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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
DEMURRER TO 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 Motion to Strike, Request for Judicial
Notice, and Declaration of Derin McLeod]*

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1 **I. INTRODUCTION**

2 Defendant University of Southern California (USC) put profits over students when it teamed up
3 with a for-profit company, 2U, Inc., to create an online Master of Social Work (MSW) program which it
4 falsely advertised as being the “same” as its prestigious in-person program. The two programs are not the
5 same, because most of the online MSW program has been outsourced to 2U. The online MSW program
6 has a different curriculum (largely pre-recorded and outdated), different faculty, different clinical field
7 placement resources with less to no choice of internship, different career services, and lower admissions
8 standards. Worse yet, because it deemed them easier marks for “conversion” from applicant or potential
9 applicant to enrolled student, USC and its 2U recruiters (disguised as USC employees) targeted individuals
10 on the basis of their race and/or veteran status for hard-sell recruitment tactics into the misleadingly
11 advertised and inferior online MSW program. The only thing that is the “same” about the online and in-
12 person programs is their very high tuition, which Plaintiffs and others similarly situated would not have
13 paid but for USC’s false and misleading advertisements and recruitment materials.

14 There is no merit to USC’s demurrer, which should be overruled.

15 *First*, Plaintiffs have alleged actionable, intentional discrimination that violates the Unruh Act:
16 USC specifically targets people of color and veterans for hard-sell recruitment tactics and enrollment in
17 its inferior online MSW program, a form of “reverse redlining” that courts have recognized as constituting
18 intentional discrimination. This is all that Plaintiffs need show: discriminatory purpose, or racial animus,
19 is not an element of the claim. Although direct evidence of discrimination is rare in this day and age, here
20 Plaintiffs point to the racist graphic used to train recruiters for the online MSW program and their own
21 experiences of hard-sell recruitment tactics. Plaintiffs allege that they were personally subjected to these
22 tactics and USC’s policy/practice of targeted enrollment: They have standing. Plaintiffs also allege
23 additional discriminatory practices on information and belief, based on this direct evidence of
24 discrimination, but those information and belief allegations are not essential to their Unruh Act claim.
25 Finally, Plaintiffs’ Unruh Act claim does not implicate the educational malpractice doctrine, because
26 Plaintiffs do not challenge the pedagogical quality of the online MSW program, but rather specific
27 objective differences between the online and in-person MSW programs.

28 *Second*, the California Legal Remedies Act (CLRA) and False Advertising Law (FAL) claims of

1 Plaintiffs Luna and Campos are timely under the delayed discovery rule. They did not and could not have
2 discovered the full scope of USC’s deception until well after they had enrolled, particularly because USC
3 continued its misleading tactics, even assigning USC email addresses to 2U employees to disguise the fact
4 that USC outsourced important functions, including academic advising, to 2U. USC’s arguments to the
5 contrary seek to go well beyond the facts alleged in the complaint, upon which their demurrer must rest,
6 and instead rely on impermissible inferences about what Plaintiffs “would have learned.”

7 *Third*, Plaintiffs may plead an unjust enrichment claim in the alternative to their other claims.

8 **II. STATEMENT OF FACTS**

9 **A. USC’s Online MSW Program**

10 USC’s School of Social Work has long offered a nationally ranked and well-regarded Master of
11 Social Work program. FAC ¶¶27-28. In 2010, trading on this reputational strength, USC launched an
12 online MSW program, which it has aggressively and consistently advertised as the “same” as its in-person
13 MSW program other than in format and location. FAC ¶¶2, 9, 37-59. Offering this online program led to
14 a tenfold increase in USC’s MSW enrollment, from approximately 300 students to over 3,000—making
15 the online program a “cash cow” for USC. FAC ¶¶10, 86-87.

16 But the online program was not the “same” as the in-person program in any of the ways claimed
17 by USC. Rather, the online program was largely outsourced to USC’s for-profit partner, 2U. FAC ¶¶8,
18 92-102. Because 2U receives 60% of the tuition paid by every online MSW student, USC and 2U both
19 profit directly from increases in online MSW enrollment. FAC ¶96. To drive enrollment, USC falsely
20 advertises, on its website and through marketing and recruitment efforts, that the following aspects of its
21 online MSW program are the same as the in-person program, when in fact they are not¹:

22 (1) USC claims both programs are taught by the “same USC faculty.” In fact, instructors in the
23 online MSW program are often adjuncts scattered across the country, not members of the “top-ranked
24 faculty” who teach at USC’s in-person program. FAC ¶¶2, 6-7, 38, 40, 42, 44, 46-49, 52, 67-72.

25 (2) USC claims both programs have the “same curriculum.” In fact, the curriculum in the online
26

27 ¹ USC asserts that Plaintiffs’ allegations merely “mirror those in a 2021 *Wall Street Journal* article.”
28 (Def.’s MPA iso Demurrer (Demurrer) at 10.) Not so. Plaintiffs’ complaint replicates and quotes USC’s
own website, e.g., FAC ¶¶36-44, 47-48, 58-59, and other promotional materials.

1 MSW program largely consists of pre-recorded, often outdated videos, and is vastly different from the
2 instruction that in-person students receive. FAC ¶¶2, 6, 30, 36, 38-40, 44, 50, 74-79.

3 (3) USC claims both programs offer the “same quality field experience.” In fact, students in the
4 online MSW program are not afforded the same clinical placement resources and opportunities as in-
5 person students, because USC outsources its online program’s clinical placements to 2U. Online students
6 do not have access to USC’s network of placements for on-campus students, even if online students live
7 close to the USC campus. FAC ¶¶2, 6, 8, 14, 38, 55-56, 80-83.

8 (4) USC claims both programs have the “same admissions standards,” trading on USC’s reputation
9 as a selective university. In fact, the online program rarely rejects an applicant. FAC ¶¶39, 44, 59, 90-91.

10 (5) USC claims both programs offer the “same career development services.” In fact, online MSW
11 students do not receive the same academic and career support as their in-person counterparts because USC
12 outsources academic counseling for the online program to 2U. FAC ¶¶2, 6, 8, 38, 58, 84-85.

13 (6) USC deliberately obfuscates its relationship with 2U, including by assigning USC email
14 addresses to 2U employees, which deceives students into believing they are communicating with USC
15 staff when in fact they are talking to 2U staff. FAC ¶¶9, 103-107.

16 Students in the online MSW program were promised a USC education, but in fact received a 2U
17 one. One of the few similarities that do exist between the programs is their identically high price: both the
18 online and in-person MSW programs until recently cost students over \$110,000. FAC ¶3, 16, 23-25, 32.

19 USC’s practice and policy is to target people of color and veterans for enrollment into its inferior²
20 online program, deeming them to have higher “conversion rates”—that is, they are more likely to be
21 converted from prospective applicant to enrollee. FAC ¶¶126-132. USC recruiters (2U employees in
22 disguise) use “hard sell” recruitment tactics usually associated with for-profit colleges, such as repeatedly
23 calling and emailing potential applicants, creating a false sense of urgency to get people to enroll, and
24 falsely assuring students not to worry about cost because they may qualify for scholarships or loan
25 forgiveness. FAC ¶¶116-125. These recruiters used racially offensive materials for recruitment training
26 (*i.e.*, depicting an African American who “needs hand-holding” and “has trouble with application”). FAC

27 _____
28 ² Plaintiffs use “inferior” here to mean unequal to and substantively different from USC’s in-person MSW
program. See FAC ¶¶60-66.

1 ¶¶126-132.³ Recruiters reserve these high-pressure and racialized enrollment tactics for those recruited to
2 the online MSW program, FAC ¶136, resulting in a program that is disproportionately composed of people
3 of color and veterans, FAC ¶135.

4 **B. Plaintiffs' Experiences in the Online MSW Program**

5 Plaintiffs learned about USC's online MSW program from information available on USC's
6 website, which indicated that the online program was the same as its in-person program, and they decided
7 to enroll based on USC's representations that the two programs were the same. FAC ¶¶138, 143, 157, 164,
8 176, 182. All three plaintiffs are people of color: Stephanie Luna and Sandra Campos are Latina women,
9 and Deonte Simpkins is a Black man. FAC ¶¶137, 156, 175. All three were subjected to USC's practice
10 and/or policy of targeting people of color and/or veterans for enrollment in the inferior online program.
11 FAC ¶15, 18, 126. In particular, all three were subjected to hard-sell recruitment tactics by 2U recruiters
12 masquerading as USC employees. FAC ¶¶119-120, 139-142, 158-163, 177-181. For example, Ms. Luna
13 was encouraged to enroll as quickly as possible, and her concerns over the program's costs were quickly
14 dismissed. FAC ¶141. Similarly, Ms. Campos received a barrage of daily emails and calls designed to
15 foster a sense of urgency and to brush off her concerns about paying for the program. FAC ¶¶119-120,
16 122, 159, 161.⁴ Mr. Simpkins was also bombarded with calls urging him to enroll as soon as possible,
17 even before finalizing his financial aid offer. FAC ¶178, 180. Plaintiffs did not realize that they had been
18 targeted for hard-sell recruitment tactics and enrollment into the inferior online MSW program based on
19 their race/ethnicity until they read the November 2021 *Wall Street Journal* article which revealed USC's
20 policy of targeting people of color for enrollment. FAC ¶¶18, 152-153, 171-172, 191; RJN Ex. 1.

21 Similarly, none of the plaintiffs had any reason to suspect that individuals with USC email
22 addresses purporting to represent USC actually worked for 2U, and they did not and could not know that
23 their USC recruiters (a/k/a "enrollment specialists"), student success advisors, and clinical field placement
24 specialists were 2U employees. FAC ¶¶139-140, 142, 146-151, 158, 160, 163, 168-170, 177, 180-181,

26 ³ USC contends that Plaintiffs fail to allege whether this offensive training graphic was used for the online
27 MSW program (Demurrer at 11), but Plaintiffs make this precise allegation. FAC ¶¶127-128.

28 ⁴ Ms. Campos was even denied admission originally, then told the denial was a mistake, and that she could
enroll after all, as soon as possible. FAC ¶¶158-59.

1 186-190. As they progressed through their courses and field placements over the course of the two-year
2 program, Plaintiffs gradually realized that some of USC’s representations had been false, FAC ¶17, but
3 they did not and could not know the full extent of USC’s misrepresentations until after they read the
4 November 2021 *Wall Street Journal* article, FAC ¶18.

5 Each Plaintiff now owes more than \$100,000 in student loan debt for their online MSW degree.
6 FAC ¶¶154, 173, 192. None of them would have enrolled in USC’s online MSW program, much less paid
7 such a large amount for tuition, if they had known that the online program was not the same as the in-
8 person program in the ways that USC represented. FAC ¶¶155, 174, 193.

9 **III. LEGAL STANDARD**

10 In evaluating a demurrer, a court must “assume[] the truth of all facts properly pleaded by the
11 plaintiff,” “accept as true all facts that may be implied or reasonably inferred from those expressly
12 alleged,” and “give the complaint a reasonable interpretation, reading it as a whole and its parts in their
13 context.” (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1161; *C.A. v. William S. Hart Union*
14 *High School Dist.* (2012) 53 Cal.4th 861, 866 [quotation omitted].) “[T]he reviewing court draws
15 inferences favorable to the plaintiff, not the defendant.” (*Perez v. Golden Empire Transit Dist.* (2012) 209
16 Cal.App.4th 1228, 1238.) “[I]t is error for a ... court to sustain a demurrer when the plaintiff has stated a
17 cause of action under any possible legal theory.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th
18 797, 810 [quotation omitted].) “[A] plaintiff is required only to set forth the essential facts of his case with
19 reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and
20 extent of his cause of action.” (*Doheney Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange*
21 (2005) 132 Cal.App.4th 1076, 1099.) “[L]ess particularity [in pleading] is required when it appears that
22 defendant has superior knowledge of the facts, so long as the pleading gives notice of the issues sufficient
23 to enable preparation of a defense.” (*Doe v. City of L.A.* (2007) 42 Cal.4th 531, 549-50 [quotation
24 omitted].) If a court grants a demurrer, it must give leave to amend if “there is a reasonable possibility
25 that the defect can be cured by amendment.” (*Zelig v. County of L.A.* (2002) 27 Cal.4th 1112, 1126.)

26 **IV. ARGUMENT**

27 **A. Plaintiffs Have Pled a Valid Unruh Act Claim.**

28 The Unruh Civil Rights Act provides that “[a]ll persons within the jurisdiction of this state are free

1 and equal, and no matter what their sex, race, color, ... [or] national origin, ... are entitled to the full and
2 equal accommodations, advantages, facilities, privileges, or services in all business establishments of
3 every kind whatsoever.” (Civ. Code §51, subd. (b).) The purpose of the Unruh Act is to create and preserve
4 “a nondiscriminatory environment in California business establishments by banishing or eradicating
5 arbitrary, invidious discrimination by such establishments.” (*Angelucci v. Century Supper Club* (2007) 41
6 Cal.4th 160, 167 [quotation omitted]; see *Isbister v. Boys’ Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72,
7 75–76.) “[T]he Act must be construed liberally in order to carry out its purpose.” (*Angelucci*, 41 Cal.4th
8 at 167; *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 28.)

9 **1. Plaintiffs Allege Actionable and Intentional Discrimination.**

10 The hallmark of an Unruh Act claim is “unequal treatment” (*Koire*, 40 Cal.3d at 29), whether by
11 outright “exclusion” or “where treatment is unequal” on the basis of protected status. (*Pizarro v. Lamb’s*
12 *Players Theatre* (2006) 135 Cal.App.4th 1171, 1174.) USC claims that Plaintiffs do not allege “unequal
13 treatment” (see Demurrer at 15-16), but this argument relies on a blinkered reading of that term. A
14 discrimination claim need not allege that anyone was excluded from access, as USC implies. (See
15 Demurrer at 15.) Rather, “[t]he scope of the statute clearly is not limited to exclusionary practices. The
16 Legislature’s choice of terms evidences concern not only with access to business establishments, but with
17 *equal treatment of patrons in all aspects of the business.*” (*Koire*, 40 Cal.3d at 29 [emphasis added].) This
18 includes unequal access with respect to advertising. (*Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910.)

19 Discriminatory *inclusion*, often called “reverse redlining,” is a form of unlawful unequal treatment
20 that courts have recognized under the Unruh Act and under analogous federal statutes.⁵ California courts
21 “often look to” interpretations of such analogous federal laws. (*Reno v. Baird* (1998) 18 Cal.4th 640, 647.)
22 Reverse redlining is exactly what Plaintiffs allege here: USC had a policy/practice of targeting prospective
23 students from protected classes for high-pressure sales tactics to induce Plaintiffs and similarly situated
24 applicants to enroll in the falsely advertised, inferior online MSW program. FAC ¶¶15, 18, 116-136, 235.

25 _____
26 ⁵ See, e.g., *Munoz v. Int’l Home Capital Corp.* (N.D. Cal. May 4, 2004, No. C 03-01099) 2004 WL
27 3086907, at *3-8 [Unruh Act, FEHA, Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA)];
28 see also *M & T Mortg. Corp. v. White* (E.D.N.Y. 2010) 736 F.Supp.2d 538, 574-75 [FHA, ECOA];
Matthews v. New Century Mortg. Corp. (S.D. Ohio 2002) 185 F.Supp.2d 874, 886-87 [similar]; *Hargraves*
v. Cap. City Mortg. Corp. (D.D.C. 2000) 140 F.Supp.2d 7, 21-23 [similar].

1 USC’s argument that “[a]n Unruh Act claim cannot be based on the mere allegation ... that USC
2 advertised an ‘inferior’ online MSW program toward certain protected groups,” Demurrer at 15, is simply
3 wrong as a matter of law. Courts have expressly upheld reverse redlining claims in cases against higher
4 education institutions that target applicants on the basis of race and/or gender for misleadingly marketed
5 programs. For instance, in *Carroll v. Walden University*, the court held that allegations that a university
6 “intentionally targeted Black and female prospective students for [its Doctor of Business Administration]
7 program by marketing and advertising the[] predatory program to a protected class” stated federal Title
8 VI and ECOA claims for intentional discrimination. ((D. Md. 2022) 650 F.Supp.3d 342, 356-59, 361-63.)
9 And in *Roberson v. Health Career Inst. LLC*, the court denied a motion to dismiss Title VI and ECOA
10 claims where plaintiffs pled that a school deliberately targeted Black women for enrollment in a nursing
11 program using misrepresentations about the cost and nature of the program. ((S.D. Fla. Aug 3, 2023, No.
12 22-CV-81883-RAR) 2023 WL 4991121, at *15; see also *Brook v. Sistema Universitario Ana G. Mendez,*
13 *Inc.* (M.D. Fla. May 4, 2017, No. 8:17-cv-171) 2017 WL 1743500, at *4 [plaintiff’s allegations that school
14 intentionally targeted Latinos for enrollment in a “sham” education program stated a Title VI claim].) As
15 in those cases, Plaintiffs’ allegations that USC targeted protected classes for enrollment into the inferior,
16 falsely advertised program state a claim for intentional discrimination due to unequal inclusion and
17 treatment. USC throws up a red herring by arguing that all online MSW students, regardless of protected
18 class, were “exposed” to the misleading advertising (Demurrer at 16), but Plaintiffs’ Unruh Act claim on
19 behalf of the subclass is premised on targeted advertising and hard-sell enrollment tactics, above and
20 beyond mere exposure to USC’s misleading websites and other advertisements.

21 USC is incorrect in its assertion that there is no unlawful misconduct if the purpose behind USC’s
22 discriminatory targeting practices is to make a profit (Demurrer at 16). Intentionally discriminating on the
23 basis of race or other protected class for the purpose of increasing profits, as Plaintiffs allege USC did
24 here, FAC¶¶ 86-102, is still intentional discrimination prohibited by the Unruh Act: The “quest for profit
25 maximization can never serve as an excuse for prohibited discrimination among potential customers.”
26 (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1153 [discounts for youth or women, though not
27 motivated by animus against older individuals or men, still violate Unruh Act]; see also *Koire*, 40 Cal.3d
28 at 32 [“Ladies’ Day” promotion violated Unruh Act even though motivated by “substantial business and

1 social purposes”].) USC implies that “intentional discrimination” means racial animus (Demurrer at 18),
2 but its cases don’t say this: They stand for the simple proposition that the Unruh Act prohibits only
3 intentional discrimination, rather than disparate impact discrimination. (Demurrer at 15-16 [citing *Harris*
4 *v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175; *Koebke v. Bernardo Heights Country Club*
5 (2005) 36 Cal.4th 824, 853].)

6 Equally wrong is USC’s reliance on CACI 3060 for the proposition that Plaintiffs must prove that
7 “USC was ‘substantial[ly] motivate[ed]’ by race or any other protected characteristic.” (Demurrer at 16.)
8 That’s not what CACI 3060 says, and USC’s use of brackets is disingenuous, at best. To the extent it is
9 relevant at all, CACI 3060 refers to *causation*, not *purpose*, and asks whether race was a “substantial
10 motivating reason” for the unequal treatment, where the instruction for “substantial motivating reason”
11 explains that the phrase means “a reason that actually contributed to the [unequal treatment].” (CACI
12 2507.) The notes to CACI 3060 explain that “substantial motivating reason” has “not been addressed by
13 the courts” in Unruh Act cases, and derives from *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203,
14 232, an inapplicable FEHA “mixed motive” case in which an employer argued it had terminated an
15 employee for a legitimate reason—poor performance—rather than a discriminatory one. In other words,
16 CACI 3060 addresses the situation in which there are two alternative explanations for defendants’ conduct,
17 one of which is discriminatory, and one of which is not.⁶ This is very different than a defendant, like USC,
18 who intentionally discriminates against members of a protected class, even if “from a motive of rational
19 self-interest,” such as “economic gain,” which nonetheless violates the Unruh Act. (*Marina Point, Ltd. v.*
20 *Wolfson* (1982) 30 Cal.3d 721, 740–741, fn.9; *Candelore*, 19 Cal.App.5th at 1153; *Koire*, 40 Cal.3d at
21 32.) Plaintiffs explicitly allege such intentionally discriminatory conduct here: USC “recruiters
22 intentionally targeted USC’s inferior, overpriced online MSW program to prospective students of color
23 and veterans,” including Plaintiffs. FAC ¶¶116, 126-127.

24 **2. Plaintiffs Have Standing.**

25 In light of its expansive preventative and remedial purposes, courts have recognized that

26 _____
27 ⁶ For example, a bar patron might allege that he was refused service because of his race, while the bar
28 argues that the patron was refused service because he was drunk, raising an issue whether race was a
reason that contributed to the refusal of service.

1 “[s]tanding under the Unruh Civil Rights Act is broad.” (*Osborne v. Yasmeh* (2016) 1 Cal.App.5th 1118,
2 1127.) “In essence, an individual plaintiff has standing under the Act if he or she has been the victim of
3 the defendant’s discriminatory act.” (*Angelucci*, 41 Cal.4th at 175.)

4 Plaintiffs have all alleged that they were personally victims of USC’s intentionally unequal
5 treatment, that is, its policy/practice of targeting people of color and/or veterans for enrollment in the
6 inferior online MSW program, including through high-pressure recruitment tactics, on the basis of their
7 protected status. FAC ¶¶15, 18, 116-132, 136, 139-142, 158-163, 177-181. Plaintiffs Luna and Campos’s
8 demographics align precisely with USC’s caricature of “Confirmed Carmen”: they are Latina women in
9 their twenties from California, meaning USC had assigned them a “Conversion Probability” of 1—most
10 likely to enroll when exposed to recruitment efforts. This racial profiling is why recruiters used “hard sell”
11 tactics to pressure them to enroll. FAC ¶¶ 152-153, 171-172. Mr. Simpkins likewise saw that the caricature
12 of the Black prospective student in USC’s recruiting materials had been assigned a “Conversion
13 Probability” of 1, and realized that the relentless pressure he’d experienced to enroll as soon as possible
14 was part of a discriminatory effort to funnel people from specific racial and social backgrounds into the
15 online MSW program. FAC ¶¶ 178-80, 191.⁷

16 This is thus not a case where Plaintiffs have “mere awareness” of a discriminatory policy. (See
17 Demurrer at 14-15 [quoting *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1023].) To the contrary, Plaintiffs
18 actually “encounter[ed]” USC’s discrimination “firsthand.” (*White*, 7 Cal.5th at 1023; Demurrer at 15.)
19 Plaintiffs expressly allege they were in fact pressured and induced to enroll in a misleadingly marketed
20 program on the basis of their race and ethnicity. FAC ¶¶151-53, 170-72, 190-91.

21 There is no merit to USC’s argument that, because Plaintiffs did not realize they were
22 discriminated against until well after they enrolled, they do not have standing because their awareness of
23 the discrimination was “post-hoc.” (Demurrer at 14.) The California Supreme Court has specifically
24 rejected this proposition, because it “would leave without redress those persons who discover only *after*
25 *the fact* that they have suffered discrimination in violation of the Act.” (*Angelucci*, 41 Cal.4th at 170.) The
26

27 ⁷ USC conflates Plaintiffs’ initial inquiries about the program, based upon misrepresentations on USC’s
28 website applicable to all class members, with the later specific, hard-sell efforts of recruiters to “convert”
them from applicant or potential applicant to enrollee. Demurrer at 14.

1 Court offered as an example “an African–American family seeking to purchase a home,” who “may not
2 realize that the real estate agency they employed has discriminated against them on the basis of race by
3 failing to disclose to them eligible homes in a White-majority neighborhood until after the agency has
4 concluded its services.” (*Ibid.*) So too here: it is irrelevant that Plaintiffs became fully aware of their
5 unequal treatment by USC subsequent to their enrollment in the online MSW program. Nor is there any
6 merit to the assertion that the discrimination Plaintiffs experienced should be disregarded as merely
7 “subjective feelings or beliefs.” (Demurrer at 14 [quoting *Diego v. City of L.A.* (2017) 15 Cal.App.5th
8 338] [ruling after trial that plaintiff’s testimony that he “believed” he had suffered discrimination was not
9 competent evidence to support jury verdict].) Plaintiffs allege they were in fact subjected to objective,
10 persistent and coercive recruitment tactics (repeated calls, purportedly expiring deadlines) that correspond
11 to USC’s policy/practice of focusing such tactics on persons from specific backgrounds. See FAC ¶¶15,
12 18, 116-132, 136, 139-142, 158-163, 177-181.⁸

13 **3. Plaintiffs’ “Information and Belief” Allegations Are Sufficiently Pled but Not**
14 **Necessary to Overrule the Demurrer.**

15 Many of Plaintiffs’ allegations about USC’s practice/policy of targeting applicants based on their
16 protected characteristics are not alleged on information and belief. FAC ¶¶11, 15, 18, 116, 126-132, 136
17 (second sentence), 153, 172, 191, 235. These include Plaintiffs’ allegation that recruiters “intentionally
18 targeted USC’s inferior, overpriced online MSW program to prospective students of color and veterans,”
19 FAC ¶116, that “USC’s operatives reserve the high-pressure and racialized tactics for those it recruits to
20 its different and unequal online MSW program,” FAC ¶136, and the specific examples of hard-sell tactics
21 applied to Plaintiffs, FAC ¶¶119-120, 122, 141, 158-159, 178, 180. The complaint reproduces a USC
22 recruiting graphic that identifies prime targets for enrollment in the online MSW program based on
23 protected characteristics of race, gender, and veteran status. FAC ¶132. Although USC misstates
24 Plaintiffs’ supporting allegations, Demurrer at 17, Plaintiffs *do* expressly allege that recruiters for the USC
25 online MSW program use that graphic. FAC ¶¶127-30. USC asks the Court to ignore the blatant racial
26

27 ⁸ Plaintiffs’ allegations that USC recruiters discriminated against them on the basis of race necessarily
28 allege that the recruiters knew Plaintiffs’ races—as they in fact did. It should not be necessary to spell
that out [cf. Demurrer at 14], but Plaintiffs could amend their complaint to add such allegations if needed.

1 profiling evident on the face of the graphic in favor of a different, strained interpretation that is more
2 favorable to USC (see Demurrer at 17 [arguing that graphic depicting a “Needy Nelly” “African American
3 female” who “needs hand-holding” and “has trouble with application” instead merely instructs recruiters
4 to focus on GPA and undergrad universities])—which the Court obviously cannot do on a demurrer.
5 (*Perez*, 209 Cal.App.4th at 1238 [inferences must be drawn in favor of plaintiffs].) USC’s similar request
6 that the Court infer the professionally created graphic’s probability ratings were not intended to inform
7 and guide recruiting efforts strains credulity and, again, is improper on a demurrer. (Demurrer at 17-18.)

8 USC finally contends the graphic does not evince intentional discrimination because it merely
9 stands for the “commonsense proposition” of using race, gender, and veteran status to predict how likely
10 a candidate is to enroll in the online MSW and adjusting recruiting efforts accordingly. (Demurrer at 17.)
11 That “commonsense proposition,” however, is barred by the Unruh Act: “generalized predictions” (even
12 if true on average) do not justify unequal treatment of entire protected classes. (See *Candelore*, 19
13 Cal.App.5th at 1146-48, 1152 [charging older users higher prices “cannot be justified by a generalization
14 about the relative incomes and budget limitations of [certain] age groups,” even though in general younger
15 people may tend to have less disposable income]; *Marina Point*, 30 Cal.3d at 725, 740-41 [landlord could
16 not exclude all families with children based on the admittedly true generalization that most “[c]hildren are
17 rowdier, noisier, more mischievous and more boisterous than adults”].) Because the facts described here,
18 not alleged on information and belief, are sufficient to sustain Plaintiffs’ Unruh Act claim, there is no need
19 for the Court to even consider Plaintiffs’ allegations pleaded on information and belief.

20 Nevertheless, the Court need not disregard Plaintiffs’ few allegations made on information and
21 belief. See FAC ¶¶133-35, 136 [first sentence]. “Allegations concerning matters ‘peculiarly within the
22 knowledge of the adverse party,’ as is the case here, may be pleaded” on information and belief. (*Liapes*,
23 95 Cal.App.5th at 922 fn.7 [quoting *Dey v. Continental Central Credit* (2008) 170 Cal.App.4th 721, 725,
24 fn.1].) The Court should draw all reasonable inferences in support of Plaintiffs’ belief that facts asserted
25 on “information and belief” are true. (See *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th
26 935, 951-52; *J.W. v. Watchtower Bible and Tract Society of New York, Inc.* (2018) 29 Cal.App.5th 1142,
27 1166.) The official USC graphic with its strikingly racist images and Plaintiffs’ first-hand experiences
28 matching the policy/practice illustrated by the graphic are more than sufficient to support their information

1 and belief allegations. USC’s objection that Plaintiffs have not yet, at the pleading stage, uncovered more
2 evidence of USC’s discriminatory practices and policies is not a basis for a demurrer. (*See Doe*, 42 Cal.4th
3 at 550 [plaintiffs not “required to plead evidentiary, as opposed to ultimate facts,” and “less particularity
4 in pleading is required when ... defendant has superior knowledge of the facts” (cleaned up)].)⁹

5 **4. The “Educational Malpractice” Doctrine Is a Red Herring.**

6 Plaintiffs’ Unruh Act claim does not implicate the educational malpractice doctrine. That doctrine
7 bars claims for “personal educational injury” that require “inherently subjective” judgments about the
8 general “educational quality or results” of an education program. (*Wells v. One2One Learning Foundation*
9 (2006) 39 Cal.4th 1164, 1212.) Plaintiffs’ claim does not ask a factfinder to make a subjective
10 determination comparing the overall pedagogical “quality” of USC’s online MSW program with its in-
11 person program—that is, to determine whether the online program *was worse at preparing future social*
12 *workers for practice*. Rather, the entire context of the complaint makes clear that by alleging the online
13 program was “inferior,” Plaintiffs mean that the online program was unequal to and substantively different
14 from the in-person program in the specific, concrete ways expressly identified in the complaint—*i.e.*, the
15 online program had different curriculum, different instructors, different field placements, and different
16 student advisors. FAC ¶¶2, 6-7, 14, 30, 36, 38-40, 42, 44, 50, 52, 55-56, 60-85, 90-91, 103-107. These are
17 objective criteria for comparison that do not require any murky determination of educational “quality.”

18 Plaintiffs’ Unruh Act claim further alleges that USC not only misleadingly advertised that the
19 online and in-person programs were the same in all those precise respects, but intentionally targeted
20 students of color and veterans to enroll in this expensive yet falsely described program using high-pressure
21 sales techniques. FAC ¶¶116-132, 135-136. The California Supreme Court has made clear that the
22 educational malpractice doctrine does *not* apply to claims challenging the veracity of specific, objective
23

24 ⁹ There are also facts of which the Court should take judicial notice that support Plaintiffs’ belief that their
25 information and belief allegations are true, which Plaintiffs could assert in an amended complaint if the
26 Court deems it necessary. For example, the *Wall Street Journal* article cited in the complaint, which is
27 based on *WSJ* reporter interviews with former USC and 2U employees, states: “Over the past decade, the
28 University of Southern California has used a for-profit company to help enroll thousands of students in its
online social-work master’s program. The nonprofit school used its status-symbol image to attract students
across the country, including low-income minority students it targeted for recruitment, often with
aggressive tactics.” (See RJN Ex. 1.)

1 representations that a school made to induce students to enroll in its program—such as those USC made
2 here. (*Wells*, 39 Cal.4th at 1212.) Nor, by that same logic, does the doctrine have any bearing on Plaintiffs’
3 claim challenging USC’s additional unlawful activity of directing aggressive recruitment tactics at
4 applicants in protected classes (but not others) in order to channel them into the program.¹⁰

5 **B. Plaintiffs Luna’s and Campos’s CLRA and FAL Claims Are Not Time-Barred.**

6 USC relies on speculation to contend that Plaintiffs Luna’s and Campos’s claims under the CLRA
7 and FAL fall outside those laws’ three-year statutes of limitations.¹¹ This is insufficient. At best, USC
8 raises questions of disputed fact, which make the statute of limitations question inappropriate for
9 resolution on demurrer. (*Fox*, 35 Cal.4th at 810 [“Resolution of the statute of limitations issue is normally
10 a question of fact.”].) “In order for the bar ... to be raised by demurrer, the defect must clearly and
11 affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action
12 may be barred.” (*Citizens for a Responsible CalTrans Decision v. Dep’t of Transportation* (2020) 46
13 Cal.App.5th 1103, 1117 [citations omitted, emphasis added].)

14 The “discovery rule” delays the running of a statute of limitations if the plaintiff did not and could
15 not have reasonably discovered the facts underlying the claim at the time it accrued. (See C.C.P. §338,
16 subd. (h) [for FAL claim, “[t]he cause of action ... shall not be deemed to have accrued until the discovery
17 by the aggrieved party ... of the facts constituting grounds for commencing the action”]; *Mass. Mutual*
18 *Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1295 [for CLRA claim, statute of limitations
19 “run[s] from the time a reasonable person would have discovered the basis for a claim”].) “[U]nder the
20 delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the
21 plaintiff has reason to suspect an injury *and some wrongful cause*, unless the plaintiff pleads and proves
22 that a reasonable investigation at that time would not have revealed a factual basis for that particular cause
23 of action.” (*Fox*, 35 Cal.4th at 803 [emphasis added].) “The question when a plaintiff actually discovered
24

25 ¹⁰ Contrary to USC’s contention (Demurrer at 19), Plaintiffs’ Unruh Act claim is not coextensive with the
26 classwide FAL or CLRA claims, including because it challenges the independently unlawful conduct of
aiming hard-sell tactics at protected classes.

27 ¹¹ In any event, Plaintiffs Luna and Campos may assert violations of the FAL and CLRA as predicates for
28 their Unfair Competition Law claim, which has a four-year statute of limitations. (See Bus. & Prof. Code
§17208.) USC does not dispute that Plaintiff Simpkins’s FAL and CLRA claims are timely.

1 or reasonably should have discovered the facts for purposes of the delayed discovery rule is a question of
2 fact unless the evidence [or allegations] can support only one reasonable conclusion.” (*Ovando v. Cnty.*
3 *of L.A.* (2008) 159 Cal.App.4th 42, 61.) That is not the case here.

4 Plaintiffs Luna and Campos were first subjected to USC’s misrepresentations about the online
5 MSW program in 2019. FAC ¶¶137-142, 156-163. But there is nothing on the face of the complaint to
6 indicate that they, or a reasonable person in their position, necessarily would or could have discovered the
7 truth—that USC falsely advertised nearly *all* aspects of its online MSW program—immediately upon
8 beginning to attend classes in May 2019. Rather, both of these Plaintiffs allege that inconsistencies
9 between USC’s representations and the actual program only appeared “gradually as the program
10 progressed,” FAC ¶17, and that at various points during their two-year program, they observed that some
11 instructors were not located at USC’s campus and that the recorded curriculum didn’t match what the live
12 instructors were teaching. FAC ¶¶144-145, 165-166. Ms. Luna alleges that she was not given a choice for
13 field placements, FAC ¶¶149-150, which occur later in the program. Both of these Plaintiffs also allege
14 that they were told to route any concerns through “student success advisors” who secretly worked for 2U
15 rather than USC. FAC ¶¶146-149, 168-169. This occurred within the context of USC deliberately
16 attempting to conceal the true role that 2U played in administering the online MSW program. FAC ¶¶103-
17 107. Under these circumstances, it is unsurprising that a reasonable student wouldn’t have immediately
18 suspected that USC had tricked them (and was continuing to trick them) into paying in-person tuition for
19 the vastly different online program. (Cf. *E-Fab, Inc. v. Accountants, Inc. Servs.* (2007) 153 Cal.App.4th
20 1308, 1325 [In determining whether plaintiffs’ failure to discover the true state of affairs was reasonable,
21 courts may consider that plaintiffs relied on defendant’s “expertise and experience.”].)¹²

22 USC’s argument otherwise relies not on the face of the complaint, but on bald assertions about
23 what Plaintiffs “necessarily” “*would* have learned.” (Demurrer at 20-21 [emphasis added].) USC’s
24

25 ¹² If necessary, Plaintiffs can also amend their complaint to allege FAL and CLRA claims as of May 2020
26 under the continuous accrual rule, because USC continued to misrepresent 2U’s role in the online program,
27 inducing them to pay tuition for a second year. “When an obligation or liability arises on a recurring basis,
28 a cause of action accrues each time a wrongful act occurs, triggering a new limitations period.” (*Aryeh v.*
Canon Bus. Sols., Inc. (2013) 55 Cal.4th 1185, 1199 [citations omitted]; see also, e.g., *Underwood v.*
Future Income Payments (C.D. Cal. Apr. 26, 2018, No. 17-1570) 2018 WL 4964333, at *10.)

1 insistence that Plaintiffs should have suspected that USC lied to them right away, or at least “before May
2 2020,” is pure speculation that improperly requires the Court to draw inferences in defendant USC’s favor.
3 As such, it does not and cannot establish that the claims are time-barred as a matter of law.

4 **C. Plaintiffs Have Stated a Cause of Action for Unjust Enrichment.**

5 Unjust enrichment may be pled as a separate cause of action. (See *Professional Tax Appeal v.*
6 *Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238 [reversing demurrer to free-standing
7 restitution claim].) “The elements of a cause of action for unjust enrichment are simply stated as ‘receipt
8 of a benefit and unjust retention of the benefit at the expense of another.’” (*Ibid.* [quoting *Lectrodryer v.*
9 *Seoulbank* (2000) 77 Cal.App.4th 723, 726].) Plaintiffs have alleged these elements: that USC received a
10 benefit from them and putative class members—namely their tuition in excess of the amount they would
11 have paid if the true features of USC’s online MSW program had been disclosed—and that USC unjustly
12 retained that benefit by failing to return the excess tuition. FAC ¶228.

13 USC relies on inapplicable cases where courts found there was “no actionable wrong,” but here
14 plaintiffs *have* alleged actionable wrongs, which USC does not contest. (See *De Havilland v. FX Networks,*
15 *LLC* (2018) 21 Cal.App.5th 845, 870; *Hill v. Roll Internat. Corp.* (2011) 195 Cal.App.4th 1295, 1307;
16 *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 382; *Melchior v. New Line Productions, Inc.* (2003)
17 106 Cal.App.4th 779, 793; cf. *Bank of New York Mellon*, 8 Cal.App.5th at 955, 957 [on the facts of the
18 case, unjust enrichment claim was treated as equitable subrogation claim; reversing demurrer based on
19 statute of limitations].)

20 USC’s “repackaging” argument fares no better. Plaintiffs may plead different legal theories based
21 on the same set of facts, including unfair competition and unjust enrichment. (*Hartford Casualty Ins. Co.*
22 *v. J.R. Marketing, LLC* (2015) 61 Cal.4th 988, 993; *Crogan v. Metz* (1956) 47 Cal.2d 398, 403.)

23 **V. CONCLUSION**

24 For the foregoing reasons, this Court should overrule USC’s demurrer. Alternatively, Plaintiffs
25 request leave to amend the complaint if the Court determines that more specific pleadings are needed.

26 DATED: December 8, 2023

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