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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 MOTION AND MOTION TO STRIKE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 436;  
SUPPORTING MEMORANDUM OF  
POINTS & AUTHORITIES**

Judge: Kenneth Freeman  
Dept.: 014  
Date: March 27, 2024  
Time: 11:00 A.M.  
Action Filed: May 4, 2023

**CLASS ACTION COMPLAINT**

*[Notice of Demurrer and Demurrer, and  
Declaration of Megan McCreadie in Support  
of Demurrer and Motion to Strike filed  
concurrently herewith]*

1 **NOTICE OF MOTION TO STRIKE AND MOTION**

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, pursuant to California Code of Civil Procedure section 436,  
5 defendant University of Southern California (“the University” or “USC”) will and hereby does  
6 respectfully move this Court to strike certain allegations in the First Amended Class Action  
7 Complaint.

8 Specifically, the University moves to strike the following allegations regarding general,  
9 subjective advertising statements and about educational quality on the basis that (i) these  
10 statements are non-actionable puffery and/or (ii) are non-actionable under the educational  
11 malpractice doctrine:

- 12 1. Paragraph 2, lines 8–9, reading: “the same quality field experience.”
- 13 2. Paragraph 30, lines 1–4, reading: “Our curriculum places a strong emphasis on the  
14 science of social work and preparing graduates to become leaders within the  
15 profession. Social Work students at USC receive the most up-to-date education  
16 because we are a top-tier research institution.”
- 17 3. Paragraph 38, lines 4–7, reading: “Same quality field experience,” and “You will  
18 form real connections with distinguished faculty who are leaders in social work.”
- 19 4. Paragraph 42, lines 27–28, reading: “give[] you the opportunity to earn the same  
20 quality education on-campus students receive.”
- 21 5. Paragraph 42, lines 1–3, reading: “Many students find the experience even more  
22 interactive and fulfilling than a traditional classroom,” and “an accredited online  
23 MSW from USC will carry significant value in any organization’s hiring and  
24 advancement decisions.”
- 25 6. Paragraph 47, lines 1–3, reading: “All of our courses are taught by distinguished  
26 USC faculty whose research and teaching have made them leaders in their  
27 respective fields” and “taught by our award-winning faculty.”
- 28 7. Paragraph 48, lines 8–9, reading: “give[] you the opportunity to earn the same  
quality education on-campus students receive.”
8. Paragraph 49, lines 15–16 and 19–20, reading: “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,” and “their  
research and teaching skills have made them leaders in their respective fields.”
9. Paragraph 50, lines 24–25 and 1, reading: “rigorous curriculum” and “elite, private  
research institution.”

- 1           10. Paragraph 56, line 19, reading: “quality.”
- 2           11. Paragraph 56, lines 28–1, reading: “Each placement site in our nationwide network
- 3           exemplifies the highest standards for 21st-century social work.”
- 4           12. Paragraph 60, line 21, reading: “and categorically inferior to.”
- 5           13. Paragraph 161, lines 10–11, reading: “the quality of the education.”
- 6           14. Paragraph 184, lines 15–16, reading: “the ‘same’ quality . . . as in the on-campus
- 7           program.”

8           The University also moves to strike the allegations regarding veterans or veteran-status  
9           discrimination—specifically, the words “veterans,” “veteran status,” and “status as veterans” in  
10          Paragraphs 5, 11, 15, 18, 116, 126, 127, 128, 134, 135, 136, 200, 202, 204(a), 206, 235, 241(d),  
11          and 245 and Paragraph 4 of the Prayer for Relief on page 47 of the First Amended Class Action  
12          Complaint—on the basis that Plaintiffs have no standing to assert an Unruh Act claim of  
13          intentional discrimination based on veteran status.

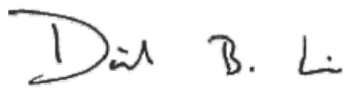
14          This Motion is based upon this Notice of Motion and Motion, the following Memorandum  
15          of Points and Authorities, the Declaration of Megan McCreddie in Support of USC’s Demurrer  
16          and Motion to Strike, and such other materials or arguments of counsel that the Court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

18          DATED: November 2, 2023

MUNGER, TOLLES & OLSON LLP

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

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 USC’s concurrently-filed Demurrer explains why Plaintiffs’ Unruh Act claim, claim for  
4 unjust enrichment, and certain CLRA and FAL claims should be dismissed. But all of Plaintiffs’  
5 claims alleging misrepresentation rely, in part, on overbroad and non-actionable theories that  
6 should be stricken. Under well-established California law, Plaintiffs’ allegations about the  
7 differing “quality” of USC’s online and in-person Master of Social Work (“MSW”) programs or  
8 differing “quality” of the clinical outplacement programs are based on non-actionable puffery.  
9 Likewise, Plaintiffs’ theories that they were misled by statements that USC is an “elite” institution  
10 or that the MSW program offers a “rigorous curriculum” are based on non-actionable puffery.

11 Even if the statements about the quality of a student’s education and experience in the  
12 online MSW program were not puffery, Plaintiffs’ allegations should still be stricken under  
13 California’s educational malpractice doctrine. California law bars claims that require courts to  
14 judge the “educational quality” of a school’s education or programs. (*Wells v. One2One Learning*  
15 *Foundation* (2006) 39 Cal.4th 1164, 1210-1212.) Plaintiffs’ allegations about the quality of the  
16 online MSW program as compared to the quality of the in-person program would require just that  
17 kind of barred inquiry.

18 Finally, even if the Court were to overrule USC’s Demurrer on Plaintiffs’ Unruh Act  
19 claim, Plaintiffs’ allegations about discrimination based on veteran status must be stricken for the  
20 simple reason that none of the Plaintiffs alleges that he or she is a veteran or suffered any  
21 discrimination as a result of veteran status. Because Plaintiffs lack standing to bring a claim  
22 regarding discrimination against veterans, allegations about such discrimination must be stricken.

23 **II. BACKGROUND AND ALLEGED FACTS**

24 The general background of this case is described in USC’s Demurrer. As relevant here, in  
25 2010, USC launched a new method of social-work education: a fully online MSW program. (See  
26 First Amended Class Action Complaint (“FAC”) ¶ 1.) Unlike in-person students, students  
27 enrolling online can attend classes from anywhere and then complete the clinical requirements for  
28 their degree with a combination of remote work and placement with an organization located

1 wherever the student resides. (See *id.* ¶¶ 34, 80.) Classes consist of both live, online instruction  
2 and pre-recorded content. (See *id.* ¶ 74.) With this increased flexibility, USC has been able to  
3 offer its masters-level education to a greater number of aspiring social workers. (*Id.* ¶¶ 86-87.)

4 Plaintiffs allege that USC marketed the online program as an “opportunity to earn the same  
5 quality education on-campus students receive.” (FAC ¶ 48.) According to Plaintiffs, on the  
6 School of Social Work website, USC describes the online and in-person programs as the “same,”  
7 using descriptions like “same curriculum,” “same career development services,” and “same quality  
8 field experience.” (*Id.* ¶ 38.) Plaintiffs allege that USC also touted the online program as being  
9 part of an “elite, private research institution,” with the School of Social Work’s “rigorous  
10 curriculum” and “award-winning faculty.” (*Id.* ¶¶ 47, 50.)

11 Plaintiffs, three online MSW program graduates, have brought this putative class action  
12 claiming violations of California’s Unfair Competition Law (“UCL”), False Advertising Law  
13 (“FAL”), Consumer Legal Remedies Act (“CLRA”), and unjust enrichment on the theory that they  
14 were misled into thinking that the online MSW program was the “same” as the in-person program,  
15 when, they allege, the two programs were different in certain respects. (See FAC ¶¶ 19, 137, 156,  
16 175.) Plaintiffs allege that they are individuals of color, and that USC violated the Unruh Act by  
17 targeting people of color and veterans, in particular, for enrollment in the online program, which  
18 they allege is “inferior” to the in-person program. (*Id.* ¶¶ 134, 136, 137, 156, 175.)

19 For the reasons set forth in USC’s Demurrer, Plaintiffs have failed to plead viable causes  
20 of action under the Unruh Act and for unjust enrichment, and the CLRA and FAL causes of action  
21 of two Plaintiffs, Ms. Campos and Ms. Luna, are time-barred. As further explained below,  
22 regardless of how the Court rules on the Demurrer, the Court should strike those portions of  
23 Plaintiffs’ claims that are not legally viable and are therefore irrelevant and prejudicial.

### 24 **III. LEGAL STANDARD**

25 “[I]n some cases a *portion* of a cause of action [is] substantively defective on the face of  
26 the complaint.” (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682, italics added.)  
27 A motion to strike is the “appropriate procedural device for challenging a portion of a cause of  
28 action.” (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385.)



1 Accordingly, under California Code of Civil Procedure section 436, a court has discretion  
2 to “[s]trike out any irrelevant, false, or improper matter asserted in any pleading,” as well as “all or  
3 any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule,  
4 or an order of the court.” (Code Civ. Proc., § 436, subs. (a)-(b).)

5 When deciding a motion to strike, a court must read the allegations in the challenged  
6 complaint as a whole, in context, and assume all allegations are true. (*Clauson v. Superior Court*  
7 (1998) 67 Cal.App.4th 1253, 1255.)

#### 8 **IV. ARGUMENT**

##### 9 **A. Certain Challenged Marketing Statements Are Non-Actionable.**

##### 10 **1. Puffery Cannot Give Rise to False Advertising Claims.**

11 Plaintiffs cannot base their deceptive marketing claims on general statements of opinion,  
12 such as statements touting the “quality” of the online MSW program or its “rigorous curriculum.”  
13 (See FAC ¶¶ 2, 30, 38, 42, 47, 48-50, 56, 60, 161, 184.) Such “general, subjective” statements are  
14 non-actionable puffery. (See *Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294, 311.) To the  
15 extent Plaintiffs’ claims rely on generic, subjective descriptions of the online MSW program or its  
16 “quality,” those allegations should be stricken from the Complaint.

17 To prevail on false advertising claims under the CLRA, UCL, and FAL, Plaintiffs must  
18 prove that USC’s advertisement of its online MSW program was likely to deceive members of the  
19 public. (See *People v. Johnson & Johnson* (2022) 77 Cal.App.5th 295, 318-319; *Skinner v. Ken’s*  
20 *Foods, Inc.* (2020) 53 Cal.App.5th 938, 948.)<sup>1</sup> In determining whether there is a likelihood of  
21 deception, courts view the challenged advertisement from the vantage point of the “reasonable  
22  
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24 <sup>1</sup> As explained in USC’s Demurrer, Plaintiffs’ unjust enrichment and Unruh Act claims should be  
25 dismissed in their entirety. But even if the Court overrules the Demurrer, Plaintiffs cannot base  
26 their unjust enrichment or Unruh Act claims on non-actionable puffery. USC’s advertising  
27 statements could be relevant to the unjust enrichment and Unruh Act claims only on the theory  
28 that the challenged statements amount to deceptive advertising. “[G]eneral, subjective”  
advertising statements are non-actionable puffery because they are unlikely to deceive consumers,  
and Plaintiffs’ allegations regarding such puffery should therefore be stricken, whether pertaining  
to the CLRA, UCL, FAL, unjust enrichment, or Unruh Act claims.

1 consumer” in the target audience, here, college graduates potentially interested in graduate-level  
2 social work education. (See *Johnson & Johnson, supra*, 77 Cal.App.5th at p. 319.)

3 “The primary evidence of likelihood of deception is the challenged advertisement or  
4 practice itself.” (*Ibid.*) False statements of *fact* that are quantifiable or relate to specific or  
5 absolute characteristics of a product or service may induce consumer reliance and deceive  
6 consumers. (See *Demetriades, supra*, 228 Cal.App.4th at p. 311.) In contrast, because a  
7 reasonable consumer is unlikely to rely on or be deceived by general, subjective opinions, such  
8 statements constitute non-actionable puffery and cannot support a false advertising claim. (*Ibid.*)

9 **(a) Statements of “Quality” Are Non-Actionable Puffery.**

10 California courts have held that statements of “quality” are non-actionable: “Sellers are  
11 permitted to ‘puff’ their products by stating opinions about the quality of the goods so long as they  
12 do not cross the line and make factual representations. . . .” (*Osborne v. Subaru of America, Inc.*  
13 (1988) 198 Cal.App.3d 646, 660 fn.8.) Accordingly, USC’s statements comparing the “quality” of  
14 the online program’s education, field experience, or classroom instruction to that of the in-person  
15 program are not actionable. (See FAC ¶¶ 2, 38, 42, 48, 56, 60, 161, 184.)

16 Because statements about quality are inherently subjective, courts repeatedly have  
17 concluded that advertisements about the quality of a product are non-actionable puffery. For  
18 example, in *In re Sony Grand Wega KDF-E A10/A20 Series Rear Projection HDTV Television*  
19 *Litigation* (S.D. Cal. 2010) 758 F.Supp.2d 1077, the plaintiffs brought claims under the CLRA,  
20 UCL, and FAL alleging that defendant Sony misled consumers by claiming its televisions “were  
21 of ‘high,’ ‘superior,’ and ‘excellent’ quality [and] that the televisions offered a picture quality far  
22 superior to that offered by standard televisions.” (*Id.* at p. 1088.) The court dismissed all of the  
23 claims “because the alleged misrepresentations [were] nothing more than mere puffery.” (*Id.* at  
24 p. 1089.) The court reasoned that the plaintiffs had “not alleged that Sony made any  
25 misstatements about absolute characteristics of the televisions.” (*Ibid.*) Likewise, in *Oestreicher*  
26 *v. Alienware Corp.* (N.D. Cal. 2008) 544 F.Supp.2d 964, the plaintiffs brought claims under the  
27 UCL and FAL, as well as for fraud and unjust enrichment, because a laptop manufacturer  
28 advertised its products as, among other things, having “superb, uncompromising quality.” (*Id.* at

1 p. 973.) The court held that the “generalized and vague statements of product superiority . . . are  
2 non-actionable puffery,” and dismissed the claims because the court was “not . . . able to glean any  
3 false statements of fact from plaintiff’s complaint.” (*Ibid.*) Finally, in *Anunziato v. eMachines,*  
4 *Inc.* (C.D. Cal. 2005) 402 F.Supp.2d 1133, the court concluded that plaintiffs could not base UCL  
5 and FAL claims on the defendant’s assertions about the quality of its computers because “the word  
6 ‘quality’ is non-actionable puffery.” (*Id.* at p. 1140.)

7 Plaintiffs’ Complaint nevertheless is larded with allegations referencing USC’s alleged  
8 statements as to the “quality” of the online MSW program. Plaintiffs allege, for example, that  
9 USC advertised that the online MSW program provided an “opportunity to earn the same quality  
10 education on-campus students receive.” (FAC ¶¶ 42, 48; see also *id.* ¶ 161.) They also allege that  
11 USC represented the online MSW program as having the “same quality field experience” as the  
12 in-person program. (*Id.* ¶¶ 2, 38, 184; see also *id.* ¶ 56.) As a final example, Plaintiffs allege that  
13 “in contrast to the representations made by USC to the public and its students, USC’s online MSW  
14 program offers classroom instruction that is . . . categorically inferior to, USC’s in-person MSW  
15 classroom instruction.” (*Id.* ¶ 60.)

16 Any such advertising statements about the “quality” of the online MSW program’s  
17 education, field experience, and classroom instruction are not actionable and should be stricken.  
18 (See FAC ¶¶ 2, 38, 42, 48, 56, 60, 161, 184.) The “quality” of a student’s education, field  
19 experience, or classroom instruction is not an absolute characteristic that can be objectively  
20 quantified, and reasonable students invariably will have differing views as to the “quality” of any  
21 particular aspect of their education or clinical placements. USC’s assertion that the online MSW  
22 program provides the same quality education, field experience, and classroom instruction as its in-  
23 person MSW program is a subjective and general opinion, and such statements are quintessential,  
24 non-actionable puffery. (*In re Sony Grand Wega, supra*, 758 F.Supp.2d at p. 1089 [“Vague or  
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1 highly subjective claims about product superiority amount to non-actionable puffery; only  
2 ‘misdescriptions of specific or absolute characteristics of a product are actionable.’”].)<sup>2</sup>

3 In short, any allegations based upon purported advertising statements regarding the “same  
4 quality education” (see, e.g., FAC ¶¶ 42, 48, 161), the “same quality field experience” (see, e.g.,  
5 *id.* ¶¶ 2, 38, 56, 184), or the quality of classroom instruction (see, e.g., *id.*, ¶ 60) are puffery and  
6 cannot support Plaintiffs’ claims. They should be stricken from the Complaint.

7 **(b) General, Subjective Statements Are Non-Actionable Puffery.**

8 In addition to targeting claims about the “quality” of the online MSW program, Plaintiffs  
9 allege false advertising based on other vague and highly subjective advertising statements that  
10 plainly constitute non-actionable puffery; these allegations also should be stricken from the  
11 Complaint. Plaintiffs contend, for example, that they were misled by USC’s statements that:

- 12 • “Our curriculum places a strong emphasis on the science of social work and  
13 preparing graduates to become leaders within the profession. Social work students  
14 at USC receive the most up-to-date education because we are a top-tier research  
15 institution . . . .” (FAC ¶ 30.)
- 16 • “[M]any students find the experience even more interactive and fulfilling than a  
17 traditional classroom.” (*id.* ¶ 42.)
- 18 • “[A]n accredited online MSW from USC will carry significant value in any  
19 organization’s hiring and advancement decisions.” (*id.* ¶ 42.)
- 20 • The online MSW program has a “rigorous curriculum.” (*id.* ¶ 50.)
- 21 • USC is an “elite, private research institution.” (*id.* ¶ 50.)
- 22 • “Each placement site in our nationwide network exemplifies the highest standards  
23 for 21st-century social work.” (*id.* ¶ 56.)

24  
25  
26 In addition, Plaintiffs rely upon USC’s statements regarding the faculty who teach in the online  
27 MSW program, including that they are “distinguished,” “leaders in their respective fields,” and  
28 “award-winning.” (*id.* ¶¶ 38, 47, 49.)

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<sup>2</sup> Plaintiffs allege that USC misrepresented its online program by advertising that it is the “same”  
as its in-person program. (See, e.g., FAC ¶ 37 [“USC represents that these programs are the  
‘same’ other than format and location.”].) To the extent Plaintiffs do not provide concrete  
examples and instead intend their allegations regarding the word “same” to encompass subjective,  
general, and intangible descriptors, like “quality,” such allegations similarly are not actionable.

1 “Generalized, vague, and unspecified assertions” such as these, however, also “constitute  
2 ‘mere puffery’ upon which a reasonable consumer could not rely, and hence are not actionable.”  
3 (*Anunziato, supra*, 402 F.Supp.2d at p. 1139.) Puffery involves “exaggerated advertising,  
4 blustering, and boasting” upon which a reasonable consumer would not rely or, generally,  
5 “product superiority claims that are vague or highly subjective.” (*Southland Sod Farms v. Stover*  
6 *Seed Co.* (9th Cir. 1997) 108 F.3d 1134, 1145.) For example, in *Consumer Advocates v. Echostar*  
7 *Satellite Corp.* (2003) 113 Cal.App.4th 1351, the Second District Court of Appeal found that the  
8 advertising phrases “crystal clear” and “CD quality” were not actionable under the CLRA, FAL,  
9 or UCL. (*Id.* at p. 1361.) The court explained that the statements were “not factual  
10 representations” but instead were “boasts, all-but-meaningless superlatives . . . which no  
11 reasonable consumer would take as anything more weighty than an advertising slogan.” (*Ibid.*)

12 So too here. The statements set out above—regarding “preparing graduates to become  
13 leaders” through a “fulfilling” and “rigorous” curriculum at an “elite” university—while true, are  
14 obvious (and perfectly appropriate) puffery. (See FAC ¶¶ 30, 38, 42, 47, 49, 50, 56.) Praise for  
15 the program as “top-tier” and of “significant value” to future employers are general, subjective  
16 opinions. As in *Consumer Advocates*, statements of this nature are non-actionable superlatives  
17 that are not likely to deceive any reasonable consumer. (*Consumer Advocates, supra*, 113  
18 Cal.App.4th at p. 1361; see also *Anunziato, supra*, 402 F.Supp.2d at p. 1140.) They should be  
19 stricken from the Complaint.

20 **2. Statements about the “Quality” of USC’s MSW Education Also Are**  
21 **Non-Actionable under the Educational Malpractice Doctrine.**

22 Statements about the quality of the online MSW program’s curriculum, field experiences,  
23 and classroom instruction are not only non-actionable puffery: they are independently non-  
24 actionable under the educational malpractice doctrine. That doctrine bars California plaintiffs  
25 from bringing claims that require a court to judge the “*educational quality*” of a school’s  
26 education or programs. (See *Wells, supra*, 39 Cal.4th at pp. 1210-1212 [italics in original].) The  
27 doctrine is grounded in the commonsense recognition that “classroom methodology affords no  
28 readily acceptable standards of care, or cause, or injury,” and therefore courts are ill equipped to

1 make subjective judgments about the relative quality of schools’ educational offerings. (*Peter W.*  
2 *v. S.F. Unified School District* (1976) 60 Cal.App.3d 814, 824.)

3 Courts regularly apply the educational malpractice doctrine to dismiss, as a matter of  
4 public policy, claims that would require the court to evaluate the quality of education the plaintiff  
5 received. (See, e.g., *Chevlin v. Los Angeles Community College Dist.* (1989) 212 Cal.App.3d 382,  
6 390 [extending the educational malpractice doctrine to a breach of contract claim  
7 because “[w]hether framed as a negligence or breach of contract theory the harm [the plaintiff]  
8 seeks to redress is the same”].) In *Wells v. One2One Learning Foundation, supra*, 39 Cal.4th  
9 1164, for example, qui tam plaintiffs brought a lawsuit under the California False Claims Act  
10 alleging that a private charter school submitted false claims for state educational funds. (*Id.* at  
11 p. 1182.) While the California Supreme Court allowed the plaintiffs to bring claims for  
12 “objectively identifiable breaches” of law, the Court found that the educational malpractice  
13 doctrine barred plaintiffs’ claims “[i]nsofar as [plaintiffs’] allegation [sought] to raise issues of the  
14 *quality* of education offered by the charter school defendants, or of the academic *results*  
15 produced.” (*Id.* at pp. 1212–1213 [italics in original].) Claims regarding objective criteria were  
16 permissible because they did not require “judgments about pedagogical methods or the *quality* of  
17 the school’s classes, instructors, curriculum, textbooks or learning aids.” (*Ibid.* [italics added].)

18 Here, Plaintiffs repeatedly allege that they did not receive the “quality” of education, field  
19 experience, or classroom instruction that they were promised because they allegedly did not  
20 receive the “same quality” of education or field experience as in-person MSW students and  
21 received “inferior” classroom instruction. (See FAC ¶¶ 2, 38, 42, 48, 56, 60, 161, 184.) In order  
22 to evaluate these allegations, the Court or a jury would have no choice but to make subjective  
23 judgments about the program and its pedagogical methods. “Pedagogical science . . . is ‘fraught  
24 with different and conflicting theories’[;] . . . moreover, educational success or failure ‘is  
25 influenced by a host of factors,’ both personal and external, ‘which affect the pupil subjectively’  
26 and often are beyond the control of educators.” (*Wells, supra*, 39 Cal.4th at p. 1211 [quoting  
27 *Peter W., supra*, 60 Cal.App.3d at p. 824].) Reasonable factfinders could, and almost certainly  
28 would, disagree on just how to value a pedagogical choice as “better” or “worse.” Assessing the

1 relative educational quality of the in-person and online MSW programs is precisely the type of  
2 inquiry that California courts are barred from undertaking under the educational malpractice  
3 doctrine.

4 Accordingly, in addition to being non-actionable puffery, the allegations regarding  
5 educational “quality” in Paragraphs 2, 38, 42, 48, 56, 60, 161 and 184, should be stricken because  
6 a claim requiring a court to evaluate an education’s quality violates the educational malpractice  
7 doctrine.

8 **B. Plaintiffs Lack Standing to Assert an Unruh Act Claim Based on Veteran**  
9 **Status, and Any Allegations Regarding Purported Discrimination against**  
10 **Veterans Should Be Stricken.**

11 As explained in USC’s Demurrer, Plaintiffs have failed to plead sufficient facts to support  
12 any Unruh Act claim, and USC denies Plaintiffs’ allegations. But even if the Court were to  
13 overrule the Demurrer, and taking Plaintiffs’ allegations as true, none of the Plaintiffs has alleged  
14 that he or she is a veteran. Plaintiffs therefore lack standing to bring an Unruh Act claim for  
15 intentional discrimination based on veteran status, and the allegations of veteran-status  
16 discrimination should be stricken. (See FAC at ¶¶ 137-193.)

17 In California, “the state Legislature has specifically conferred standing to sue under the  
18 Unruh Act upon *the victims of the discriminatory practices* and certain designated others, i.e.  
19 district or city attorneys or the Attorney General.” (*Midpeninsula Citizens for Fair Housing v.*  
20 *Westwood Investors* (1990) 221 Cal.App.3d 1377, 1386 [italics added]; see also Civ. Code, § 52,  
21 subd. (c) [stating that only “the Attorney General, any district attorney or city attorney, or any  
22 person aggrieved” by alleged discriminatory conduct “may bring a civil action”].) A plaintiff  
23 pursuing an Unruh Act claim must allege an actual injury—“some ‘invasion of the plaintiff’s  
24 legally protected interests.’” (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175.) “In  
25 essence, an individual plaintiff has standing under the Act if he or she has been the victim of the  
26 defendant’s discriminatory act.” (*Ibid.*)

27 Here, no Plaintiff has alleged that he or she is a veteran, let alone that USC discriminated  
28 against him or her on the basis of veteran status. Plaintiffs allege that a graphic purportedly used  
by the School of Social Work includes a hypothetical veteran applicant described as likely to

1 enroll. (FAC ¶¶ 128–132.) They make no other specific claims about veterans, other than to  
2 surmise “on information and belief” that USC employs advertisements aimed specifically at  
3 veterans. (See *id.* ¶ 134.) Plaintiffs do not allege that they ever served in the military; nor do they  
4 allege that they were targeted for enrollment based on veteran status. Accordingly, none of the  
5 Plaintiffs was “aggrieved” by the alleged discrimination against veterans, and no Plaintiff has  
6 standing to assert an Unruh Act claim on the basis of veteran discrimination. (See Civ. Code,  
7 § 52, subd. (c); *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1025 [“[A] plaintiff cannot sue for  
8 discrimination in the abstract, but most actually suffer the discriminatory conduct.” (citation  
9 omitted)].)

10 Accordingly, all allegations related to veterans or veteran-status discrimination should be  
11 stricken from the Complaint. (FAC ¶¶ 5, 11, 15, 18, 116, 126, 127, 128, 134, 135, 136, 200, 202,  
12 204(a), 206, 235, 241(d), 245.)

13 **V. CONCLUSION**

14 For the foregoing reasons, USC respectfully requests that the Court grant its motion and  
15 strike:

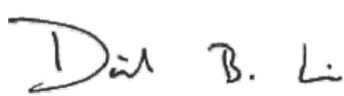
16 1. Allegations regarding general, subjective advertising statements and statements  
17 about educational quality in Paragraphs 2, 30, 38, 42, 47, 48-50, 56, 60, 161, and 184 of the First  
18 Amended Class Action Complaint (as outlined above in the Notice of Motion);

19 2. Allegations regarding veterans or veteran-status discrimination—specifically, the  
20 words “veterans,” “veteran status,” and “status as veterans”—in Paragraphs 5, 11, 15, 18, 116,  
21 126, 127, 128, 134, 135, 136, 200, 202, 204(a), 206, 235, 241(d), and 245 and Paragraph 4 of the  
22 Prayer for Relief on page 47 of the First Amended Class Action Complaint.

23 DATED: November 2, 2023

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