

thousands of employees in violation of the CARES Act and the contract it made when awarded the CARES Act money.

3. Starting in May 2020, CUNY began to announce plans to lay off hundreds of PSC-represented adjunct faculty and staff (collectively, “adjuncts”) as early as July 1, 2020. For example, CUNY’s John Jay College of Criminal Justice announced plans to lay off more than 400 adjuncts. CUNY’s College of Staten Island announced plans to lay off more than 35% of its adjuncts.

4. On information and belief, CUNY began laying off adjuncts as early as May 2020, and is in the process of completing more than 2,800 lay-offs by July 1, 2020. These 2,800 adjuncts represent the equivalent of approximately 20% of CUNY’s adjunct workforce.

5. CUNY employs approximately 12,000 adjunct faculty members and approximately 2,000 adjunct professional staff. These employees are represented by the PSC and their terms and conditions of employment are governed by the collective bargaining agreement between the PSC and CUNY (the “CBA”).

6. Adjunct faculty do work that is critical to furthering CUNY’s mission of providing a public, affordable, first-rate education to all students, regardless of means or background. They teach the majority of CUNY’s courses. Each semester, they teach thousands of classes, work with tens of thousands of students, and grade tens of thousands of assignments, papers, quizzes, mid-terms, and final examinations. They provide career and academic advice to students, many of whom are the first in their families to attend college, and many of whom work full-time in addition to their coursework. They identify and support students who are struggling academically or in their personal lives. They are advocates for students who lack the resources or the confidence to effectively advocate for themselves. They have enabled CUNY to stay

afloat during decades of shrinking public funding. They are a core academic workforce. The pandemic has not stopped the critical work these adjuncts perform: it has just moved that work online.

7. Since the start of the pandemic, the adjunct faculty have converted their classes into remote learning classes. They have continued to teach their classes, troubleshooting their students' technological problems in the process. They have invested thousands of hours of unpaid time in making a quick transition to online instruction. They have continued to generously share their time, energy, and expertise with their students. Their role is all the more important now as many students face pandemic-related job insecurity and family illness. Their hard work and sacrifice are a major reason that CUNY continues to be able to teach hundreds of thousands of New Yorkers even as the City has become an epicenter of the pandemic.

8. Adjunct staff are also vital to CUNY's mission. As public funding has decreased and enrollment has increased, CUNY has developed a growing reliance on adjunct staff to perform functions once performed exclusively by full-time employees who could earn continuing appointment.

9. Hundreds of adjunct staff serve as laboratory technicians, working closely with their full-time counterparts to prepare and maintain scientific equipment used in multi-million-dollar research grants and student instruction.

10. They also work closely with students, setting up lab experiments, guiding them through difficult procedures, and maintaining safety in the labs. With the abrupt transition to online instruction in March 2020, the adjunct staff have had to invent ways to assist students with scientific experiments normally done in person; some have made videos of themselves at

home, some have recreated past lab results and asked students to work with them, and all have found ways of sustaining students' engagement under very difficult circumstances.

11. Non-teaching adjunct staff also fulfill critical roles in many other parts of the University; they serve as part-time financial aid counselors, part-time academic advisors, and part-time research librarians.

12. CUNY college libraries depend increasingly on adjunct librarians as budgets have shrunk. Their work helps to keep libraries open, and during the pandemic they have become especially important in enabling students to continue researching and learning even while physical libraries are closed.

13. It is fair to say there would be no CUNY without adjunct faculty and staff. In spite of this, CUNY has chosen to repay the adjuncts' dedication and hard work with pink slips: it is laying off 2,800 of them. These layoffs violate Section 18006 of the CARES Act, which requires CUNY to continue to pay them "to the greatest extent practicable," and breach a contract that CUNY entered in to with the federal government as a condition of receiving the CARES Act money.

THE PARTIES

14. The PSC, an "employee organization" under § 201(5) of the New York State Civil Service Law, is the collective bargaining representative of approximately 30,000 members of the CUNY instructional and professional staff, including the adjunct faculty. Its primary purpose is to advance and secure the professional and economic interests of its members. It maintains its office at 61 Broadway, New York, New York 10006.

15. PSC's objectives include, but are not limited to: improving the quality of education and scholarship at CUNY; negotiating and administering CBAs; serving as the public representative for CUNY instructional staff and other PSC-represented employees; and

cooperating with other CUNY employees and academic organizations and student bodies in order to advance the interests of the faculty, staff, and students of CUNY and the communities it serves.

16. PSC represents approximately 12,000 teaching adjuncts and approximately 2,000 non-teaching adjuncts.

17. CUNY, a “public employer” under § 201(6) of the New York State Civil Service Law, is a public university created by the New York legislature. N.Y. Educ. Law § 6203. It has eleven senior colleges, seven community colleges, and seven graduate, honors, and professional schools. Its principal place of business is located at 205 East 42nd Street, New York, New York 10017.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

19. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because CUNY maintains its headquarters and principal place of business in Manhattan.

FACTS

CONGRESS PASSED THE CARES ACT TO HELP WORKERS LIKE THE ADJUNCTS

20. In March 2020, Congress enacted the CARES Act. As described below, the CARES Act provides significant new federal funding to colleges and universities.

21. Congress passed the CARES Act to address the profound economic dislocation arising from the unprecedented COVID-19 global pandemic. In passing the CARES Act, Congress intended to reduce the amount of unemployment that would otherwise flow from

the impact of COVID-19 on the economy, and to protect vulnerable workers such as the adjuncts being laid off by CUNY.

22. Speaker of the House of Representatives Nancy Pelosi stated during her floor speech on behalf of the CARES Act:

We ensured in the bill that any taxpayer dollars given to industry goes first and foremost to workers. Workers' paychecks and benefits, not used to pay CEO bonuses, stocks, fund buybacks or dividends and the rest. And I thank – and we have secured robust special oversight that will hold the Administration accountable for this.

23. While in the White House Oval Office as the President signed the CARES Act, House Minority Leader Kevin McCarthy stated: “The small businesses will be able to hire their employees back ... The other businesses get a retention to keep your employees on.”

**THE CARES ACT PROVIDES NEARLY
\$14 BILLION TO COLLEGES AND UNIVERSITIES**

24. CARES Act Section 18001 creates the “Education Stabilization Fund” with funding of \$30.75 billion. Of that amount, CARES Act Section 18004 allocates approximately \$13.953 billion to the Higher Education Relief Fund (“Relief Fund”).

25. Under CARES Act Section 18004, the Secretary of Education allocates Relief Fund money to colleges and universities.

26. CARES Act Section 18007(2) defines the term “institution of higher education” to have the meaning given such term in Title I of the Higher Education Act of 1965, 20 U.S.C. § 1001, *et seq.*

27. 20 U.S.C. § 1001 defines an institution of higher education as an accredited and certain state licensed and pre-accredited public or non-profit post-secondary degree-granting institution.

28. CUNY is an institution of higher education within the meaning of 20 U.S.C. § 1002 and CARES Act Section 18007(2) because it is an accredited public post-secondary degree-granting institution.

**COLLEGES AND UNIVERSITIES THAT RECEIVE CARES
ACT MONEY, INCLUDING CUNY, MUST CONTINUE TO PAY
THEIR WORKERS “TO THE GREATEST EXTENT PRACTICABLE”**

29. Under CARES Act Section 18006, an institution of higher education that receives Relief Fund money “shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to the coronavirus.”

30. To receive CARES Act Relief Fund monies, an institution of higher education must enter into a “Higher Education Emergency Relief Fund Certification Agreement” (the “Contract”) in the form as attached in Exhibit A. On information and belief, CUNY entered into the Contract as a condition of receiving Relief Fund CARES Act money.

31. On information and belief, CUNY was awarded approximately \$251 million in CARES Act funds, with the first allocation in or about May 2020.

32. On information and belief, the federal government provided CARES Act funds to many, if not all of CUNY’s campuses. Among CUNY’s Manhattan-based campuses, the CUNY Borough of Manhattan Community College received \$26,420,828 in CARES Act funding; CUNY’s Hunter College received \$19,006,958 in CARES Act funding; CUNY’s City College of New York received \$15,399,906 in CARES Act funding; CUNY John Jay College of Criminal Justice received \$15,320,009 in CARES Act funding; CUNY’s Graduate School and University Center received \$776,134 in CARES Act funding; CUNY’s Charles Guttman Community College received \$1,228,352 in CARES Act funding; and CUNY’s Bernard M. Baruch College received \$16,563,226 in CARES Act funding.

33. Thus, in total, CUNY's Manhattan-based campuses alone received over \$94 million of CARES Act funding.

34. CUNY campuses in other boroughs collectively received an additional \$157 million in CARES Act funding.

35. The adjuncts, and the PSC as the adjuncts' collective bargaining representative, are third-party beneficiaries of the Contract.

36. CUNY must comply with CARES Act Section 18006 and the Contract.

**NEW YORK CITY IS STILL IN A PERIOD OF
CORONAVIRUS CAUSED DISRUPTIONS AND CLOSURES**

37. On May 29, 2020 New York Governor Andrew Cuomo discussed the then-imminent Phase 1 reopening in New York City and addressed the disruptions that would remain in place during the reopening, "This is about reopening to a new normal — a safer normal. People will be wearing masks and people will be socially distanced — it's a new way of interacting, which is what we have to do. Wear a mask, get tested and socially distance."

38. On June 22, 2020, New York City entered Phase Two of its four-phase reopening. The Governor has not yet set a date for New York City to fully reopen.

39. On June 24, 2020, Governor Cuomo announced a travel advisory requiring individuals travelling to New York from states with high infection rates to self-quarantine for two weeks. "We've been working with our neighbors in New Jersey and Connecticut throughout this entire pandemic, and we're announcing a joint travel advisory that says people coming in from states with a high infection rate must quarantine for 14 days." Although New York is gradually reopening, COVID-19 is still causing disruptions and closures, as people continue to self-quarantine and stay home.

40. Many businesses remain closed and will not reopen until Phase 3 or Phase 4 of New York City's reopening plan. The New York City public school system, the largest in the country, has not yet announced whether it intends to implement full-time, in-person classes when school is set to resume in September 2020. New York City, where all of CUNY's campuses and programs are located, is still undeniably in the period of COVID-19 closures and disruptions.

**CUNY CANNOT SHOW THAT "TO THE GREATEST
EXTENT PRACTICABLE" IT IS CONTINUING TO PAY ITS ADJUNCTS**

41. As a recipient of funding governed by CARES Act Section 18006, CUNY bears the burden of proving that, "to the greatest extent practicable," it has continued to pay the adjuncts it is laying off. CUNY cannot meet this burden.

42. On information and belief, CUNY's decision to lay off thousands of adjuncts is primarily motivated by its belief that it will suffer COVID-19 related funding reductions.

43. The State of New York ("State") is CUNY's principal funding source. Tuition revenue is CUNY's second largest funding source. New York City, which finances a portion of CUNY's operating costs, principally for the community colleges, is an additional funding source.

44. The State passed its budget in early April 2020. There are no cuts to State funding for the senior colleges; funding remains largely flat at \$552 million, except for additional fringe benefit coverage and funding for the adjunct office hours negotiated in the recent CBA. But most of the University's FY2021 cost increases for collective bargaining, energy, rent and other operating costs are not funded.

45. That budget provided CUNY with \$552 million, an amount that reflects a modest increase over the State budget passed in 2019, primarily due to a \$51 million increase in fringe benefit funding. The enacted State budget also assumes a tuition increase of \$200 per year. While cuts to State funding to CUNY have been projected, based on the State budget deficit as a result of COVID-19, such cuts have not yet been announced or implemented.

46. The City budget for the upcoming fiscal year was passed on June 30, 2020. The funding for CUNY in the City's fiscal year 2021 budget is \$1,195,556,150. The funding for CUNY in the City's fiscal year 2020 budget was \$1,190,766,027. Thus, the City's funding of CUNY includes an increase of \$4,790,123.

47. The Federal government has provided CUNY with \$251 million in CARES Act funding, an amount equal to approximately 6% of CUNY's 2019-2020 operating budget, as reported in CUNY's FY2021 budget request.

48. CUNY's 2020 Summer Session enrollment is up 17% from its 2019 Summer Session enrollment. CUNY has projected a 4.4% decrease in Fall Semester enrollment.

49. To cut costs in response to COVID-19, universities and colleges around the nation have reduced executive compensation. For example, the president of the University of Southern California took a 20% pay cut. The president of the University of Oregon took a temporary 12% pay cut, and the university's vice presidents and athletic director will take 10% pay cuts. While reducing executive compensation does not represent a solution to universities' budget crises, it does demonstrate leadership, and such pay cuts can generate revenue to help avoid adjunct layoffs. CUNY has not reduced executive compensation packages, as other universities around the country have done.

50. The CUNY University Budget Office issued a “FY2020 Third Quarter Financial Report” dated June 4, 2020 (the “Third Quarter Report”). Any CUNY assertion that it is not practicable to continue to pay the 2,800 adjuncts it is laying off is belied by the Third Quarter Report.

51. The Third Quarter Report’s “Executive Summary” states:

[t]he overall financial outlook is stable for the current year, although the impact of growing costs University wide and lower enrollment at some colleges is increasing pressure on college budgets and negatively effecting future years’ outlook. The COVID-19 pandemic is also impacting the University’s finances. Costs related to the health crisis include additional cleaning, protective personal equipment, and needs associated with the shift to distance learning and remote work. At the same time, costs associated with office supplies and travel have decreased. The pandemic is also having an impact on tuition revenue collections as students and families have lost jobs. Expenditures are projected to grow year-over-year by 5%, while revenues are estimated to increase by only 0.4%. Overall enrollment is down 1% compared to the prior year.

52. According to the Third Quarter Report, CUNY as a whole is projected to “end the [fiscal] year with \$52 million in reserves.”

53. Only two CUNY colleges are projected to end the fiscal year with a negative balance.

54. The Third Quarter Report says nothing about the necessity of laying off any employees, let alone thousands of adjuncts.

55. In May 2020, when the PSC first learned of CUNY’s plans to lay off large numbers of adjuncts, it agreed to a proposal from CUNY to extend the deadline for notification of current adjuncts about their employment in the fall, and the parties negotiated a May 29, 2020 agreement (the “May 29 Agreement”). In the May 29 Agreement, CUNY agreed, *inter alia*, to provide the PSC with “fiscal year 2020-2021 budget information about the colleges and

university [which] ... will include detailed college budget information, information about proposed cuts, information about State and City fiscal information and enrollment projections.” To date, more than a month later, CUNY has produced none of the information it promised to provide to the PSC in the May 29 Agreement, apart from the publicly available Third Quarter Report.

56. At a June 24, 2020 bargaining session, PSC President Barbara Bowen noted that other than the Third Quarter Report, CUNY had not provided the PSC with any of the information it had agreed to provide in the May 29 Agreement, and asked CUNY to provide the information promised in the May 29 Agreement. In response, CUNY’s representative said that CUNY has provided the PSC what it had. CUNY’s representatives told President Bowen and the PSC bargaining team they did not have college specific information, that they did not have enrollment information and that they did not have City budget information. Regarding the State, CUNY’s representative told President Bowen and her bargaining team that while the State had projected a \$13.1 billion shortfall and a \$10.1 billion in cuts to various agencies, the State had not yet advised which agencies would be cut.

57. At a minimum, CUNY has available the \$132 awarded to CUNY colleges in institutional CARES Act funding – the portion of the funding not restricted to direct student aid – and the \$52 million in projected fiscal year-end surplus. These monies can be used to pay the adjuncts now being laid off.

58. CUNY hires adjunct faculty to teach a specific course, or courses, generally for a fifteen-week semester. Adjunct faculty are paid on the basis of the number of “classroom contact hours” they spend in classroom instruction, plus additional paid office hours scaled to the number of courses they teach. Adjuncts who teach less than one three-credit course

are not paid for or required to hold office hours; instead, they are paid for a small number of “professional hours” per semester to engage in professional activities defined in the CBA. Adjuncts’ rates of hourly pay are established in the CBA and depend on the individuals’ academic credentials and seniority. On average, they teach between one and two three-credit courses a semester, but some of CUNY’s longest-serving adjuncts teach as many as four courses a term. Many have been teaching at CUNY for decades.

59. Adjunct staff are hired for a specific number of hours per week for a specific number of weeks, and their pay rates are established in the CBA. Their pay rates vary by job title, qualifications and seniority.

60. Data provided by CUNY for the spring 2020 semester show that approximately 87% of all adjuncts are adjunct faculty; 8.5% are “non-teaching adjuncts” (typically in librarian or counseling positions), and 4.5% are adjunct college laboratory technicians. Under these proportions, the projected total of 2,800 adjunct lay-offs would include 2,430 adjunct faculty; 243 non-teaching adjuncts; and 127 adjunct college laboratory technicians. The total incomes for these groups, inflated by the 13% fringe benefit number CUNY uses in its calculations, are \$27,375,800; \$1,842,131; and \$786,162 respectively. The grand total for the projected 2,800 adjuncts, assuming the current mix of titles and current mix of hours paid, would be \$30,004,093 for a semester.

61. The \$30 million cost of retaining all 2,800 laid-off adjuncts for one semester represents less than 12% of CUNY’s institutional CARES Act funding and less than 10% of the minimum CUNY has on hand as a result of the projected year-end surplus and the institutional CARES Act money together. The cost of retaining all the adjuncts who are expected to be laid off is less than 1% of CUNY’s total operating budget.

62. CUNY has chosen to lay off the adjuncts as a first resort, in violation of CARES Act Section 18006 and the Contract, which require CUNY to lay off adjuncts – and any other employees – as a last resort.

63. CARES Act Section 18006 requires CUNY to continue to pay these adjuncts “to the greatest extent practicable.” To meet its burden of establishing that its layoff of adjuncts is lawful, CUNY must prove that it has made efforts “to the greatest extent practicable” to avoid lay-offs and that, despite these efforts, it cannot continue to pay them. CUNY cannot meet this burden. It cannot meet this burden because, according CUNY’s own Third Quarter Report, as of June 4, 2020, its finances were “stable.” It cannot meet this burden because, despite promising the PSC in the May 19 Agreement that it would provide detailed financial and enrollment information, it has provided nothing, and has affirmatively stated that it has not made those calculations. It cannot meet this burden because it has not cut executive pay. And it cannot meet this burden because the cost of paying the to-be-laid-off adjuncts for the fall 2020 semester would be less than 1% of its total budget for the 2020 fiscal year and only 12% of the CARES Act money it received.

THE LAYOFFS WILL CAUSE IRREPARABLE HARM

64. The adjuncts who receive CUNY-provided medical coverage pursuant to the CBA and who are laid off will lose their medical coverage. Based on representations from CUNY, the PSC believes that CUNY’s layoff will make 422 adjunct faculty and staff members ineligible for the medical coverage they received pursuant to the CBA under the NYC Health Benefits Program. Additional adjunct faculty and staff who receive medical coverage under the New York State Health Insurance Program will also be among those laid off.

65. The layoff of adjunct faculty and staff who receive medical coverage pursuant to the CBA will strip them of their medical coverage during a pandemic; the loss of

medical coverage will cause irreparable harm that cannot be fully remedied absent a preliminary injunction barring the layoffs. As the Court of Appeals for the Second Circuit said, “the threatened termination of benefits such as medical coverage for workers and their families obviously raised the spectre of irreparable injury.” *Whelan v Colgan*, 602 F.2d 1060, 1062 (2d Cir. 1979). That was true 41 years ago, and it is truer now, as every New Yorker confronts COVID-19. Laid-off adjunct faculty and staff who have lost medical coverage, like every other New Yorker, will be at risk of contracting COVID-19. Some will contract COVID-19 post-layoff, and some will be suffering from COVID-19 when laid off. For those people, uninterrupted access to medical care will be a matter of life and death.

66. Further, all of the 2,800 laid-off adjuncts will suffer irreparable harm because they are being laid off during an unprecedented pandemic and related recession. The laid-off adjuncts will suffer job loss and the loss of their livelihood while the economy is in a near-depression, and while the simple act of getting on the subway to travel to an in-person job interview is fraught with danger. The laid-off adjuncts will have great difficulty safely searching for work because of the infection risk arising from travel on subways and buses; they will have great difficulty finding any replacement employment because of the massive levels of unemployment generated by the pandemic; and they will have great difficulty finding a job in academia because the largest university in New York City, CUNY, will have laid off thousands of adjuncts. To make matters worse, the extra \$600 a week of unemployment benefits that unemployed individuals now receive will end on July 31, 2020 unless extended by new legislation. Absent new legislation, those laid-off adjuncts will be eligible to receive New York State unemployment insurance at the maximum rate of \$504 per week. Most will receive far

less, due to their low level of income. To avoid irreparable harm to thousands of adjuncts, CUNY must be enjoined from laying them off.

67. In sum, the laid-off CUNY adjuncts will face a perfect storm of economic insecurity. Many will be plunged into poverty, which Gandhi described as the “worst kind of violence.” Some will suffer from hunger, some from homelessness, and some will be unable to afford to pay for medical care and prescription drugs. While the layoff of a single person under normal circumstances does not normally lead to a finding of irreparable harm, we are not in normal times. This Honorable Court, sitting as a Court of Equity, can take notice of the unique circumstances facing thousands of laid-off adjuncts in evaluating whether those layoffs constitute irreparable harm.

CAUSES OF ACTION

COUNT ONE - VIOLATION OF CARES ACT SECTION 180006

68. The above paragraphs are incorporated as if restated herein.

69. Section 18006 of the CARES Act, entitled “CONTINUED PAYMENT TO EMPLOYEES,” states: “A local educational agency, State, institution of higher education, or other entity that receives funds under ‘Education Stabilization Fund,’ shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”

70. CUNY has violated Section 18006 of the CARES Act, because, in laying off the adjuncts during a period of disruption and closures related to the coronavirus, it is not continuing to pay those adjuncts “to the greatest extent practicable.”

COUNT TWO - BREACH OF CONTRACT UNDER STATE LAW

71. The above paragraphs are incorporated as if restated herein.

72. The Contract binds CUNY. The federal government awarded nearly \$251 million in CARES Act money to CUNY in reliance on CUNY's adherence to the Contract.

73. The PSC and the adjunct faculty employees represented by PSC are intended third party beneficiaries of the Contract.

74. Section 4(c) of the Contract provides that "[c]onsistent with Section 18006 of the CARES Act, Recipient agrees that to the greatest extent practicable, Recipient will pay all of its employees and contractors during the period of any disruptions or closures related to the coronavirus."

75. CUNY has violated the Contract because, in laying off the adjuncts during a period of disruptions and closures related to the coronavirus, it is not continuing to pay those adjuncts "to the greatest extent practicable."

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that the Court enter judgment in its favor and also award the following relief:

1. Issue a temporary restraining order and preliminary injunction barring CUNY from laying off adjunct employees, and directing CUNY to reinstate any adjunct employees already laid off until the Court is able to arrive at a final determination;
2. Issue permanent injunctive relief barring CUNY from laying off adjunct employees until the conclusion of the period of disruptions or closures related to the coronavirus;
3. Issue an order requiring CUNY to pay back-pay and benefits and make whole all PSC-represented employees laid off by CUNY in violation of the CARES Act and its Contract;
4. Award Plaintiff its reasonable fees, costs, and expenses, including attorneys' fees; and

5. Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
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Respectfully submitted,

/s/ Hanan B. Kolko

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