affirmative defenses to the complaint:

**FIRST DEFENSE**

Plaintiff and the putative class members fail to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Howard did not enter into a contract, express or implied, with plaintiff or any putative class members for in-person instruction, activities, or services.

**THIRD DEFENSE**

Plaintiff's and the putative class members' claims are barred in whole or in part by the doctrines of force majeure, excused performance, frustration of purpose, illegality, impracticability, and/or impossibility. To the extent any contract was formed between Howard and plaintiff or any putative class member for in-person instruction, activities, or services, Howard's duty to perform any such contract was discharged by the emergence of the global COVID-19 pandemic, the March 11, 2020 declarations of a public emergency and public health emergency, the March 30, 2020 mandatory Stay-At-Home Order, and other orders issued by District of Columbia Mayor Muriel Bowser.

**FOURTH DEFENSE**

Plaintiff's and the putative class members' claims are barred by Howard's policies and procedures, including but not limited to the refund policy set forth in the Student Reference Manual.

**FIFTH DEFENSE**

Plaintiff's and the putative class members' claims are barred by the reservation of rights in Howard's Course Catalog.

**SIXTH DEFENSE**

Plaintiff's and the putative class members' claims are barred by the educational malpractice doctrine and public policy.

**SEVENTH DEFENSE**

Plaintiff's and the putative class members' claims are barred in whole or in part by the doctrines of novation, consent, acquiescence, ratification, and/or waiver.

**EIGHTH DEFENSE**

Plaintiff's and the putative class members' claims are barred in whole or in part by their failure to mitigate any injuries or damages.

**NINTH DEFENSE**

Plaintiff's and the putative class members' claims are barred in whole or in part by the doctrines of unclean hands, laches, and/or equitable estoppel.

**TENTH DEFENSE**

To the extent the Court finds that Howard entered into a contract, express or implied, with plaintiff or any putative class members for in-person instruction, activities, or services, plaintiff's and the putative class members' claim for unjust enrichment is barred.

**ELEVENTH DEFENSE**

Howard was not unjustly enriched by the transition to remote and online instruction during the Spring 2020 semester caused by the emergence of the global COVID-19 pandemic, and the

March 11, 2020 declarations of a public emergency and public health emergency and March 30, 2020 mandatory Stay-At-Home Order issued by District of Columbia Mayor Muriel Bowser.

**TWELFTH DEFENSE**

To the extent plaintiff or any putative class members conferred any benefit on Howard in the form of payment of tuition or fees or in any other form, it would not be unjust for Howard to retain the benefit.

**THIRTEENTH DEFENSE**

Plaintiff and the putative class members did not suffer any injury or damages.

**FOURTEENTH DEFENSE**

Plaintiff and the putative class members have an adequate remedy at law and are not entitled to equitable relief.

**FIFTEENTH DEFENSE**

Plaintiff's and the putative class members' claims are barred in whole or in part to the extent plaintiff and the putative class members received financial aid from any source and did not pay tuition or fees, in full or in part.

**SIXTEENTH DEFENSE**

Plaintiff and the putative class members would be unjustly enriched if awarded any damages.

**SEVENTEENTH DEFENSE**

Plaintiff and the putative class members are not entitled to recovery of attorneys' fees or other fees, costs, or expenses of this litigation.

**EIGHTEENTH DEFENSE**

To the extent that plaintiff and the putative class members are entitled to recover any damages, such damages should be set off by any refunds already provided to them and any monies or things of value provided to them in connection with the Spring 2020 term.

**ADDITIONAL DEFENSES**

Howard has not knowingly or intentionally waived any applicable affirmative or other defense and reserves the right to rely upon such defenses as may become available or apparent. Howard further reserves the right to amend this Answer and/or its affirmative and other defenses accordingly, and/or to withdraw affirmative and other defenses that Howard determines are not applicable.

**JURY DEMAND**

Howard demands a trial by jury on all issues of fact and damages on all claims except as to those claims the Court has dismissed.

**RESPONSE TO NOTICE OF RELATED ACTION**

Howard states that pursuant to Local Civil Rule 40.5(a)(4), this case should have been initially designated as related to *Adavenaixx v. Howard University*, Case No. 1:20-cv-02872 (D.D.C.), the putative class action previously filed by plaintiff on October 7, 2020. Because of plaintiff's failure to file an initial Notice of Related Action that complied with Local Civil Rule 40.5(a)(4), this case was administratively assigned without the benefit of accurate information.

**PRAYER FOR RELIEF**

Howard respectfully requests that the Court enter judgment in its favor and against plaintiff, that plaintiff take nothing against Howard by its suit, and that the Court grant Howard such other and further relief as the Court deems just and proper.

June 5, 2023

Respectfully submitted,

By: /s/ Tracy A. Roman  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2023, a copy of the foregoing was filed with the United States District Court for the District of Columbia by electronic filing and served on all counsel of record via the Court’s electronic filing system.

\_\_\_\_\_  
/s/ Tracy A. Roman  
Tracy A. Roman