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18 FOR THE COUNTY OF LOS ANGELES
19

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

22 Plaintiffs,

23 vs.

24 UNIVERSITY OF SOUTHERN
CALIFORNIA,

25 Defendant.
26
27
28

Case No. 23STCV09981

**JOINT INITIAL STATUS CONFERENCE
REPORT**

Date: August 11, 2023 (Continuance to
August 25, 2023 requested)

Time: 10:00 a.m.

Judge: Kenneth Freeman

Dept.: 014

Action Filed: May 4, 2023

Trial Date: TBD

CLASS ACTION COMPLAINT

1 [Additional counsel continued from first page]

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1 Pursuant to the Court’s Initial Status Conference Order dated June 20, 2023, and
2 after meeting and conferring pursuant to California Rules of Court 3.724 and 3.727, Plaintiffs
3 Stephanie Luna, Sandra Campos, and Deonte Simpkins and Defendant University of Southern
4 California hereby jointly submit this Joint Initial Status Conference Statement.

5 **I. PARTIES**

6 Plaintiffs Stephanie Luna, Sandra Campos, and Deonte Simpkins (collectively,
7 “Plaintiffs”) have sued individually and on behalf of a putative class of similarly situated
8 individuals. The putative class representatives are the three named Plaintiffs. Plaintiffs are
9 represented by Eileen Connor and Rebecca Ellis of the Project on Predatory Student Lending and
10 Eve Cervantez, Danielle Leonard, Corinne Johnson, and Derin McLeod of Altshuler Berzon LLP.
11 Contact information for Plaintiffs’ counsel is found on the caption of this pleading.

12 There is presently one named defendant, the University of Southern California
13 (“USC” or “Defendant”). Defendant is represented by Daniel Levin, Hailyn Chen, Adam Weiss,
14 Megan McCreddie, Raquel Dominguez, and Janelle Krummen of Munger, Tolles & Olson LLP.
15 Contact information for Defendant’s counsel is found on the caption of this pleading.

16 **II. POTENTIAL ADDITIONAL PARTIES**

17 Plaintiffs do not presently intend to add additional class representatives or name
18 more defendants, but may do so in the future.

19 Based on information currently in its possession, USC does not presently intend to
20 add any additional parties to this action but may do so in the future.

21 **III. IMPROPERLY NAMED DEFENDANT(S)**

22 USC is not asserting that there are any improperly named defendants.

23 **IV. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S)**

24 At present, USC is not aware of any reasons specific to the three named Plaintiffs
25 (e.g., release of claims in bankruptcy, fraud conviction, etc.) that would render any of them an
26 inadequate class representative, but reserves its right to argue that the named Plaintiffs are not
27 adequate class representatives after taking discovery.

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1 **V. ESTIMATED CLASS SIZE**

2 Plaintiffs' Complaint is brought on behalf of a putative class of "[a]ll California
3 citizens who, at the time of the filing of this complaint, are or have been students in the online
4 Master of Social Work degree program at the USC School of Social Work at any time during the
5 period from four years before the filing of this complaint through the date of final judgment."
6 (Compl. ¶ 198.) Plaintiffs also define a subclass for purposes of their Unruh Act claim of "[a]ll
7 California citizens who are people of color or veterans and who, at the time of the filing of this
8 complaint, are or have been students in the online Master of Social Work degree program at the
9 USC School of Social Work at any time through the date of final judgment." (Compl. ¶ 199.)

10 Although USC's investigation is ongoing, USC estimates that the putative class
11 consists of no more than 3,430 members, which is the number of individuals who have been
12 students in the online MSW program between May 4, 2019 (i.e., four years before the Complaint
13 was filed) and the present. Of those individuals, USC has a California address on file for 2,156
14 students. USC is unable to give a precise estimate of the size of Plaintiffs' putative class,
15 however, for at least two reasons. First, USC lacks the information necessary to determine the
16 current domicile of putative class members. The address information on file may not be up to
17 date, particularly for program graduates, and may not necessarily reflect the individual's legal
18 domicile. USC therefore cannot make a conclusive determination whether any given putative
19 class member is a "California citizen." Second, as currently phrased, Plaintiffs' putative class
20 definition could be read to include students who will enroll in the online MSW program between
21 now and final judgment in this case; putting aside potential objections to such a class as a matter
22 of law, USC cannot predict when this lawsuit will conclude or how many students will choose to
23 enroll in the online MSW program before then.

24 As to the "Unruh Act Subclass"—brought on behalf of putative class members
25 "who are people of color or veterans" (Compl. ¶ 199)—of the 2,156 students in the potential class
26 with California addresses on file, 1,502 students self-reported as being African American,
27 Latino/a, Asian/Pacific Islander, or Native American and 148 self-reported as being either
28 veterans, active duty military, or members of the National Guard. However, in addition to the two

1 issues noted above with respect to determining membership in the broader class, which apply
2 equally to the subclass, USC cannot provide a fully accurate estimate of the number of putative
3 subclass members due to the voluntary nature of students' disclosure of their race and/or veteran
4 status. A non-negligible number of students choose not to self-report a race or ethnicity. And for
5 those students who do report a race or ethnicity, USC does not verify the accuracy of the
6 information they provide. Moreover, USC does not know whether student's self-reported
7 demographic information aligns with the subclass's "people of color" designation, because
8 Plaintiffs do not define that term.

9 **VI. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS**

10 The parties are not aware of any cases with an identical or materially similar class
11 definition to the definition proposed by Plaintiffs for their putative class.

12 USC is aware of the following cases pending against USC with class definitions
13 that may incidentally encompass certain members of the putative class in this case:

- 14 • *Chaisson v. University of Southern California*, Case No. 2:23-cv-00518, currently
15 pending in the United States District Court for the Central District of California.
16 Plaintiffs there seek to certify the following class: "All current and former students
17 who paid or were charged one or more Late Fees imposed by USC from July 14,
18 2016 to the date that class notice is disseminated, and who have not received a full
19 refund or waiver of such fees." The case was removed to federal court at the
20 beginning of this year, and Plaintiffs have moved to remand. That motion is under
21 submission.
- 22 • *Heerde v. Learfield Communications, et al.*, Case No. 2:23-cv-4493, currently
23 pending in the United States District Court for the Central District of California.
24 Plaintiffs there seek to certify the following classes against USC: "All persons in
25 the United States with a subscription to the Trojan's Website that had their PII
26 improperly disclosed to Facebook through the use of the Pixel while subscribers
27 watched pre-recorded videos on the sites"; "All persons in the United States whose
28 searches and activity on the Trojan's Websites were intercepted, stored, and shared

1 through the use of the tracking tools”; and “All person in California whose
2 communications with the Trojan’s Websites were intercepted by and had their
3 contents learned as a result of the tracking tools.” The case was recently filed, and
4 USC has yet to respond to the complaint.

5 **VII. POTENTIALLY RELEVANT ARBITRATION AND/OR CLASS ACTION**
6 **WAIVER CLAUSES**

7 The parties are not aware at this time of any potentially relevant arbitration or class
8 action waiver clauses that may affect the claims of the named Plaintiffs or the putative class
9 members.

10 **VIII. POTENTIAL EARLY CRUCIAL MOTIONS**

11 The core issues in the case include, among other things, whether a class should be
12 certified; whether USC’s representations about its online Master of Social Work (“MSW”) were
13 accurate; whether USC’s representations about its online MSW program were likely to deceive a
14 reasonable consumer; whether USC engaged in actionable “hard sell” techniques; whether USC
15 unlawfully targeted consumers of color and veterans for its online MSW program; and what, if
16 any, damages or restitution may be recovered.

17 USC intends to demur to several or all of the causes of action in the Complaint, and
18 may file an accompanying motion to strike certain allegations in the Complaint. USC will meet
19 and confer with Plaintiffs in advance of filing any motion. USC also anticipates vigorously
20 opposing Plaintiffs’ eventual motion for class certification.

21 Plaintiffs intend to file a motion for class certification after the case is at issue, and
22 after they have taken sufficient discovery.

23 Depending on how discovery progresses, both sides anticipate filing motions for
24 summary judgment/adjudication at an appropriate time to be determined at a later date.

25 **IX. CLASS CONTACT INFORMATION**

26 The parties agree that USC will provide unnamed class member contact
27 information to Plaintiffs, following the commencement of discovery, in response to a valid, non-
28 objectionable discovery request for such information and subject to the protection of an agreed-

1 upon protective order. Such disclosure must be consistent with the Family Educational Rights and
2 Privacy Act (“FERPA”), however, and limited to appropriate “Directory” information under
3 FERPA. *See* 34 CFR § 99.37. With respect to the *Belaire* notice process, the parties agree the
4 process is not necessary for class members who have not previously opted out of disclosure of
5 their “Directory” information under FERPA (which the parties expect to be a large majority of the
6 proposed class). It is USC’s position that, consistent with FERPA, USC may not provide such
7 information for students who have opted out of the sharing of “Directory” information. *See id.*
8 The parties will continue to meet and confer regarding the specific information to be provided and
9 any attendant obligations under FERPA.

10 **X. PROTECTIVE ORDERS**

11 The parties agree that a protective order is needed in this case. The parties are in
12 the process of meeting and conferring on revisions to the model protective orders found on the Los
13 Angeles Superior Court website, which likely will need to be modified to include specific
14 protections for FERPA-protected information. The parties anticipate filing a stipulation and
15 proposed order regarding a protective order in the coming weeks.

16 **XI. DISCOVERY**

17 The parties are continuing to meet and confer regarding discovery and will be
18 prepared to further address the issue at the next status conference.

19 In general, Plaintiffs intend to serve discovery requests and interrogatories, subject
20 to the limitations of the Code of Civil Procedure, on both defendant and third parties. Plaintiffs
21 will notice Person Most Knowledgeable depositions after having time to receive and review
22 USC’s written discovery responses and produced documents, and may also depose select fact
23 witnesses. Plaintiffs believe that the stay on discovery should be lifted, and that discovery should
24 commence after the status conference is held. Plaintiffs contend that the default rule in California
25 is that discovery begins shortly after the case is filed, and USC’s demurrer and motion to strike are
26 unlikely to dispose of the case entirely.

27 USC intends to serve discovery requests and interrogatories, subject to the
28 limitations of the Code of Civil Procedure, on Plaintiffs and likely on third parties. At an

1 appropriate time after Defendant has received Plaintiffs' discovery responses and produced
2 documents, Defendant intends to depose the named Plaintiffs and potentially third parties and
3 putative class members (discussed further below). USC believes that the discovery stay should
4 remain in place until a decision is rendered on USC's demurrer and motion to strike, as those
5 motions may drastically limit the claims and allegations at issue.

6 USC believes that, consistent with the Court's Initial Status Conference order,
7 discovery should be bifurcated, with class discovery proceeding first and discovery of pure merits
8 issues occurring only once a class is certified. To the extent that there is overlap between class-
9 focused and merits-focused discovery, USC believes that any pre-certification discovery from
10 USC should be subject to reasonable overall limits on scope.

11 Plaintiffs believe that the merits and class certification issues are intertwined in this
12 case such that discovery will necessarily include many factual issues also touching the merits. In
13 particular, what representations class members were exposed to and whether those representations
14 accurately depicted the actual online MSW program or instead would tend to mislead a reasonable
15 consumer about the online MSW program, are going to be core issues with respect to both the
16 merits and class certification. Similarly, whether USC had a policy or practice of targeting
17 prospective students of color or veterans will likewise be issues for class certification and the
18 merits. Accordingly, Plaintiffs do not believe that there should be any formal bifurcation of class
19 and merits discovery, as any such bifurcation will only lead to needless discovery disputes
20 concerning whether certain requested discovery is relevant to class certification or only to the
21 merits. Similarly, Plaintiffs do not believe that damages are relevant to class certification under
22 California law, but are aware that defendants often cite to a federal case, *Comcast Corp. v.*
23 *Behrend*, 569 U.S. 27 (2013), for the proposition that Plaintiffs must prove commonality with
24 respect to damages for class certification. This is another reason that discovery should not be
25 bifurcated. However, if discovery is bifurcated, USC will either need to agree that damages are
26 not relevant to class certification or produce damages discovery prior to class certification.

1 The parties propose to continue to meet and confer regarding the specific
2 parameters of any bifurcation so that the parties will be in a position to begin discovery
3 expeditiously.

4 USC believes that the experiences of absent class members are highly relevant to
5 class certification in this case. Putative class members likely had different experiences both with
6 recruiting for the online MSW program (for example, being exposed to different marketing
7 statements and having different interactions with program recruiters) and in the online MSW
8 program itself once they enrolled. USC believes that these differences create individualized issues
9 that will preclude class certification. USC has not yet determined, however, whether formal
10 absent class member discovery (e.g., depositions) will be required. USC will continue to meet and
11 confer with Plaintiffs about this issue and will be prepared to address this issue further at the next
12 status conference.

13 Plaintiffs do not believe that formal class member discovery such as depositions
14 will be necessary in this case, but are willing to continue meeting and conferring with USC about
15 this topic as the case progresses.

16 **XII. INSURANCE COVERAGE**

17 USC has tendered a claim to its insurers, but at this time the insurers have not
18 indicated their position on coverage.

19 **XIII. ALTERNATIVE DISPUTE RESOLUTION**

20 While the parties are open to alternative dispute resolution (“ADR”) at an
21 appropriate time, they agree that ADR is unlikely to be productive at this juncture. The parties
22 agree that a private mediation would be the most productive ADR mechanism in this matter, and
23 will continue to meet and confer regarding the appropriate time to conduct such a mediation,
24 which likely will not be until, at the earliest, after a decision on USC’s forthcoming demurrer and
25 some document discovery.

26 **XIV. TIMELINE OF CASE MANAGEMENT**

27 The parties propose the following schedule for demurrer and/or motion to strike
28 briefing:

- 1 • September 8, 2023: Defendant’s deadline to file demurrer and/or motion to strike portions of Complaint
- 2
- 3 • October 6, 2023: Plaintiffs’ deadline to amend Complaint
- 4 • November 6, 2023: Defendant’s deadline to file demurrer and/or motion to strike portions of Amended Complaint
- 5 • December 11, 2023: Plaintiffs’ deadline to oppose demurrer and/or motion to strike
- 6 • January 15, 2024: Defendant’s deadline to file reply in support of demurrer and/or motion to strike
- 7
- 8 • January 31, 2024: hearing on demurrer and/or motion to strike

9 The parties further propose that the next status conference be held concurrently with or shortly
10 after the hearing on USC’s demurrer and/or motion to strike on January 31, 2024.

11 The proposed schedule reflects that Plaintiffs intend to amend the Complaint at
12 least to add a request for damages under the Consumer Legal Remedies Act, *see* Civil Code
13 § 1782, and may also make substantive amendments in response to the demurrer/motion to strike.

14 The parties are continuing to discuss a schedule and framework for discovery, class
15 certification briefing, and other dispositive motions and will be prepared to discuss these topics at
16 the next status conference.

17 **XV. ELECTRONIC SERVICE OF PAPERS**

18 The parties have agreed to use Case Anywhere for third-party cloud service of
19 Court filings. Concurrently with this joint status report, the parties have filed a stipulation
20 governing email service of discovery materials.

21 DATED: August 4, 2023

ALTSHULER BERZON LLP

23
24 By: 

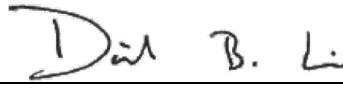
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DATED: August 4, 2023

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