

1 EILEEN M. CONNOR (SBN 248856)
econnor@ppsl.org
2 REBECCA C. ELLIS (*pro hac vice*)
rellis@ppsl.org
3 ERIC SCHMIDT (*pro hac vice pending*)
eschmidt@ppsl.org
4 PROJECT ON PREDATORY STUDENT
5 LENDING
769 Centre Street, Suite 166
6 Jamaica Plain, MA 02130
7 Telephone: (617) 390-2669

8 EVE H. CERVANTEZ (SBN 164709)
ecervantez@altber.com
9 DANIELLE E. LEONARD (SBN 218201)
dleonard@altber.com
10 CORINNE F. JOHNSON (SBN 287385)
cjohnson@altber.com
11 DERIN MCLEOD (SBN 345256)
dmcleod@altber.com
12 ALTSHULER BERZON LLP
13 177 Post Street, Suite 300
San Francisco, CA 94108
14 Telephone: (415) 421-7151
15 Facsimile: (415) 362-8064

16 *Attorneys for Plaintiffs and the Proposed Class*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

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

21 Plaintiffs,

22 vs.

23 UNIVERSITY OF SOUTHERN
24 CALIFORNIA,

25 Defendant.
26
27
28

Case No. 23STCV09981

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE FIRST AMENDED
COMPLAINT**

Judge: Kenneth Freeman

Dept.: 014

Date: March 27, 2024

Time: 11:00 a.m.

Action Filed: May 4, 2023

*[Filed concurrently with Plaintiffs' Opposition
to Demurrer, Request for Judicial Notice, and
Declaration of Derin McLeod]*

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1 **I. INTRODUCTION**

2 As described more fully in Plaintiffs’ demurrer opposition, Defendant University of Southern
3 California (USC) advertises its online Master of Social Work (MSW) program as the “same” as its famous
4 in-person MSW program. First Amended Complaint (FAC) ¶¶2, 9, 37-59. As USC puts the point in a pun,
5 “What is the difference ...?” “Virtually, nothing.” FAC ¶42. USC specifically claims that the online and
6 in-person curriculum, clinical field experience, faculty, admissions standards, and career development
7 services are the “same.” FAC ¶¶2, 6-7, 14, 36, 38-40, 44. It makes sense why USC advertises the two
8 programs as the “same”: USC charges the same very high tuition for both programs. FAC ¶¶3, 16, 32, 35,
9 45, 198. But the online MSW program is not the “same,” in multiple specific ways outlined in Plaintiffs’
10 complaint. FAC ¶¶60-85, 90-102. Students would not have paid that same high tuition if not for USC’s
11 misrepresentations of specific facts comparing the two programs. FAC ¶¶198, 222.

12 USC seeks to minimize its misrepresentations of fact by asking the Court to strike from Plaintiffs’
13 complaint words or phrases quoted directly from its own website, tweets, and emails. It offers no legal
14 authority for this novel request to erase isolated phrases from its own statements (which in some cases
15 would make portions of Plaintiffs’ complaint unintelligible), and none exists. The Court should deny
16 USC’s motion on this ground alone. USC also incorrectly claims that certain phrases, which USC pulls
17 out of context, are non-actionable “puffery.” Not so. USC’s challenged phrases must be read in context,
18 where it is clear they are actionable statements of objective fact concerning specific characteristics of the
19 two programs, not mere subjective opinions. Nor should the Court strike specific words or phrases on
20 grounds that Plaintiffs’ allegations purportedly violate the “educational malpractice doctrine.” Plaintiffs’
21 claims do not require the Court to evaluate the quality of the education they received in the online program,
22 but, rather, to evaluate specific objective differences between the online and in-person programs.

23 USC also had a policy/practice of targeting certain prospective students who were deemed good
24 marks for “conversion”—people of color and veterans—for hard-sell techniques to encourage enrollment
25 into the falsely advertised online MSW program. FAC ¶¶11, 15, 18, 116-36, 141, 152-153, 158-159, 171-
26 72, 178, 180, 191, 200, 202, 204, 206. As explained in Plaintiffs’ demurrer opposition, USC’s
27 policy/practice of targeting people of color and veterans constitutes unlawful discrimination under the
28 Unruh Act, to which Plaintiffs were personally subjected. USC seeks to strike the words “veteran” and

1 “veteran status” from Plaintiffs’ complaint on the grounds that Plaintiffs allegedly lack “standing” to assert
2 a discrimination claim on behalf of veterans because Plaintiffs are not veterans. USC conflates standing
3 requirements with class certification requirements. Whether Plaintiffs have a statutory right to bring suit
4 because they were subjected to USC’s discriminatory conduct—standing—is a completely distinct inquiry
5 from whether Plaintiffs may represent other individuals, including veterans, who were also subjected to
6 this same discriminatory practice. USC has not even attempted to argue that Plaintiffs do not meet class
7 certification requirements, and the Court should not decide class certification on the pleadings under the
8 guise of “standing.”

9 **II. FACTUAL BACKGROUND**

10 USC has advertised and continues to advertise its online MSW program by telling the public that
11 the program is the “same” as USC’s well-known and well-respected in-person MSW program. FAC ¶¶2,
12 9, 37-59. Students agree to pay the *same* amount for the online MSW program as for the in-person MSW
13 program because they are told the programs are the *same*. FAC ¶¶35, 45, 198, 222.

14 More specifically, USC represents that crucial elements of the online MSW program are the
15 “same” as the in-person program: (1) “Same curriculum”; (2) “Same quality field experience,” *i.e.*, online
16 students will have the same clinical placement opportunities in their communities as they would if in-
17 person in Los Angeles; (3) “Same USC faculty”; and (4) “Same career development services.” FAC ¶¶2,
18 38. As to curriculum, USC generally describes the online and in-person curriculum in the same breath as
19 being the same, including “seminar-style” classes. FAC ¶¶30, 50–53. As to field experience, USC
20 describes in one breath both in-person and online placements, and represents that these field placements
21 are the “same,” including that they are facilitated by USC experts. FAC ¶¶54–57, 184. As to faculty, USC
22 explains that “[a]ll of our courses are taught by distinguished USC faculty[,]” courses are “taught by *our*
23 award-winning faculty,” “[y]our [c]lasses” are “[t]aught by USC professors,” and that students receive
24 instruction “delivered by our regular, full-time faculty.” FAC ¶¶47-49. And as to career placement
25 services, USC represents that an “in-house” team provides these services to students. FAC ¶58. In other
26 words, “consistent[ly]” USC has “represent[ed] that its online MSW program is, *in all relevant respects*,
27 the same as its in-person (or ‘on-ground’ or ‘on-campus’) MSW program[.]” FAC ¶41 [emphasis added].
28

1 Students rely on the “same”-ness of each of these aspects of the online MSW program in deciding to
2 enroll. FAC ¶¶49, 54, 57-58, 222.

3 USC’s representations are false. The online MSW program is inferior to the in-person MSW
4 program because it is not the same as the in-person MSW program in certain specified ways, and students
5 would not have paid the same tuition had they not been misled by USC’s false advertising. FAC ¶¶60-85,
6 222. Online students attend different classes from in-person students; unlike the in-person curriculum, the
7 on-line curriculum is largely pre-recorded (and outdated) and does not consist of “seminar-style” classes.
8 FAC ¶¶61-62, 74-79. Online students have different clinical placement resources, options, and placements
9 from in-person students. FAC ¶¶64, 80-83. Online students have different faculty from in-person students.
10 FAC ¶¶63, 67-73. Online students have different support services from in-person students. FAC ¶¶65, 84-
11 85. In other words, consistently, in numerous relevant respects, the online MSW program is different from
12 the in-person MSW program, and students would have paid less if they had known of those relevant
13 differences. FAC ¶222.

14 In order to sell its falsely advertised online MSW program, USC has a policy/practice of employing
15 hard-sell recruitment tactics specifically targeted at veterans and people of color, whom USC determined
16 are better marks for “conversion”—that is, for ultimate enrollment into the online program. FAC ¶¶11,
17 116-36. Plaintiffs are all persons of color who were subjected to USC’s discriminatory practice, FAC
18 ¶¶15, 119-122, 126, 137, 141, 152-153, 156, 158-159, 171-72, 175, 178, 180, 191, and seek to represent
19 a subclass of individuals who were also subjected to this same unlawful practice, FAC ¶¶200, 204, 206.

20 **III. USC’S MOTION TO STRIKE**

21 In addition to moving to strike every reference to “veteran” or “veteran status,” USC moves to
22 strike certain words, phrases, and sentences directly quoted from *its own* false statements about the online
23 MSW program, which false statements Plaintiffs included in their entirety in the first amended complaint,
24 as set forth in the following table:

¶	Proposed “Strike”
2	USC represents to the public, prospective students, and its students that its online MSW program <i>is exactly the same</i> as its long-standing and well-known in-person MSW program,

1 2	using the “same USC faculty,” the “same curriculum,” the “same quality field experience,” and the “same career development services.”
3 4 5 6 7 8 9 10 11 12 13	30 USC’s MSW program generally takes two years and involves coursework and clinical education. With respect to the curriculum, USC explains: “Our courses and training incorporate evidence-based and evidence-informed research and practices, including new findings in future-forward areas such as artificial intelligence and neuroscience that are pushing the envelope in prevention and intervention and providing more interdisciplinary opportunities for social workers.” USC represents: “Our curriculum places a strong emphasis on the science of social work and preparing graduates to become leaders within the profession. Social work students at USC receive the most up-to-date education because we are a top-tier research institution, and community-based research informs our curriculum.” With respect to clinical education, USC also explains: “This intensive program includes 1,200 hours of hands-on practicum education to practice and apply the skills you learn in class,” achieved through clinical placements.
14 15 16 17 18 19 20 21 22	38 For example, this is the page where users request more information about the online MSW: [Image of website][Then language from website image quoted verbatim in text:] That is, USC states that “the online MSW program match[es] the on-campus program” in the following ways: <ul style="list-style-type: none"> • Same curriculum: You will be prepared for leadership roles across all social work settings. • Same quality field experience: You will complete training in your community to prepare for real world practice. • Same USC faculty: You will form real connections with distinguished faculty who are leaders in social work. • Same career development services: You will receive the support and resources you need to pursue career success.
23 24 25 26 27 28	42 For example, when USC launched its online MSW program in 2010, USC’s website claimed that the program would “give[] you the opportunity to earn the same quality education on-campus students receive,” “delivered by our regular, full-time faculty.” Indeed, USC stated that “[m]any students find the experience even more interactive and fulfilling than a traditional classroom.” USC also touted that “an accredited online MSW from USC will carry significant value in any organization’s hiring and advancement decisions.” In the FAQ section of this

1 2	website, USC posed the question: “What is the difference between the MSW@USC and the MSW?” The answer: “Virtually, nothing.”
3 4 5 6 7 8 9 10	<p>47 To that end, USC provides specific information regarding the online MSW program, under “Online Programs,” at https://msw.usc.edu/online. On that website, USC represents, with respect to its online MSW program, that the courses in the online MSW program are taught by USC faculty:</p> <ul style="list-style-type: none"> • “All of our courses are taught by distinguished USC faculty whose research and teaching have made them leaders in their respective fields.” • “Courses are delivered online and taught by our award-winning faculty” • “Your Classes” are “Taught by USC professors, seminar-style classes are kept small—with an approximate 12:1 student-to-faculty ratio—to encourage conversation and collaboration. In the MSW@USC classroom, there is no back row: You will actively participate in discussions with your professors and peers.”
11 12 13 14 15	<p>48 Elsewhere, the USC website has advertised that “[e]ach seminar-style class is taught by USC faculty” and that the online MSW program will “give[] you the opportunity to earn the same quality education on campus students receive,” “delivered by our regular, full-time faculty.” A link for “Virtual Academic Center faculty” directs to the general faculty listing for the in-person program and does not include instructors who teach exclusively in the online MSW program.</p>
16 17 18 19 20 21 22 23 24 25 26 27	<p>49 Information provided directly to prospective students likewise makes these claims. For example, USC has advertised to the public and prospective students via Twitter that: “The courses in the online MSW@USC program are designed and led by distinguished USC faculty whose research and teaching have made them leaders in their respective fields.”</p> <p>Similarly, emails sent to prospective students titled “Why Choose the MSW@USC?” state: “All MSW@USC courses are taught by USC professors. Our top-ranked faculty have their fingers on the pulse of today’s societal and social issues, and their research and teaching skills have made them leaders in their respective fields.” They also state: “All MSW@USC classes are live, collaborative, seminar-style sessions.” The availability of world-class faculty is a key component of USC’s MSW program and one that prospective students value and consider in selecting a program or whether to attend a program at all.</p>

1 50 USC also promotes the online MSW program’s “~~rigorous curriculum~~” and USC’s status as an
2 “~~elite, private research institution.~~” With respect to its curriculum, USC generally advertises:
3 “The school’s recently refreshed curriculum places a stronger emphasis on science and
4 leadership, and allows for more intensive preparation within the student’s chosen department of
5 study and through various specialization tracks offered.” With respect to the online program in
6 particular, USC separately states: “Featuring a ~~rigorous curriculum~~ that mirrors the on-campus
7 program, MSW@USC provides each student with a specialization in integrative social work,
8 offering foundational training that prepares them to practice across client populations and
9 settings.”

10 56 USC represents that the ~~quality~~, services, and variety of valuable clinical placements is
11 equivalent between its in-person and online MSW programs. For example:
12 a. The USC website claims: “The USC Suzanne Dworak-Peck School of Social Work is
13 affiliated with practicum sites around the world, which allows us to help our students find
14 successful placements no matter where they live.”
15 b. USC has advertised to the public and prospective students via Twitter that: “Our MSW
16 students have the opportunity to secure field placements with sports teams, veteran service
17 agencies, political offices and banks.”
18 c. Emails sent to prospective students on behalf of USC titled “What Makes the Field
19 Experience at USC Different?” read: “~~Each placement site in our nationwide network~~
20 ~~exemplifies the highest standards for 21st century social work.~~ Our team will identify a local
21 field placement that will help you reach your learning objectives.”
22 d. Other emails to prospective students on behalf of USC titled “Why
23 Choose the MSW@USC?” state: “We partner with more than 4,000 community-based field
24 placement sites around the world to place students in field internships close to home.”

60 ¹	In reality, and in contrast to the representations made by USC to the public and its students, USC’s online MSW program offers classroom instruction that is not the same as, but instead is substantially different from and categorically inferior to , USC’s in-person MSW classroom instruction.
161	When deciding whether to attend the online program, Ms. Campos asked the recruiter why the tuition was the same as the on-campus program. The recruiter responded that the quality of the education and other aspects of the program were the “same.”
184	Likewise, Mr. Simpkins’ internship field placement was unrelated to and unhelpful in preparing him for his career goals. Mr. Simpkins knew entering the program that he intended to pursue clinical practice after graduating. Recruiters told him at the time that he would have the same range of internship field placement opportunities even though he was in San Diego. USC’s website represented that he would receive the “same” quality field experience as in the on-campus program to prepare him for practice.

IV. LEGAL STANDARD

A motion to strike under C.C.P. §436 is authorized in only “two situations”: subdivision (a), for “the excision of superfluous or abusive allegations” (that is, removal of “irrelevant, false, or improper matter”), or subdivision (b), for “improprieties in [a pleading’s] *form* or in the *procedures* pursuant to which it was filed,” *e.g.*, “pleadings filed in violation of a deadline, court order, or requirement of prior leave of court.” (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.) “Use of the motion to strike should be cautious and sparing” and specifically may not be used as “a procedural ‘line item veto’ for the civil defendant.” (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.) “A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint’s allegations, which are assumed to be true.” (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 53.) A court must ““read allegations of a

¹ Paragraph 60 is immediately followed by an explanation of what Plaintiffs deem to be “inferior” about the online MSW program—students “do *not* attend the same classes,” “are *not* provided with the same curriculum and course content,” “are *not* taught by the same faculty,” “are *not* given the same access and resources for clinical placements,” “are *not* given the same services related to their academic programs,” and “are *not* subject to the same admissions standards.” FAC ¶¶61-85.

1 pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.”
2 (*Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63.)

3 Motions to strike class allegations are disfavored. (*Blakemore*, 129 Cal.App.4th at 59.) Where
4 defendants move to strike class action allegations, “[w]henver there is a reasonable possibility plaintiffs
5 can plead a prima facie community of interest among class members, the preferred course is to defer
6 decision on the propriety of the class action until an evidentiary hearing has been held on the
7 appropriateness of class litigation.” (*Id.* at 53 [quotations omitted].)

8 **V. ARGUMENT**

9 **A. Defendant’s Motion to Strike Its Own Words Is Procedurally Improper.**

10 USC offers no authority for its novel request to strike isolated phrases from the complaint’s
11 quotation of statements pulled directly from USC’s own website, tweets, and emails. There is nothing
12 “superfluous” or “abusive” about the challenged words or phrases, which are not “irrelevant, false, or
13 improper,” but merely describe USC’s websites and other communications, some of which Plaintiffs
14 allege are false. Instead, USC proposes to do what it is not permitted to do—exercise a line-item veto over
15 specific phrases in the complaint. The motion should be denied for this reason alone.

16 USC does not cite *any* case where a court struck out specific words, phrases, or sentences from
17 longer quotations of a defendant’s false advertisement in a complaint, or struck a plaintiff’s
18 characterization of that false advertising in the complaint, because those specific words, phrases, or
19 sentences might not mislead a reasonable consumer or might implicate the doctrine of educational
20 malpractice. The California cases USC cites on “puffery” are in completely different procedural postures
21 and offer no support for USC’s procedurally unsupported request. (See *People v. Johnson & Johnson*
22 (2022) 77 Cal.App.5th 295, 328–38 [reviewing final judgment and affirming statements were likely to
23 deceive]; *Skinner v. Ken’s Foods, Inc.* (2020) 53 Cal.App.5th 938, 948 [quoting reasonable consumer
24 standard when awarding plaintiffs catalyst fees]; *Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294,
25 310 [holding statements came within commercial speech exemption to anti-SLAPP statute]; *Consumer*
26 *Advocs. v. Echostar Satellite Corp.* (2003) 113 Cal.App.4th 1351, 1362 [affirming in part and reversing
27 in part summary judgment]; *Osborne v. Subaru of America, Inc.* (1988) 198 Cal.App.3d 646, 650
28 [addressing certification of nationwide class].) Nor do USC’s “educational malpractice” cases support its

1 request to strike specific phrases from the complaint. (*Wells v. One2One Learning Foundation* (2006) 39
2 Cal.4th 1164, 1210 [affirming reversal of demurrer]; *Chevlin v. L.A. Community College Dist.* (1989) 212
3 Cal.App.3d 382, 390 [demurrer]; *Peter W. v. S.F. Unified School Dist.* (1976) 60 Cal.App.3d 814, 824
4 [demurrer].)

5 USC’s reliance on *PH II* and *Caliber Bodyworks, Inc. v. Superior Court* ((2005) 134 Cal.App.4th
6 365, 385), is unwarranted: USC does not purport to attack a “portion of [a] cause of action,” “such as a
7 violation of the applicable statute of limitations or a purported claim of right which is legally invalid” as
8 described in *PH II* (33 Cal.App.4th at 1682-83), or a specific remedy sought, as in *Caliber* (134
9 Cal.App.4th at 385). Instead, USC proposes to do precisely what the Court of Appeal in *PH II* warned
10 against: “creat[e] a procedural ‘line item veto’ for the civil defendant” (*PH II*, 33 Cal.App.4th at 1683). It
11 is difficult to imagine what this would look like in practice: a pock-marked complaint with specific words
12 or phrases blacked out from longer quotations? Even if specific words or phrases quoted from USC’s own
13 website and other communications were not actionable (and they are actionable, as described below),
14 Plaintiffs are entitled to tell the entire story of USC’s misrepresentations in their complaint, without
15 omitting certain words or phrases from their quotations. The Court may decide at a later appropriate stage,
16 such as on summary judgment, whether there are some non-actionable phrases within that false
17 advertising. (Cf. *Consumer Advocs*, 113 Cal.App.4th at 1360-62 [determining on summary judgment
18 certain advertising statements were actionable and others were not].)

19 USC’s federal cases could never support the procedural propriety of a motion to strike under state
20 law, nor do they suggest that the court could *strike* particular words or phrases, even under federal
21 procedure. (*Southland Sod Farms v. Stover Seed Co.* (9th Cir. 1997) 108 F.3d 1134, 1145 [on summary
22 judgment, some statements actionable, others not]; *In re Sony Grand Wega KDF-E A10/A20 Series Rear*
23 *Projection HDTV Television Litigation* (S.D. Cal. 2010) 758 F.Supp.2d 1077, 1089-90 [motion to
24 dismiss]; *Oestreicher v. Alienware Corp.* (N.D. Cal. 2008) 544 F.Supp.2d 964, 973-74 [motion to
25 dismiss]; *Anunziato v. eMachines, Inc.* (C.D. Cal. 2005) 402 F.Supp.2d 1133, 1139-41 [motion to
26 dismiss].)

27 Considering the details of USC’s motion, it is clear why USC found no court engaged in the
28 quixotic editing assignment USC proposes for the Court—there is no way to draw the line. USC argues

1 that the Court should edit Plaintiffs’ complaint, sometimes narrowly and sometimes broadly, but does not
2 offer any reason why sometimes more should be struck and sometimes less. For example, USC proposes
3 to strike “same quality field experience” in paragraphs 2 and 38, but to strike only “the ‘same’ quality”
4 and not “field experience” in paragraph 184, which refers to “the ‘same’ quality field experience....”
5 Similarly, in paragraph 47 of the complaint, USC proposes to strike an entire sentence from its website:
6 “All of our courses are taught by distinguished USC faculty whose research and teaching have made them
7 leaders in their respective fields,” to strike part of the next sentence: “Courses are delivered online [not
8 struck] and taught by our award-winning faculty [struck]”, and to leave intact the next sentence, “Your
9 Classes” are “[t]aught by USC professors....” USC argues (incorrectly, as discussed below) that
10 “distinguished,” “leaders in their respective fields” and “award-winning” are non-actionable puffery but
11 offers no explanation for striking the remaining portions of paragraph 47.

12 These examples demonstrate that USC’s suggested procedure violates the most basic principles
13 governing motions to strike: courts must read allegations subject to a motion to strike ““as a whole, all
14 parts in their context.”” (*Turman*, 191 Cal.App.4th at 63.) USC asks the Court to strike words and phrases
15 out of context, in a manner that would make Plaintiffs’ complaint illegible and unreadable. The Court
16 should not do so.²

17 **B. There Are No Substantive Grounds for Striking Any Part of Plaintiffs’ Complaint.**

18 Even if the Court were to consider embarking on the improper enterprise of line editing Plaintiffs’
19 complaint, the Court should deny USC’s motion because the stated substantive grounds lack merit: the
20 challenged words and phrases are not subjective opinions about superiority, but instead are misstatements
21 about “specific or absolute characteristics” of the two programs. (*Demetriades*, 228 Cal.App.4th at 311.)
22

23 ² USC also wrongly claims that if a statement is not actionable as false advertising then it cannot be the
24 basis for an unjust enrichment or Unruh Act claim. (MPA iso Mot. to Strike, at 9 fn.1.) USC offers no
25 authority for this proposition, which is patently false. Whether or not a statement is puffery, it can still be
26 discriminatory (think of a club that excludes Black people and advertises that it selects “only people of
27 the highest quality for membership”). That is another reason it is improper to strike particular allegations
28 on the basis that they might not be actionable as a basis for one of Plaintiffs’ claims. Unless Defendant at
least proves that, as a matter of law, the words it wishes to strike are “irrelevant, false, or improper” with
respect to *all* of Plaintiffs’ claims, they clearly cannot be struck. Defendant has not even attempted to do
this.

1 Nor do the challenged words or phrases implicate the educational malpractice doctrine, because Plaintiffs’
2 claims do not require an evaluation of the subjective quality of education provided by the online MSW
3 program, as opposed to an objective evaluation whether certain components of the two programs are the
4 same or different.

5 **1. USC’s statements are not “puffery”: They would mislead a reasonable consumer.**

6 The words, phrases, and sentences USC seeks to strike from Plaintiffs’ complaint are not mere
7 puffery. “A statement is considered puffery if the claim is *extremely unlikely* to induce consumer reliance
8 Ultimately, the difference between a statement of fact and mere puffery rests in the specificity or
9 generality of the claim. The common theme that seems to run through cases considering puffery in a
10 variety of contexts is that consumer reliance will be induced by specific rather than general assertions.”
11 (*Demetriades*, 228 Cal.App.4th at 311 [emphasis added; quotations, citations omitted].) Here, as discussed
12 below, Plaintiffs’ claims are specific, not general. Moreover, words used must be considered in context:
13 whether a statement or practice is likely “to mislead or deceive” “cannot be mechanistically determined
14 under the relatively rigid legal rules applicable to the sustaining or overruling of a demurrer. Rather, the
15 determination is one question of fact, requiring consideration and weighing of evidence from both sides
16 before it can be resolved.” (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1471, 1472
17 [reversing demurrer] [quotations, citations omitted].)

18 USC’s contention that the phrase “same quality” is non-actionable puffery fails to read the words
19 in context, as this Court must. (*Turman*, 191 Cal.App.4th at 63.) In context, USC’s repeated advertising
20 phrase “[s]ame quality field experience” explains how the online program “match[es] the on-campus
21 program.” FAC ¶38 [emphasis added]. That is, “same quality” does not mean “just as good”; it rather
22 means “having the same attributes or features” as field placements in the on-campus program. (See, e.g.,
23 Merriam-Webster’s Dictionary, s.v. quality [“an inherent feature”].) “Same quality” as a definite
24 comparator to the in-person program does not mean “high,” “superior,” “excellent,” “superb,”
25 “uncompromising,” or “outstanding” quality, and so Defendant’s cases addressing those very different
26 representations are irrelevant. (MPA iso Mot. to Strike at 10-13 [discussing *In re Sony Grand Wega*, 758
27 F.Supp.2d at 1088-89; *Oestreicher*, 544 F.Supp.2d at 973; *Anunziato*, 402 F.Supp.2d at 1139-40].) When
28

1 a defendant “compares” a product to something, consumers can reasonably expect relevant similarity.
2 (See *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064, 1081.)³

3 USC also takes other words out of context. What is misleading in the phrase “Featuring a rigorous
4 curriculum that mirrors the on-campus program,” FAC ¶50, is not the word “rigorous” by itself, but that
5 the online curriculum “mirrors the on-campus program.” What is misleading in the phrases “All of our
6 courses are taught by distinguished USC faculty,” “Courses are delivered online and taught by our award-
7 winning faculty,” FAC ¶47, and “The courses in the online MSW@USC program are designed and led by
8 distinguished USC faculty whose research and teaching have made them leaders in their respective fields,”
9 FAC ¶49, are not the words “distinguished,” “award winning” or “leaders” by themselves, but the
10 implication that the same faculty teach in the in-person and online programs.⁴ Similarly, paragraphs 30
11 and 56 refer to “[o]ur curriculum” or “our nationwide network,” misleadingly implying that the online
12 and in-person curriculum and network of field placements are the same. FAC ¶¶30, 56 [emphasis added].
13 Nor do Plaintiffs contend that all of USC’s statements quoted in the complaint are false: for example, USC
14 is indeed an “elite, private research institution.” FAC ¶50. USC’s true statement to this effect is necessary
15 to put into context the importance of its later false representations, for example that online students will
16 be taught by “our” faculty, or learn from “our” curriculum. FAC ¶¶30, 42, 47-49. It should not be stricken.

17 Finally, USC’s motion to strike words in paragraph 56 and 60 (“quality” and “inferior”) that merely
18 characterize USC’s false advertising, and are not quotations of USC’s own words, on the basis that those
19 statements were puffery, is nonsensical. Puffery has no application whatsoever to statements not made by
20 a defendant, and not alleged to be false advertising.

21 In sum, USC has not pointed to a single statement that, when considered in context as it must be,
22 is *extremely unlikely* to mislead, and any challenge to the statements USC does point to is not properly
23 resolved at the pleading stage.

24
25 ³ Of course, the comparison itself must be to something objective and definite. Thus the phrase “CD
26 quality” was non-actionable puffery, not because of use of the word “quality” but use of the word “CD.”
As the court explained: “How good are the speakers on the CD player?” (*Consumer Advocates*, 113
Cal.App.4th at 1361).

27 ⁴ Where Plaintiffs rely on the entire sentence, the specific words and phrases USC highlights are not
28 puffery either. For example, faculty either won awards or they did not. This is a specific, objective
statement of fact that is demonstrably true or false, not a subjective statement of opinion.

1 **2. USC’s false statements do not implicate the educational malpractice doctrine.**

2 California’s educational malpractice doctrine is primarily a “no-duty” rule—*i.e.*, that there is no
3 freestanding negligence action for failing to provide a good enough education. (See *Wells*, 39 Cal.4th at
4 1211-12.) It relatedly disallows claims challenging the general “educational quality or results” of a
5 school’s programs. (*Id.* at 1212 [emphasis omitted].) But the doctrine does not bar statutory causes of
6 action for, among other things, false statements made to prospective students. (See *ibid.*) For example, the
7 doctrine is no bar to claims that a school “used teachers who lacked necessary credentials.” (*Ibid.*)

8 The words and phrases USC seeks to strike do not implicate the educational malpractice doctrine.
9 The phrase “same quality” does not require an assessment of the quality or results of the education but
10 merely whether the advertised program has the same specific, relevant features as the in-person program.
11 As explained above, “same quality” does not mean “just as good” at producing some unspecified “result”
12 as might implicate the educational malpractice doctrine; it rather means “having the same characteristics,
13 attributes or features” as elements of the on-campus program. That’s especially true for the phrase “same
14 quality field experience,” FAC ¶¶2, 38, 184; see also FAC ¶56, which a reasonable consumer would
15 understand to mean the same kind of opportunities in their community as in-person students would have
16 in Los Angeles. “[S]ame quality education on-campus students receive,” FAC ¶¶42, 48; see also FAC
17 ¶161, likewise represents to prospective students they can expect a program with the same relevant
18 characteristics as the on-campus program, including equivalently credentialed faculty. Thus, Plaintiffs
19 allege the online program was “categorically inferior” to the on-campus program, FAC ¶60, because it
20 *differed* from the in-person program with respect to classes, curriculum, faculty, access and resources for
21 clinical placements, and admissions standards. FAC ¶¶61-85. The on-campus program provides a specific
22 benchmark as to specific features that students themselves expected to measure the online program against
23 based on USC’s representations; assessing the truth or falsity of those “sameness” representations does
24 not call for any assessment of the general “quality” of the online MSW program or of its results.

25 Similarly, USC’s claim that Plaintiffs object to the “quality” of classroom instruction misses the
26 point. Plaintiffs’ complaint regarding classroom instruction is that it was not provided at all; instead of
27 live teachers, they were provided outdated prerecorded content. (*Cf. Wells*, 39 Cal.4th at 1212 [operators
28 “sought and obtained public education funds for doing nothing more than collecting attendance forms”].)

1 That does not require an assessment of “pedagogical methods” but just whether USC provided the “same”
2 curriculum—*i.e.*, primarily outdated prerecorded videos—to online students as to in-person students.

3 **C. USC Improperly Attempts to Litigate Class Certification Under the Guise of**
4 **“Standing.”**

5 USC’s proposal to strike all references to “veteran” and “veteran status,” including in Plaintiffs’
6 proposed subclass definition, FAC ¶202, is an attempt to litigate class certification under the guise of
7 litigating standing. Again, there is no support for USC’s novel argument. Whether plaintiffs have
8 “standing” to file a lawsuit in their own right is distinct from whether they have a right to represent others
9 in a class action. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 306 [under the UCL, “standing
10 requirements are applicable only to the class representatives, and not all absent class members”].)
11 “Standing” refers to whether a plaintiff has a “right to sue.” (5 Witkin, Cal. Procedure (6th ed. 2023)
12 Pleading, §906.) A plaintiff’s right, or standing, to sue, is generally determined with reference to the
13 statutory language. (See *In re Tobacco*, 46 Cal.4th at 314 [standing to sue under Bus. & Prof. Code §17200
14 determined by statutory language in §17204].) “[T]he standing issue focuses on whether the plaintiff is
15 properly before the court, not whether ... absent class members are properly before the court.” (*Id.* at 319
16 [quoting 1 Newberg & Conte, *Newberg on Class Actions* (3d ed. 1992) §2.07, p. 2–41].) “Representative
17 parties who have a direct and substantial interest have standing; the question whether they may be allowed
18 to present claims on behalf of others who have similar, but not identical, interests depends not on standing,
19 but on an assessment of typicality and adequacy of representation.” (*Ibid.* [quoting 7AA Wright et al.,
20 *Federal Practice and Procedure* (3d ed. 2005) §1785.1, pp. 388–389].)

21 As explained in Plaintiffs’ demurrer opposition, Plaintiffs have standing to bring suit under the
22 Unruh Act, which provides that “any person aggrieved by the conduct may bring a civil action.” (Civ.
23 Code §52.) “In essence, an individual plaintiff has standing under the Act if he or she has been the victim
24 of the defendant’s discriminatory act.” (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175.)
25 The discriminatory act at issue in this case is USC’s policy/practice of targeting hard-sell techniques for
26 enrollment at groups it deemed to be high conversion probabilities—people of color and veterans. As
27 explained in Plaintiffs’ demurrer opposition, Plaintiffs were the victims of that discriminatory act—they
28

1 have “actually suffer[ed]” from that “discriminatory conduct” (*White v. Square, Inc.* (2019) 7 Cal.5th
2 1019, 1025). FAC ¶¶15, 18, 119-122, 126, 137, 141, 152-153, 156, 158-159, 171-72, 175, 178, 180, 191.

3 In contrast to the standing inquiry, the class certification inquiry “is ‘essentially a procedural one,’”
4 asking whether there is a “‘well-defined community of interest’” such that claims “‘may be jointly tried,’”
5 including here, claims of veterans that they were subjected to the very same discriminatory practice as
6 were Plaintiffs (*Sav-On Drug Stores, Inc. v. Superior Ct.* (2004) 34 Cal.4th 319, 326). That is not a
7 question the Court should address now. “Absent strong factual showings in the complaint that negate the
8 possibility of a community of interest, determination of the propriety of a class action should be deferred
9 until a time when the court may better make the decision.” (*Blakemore*, 129 Cal.App.4th at 59 [cleaned
10 up]; see also *Tarkington v. Cal. Unempl. Ins. Appeals Bd.* (2009) 172 Cal.App.4th 1494, 1510 [similar].)
11 A court may only strike class allegations if it can “rule at the pleading stage that the suit [is] without the
12 realm of probability of being properly tried as class litigation.” (*Blakemore*, 129 Cal.App.4th at 59.)

13 Here, USC does not even attempt to make a showing to negate the possibility of a community of
14 interest. Instead, USC merely notes that Plaintiffs are not veterans. That is not sufficient to establish that
15 it is “without the realm of probability” that claims of those students subjected to the same discriminatory
16 policy could be properly tried together in class litigation. Although the Court should not be considering
17 class certification issues now, courts typically recognize that members of one minority group that has been
18 the victim of a discriminatory policy aimed at multiple groups may bring claims on behalf of all affected
19 groups, without the need for separate representatives from each group. (E.g., *Floyd v. City of New York*
20 (S.D.N.Y. 2012) 283 F.R.D. 153, 177; *Jaffe v. Morgan Stanley & Co.* (N.D. Cal. Dec. 12, 2007, No. C
21 06-3903) 2007 WL 4934323, at *2; *Gutierrez v. Johnson & Johnson* (D.N.J. 2006) 467 F.Supp.2d 403,
22 413; see also *Sanchez v. Standard Brands, Inc.* (5th Cir. 1970) 431 F.2d 455, 459-60, 464.) Thus, at the
23 appropriate time, the Court should find that Plaintiffs are adequate and typical class representatives to
24 represent all individuals subjected to USC’s discriminatory practice, including veterans.

25 **VI. CONCLUSION**

26 For the foregoing reasons, USC’s motion to strike should be denied.

27 DATED: December 8, 2023

By: /s/ Eve H. Cervantez
Eve H. Cervantez

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Eileen M. Connor
Rebecca C. Ellis
Eric A. Schmidt
**PROJECT ON PREDATORY STUDENT
LENDING**

Eve H. Cervantez
Danielle E. Leonard
Corinne F. Johnson
Derin McLeod
ALTSCHULER BERZON LLP
Attorneys for Plaintiffs and the Proposed Class