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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES

17 STEPHANIE LUNA, SANDRA CAMPOS,  
18 and DEONTE SIMPKINS, *individually and on*  
*behalf of all others similarly situated,*

19 Plaintiffs,

20 vs.

21 UNIVERSITY OF SOUTHERN  
22 CALIFORNIA,

23 Defendant.

Case No. 23STCV09981

**DEFENDANT UNIVERSITY OF  
SOUTHERN CALIFORNIA'S NOTICE  
OF DEMURRER AND DEMURRER TO  
THE FIRST AMENDED CLASS ACTION  
COMPLAINT; SUPPORTING  
MEMORANDUM OF POINTS &  
AUTHORITIES**

Judge: Kenneth Freeman  
Dept.: 014  
Date: March 27, 2024  
Time: 11:00 a.m.

Action Filed: May 4, 2023

*[Motion to Strike and Supporting  
Memorandum of Points and Authorities and  
Declaration of Megan McCreddie filed  
concurrently herewith]*

1 **NOTICE OF DEMURRER**

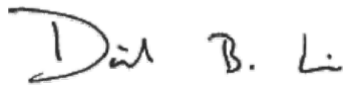
2 PLEASE TAKE NOTICE that on March 27, 2024, at 11:00 a.m., or as soon thereafter as  
3 counsel may be heard, in Department 014 of the above-entitled Court, located at 312 North Spring  
4 Street, Los Angeles, CA 90012, Defendant University of Southern California (“USC”) will and  
5 hereby does bring its Demurrer pursuant to California Code of Civil Procedure section 430.10 to  
6 the First, Second, Third, and Fourth Causes of Action of the First Amended Class Action  
7 Complaint filed by Plaintiffs Stephanie Luna, Sandra Campos, and Deonte Simpkins on behalf of  
8 a putative class of similarly situated individuals, seeking an order sustaining the Demurrer.

9 The parties have met and conferred telephonically regarding the grounds for this Demurrer,  
10 as well as the concurrently filed Motion to Strike, and did not reach an agreement resolving USC’s  
11 objections. (See Code Civ. Proc., § 430.41; Declaration of Megan McCreadie in Support of  
12 Defendant USC’s Demurrer and Motion to Strike, filed concurrently.)

13 USC’s Demurrer is based on this Notice of Demurrer and Demurrer, the Memorandum of  
14 Points and Authorities in support thereof, the Declaration of Megan McCreadie in Support of  
15 USC’s Demurrer and Motion to Strike, and such other materials or arguments of counsel that the  
16 Court may receive at or before the hearing on this Demurrer.

17  
18 DATED: November 2, 2023

MUNGER, TOLLES & OLSON LLP

19  
20 By:   
21 DANIEL B. LEVIN  
22 Attorneys for Defendant  
23 UNIVERSITY OF SOUTHERN CALIFORNIA  
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1                    **DEMURRER TO THE FIRST AMENDED CLASS ACTION COMPLAINT**

2                    Pursuant to California Code of Civil Procedure section 430.10, Defendant University of  
3 Southern California (“USC” or “the University”) demurs to the First, Second, Third, and Fourth  
4 Causes of Action of the First Amended Class Action Complaint as follows:

5                    **First Cause of Action:** USC demurs to the First Cause of Action (violation of the  
6 California Consumer Legal Remedies Act, Civ. Code, § 1770, *et seq.*) as brought by Plaintiffs  
7 Stephanie Luna and Sandra Campos on the ground that their claims are untimely because they  
8 have been brought outside of the three-year statute of limitations for Consumer Legal Remedies  
9 Act claims.

10                   **Second Cause of Action:** USC demurs to the Second Cause of Action (violation of the  
11 False Advertising Law, Bus. & Prof. Code, § 17500, *et seq.*) as brought by Plaintiffs Stephanie  
12 Luna and Sandra Campos on the ground that their claims are untimely because they have been  
13 brought outside of the three-year statute of limitations for False Advertising Law claims.

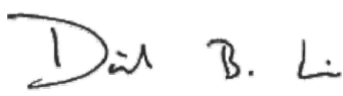
14                   **Third Cause of Action:** USC demurs to the Third Cause of Action for unjust enrichment  
15 on the basis that there is no standalone cause of action for unjust enrichment in California. (*E.g.*,  
16 *De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 870.) In the alternative, USC  
17 demurs to the Third Cause of Action as brought by Plaintiffs Stephanie Luna and Sandra Campos  
18 on the ground that their claims are untimely because they have been brought outside of the three-  
19 year statute of limitations for fraud-based claims.

20                   **Fourth Cause of Action:** USC demurs to the Fourth Cause of Action (violation of the  
21 Unruh Civil Rights Act, Civ. Code, § 51, *et seq.*) on the basis that Plaintiffs do not have standing  
22 to advance such a cause of action because they have not pleaded facts showing they were  
23 “aggrieved” by any allegedly discriminatory practices. (Civ. Code, § 52, subd. (c).) In the  
24 alternative, USC demurs on the basis that Plaintiffs have not sufficiently pleaded facts establishing  
25 that USC either denied equal access to members of protected groups or did so with an  
26 intentionally discriminatory purpose, as is required to state a claim under the Unruh Act.

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DATED: November 2, 2023

MUNGER, TOLLES & OLSON LLP

By:   
DANIEL B. LEVIN  
Attorneys for Defendant  
UNIVERSITY OF SOUTHERN CALIFORNIA

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The University of Southern California’s (“USC”) Suzanne Dworak-Peck School of Social  
4 Work has long been a leader and innovator in the field of social work. With the advent of online  
5 education, the School of Social Work began offering aspiring social workers who might otherwise  
6 not have access to top-tier, graduate-level education the ability to earn a USC Master of Social  
7 Work (“MSW”) degree through an online program. Since 2010, USC has offered its MSW  
8 program both in person on its Los Angeles campus and online, with the same curriculum, the same  
9 graduation requirements, and, at the end of two years, the same USC degree. In that time, USC’s  
10 MSW program has educated thousands of social workers, who have gone on to make positive  
11 impacts throughout the country.

12 The three Plaintiffs in this action received USC MSW degrees through the online program.  
13 Despite successfully completing the program, they now claim that they were misled by USC’s  
14 marketing and recruiting. Plaintiffs allege that the online MSW program was different in a  
15 number of ways from the in-person MSW program, which they claim was contrary to USC’s  
16 advertising of the two programs as “the same.”

17 Plaintiffs’ operative Complaint takes many of the benefits of online education and turns  
18 them on their head. Mimicking assertions made in a November 2021 *Wall Street Journal* article,  
19 Plaintiffs criticize USC’s partnership with a third-party online educational program manager, 2U,  
20 which ran its online classroom platform and provided other support services. They allege that  
21 intrinsic components of an online program, such as giving students the ability to watch some class  
22 videos asynchronously on students’ own schedules and arranging clinical internships for online  
23 students outside of Los Angeles through a different mechanism than the in-person program, made  
24 the online program deficient and its advertising misleading.

25 Many of Plaintiffs’ other allegations are simply false. Contrary to what Plaintiffs allege,  
26 the online and in-person versions of USC’s MSW program have the same curricula, the same  
27 syllabi, and the same graduation requirements; and students who graduate from both programs  
28 receive the same USC MSW degree.



1 Even at this early stage, certain of Plaintiffs’ claims are legally unsupportable and should  
2 be dismissed. First, Plaintiffs assert a novel (and unsupported) theory under California’s Unruh  
3 Act that USC allegedly “targeted” an “inferior product”—the online MSW program—at people of  
4 color and veterans. Plaintiffs do not plead facts showing that they were personally the victims of  
5 any alleged discriminatory scheme and so lack standing to bring this claim. Moreover, Plaintiffs  
6 fail to plead any facts supporting an inference that USC intentionally, and actionably,  
7 discriminated against protected groups, as is required to state an Unruh Act claim.

8 Second, the California Legal Remedies Act and False Advertising Law claims of two  
9 named Plaintiffs, Stephanie Luna and Sandra Campos, are time-barred and should be dismissed.  
10 Their claims accrued when they became aware (or should have become aware) of ways in which  
11 the online MSW program purportedly differed from how it was advertised, which they concede  
12 occurred shortly after they started online classes in May 2019—outside of the three-year statute of  
13 limitations period.

14 Third, Plaintiffs’ claim for unjust enrichment must be dismissed, because there is no such  
15 standalone claim under California law, and, in any event, the claim seeks relief duplicative of  
16 Plaintiffs’ other claims.

## 17 **II. BACKGROUND**

### 18 **A. USC and the MSW Program**

19 USC’s Suzanne Dworak-Peck School of Social Work has been “a leader and innovator in  
20 social work education and research since its founding” in 1920. (First Amended Complaint  
21 (“FAC”) ¶ 27.) The School runs the oldest Master of Social Work program in the country. (*Ibid.*)  
22 Since 2010, the School has offered the MSW program in an online format in addition to the  
23 traditional in-person format. (*Id.* ¶ 1.) The MSW program (in-person and online) is fully  
24 accredited, generally takes two years to complete, and involves both classroom work and clinical  
25 practice. (*Id.* ¶¶ 27, 30.)

26 For the online MSW program, USC partnered with an online education program manager,  
27 2U, which runs the online classroom platform and administers various aspects of the program.  
28 (FAC ¶¶ 92-95.) Tasks performed by 2U include advertising the online MSW program, assisting

1 with recruiting potential students, and providing certain advisory services to enrolled students,  
2 including helping them to find clinical placements either online or where they reside. (*Ibid.*) 2U  
3 is described on the School of Social Work’s website as “a leading global online learning platform”  
4 whose “people and technology are powering more than 4,000 digital education offerings,”  
5 including USC’s online MSW program. (*Id.* ¶ 103.) 2U is not a party to this litigation.

6 **B. Plaintiffs’ Allegations Mirror Those in a 2021 *Wall Street Journal* Article**

7 On November 9, 2021, the *Wall Street Journal* published an article about USC’s online  
8 MSW program. (FAC ¶ 12 & n.2.) According to Plaintiffs, the *Wall Street Journal* article for the  
9 first time revealed “hidden information about USC’s relationship with the for-profit 2U,”  
10 including that “USC had outsourced multiple important functions” of the online MSW program—  
11 “recruitment, academic advising, clinical placements, and career services”—to 2U. (*Id.* ¶ 18.)

12 Plaintiffs’ Complaint tracks the *Wall Street Journal* article and focuses on USC’s  
13 advertising for the online MSW program. According to Plaintiffs, USC allegedly advertised that  
14 the “online MSW program *is exactly the same* as [USC’s] long-standing and well-known in-  
15 person MSW program, using the ‘same USC faculty,’ the ‘same curriculum,’ the ‘same quality  
16 field experience,’ and the ‘same career development services.’” (FAC ¶ 2.) Plaintiffs allege that  
17 these representations were misleading because the online and in-person program are not identical.  
18 They allege that some online classes are “taught by what appear to be adjunct instructors  
19 specifically hired to teach only online classes.” (*Id.* ¶ 69.) They allege that the online and in-  
20 person curricula differ because online students receive “a substantial amount of *pre-recorded*  
21 rather than live coursework,” which is “often substantially outdated.” (*Id.* ¶¶ 74-75.) They allege  
22 that online students are provided 2U advisors (not USC advisors) to help them find clinical  
23 placements, and that the 2U advisors “fail to offer USC’s online MSW students a choice of  
24 clinical placements.” (*Id.* ¶¶ 80-83.) And Plaintiffs allege that USC, in partnership with 2U, took  
25 these actions to drive up enrollment in the online MSW program. (*Id.* ¶¶ 96, 101.)

26 Plaintiffs further allege that recruiters for the online MSW program—who they contend  
27 were actually 2U employees—used “hard-sell” tactics to encourage enrollment. (FAC ¶¶ 117-  
28 125.) The Complaint reproduces an undated graphic published by the *Wall Street Journal* that

1 describes “personas” of six hypothetical School of Social Work applicants, including each  
2 applicant’s race, age, GPA, location, and various other descriptive information. (*Id.* ¶¶ 128-132.)  
3 Based on this graphic alone, and without any allegations as to when the graphic was created, who  
4 created it, or whether it was even used for the online MSW program rather than the in-person  
5 MSW program (or at all), Plaintiffs allege “[o]n information and belief . . . [that] recruiters  
6 incorporated racialized tactics into marketing and promotion” of the online MSW program, and  
7 that USC “reserve[s] the high-pressure and racialized tactics for those its recruits to its different  
8 and unequal online MSW program.” (*Id.* ¶¶ 133-136.) Notably, Plaintiffs do not plead any facts  
9 suggesting that they were personally the victims of any alleged discriminatory scheme.

10 **C. The Complaint**

11 On May 4, 2023, Plaintiffs Stephanie Luna, Sandra Campos, and Deonte Simpkins—all  
12 graduates of the online MSW program—filed suit on behalf of a putative class of “[a]ll California  
13 citizens who . . . are or have been students in the online Master of Social Work degree program at  
14 the USC School of Social Work at any time during the period from four years before the filing of  
15 this complaint [i.e., May 4, 2019] through the date of final judgment.”<sup>1</sup> (FAC ¶ 199.) On  
16 September 13, 2023, Plaintiffs filed a First Amended Complaint (the “Complaint”), which is  
17 materially the same as the original complaint except for an added request for restitution and  
18 damages under the Consumer Legal Remedies Act (“CLRA”).

19 Ms. Luna, a Latina woman, alleges that she learned about the online MSW program from  
20 USC’s website and submitted an inquiry to USC at an unspecified time. (FAC ¶¶ 136, 138-139.)  
21 She alleges that she was contacted by a recruiter employed by 2U who encouraged her to apply.  
22 (*Id.* ¶¶ 140-142.) Ms. Luna began the online MSW program in May 2019 and graduated in  
23 May 2021. (*Id.* ¶ 137.)

24 Ms. Campos, a Latina woman, alleges that she learned about USC’s online MSW program  
25 from information on the School of Social Work website. (FAC ¶¶ 156-157.) She alleges that she  
26 applied to USC’s online MSW at an unspecified time and was rejected, but was then contacted by

27 <sup>1</sup> The Fourth Cause of Action, for violation of the Unruh Civil Rights Act, is brought on behalf of  
28 a putative subclass of all class members “who are people of color or veterans.” (FAC ¶ 200.)

1 a 2U-employed recruiter who informed her the rejection “was a mistake.” (*Id.* ¶¶ 158, 163.)  
2 Ms. Campos later was admitted to the program; once accepted, she received phone calls and  
3 emails from recruiters encouraging her to enroll. (*Id.* ¶¶ 158-159.) Like Ms. Luna, Ms. Campos  
4 began the online MSW program in May 2019 and graduated in May 2021. (*Id.* ¶ 156.)

5 Mr. Simpkins, an African American man, alleges that he researched the online MSW on  
6 the School of Social Work’s website, which he used to submit an inquiry at an unspecified time.  
7 (FAC ¶¶ 174-175.) He alleges that he then received phone calls from recruiters who encouraged  
8 him to apply and, later, to enroll in the online MSW; he alleges that the recruiters told him “the  
9 online MSW program was the same as the on-campus program.” (*Id.* ¶¶ 178-181.) Mr. Simpkins  
10 began the online MSW program in January 2021 and graduated in May 2023. (*Id.* ¶ 175.)

11 All three Plaintiffs allege that they decided to enroll in the online MSW program because  
12 of USC’s reputation and because they believed, based on USC’s website and advertising, that the  
13 online program was “the same” as the in-person program. (FAC ¶¶ 143, 164, 182.)

14 Plaintiffs bring five causes of action. The first seeks an injunction, restitution, and punitive  
15 and actual damages under the CLRA based on USC’s purportedly false and misleading advertising  
16 of the online MSW program. (FAC ¶¶ 215-217.) The second seeks an injunction and restitution  
17 under the False Advertising Law (“FAL”). (*Id.* ¶¶ 220-224.) The third is unjust enrichment, for  
18 which Plaintiffs seek equitable relief including restitution and disgorgement. (*Id.* ¶¶ 226-230.)  
19 The fourth alleges that USC violated the Unruh Civil Rights Act by “targeting an inferior  
20 product”—the online MSW program—at people of color and veterans, and seeks damages. (*Id.*  
21 ¶¶ 232-237.) The fifth seeks an injunction and restitution under California’s Unfair Competition  
22 Law (“UCL”) based on the alleged actions underlying the other causes of action. (*Id.* ¶¶ 238-246.)

### 23 **III. LEGAL STANDARD**

24 A demurrer should be sustained where “[t]he pleading does not state facts sufficient to  
25 constitute a cause of action.” (Code Civ. Proc., § 430.10, subd. (e).) The Court may consider only  
26 well-pleaded facts and must disregard “contentions, deductions or conclusions of fact or law.” (*La*  
27 *Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 242-243.) “Doubt in the  
28 complaint may be resolved against plaintiffs and facts not alleged are presumed not to exist.”

1 (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578, citation omitted.)

2 **IV. ANALYSIS**

3 **A. The Unruh Act Cause of Action Must Be Dismissed**

4 Plaintiffs' Fourth Cause of Action, for violation of the Unruh Act, should be dismissed for  
5 two independent reasons: First, Plaintiffs lack standing because they do not plead any facts  
6 establishing that they were personally victims of any allegedly discriminatory recruitment  
7 practices. Second, Plaintiffs do not allege facts sufficient to show that there was any actionable  
8 discrimination by USC, let alone that any discrimination was intentional.

9 **1. Plaintiffs Lack Standing Because They Do Not Allege That They  
10 Personally Experienced Discrimination.**

11 The Unruh Act "creates a cause of action for any person who is denied the right to 'full and  
12 equal accommodations . . . in all business establishments . . .' based on that person's 'sex, race,  
13 color,'" or other protected characteristic. (*Mackey v. Board of Trustees of Cal. State Univ.* (2019)  
14 31 Cal.App.5th 640, 660, quoting Civ. Code § 51, subd. (b).) The hallmark of an Unruh Act claim  
15 is "unequal treatment" (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 29), whether by outright  
16 "exclusion" or "where treatment is unequal" on the basis of protected status. (*Pizarro v. Lamb's  
17 Players Theatre* (2006) 135 Cal.App.4th 1171, 1174.)

18 Plaintiffs allege neither theory of discrimination. They do not allege "exclusion" from any  
19 USC program; each was accepted into USC's online MSW, chose to enroll, and graduated with a  
20 full degree. Nor do Plaintiffs allege unequal treatment. There is no allegation that they were  
21 treated differently than any other student or prospective student in the online MSW program.  
22 Rather, Plaintiffs contend that USC's "advertising, soliciting, recruiting for, and providing [of the]  
23 online MSW program" was intentionally discriminatory because USC purportedly "target[ed] an  
24 inferior product"—the online MSW program—at persons of color and veterans. (FAC ¶ 235.)

25 But Plaintiffs fail to plead any facts showing they were *personally* "aggrieved by [the  
26 discriminatory] conduct," as is required to establish Unruh Act standing. (Civ. Code, § 52,  
27 subd. (c).) "[A] plaintiff cannot sue for discrimination in the abstract, but must actually suffer the  
28 discriminatory conduct." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175; see also

1 *Midpeninsula Citizens for Fair Housing v. Westwood Investors* (1990) 221 Cal.App.3d 1377,  
2 1386, italics added [to have Unruh Act standing, plaintiffs must be “*victims* of the discriminatory  
3 practices”].) The Complaint lacks any allegation that any Plaintiff saw any racially discriminatory  
4 advertisements, was subjected to different marketing than members of other races, or was targeted  
5 by recruiters for differential treatment on the basis of race or another protected characteristic.

6 Nor do Plaintiffs allege they were personally targeted to receive additional *encouragement*  
7 from recruiters to enroll in the online MSW because of their race or other protected status.

8 Ms. Luna alleges that she was contacted by a recruiter after she voluntarily “provided her contact  
9 information on the USC website.” (FAC ¶¶ 139-140.) She alleges that the recruiter “encouraged  
10 [her] to get her materials in as quickly as possible” and told her that “federal student loans would  
11 ‘cover everything.’” (*Id.* ¶ 141.) Ms. Campos alleges that she initially chose to apply to the  
12 online MSW program without even speaking to a recruiter but received a letter of denial. (*Id.*  
13 ¶¶ 157-158.) A recruiter then contacted her to say “the denial was a mistake” and worked with her  
14 to have her application accepted. (*Id.* ¶ 158) Mr. Simpkins alleges that he voluntarily submitted  
15 his contact information to USC and was contacted by a recruiter, who encouraged him to apply.  
16 (*Id.* ¶¶ 176-178.) Mr. Simpkins alleges that he was soon accepted into the online MSW program  
17 and began receiving outreach from recruiters encouraging him to enroll. (*Id.* ¶ 180.) None of the  
18 three alleges that the recruiters with whom they interacted knew they were people of color or that  
19 any recruiter ever mentioned their race or other protected status. Nor do they allege that any  
20 recruiter treated them differently from other candidates because of any protected status.

21 Instead, Plaintiffs allege that since reading the November 2021 *Wall Street Journal* article  
22 (published after they all had enrolled), they “*now understand[]*” that they were “targeted by USC  
23 because of [their] race.” (FAC ¶¶ 153, 172, 191, italics added.) That does not suffice to state an  
24 Unruh Act claim. Plaintiffs’ subjective, post-hoc beliefs that they were discriminated against in  
25 some unspecified manner are legally insufficient. (Cf. *Diego v. City of Los Angeles* (2017) 15  
26 Cal.App.5th 338, 356 [“A plaintiffs’ subjective feelings or beliefs are not sufficient to support a  
27 discrimination claim.”].) The California Supreme Court has made clear that a “mere awareness of  
28 a . . . discriminatory policy”—even where, unlike here, such a policy is adequately pled—is

1 insufficient to confer Unruh Act standing. (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1023.) In  
2 *White*, the Supreme Court distinguished between a plaintiff who “merely learn[s] about a  
3 business’s discriminatory policy or practices secondhand” and one who “encounters a  
4 discriminatory [practice]” firsthand. (*Id.* at p. 1027) Only the latter has standing to bring an  
5 Unruh Act claim. (*Ibid.*) But Plaintiffs here fall squarely into the former category. Plaintiffs’  
6 after-the-fact awareness from the *Wall Street Journal* of alleged discrimination does not give them  
7 standing when they do not allege they encountered any discriminatory conduct.

## 8                   2.       Plaintiffs Do Not Allege Actionable Discrimination by USC.

9           Even if Plaintiffs’ after-the-fact beliefs were enough to convey standing, Plaintiffs  
10 nonetheless have failed to plead an Unruh Act claim because they have not pleaded that USC  
11 (i) denied access or provided unequal access to anyone and (ii) did so with intentional  
12 discriminatory intent—both of which are required to state an Unruh Act claim. (See *Harris v.*  
13 *Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175.)

14           First, Plaintiffs fail to plead that there was any discrimination or unequal access  
15 (intentional or otherwise) within the meaning of the Unruh Act. The Complaint contains no  
16 allegation that *anyone* (not just Plaintiffs) was denied access to the online MSW program; if  
17 anything, it insinuates that *too many people* were accepted into that program due to alleged lower  
18 admissions standards. (FAC ¶¶ 66, 90-91.) The Complaint also contains no allegation that  
19 anyone received unequal treatment—no allegation that *any* protected-status applicant received  
20 different marketing than non-protected-status applicants; no allegation that such persons were  
21 treated differently once admitted or enrolled; no allegation that such persons were  
22 disproportionately funneled toward the online program instead of the in-person program; and so  
23 on. An Unruh Act claim cannot be based on the mere allegation—which USC vehemently  
24 denies—that USC advertised an “inferior” online MSW program toward certain protected groups.

25           At most, the Complaint alleges—relying on inadequate “information and belief”  
26 allegations (see *infra* at pp. 16-18)—that USC “recruiters incorporated racialized tactics into  
27 marketing and promotion, including but not limited to the content of advertisements.” (FAC  
28 ¶ 133.) But this allegation fails to establish *unequal* treatment violating the Unruh Act; to the

1 contrary, the Complaint affirmatively alleges that *all* online MSW students, regardless whether  
2 they were members of protected groups, were exposed to the to “*the same uniform conduct*”—  
3 namely, USC’s allegedly misleading advertising. (*Id.* ¶ 206, italics added.)

4         Second, Plaintiffs fail to plead that USC *intentionally* discriminated in recruitment or  
5 admissions for the online MSW program on the basis of race or veteran status, a necessary  
6 element for an Unruh Act claim. (See *Koebke v. Bernardo Heights Country Club* (2005) 36  
7 Cal.4th 824, 853 [explaining that “willful, affirmative misconduct” is required under the Unruh  
8 Act].) The Judicial Council of California’s jury instructions for an Unruh Act violation require  
9 that a plaintiff prove that a protected characteristic was a “substantial motivating reason” for the  
10 alleged discriminatory conduct. (See CACI 3060.) But Plaintiffs’ Complaint contains no  
11 allegation whatsoever that Plaintiffs’ race (or any other protected characteristic) was a “substantial  
12 motivating reason” for the marketing they or other putative subclass members received, let alone a  
13 “substantial motivating reason” for any purported differences between the in-person program and  
14 the allegedly inferior online program. Instead, the Complaint alleges that USC’s advertising and  
15 recruiting techniques were motivated by a desire to increase profits by increasing enrollment.  
16 (FAC ¶¶ 86-102 [section entitled “The Profit Incentive for USC’s MSW Program Growth”].)  
17 Even if Plaintiffs’ allegations showed unequal access based on protected status (and they plainly  
18 do not), Plaintiffs’ Unruh Act claim would still fail as Plaintiffs have not pleaded facts showing  
19 that USC was “substantial[ly] motivat[ed]” by race or any other protected characteristic.

### 20                   **3. Plaintiffs’ “Information and Belief” Allegations Are Insufficient.**

21         Rather than plead concrete examples of discrimination, Plaintiffs attempt to rely on a series  
22 of conclusory, increasingly speculative “information and belief” allegations about USC’s  
23 “targeting” of an inferior MSW program at protected groups—including, for example, that  
24 recruiters “reserve the high-pressure and racialized tactics for those [USC] recruits to its different  
25 and unequal online MSW program.” (See FAC ¶¶ 126-136.) This is insufficient. Although a  
26 “[p]laintiff may allege on information and belief any matters that are not within his personal  
27 knowledge,” he may do so only “if he has information leading him to believe that the allegations  
28 are true.” (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158, quoting



1 *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) A pleading “made on information and  
2 belief is insufficient if it merely assert[s] the facts so alleged without alleging such information  
3 that ‘lead[s] [the plaintiff] to believe that the allegations are true.’” (*Gomes*, at pp. 1158-1159,  
4 quoting *Doe*, at p. 551 fn. 5; see also *Woodring v. Basso* (1961) 195 Cal.App.2d 459, 465.)

5       Such is the case here. The *only* “information” Plaintiffs cite as the basis for their various  
6 “information and belief” allegations is a single, undated graphic that is attributed to USC’s School  
7 of Social Work and that depicts six different hypothetical applicants and how likely each was to  
8 decide to enroll. (FAC ¶¶ 127-132.) It is unclear (nor do Plaintiffs allege) whether the graphic  
9 relates to the online MSW program, the in-person MSW program, or some other School of Social  
10 Work program. Nor is it clear (and Plaintiffs do not allege) how it was used, when it was used (if  
11 at all), and if used, by whom. The graphic lists a variety of biographical data for each hypothetical  
12 applicant, including race, age, location, undergraduate school and GPA, and in some instances,  
13 finances (“wants a full ride”), what they are looking for (“wants work experience” or “mental  
14 health or clinical focus”), and why (“tired of the business-related career they chose”). (*Ibid.*)

15       Though Plaintiffs rely on this graphic to suggest that recruiters were instructed to pursue  
16 applicants *because* they were members of a protected group, it supports no such inference. There  
17 is no allegation that the graphic was ever even shared with recruiters for the online program. But  
18 even if it was, the graphic could just as easily be read to instruct recruiters to focus on candidates  
19 with particular grade profiles, those who already live in Southern California, or those who went to  
20 public colleges and universities, all of which are factors the graphic suggests would make a  
21 candidate more likely to enroll. (FAC ¶ 132.) Indeed, though Plaintiffs appear to focus on the fact  
22 that two of the three hypothetical applicants deemed most likely to enroll are women of color, the  
23 third is a white man, and one of the two applicants deemed *least* likely is a Latino man. By the  
24 same token, though Plaintiffs assume the graphic was meant to identify applicants *most* likely to  
25 enroll, it is equally plausible that the graphic was meant to help identify those *least* likely to do so.

26       At most, and adopting all reasonable inferences in Plaintiffs’ favor, the graphic suggests  
27 that USC recognized the commonsense proposition that race, veteran status, and a wide variety of  
28 other characteristics influence how likely a candidate is to choose to enroll in a School of Social

1 Work program. It does not suggest that recruiters targeted members of protected groups *for the*  
2 *discriminatory purpose* of offering them a supposedly inferior education. It therefore provides  
3 “no specific information” supporting Plaintiffs’ claim that USC *intentionally* targeted protected  
4 groups with the discriminatory purpose of offering them an inferior product, as the Unruh Act  
5 requires. (*Gomes, supra*, 192 Cal.App.4th at p. 1159.) And Plaintiffs plead *no* other facts or  
6 information in support of their claims of intentional discrimination by USC. Because Plaintiffs  
7 have failed to plead any “facts leading [them] to believe” their information-and-belief allegations  
8 “were true,” their Unruh Act cause of action should be dismissed. (*Ibid.*, italics omitted.)

9 **4. The Educational Malpractice Doctrine Bars Plaintiffs’ Theory That**  
10 **USC Discriminated by “Targeting” an Inferior Educational Program.**

11 Putting aside the other defects with Plaintiffs’ Unruh Act claim, their theory that subclass  
12 members were targeted for an “inferior” academic program fails because claims based on relative  
13 academic quality are not actionable. California’s educational malpractice doctrine bars plaintiffs  
14 from bringing claims against universities based on allegations that they received a “*substandard*  
15 education” or if their claims would require judgments about “educational quality or results.”  
16 (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1210-1212.) Pursuant to this  
17 doctrine, courts regularly dismiss claims that would require an evaluation of the quality of  
18 education the plaintiff received. (See, e.g., *Chevlin v. Los Angeles Community College Dist.*  
19 (1989) 212 Cal.App.3d 382, 390.) These claims are barred as a matter of public policy because  
20 “classroom methodology affords no readily acceptable standards of care, or cause, or injury,” and  
21 such claims would require subjective judgments that courts are ill-equipped to make. (*Peter W. v.*  
22 *S.F. Unified School District* (1976) 60 Cal.App.3d 814, 824.)

23 The educational malpractice doctrine squarely bars Plaintiffs’ theory of “discrimination”  
24 because, to accept that theory as true, a factfinder would have to make an inherently subjective  
25 determination that the in-person MSW was “better” in quality than the online MSW. There is no  
26 objective way to make such a determination, and Plaintiffs point to none. Rather, any differences  
27 between the programs may make the online MSW program subjectively better for some (e.g.,  
28 those seeking to earn a degree while working) and the in-person MSW program subjectively better

1 for others (e.g., those wanting the structure or experience of an in-person setting).

2 To the extent Plaintiffs’ discrimination theory is that the online and in-person programs  
3 were falsely advertised as being “the same” but in fact differed in ways that may have affected  
4 each program’s perceived quality, that is just a repackaging of their CLRA, FAL, and UCL claims.  
5 (FAC ¶¶ 215-216 [CLRA], 221-222 [FAL], 241-245 [UCL].) As noted above, those claims are  
6 brought on behalf of a putative class of *all* online MSW students, not just those who are persons of  
7 color or veterans. In other words, there was no unequal treatment under the Unruh Act, because,  
8 as alleged by Plaintiffs, all prospective students were exposed to the *same* “targeted” advertising  
9 and recruiting. Accordingly, Plaintiffs’ Unruh Act claim must be dismissed.

10 **B. Ms. Luna’s and Ms. Campos’s CLRA and FAL Claims Are Time-Barred**

11 With respect to the first and second causes of action—for violation of the CLRA and the  
12 FAL, respectively—Ms. Luna’s and Ms. Campos’s claims should be dismissed as untimely,  
13 because “the complaint shows on its face that the statute [of limitations] bars” their claims.  
14 (*Citizens for a Responsible Caltrans Dec. v. Dept. of Transportation* (2020) 46 Cal.App.5th 1103,  
15 1116 [stating standard for raising statute-of-limitations defense on demurrer].)

16 Claims under the CLRA and the FAL both have a three-year statute of limitations, which  
17 commences on “the date of the commission of [the allegedly unlawful behavior].” (Civ. Code,  
18 § 1783 [CLRA]; Code Civ. Proc., § 338, subd. (h) [FAL]; see also *People v. Johnson & Johnson*  
19 (2022) 77 Cal.App.5th 295, 310 fn. 3.) The alleged unlawful behavior for both claims is USC’s  
20 purportedly false advertising and recruiting, which Plaintiffs claim induced them to apply and  
21 enroll in the online MSW program. (FAC ¶¶ 215 [CLRA], 221 [FAL].) This behavior necessarily  
22 had to occur *before* Plaintiffs enrolled at USC. For Ms. Luna and Ms. Campos, that means at least  
23 before May 2019, when they began classes (*id.* ¶¶ 137, 156)—which was *four* years before they  
24 filed this lawsuit and therefore outside of the three-year statute-of-limitations period.<sup>2</sup>

25 Ms. Luna and Ms. Campos cannot avoid the statute of limitations by invoking the delayed-

26 \_\_\_\_\_  
27 <sup>2</sup> Mr. Simpkins began the online MSW program in May 2021 (FAC ¶ 175), so on the face of the  
28 Complaint, he does not face the same statute-of-limitations issue as Ms. Luna and Ms. Campos.  
USC reserves the right to challenge the timeliness of his claims at a later date as appropriate.

1 discovery rule. That rule “postpones accrual of a cause of action until the plaintiff discovers, or  
2 has reason to discover, the cause of action.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th  
3 797, 807.) A plaintiff “has reason to discover” a cause of action when she “ha[s] reason to *at least*  
4 *suspect* that a type of wrongdoing has injured [her].” (*Ibid.*, italics added.) Once a plaintiff “has  
5 reason to at least suspect a factual basis” for a cause of action “within the applicable limitations  
6 period, [s]he must indeed seek to learn the facts necessary to bring the cause of action,” or be  
7 barred by the statute of limitations. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 398; see also  
8 *Vera v. REL-BC, LLC* (2021) 66 Cal.App.5th 57, 69 [“The statute of limitations begins to run  
9 when the plaintiff has information which would put a reasonable person on inquiry.”].)

10 This dooms Ms. Luna’s and Ms. Campos’s CLRA and FAL claims. It is clear from the  
11 face of the Complaint that beginning shortly after they enrolled in May 2019, Ms. Luna and  
12 Ms. Campos would have “had reason to at least suspect” the factual basis for their CLRA and  
13 FAL claims, namely that the online MSW was not “the same” as the in-person MSW. (FAC  
14 ¶¶ 17, 137, 156.) Indeed, though USC disputes many of the Complaint’s allegations, the  
15 Complaint specifically alleges that Ms. Luna and Ms. Campos “*began to discover* the extent to  
16 which USC’s online MSW program *was not the ‘same’* as USC’s in-person MSW program” “once  
17 they had already paid their tuition and enrolled.” (*Id.* ¶ 17, italics added.)

18 Other specific allegations in the Complaint further demonstrate that Ms. Luna’s and  
19 Ms. Campos’s CLRA and FAL claims necessarily accrued once they began taking online classes  
20 in May 2019, or very shortly thereafter. Ms. Luna alleges, for example, that she knew while she  
21 was a student that the pre-recorded lessons given to online MSW students “didn’t match up with  
22 the material that was taught in live presentations,” and that she “raised the issue to one of her live  
23 instructors,” who was “not familiar with the prerecorded content and told her to ignore it.” (FAC  
24 ¶ 144.) She knew contemporaneously that “[m]any of her instructors did not teach in USC’s in-  
25 person MSW program” and that several “were not in California.” (*Id.* ¶ 145.) And at the time she  
26 was seeking a clinical placement, she found the placement process “confusing,” felt “pressured” to  
27 accept a place in a USC telehealth program, and “was not presented with any other choices.” (*Id.*  
28 ¶ 149.) By definition, many of the alleged facts giving rise to Ms. Luna’s claims, such as whether

1 her classes were pre-recorded rather than live and the identity of her instructors, are things that  
2 Ms. Luna would have learned, at the latest, within a few weeks or months after beginning classes  
3 in May 2019—and certainly before May 2020.

4 On Ms. Campos’s part, she alleges that recruiters told her that “the [online] program [was]  
5 the ‘same’” as the in-person program and that “[a]ll [online MSW] classes are live, collaborative,  
6 seminar-style sessions.” (FAC ¶¶ 161-162.) Taking Ms. Campos’s allegations as true, as soon as  
7 she began the online program, she necessarily would have been on notice that, as alleged, she was  
8 “not provided the live, collaborative, seminar-style classes taught by the esteemed [in-person  
9 USC] faculty,” and instead the online program “consisted in significant part of pre-recorded,  
10 ‘asynchronous’ content, mostly of PowerPoints and YouTube videos.” (*Id.* ¶ 165.) Ms. Campos  
11 alleges that the live instruction “would sometimes contradict or otherwise completely depart from  
12 what the asynchronous material had said.” (*Ibid.*) She also alleges she knew that “several of her  
13 instructors were not in California and lacked connections to the California social work  
14 community.” (*Id.* ¶ 166.) Here too, these are all things that Ms. Campos necessarily would have  
15 learned shortly after beginning classes and long before May 2020, by which time Ms. Campos  
16 already had completed a full year of online MSW programming.

17 Notwithstanding that Ms. Luna’s and Ms. Campos’s own allegations establish that they  
18 were on notice of at least some of the alleged differences between the online and in-person  
19 programs as soon as they began classes, they allege that their claims did not accrue until *after* they  
20 read the November 2021 *Wall Street Journal* article, which was published six months after they  
21 both graduated. (FAC ¶¶ 151, 170.) They allege that only then did they “learn that the staff with  
22 whom [they] interacted were actually 2U rather than USC employees.” (*Ibid.*) Whether or not  
23 this is true, it does not delay accrual of their claims. Plaintiffs’ allegations about 2U are only one  
24 aspect of their theory that the online and in-person programs were not “the same,” and California  
25 law is clear that a plaintiff’s claim accrues once she “ha[s] reason to at least suspect that a type of  
26 wrongdoing ha[s] injured [her].” (*Fox, supra*, 35 Cal.4th at p. 807.) In other words, even if  
27 Ms. Luna and Ms. Campos did not learn of *all* of the facts alleged in May 2019, they plainly  
28 learned of some of the facts supporting their CLRA and FAL claims more than three years before

1 filing, and thus were on inquiry notice. Therefore, their claims are time-barred.<sup>3</sup>

2 **C. California Does Not Recognize a Standalone Unjust Enrichment Claim**

3 Plaintiffs’ third cause of action for “unjust enrichment” (see FAC ¶¶ 225-230) should be  
4 dismissed for the simple reason that, in California, “[u]njust enrichment is not a cause of action.”  
5 (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 870, quoting *Hill v. Roll Internat.*  
6 *Corp.* (2011) 195 Cal.App.4th 1295, 1307; see also, e.g., *Bank of New York Mellon v. Citibank,*  
7 *N.A.* (2017) 8 Cal.App.5th 935, 955; *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387;  
8 *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793.) Rather, unjust  
9 enrichment is a theory of restitution (*De Havilland*, at p. 870), which is a *remedy* rather than a  
10 freestanding cause of action. (See *Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 362.)

11 Moreover, Plaintiffs’ unjust enrichment cause of action is nothing more than a repackaging  
12 of their other claims for restitution. This cause of action alleges that “USC charged a higher price  
13 for the services that Plaintiffs and Class members received than the true value of those services or  
14 the price that Plaintiffs and Class Members would have paid if the true features of USC’s online  
15 MSW program had been disclosed,” and demands restitution. (FAC ¶¶ 228, 230.) These are  
16 materially the same allegations that Plaintiffs make, and materially the same relief Plaintiffs seek,  
17 with respect to their FAL and UCL causes of action. (See *id.* ¶¶ 222, 224 [FAL claim seeking  
18 restitution “in the form of the difference between what [Plaintiffs] paid in tuition and what a  
19 reasonable student would pay for a program accurately advertised as substantively different from  
20 the in-person MSW program”]; *id.* ¶¶ 243-246 [same for UCL claim].)

21 Plaintiffs’ unjust enrichment cause of action therefore should be dismissed.

22 **V. CONCLUSION**

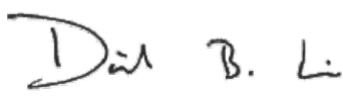
23 For the reasons stated above, USC respectfully requests that the Court sustain the  
24 Demurrer.

25 \_\_\_\_\_  
26 <sup>3</sup> If unjust enrichment were a standalone cause of action—it is not (see *infra* at p. 22)—it would  
27 similarly have a three-year statute of limitations, as a claim based in fraud. (See Code Civ. Proc.,  
28 § 338, subd. (h).) Because the unjust-enrichment claim is also based on Plaintiffs “not receiv[ing]  
the services that USC stated that it would provide” in its advertising (FAC ¶ 227), the same  
analysis would apply, and Ms. Luna’s and Ms. Campos’s claims would be time-barred.

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