

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

APR 02 2024

David W. Slayton, Executive Officer/Clerk of Court

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA,

Defendant.

LASC Case No: 23STCV09981

**COURT'S RULING AND ORDER RE:
DEFENDANT'S DEMURRER AND
MOTION TO STRIKE**

Hearing Date: March 27, 2024

Complaint Filed: May 4, 2023

I.

BACKGROUND

This is a putative class action arising out of Defendant University of Southern California's ("USC's") Master of Social Work ("MSW") online program. Plaintiffs Stephanie Luna, Sandra Campos, and Deonte Simpkins allege in their First Amended Complaint ("FAC") they all started the MSW online program, and have either graduated or will graduate from the

1 program, having paid over \$110,000.¹ Plaintiffs allege that USC represents to the public,
2 prospective students, and its students that its online MSW program is exactly the same as its
3 long-standing and well-known in-person MSW program, using the “same USC faculty,” the
4 “same curriculum,” the “same quality field experience,” and the “same career development
5 services.”² Per the FAC, USC aggressively markets its online MSW program, relying on the
6 reputation of and representations regarding the quality and nature of its in-person MSW program
7 and the Suzanne Dworak-Peck School of Social Work.³ USC also allegedly charges its students
8 exactly the same very high price for its in-person and online MSW degrees (until recently, over
9 \$110,000).⁴

11 However, Plaintiffs allege that USC’s in-person and online MSW programs are not at all
12 the same, and USC’s representations about the online MSW program are egregiously false and
13 misleading.⁵ In fact, Plaintiffs allege, USC provides a very different program to its online
14 students, including by using different instructors, different course content, and by outsourcing
15 other important services such as the clinical placement program.⁶ Indeed, Plaintiffs allege, USC
16 has outsourced substantial aspects of its online MSW program to a for-profit corporation in
17 exchange for splitting the tuition; USC does not administer this program.⁷ Rather than provide
18 the same academic program that it represents to students to induce them to enroll in its online
19
20

21
22 ¹ FAC, ¶¶23-25.

23 ² FAC, ¶2.

24 ³ FAC, ¶3.

25 ⁴ *Id.*

26 ⁵ FAC, ¶4.

27 ⁶ *Id.*

28 ⁷ *Id.*

1 MSW program, Plaintiffs allege that USC merely profits at their expense.⁸

2 Based on these allegations and the other allegations set forth in the FAC, Plaintiffs bring
3 the following putative class claims: 1. Unfair, Deceptive Acts (Civ. Code § 1770); 2. Unfair,
4 Deceptive, Untrue, or Misleading Advertising (Bus. & Prof. Code § 17500); 3. Unjust
5 Enrichment; 4. Unruh Civil Rights Act (Civ. Code § 51); and 5. Unlawful, Unfair, or Fraudulent
6 Conduct, Public Injunction (Bus. & Prof. Code § 17200). Plaintiffs bring these claims on behalf
7 of the following putative class:
8

9 All California citizens who, at the time of the filing of this complaint, are or have
10 been students in the online Master of Social Work degree program at the USC
11 School of Social Work at any time during the period from four years before the
12 filing of this complaint through the date of final judgment.⁹

12 Additionally, Plaintiffs allege the following subclass:

13 All California citizens who are people of color or veterans and who, at the time of
14 the filing of this complaint, are or have been students in the online Master of Social
15 Work degree program at the USC School of Social Work at any time through the
16 date of final judgment.¹⁰

15 Defendant USC demurs to the first through fourth causes of action. Defendant separately
16 moves to strike portions of the complaint regarding general, subjective advertising statements
17 and the allegations regarding veterans or veteran-status discrimination.
18

19 For the reasons discussed below, the demurrer is sustained in part and overruled in part.
20 The motion to strike is granted in part and denied in part.

22 II.

23 REQUEST FOR JUDICIAL NOTICE

24 Plaintiffs' request for judicial notice of Exhibit 1 to Declaration of Derin McLeod, a copy
25

26 ⁸ *Id.*

27 ⁹ FAC, ¶199.

28 ¹⁰ FAC, ¶200.

1 of the article entitled “USC Pushed a \$115,000 Online Degree. Graduates Got Low Salaries,
2 Huge Debts”¹¹ is denied. The newspaper article is not a proper matter of which the Court may
3 take judicial notice.

4 Notwithstanding denial of the request of judicial notice, Plaintiffs may still attempt to
5 allege the substance of the article for purposes of attempting to state their Unruh Act claim.
6

7 8 III.

9 DEMURRER

10 1. General standards governing demurrers

11 CCP § 430.10(e) is grounds for a demurrer when the complaint fails to state facts
12 sufficient to constitute a cause of action. For purposes of ruling on a demurrer, material facts
13 properly pleaded in the complaint must be taken as true. *Serrano v. Priest* (1971) 5 Cal.3d 584,
14 491. A demurrer may challenge only defects that appear on the face of the pleading or from
15 matters which are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 31; *Donabedian*
16 *v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994; California Practice Guide, Civil Procedure
17 Before Trial, ¶7:8 (The Rutter Group 2023).
18

19 The function of a demurrer is to test the legal sufficiency of a complaint, but not the
20 truthfulness of the allegations. *Donabedian v. Mercury Ins. Co., supra*, 116 Cal.App.4th at 994;
21 *Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388; *SJJC Aviation Services, LLC v. City of*
22 *San Jose* (2017) 12 Cal.App.5th 1043, 1051-1052; California Practice Guide, Civil Procedure
23 Before Trial, ¶7:5 (The Rutter Group 2023). Demurrers are to be sustained where a pleading fails
24 to plead adequately any essential element of the cause of action. *Cantu v. Resolution Trust Corp.*
25
26

27 _____
28 ¹¹ This article was published in the Wall Street Journal on November 9, 2021.

1 (1992) 4 Cal.App.4th 857, 879-80.

2 “A demurrer tests the pleadings alone and not the evidence or other extrinsic matters.
3 Therefore, it lies only where the defects appear on the face of the pleading or are judicially
4 noticed (Code Civ. Proc., §§ 430.30, 430.70). The only issue involved in a demurrer hearing is
5 whether the complaint, as it stands, unconnected with extraneous matters, states a cause of
6 action.” *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747. *Accord McKenney v. Purepac*
7 *Pharmaceutical Co.* (2008) 162 Cal.App.4th 72, 79. When considering demurrers, courts read
8 the allegations liberally and in context. *McKenney, supra*, 167 Cal.App.4th at 77; *Taylor v. City*
9 *of Los Angeles Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.

11 “If the complaint states a cause of action under *any* theory, regardless of the title under
12 which the factual basis for relief is stated, that aspect of the complaint is good against
13 a demurrer.” *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 (emphasis
14 added).

16 2. Discussion

17 a. Unruh Civil Rights Act

18 Defendant first demurs to the Unruh Civil Rights Act claim, codified at Civil Code §51.

19 To state an Unruh Act claim, a plaintiff must allege the following:

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

- 1 1. Defendant was a business establishment
- 2 2. defendant intentionally denied plaintiff:
 - 3 a. full and equal accommodations;
 - 4 b. advantages;
 - 5 c. facilities;
 - 6 d. privileges; or
 - 7 e. services;
- 8 3. based upon plaintiff's:
 - 9 a. sex;
 - 10 b. race;
 - 11 c. color;
 - 12 d. religion;
 - 13 e. ancestry;
 - 14 f. national origin;
 - 15 g. disability;
 - 16 h. medical condition;
 - 17 i. marital status; or
 - 18 j. sexual orientation.

19 CC§ 51(b); *Payne v. Anaheim Memorial Med. Center, Inc.* (2005) 130 Cal. App. 4th 729, 746
20 (plaintiff sufficiently alleged defendant was a business that “failed to address racist conduct
21 which impaired the access of minority physicians and patients to that facility.”); *Jackson v. Sup.*
22 *Ct.* (1994) 30 Cal. App. 4th 936, 942 (petitioner adequately alleged pursuit of an
23 accommodation, advantage or privilege of a business and that he was discriminated against
24 because of race). *See also Ramirez v. Wong* (2010) 188 Cal.App.4th 1480, 1485 (Civil Code
25 Section 51 (Unruh Act) provides all persons of listed characteristics (e.g., gender, marital status)
26 are entitled ““to the full and equal accommodations, advantages, facilities, privileges, or services
27 in all business establishments....””); *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th
28 523, 527 (Unruh Act applies where businesses exclude individuals, and where treatment is
unequal, based upon sex, race, color, religion, ancestry, national origin, disability, medical
condition, marital status, or sexual orientation.); *Martinez v. Cot'n Wash, Inc.* (2022) 81
Cal.App.5th 1026, 1032 (“the discriminatory effect of a facially neutral policy or action is not

1 alone a basis for inferring intentional discrimination under the Unruh Civil Rights Act.”); *Belton*
2 *v. Comcast Cable Holdings, LLC* (2007) 151 Cal. App. 4th 1224, 1238 (intentional
3 discrimination required, and not an adverse impact); *Coronado v. Cobblestone Village Comm.*
4 *Rentals, L.P.* (2008) 163 Cal. App. 4th 831, 842 (CC Section 52 provides for statutory penalties),
5 *overruled on other grounds by Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 678; CACI
6 3020.
7

8 Defendant’s demurrer to the Unruh Act claim is based on four (4) grounds, as further
9 discussed below.

10
11 **(1) Plaintiffs’ alleged lack of standing**

12 Defendant first argues that Plaintiffs lack standing because they do not allege they
13 *personally* experienced discrimination. Civil Code § 52(c) specifies the parties who may sue for
14 a violation of the Unruh Act. That subdivision states that an Unruh Act claim may be brought
15 by “the [California] Attorney General, any district attorney or city attorney, or any person
16 aggrieved by the conduct” constituting the Unruh Act violation. Civil action standing, Cal. Civ.
17 Prac. Civil Rights Litigation § 2:7. A plaintiff may sue for a violation of the Unruh Act without
18 first having requested that the defendant act in a non-discriminatory manner toward the plaintiff.
19 § 2:7. Civil action standing, Cal. Civ. Prac. Civil Rights Litigation § 2:7 (citing *Angelucci v.*
20 *Century Supper Club*, (2007) 41 Cal. 4th 160). “[T]he Act applies not merely in situations
21 where businesses *exclude* individuals altogether, but also where treatment is *unequal*.” *Pizarro*
22 *v. Lamb’s Players Theatre* (2006) 135 Cal.App.4th 1171, 1174 (citing *Koire v. Metro Car Wash*
23 (1985) 40 Cal.3d 24, 29).
24
25

26 Civil Code § 52(c) confers standing on “any person aggrieved” by conduct violative of
27 the Unruh Act. Thus, a private plaintiff can sue only if the plaintiff is an *actual victim* of the
28

1 discriminatory act or policy. California Practice Guide, Civ. Pro. Trial Claims and Def.,
2 ¶114:670 (The Rutter Group 2023) (citing *Midpeninsula Citizens for Fair Housing v. Westwood*
3 *Investors* (1990) 221 Cal.App.3d 1377, 1386).

4
5 Thus, in order to state an Unruh Act claim, Plaintiffs here must allege that they were the
6 victims of a discriminatory act or policy, such that they were excluded from the business or that
7 treatment of them was unequal. To that end, Plaintiffs allege in applicable part as follows.

8 Plaintiff Luna alleges that she started USC's online MSW program on May 13, 2019 and
9 graduated on May 19, 2021.¹² Plaintiff Luna alleges she is a Latina woman.¹³ Plaintiff Luna
10 alleges she learned about USC's online MSW program from information available on USC's
11 School of Social Work website.¹⁴ She allegedly understood from the website that all the features
12 of the MSW program described there applied to both the online and in-person programs—that's
13 what the MSW from USC was.¹⁵

14
15 Plaintiffs allege that Plaintiff Luna submitted an inquiry and provided her contact
16 information on the USC website.¹⁶ She allegedly was not aware that the personal contact
17 information that she provided through the website would be given to people who were not
18 employed by USC.¹⁷ She was then allegedly contacted by a recruiter, whom she believed was
19 USC staff, who encouraged Ms. Luna to apply to USC's online MSW program.¹⁸ The recruiter
20

21
22 ¹² FAC, ¶137.

23 ¹³ *Id.*

24 ¹⁴ FAC, ¶138.

25 ¹⁵ *Id.*

26 ¹⁶ FAC, ¶139.

27 ¹⁷ *Id.*

28 ¹⁸ FAC, ¶140.

1 allegedly used a USC email address and had a signature block.¹⁹ Additionally, when Ms. Luna
2 expressed concern about being able to pay for USC, the recruiter allegedly responded that
3 federal student loans would “cover everything” and that she wouldn’t need to worry about
4 affording repayment.²⁰ The recruiter encouraged Ms. Luna to get her materials in as quickly as
5 possible so that she could start with the May 2019 cohort.²¹

7 Plaintiff Luna alleges that she had no reason to suspect that USC was targeting her for
8 enrollment and admission into its unequal and inferior online MSW program because of race or
9 national origin.²² Ms. Luna allegedly did not learn of USC’s unlawful targeting and reverse
10 redlining until after she had graduated and read the November 2021 Wall Street Journal
11 article.²³ When Ms. Luna learned about the targeted marketing for the program after reading the
12 November 2021 Wall Street Journal article, she realized that she met the exact description of the
13 caricature of the Latina target recruit, “Confirmed Carmen.”²⁴ She alleges that she now
14 understands that she was targeted by USC because of her race and her gender.

16 With respect to Plaintiff Campos, Plaintiffs allege that she learned about USC’s online
17 MSW program from information available on USC’s School of Social Work website.²⁵ She
18 allegedly understood from the website that all the features of the MSW program described there
19 applied to both the online and in-person programs.²⁶ After Ms. Campos applied, she allegedly

21 ¹⁹ *Id.*

22 ²⁰ FAC, ¶141.

23 ²¹ *Id.*

24 ²² FAC, ¶152.

25 ²³ *Id.*

26 ²⁴ FAC, ¶153.

27 ²⁵ FAC, ¶157.

28 ²⁶ *Id.*

1 initially received a letter of denial from what she thought was USC.²⁷ But shortly after, a
2 recruiter, who she also thought worked for USC, reached out to her and explained that the
3 denial was a mistake.²⁸ The recruiter told her that the recruiter would pass on Ms. Campos's
4 information and let her know of updates.²⁹ Within a few weeks, the recruiter allegedly emailed
5 again to congratulate Ms. Campos on being admitted.³⁰

7 Plaintiffs allege that Ms. Campos had no reason to suspect that USC was targeting her
8 for enrollment and admission into its unequal and inferior online MSW program because of race
9 or national origin.³¹ Ms. Campos allegedly did not learn of USC's unlawful targeting and
10 reverse redlining until after she had graduated and read the November 2021 Wall Street Journal
11 article.³² Plaintiffs allege that when Ms. Campos learned about targeted marketing for the
12 program after reading the November 2021 Wall Street Journal article, she realized that she met
13 the exact description of the caricature of the Latina target recruit, "Confirmed Carmen."³³ She
14 now understands that she was targeted by USC because of her race and her gender, Plaintiffs
15 allege.³⁴

17 As to Plaintiff Simpkins, Plaintiffs allege that Mr. Simpkins researched USC's online
18
19

20
21 ²⁷ FAC, ¶158.

22 ²⁸ *Id.*

23 ²⁹ *Id.*

24 ³⁰ *Id.*

25 ³¹ FAC, ¶171.

26 ³² *Id.*

27 ³³ FAC, ¶172.

28 ³⁴ *Id.*

1 MSW program by visiting USC's School of Social Work website.³⁵ He understood from the
2 website that all the features of the MSW program described there applied to both the online and
3 the in-person programs.³⁶ Mr. Simpkins allegedly submitted an inquiry and provided his contact
4 information on the USC website.³⁷ He allegedly was not aware that the personal contact
5 information that he provided through the website would be given to people who were not
6 employed by USC.³⁸ After he submitted his contact information, Mr. Simpkins received
7 numerous calls from recruiters who urged him to apply as quickly as possible.³⁹

9 Plaintiffs allege that after Mr. Simpkins applied and was quickly accepted, recruiters
10 continued to call him constantly, urging him to enroll.⁴⁰ Plaintiffs allege that one recruiter, who
11 pretended to be a USC employee, told Mr. Simpkins that he needed to start as soon as
12 possible.⁴¹ Mr. Simpkins was allegedly pressured to enroll even before finalizing his financial
13 aid offer.⁴²

15 Additionally, Plaintiffs allege that Mr. Simpkins had no reason to suspect that USC was
16 targeting him for enrollment and admission into its unequal and inferior online MSW program
17 because of race or national origin.⁴³ Mr. Simpkins allegedly did not learn of USC's unlawful
18

20 ³⁵ FAC, ¶176.

21 ³⁶ *Id.*

22 ³⁷ FAC, ¶177.

23 ³⁸ *Id.*

24 ³⁹ *Id.*

25 ⁴⁰ FAC, ¶180.

26 ⁴¹ *Id.*

27 ⁴² *Id.*

28 ⁴³ FAC, ¶191.

1 targeting and reverse redlining until he read the November 2021 Wall Street Journal article.⁴⁴
2 Plaintiffs allege that Mr. Simpkins now understands that he was targeted by USC for enrollment
3 in its inferior online program because of his race.⁴⁵
4

5 Reading the allegations liberally and in context, as the Court must, Plaintiffs still have
6 not alleged that Defendant USC excluded them from the MSW online program, or that
7 treatment of them was unequal, based on a protected characteristic. The allegation that since
8 their reading of the November 2021 Wall Street Journal article, Plaintiffs “now understand[]”
9 that they were “targeted by USC because of [their] race”⁴⁶ does not allege they suffered any
10 discriminatory conduct to establish standing under the Unruh Act. Absent any factual
11 allegations meeting this requirement, the demurrer to the Unruh Act claim is well-taken on this
12 ground.
13

14 **(2) Plaintiffs’ non-allegation of actionable discrimination**

15 Second. Defendant argues that Plaintiffs do not allege actionable discrimination by
16 USC. Specifically, Defendant argues that Plaintiffs have not pled that USC: (i) denied access or
17 provided unequal access to anyone and (ii) did so with intentional discriminatory intent—both
18 of which are required to state an Unruh Act claim.⁴⁷
19

20 The primary basis for the Unruh Act claim is premised on Defendant’s “racially targeted
21 marketing,” appearing at ¶¶126-136. Plaintiffs allege that it was and is USC’s practice and/or
22 policy to target people of color and/or veterans, including Plaintiffs, on the basis of their race
23
24

25 ⁴⁴ *Id.*

26 ⁴⁵ *Id.*

27 ⁴⁶ FAC, ¶¶153, 172, 191.

28 ⁴⁷ Demurrer at 15:11-13 (citing *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175).

1 and/or veteran status for enrollment in the inferior online MSW program.⁴⁸ The recruiters for
2 the USC online MSW program allegedly target specific populations that are singled out because
3 of their race, age, gender, socioeconomic status, veteran status, or a combination of those
4 factors.⁴⁹ These recruiters have allegedly used offensive materials for recruitment training,
5 including a cartoon graphic that caricatured potential recruitment targets according to their race,
6 age, gender, socioeconomic status, and veteran status.⁵⁰

7
8 For instance, Plaintiffs allege, the graphic included a Black woman labeled “Needy
9 Nelly,” who was assigned an age of 23, an undergraduate GPA of 3.0, and the following
10 characteristics: “high touch, needs hand-holding, calls and emails everyone, has trouble with
11 application.” “Needy Nelly” was also assigned a “Conversion Probability” of 1—that is, most
12 likely to be “converted” from a prospective applicant to an enrollee.⁵¹ The graphic also
13 allegedly assigned a “Conversion Probability” of 1 to “Confirmed Carmen,” a Latina woman,
14 age 26, from California, with an undergraduate GPA “at or below” 3.0; and to “Military Mike,”
15 a white man, age 30, with an undergraduate GPA “at or below” 3.0 and characteristics including
16 “wants a free ride” and “not as ‘social work’ ready.”⁵² By contrast, the graphic allegedly gave
17 the lowest “Conversion Probability” score to “Money Molly”—a white woman with an age of
18 25, an undergraduate GPA of 4.0, and the characteristics of “very intelligent, not high-touch,
19 avoids recruitment efforts.”⁵³

20
21
22
23 ⁴⁸ FAC, ¶126.

24 ⁴⁹ FAC, ¶127.

25 ⁵⁰ FAC, ¶128.

26 ⁵¹ FAC, ¶129.

27 ⁵² FAC, ¶130.

28 ⁵³ FAC, ¶131.

1 Plaintiffs allege that on information and belief, consistent with these training documents,
2 recruiters incorporated racialized tactics into marketing and promotion, including but not
3 limited to the content of advertisements, and the parameters for targeting digital advertising.⁵⁴
4 Additionally, on information and belief, Plaintiffs allege that marketing for the online MSW
5 program was targeted based on race and/or veteran status using display ad networks that allow
6 tracking and dissemination of online advertising to targeted audiences.⁵⁵ Plaintiffs further allege
7 that on information and belief, display ad networks use pixels or other tracking tools to monitor
8 website visitors' activity around the internet.⁵⁶ The ad networks allegedly purchase advertising
9 space on a variety of websites—such as news outlets, blogs, social media websites, and other
10 forums—so that someone fitting a particular profile and who might have searched for social
11 work programs would see advertisements for the online MSW program prominently wherever
12 she went on the internet.⁵⁷

13
14
15 Plaintiffs allege that on information and belief, the enrollment in USC's online MSW
16 program is disproportionately composed of people of color and veterans, compared to the
17 demographics of USC's in-person MSW program.⁵⁸ Plaintiffs also allege that on information
18 and belief, USC recruiters (actually 2U employees in disguise) are not using the same targeted
19 marketing and recruiting efforts to recruit anyone to USC's in-person MSW program, let alone
20 targeting people of color or veterans for the in-person program.⁵⁹ USC's operatives allegedly
21

22
23 ⁵⁴ FAC, ¶133.

24 ⁵⁵ FAC, ¶134.

25 ⁵⁶ *Id.*

26 ⁵⁷ *Id.*

27 ⁵⁸ FAC, ¶135.

28 ⁵⁹ FAC, ¶136.

1 reserve the high-pressure and racialized tactics for those it recruits to its different and unequal
2 online MSW program.⁶⁰

3 None of these allegations, however, alleges unequal treatment under the Unruh Act. To
4 the contrary, in the portion of the FAC dealing with the class allegations, Plaintiffs allege that
5 “[a]ll members of the proposed Class were subject to the same uniform conduct: USC’s false
6 and misleading misrepresentations that its online MSW program is the same as its on-campus
7 MSW program, when it is, in fact, a different and inferior academic program compared to the
8 on-campus MSW program.”⁶¹ While ¶206 also alleges that “[a]ll members of the proposed
9 Subclass were subject to the same conduct with respect to targeting them for enrollment in the
10 inferior online MSW program on the basis of race, national origin, and/or veteran status,” this is
11 conclusory and does not allege *facts* to state an Unruh Act violation.
12

13
14 Importantly, there is no allegation that the graphic itself, reproduced at ¶132, was used
15 or referenced in connection with the USC MSW *online* program itself. This would be a critical
16 link for the Unruh Act claim. Additionally, to the extent the Unruh Act claim is premised on
17 alleged “high pressure” recruitment tactics, there is no factual allegation that persons were
18 singled out based on race or another protected characteristic by USC in pursuing its recruitment
19 efforts.
20

21 Plaintiffs also theorize that Defendant engaged in “reverse redlining,” which, in the loan
22 context, has been described as “[t]he practice of extending credit on unfair terms to specific
23 geographic areas due to income, race, or ethnicity.” *Munoz v. International Home Capital*
24 *Corp.*, 2004 WL 3086907 (N.D. Cal. 2004, No. C 03-01099) at *3, fn.4. In the loan context, a
25

26
27 ⁶⁰ *Id.*

28 ⁶¹ FAC, ¶206.

1 plaintiff alleging a reverse redlining theory must set forth the following allegations: (1) that she
2 is a member of a protected class; (2) that she applied and was qualified for a loan; (3) that the
3 loan was given on grossly unfavorable terms; and (4) that the lender either intentionally targeted
4 her for unfair loans or currently makes loans on more favorable terms to others. *Davenport v.*
5 *Litton Loan Servicing, LP* (N.D. Cal. 2010) 725 F.Supp.2d 862, 876.
6

7 Extending the reverse redlining theory to the instant case, Plaintiffs still have not alleged
8 a factual basis for it here. “In the context of alleged racial discrimination, the dispositive
9 question under the Unruh Civil Rights Act is whether the plaintiff faced unequal treatment on
10 account of his or her race that members of other races did not experience.” *Smith v. BP*
11 *Lubricants* (2021) 64 Cal.App.5th 138, 154. Here again, there are no factual allegations that
12 persons of color and veterans faced unequal treatment with respect to the MSW program.
13 Absent such allegations, the demurrer on this ground is again well-taken.
14

15 (3) “Information and Belief” Allegations

16 The third basis for Defendant’s demurrer to the Unruh Act claim is premised on
17 Defendant’s argument that “Plaintiffs attempt to rely on a series of conclusory, increasingly
18 speculative “information and belief” allegations about USC’s “targeting” of an inferior MSW
19 program at protected groups—including, for example, that recruiters “reserve the high-pressure
20 and racialized tactics for those [USC] recruits to its different and unequal online MSW
21 program.”⁶²
22

23 Plaintiffs allege in applicable part as follows:

24 ////

25 ////

26 ////

27 _____
28 ⁶² Demurrer at 16:21-25.

1 133. On information and belief, consistent with these training documents, recruiters
2 incorporated racialized tactics into marketing and promotion, including but not
3 limited to the content of advertisements, and the parameters for targeting digital
4 advertising.

5 134. On information and belief, marketing for the online MSW program was
6 targeted based on race and/or veteran status using display ad networks that allow
7 tracking and dissemination of online advertising to targeted audiences. On
8 information and belief, display ad networks use pixels or other tracking tools to
9 monitor website visitors' activity around the internet. The ad networks purchase
10 advertising space on a variety of websites—such as news outlets, blogs, social
11 media websites, and other forums—so that someone fitting a particular profile and
12 who might have searched for social work programs would see advertisements for
13 the online MSW program prominently wherever she went on the internet.

14 135. On information and belief, the enrollment in USC's online MSW program is
15 disproportionately composed of people of color and veterans, compared to the
16 demographics of USC's in-person MSW program.

17 136. On information and belief, USC recruiters (actually 2U employees in disguise)
18 are not using the same targeted marketing and recruiting efforts to recruit anyone
19 to USC's in-person MSW program, let alone targeting people of color or veterans
20 for the in-person program. USC's operatives reserve the high-pressure and
21 racialized tactics for those it recruits to its different and unequal online MSW
22 program.⁶³

23 “[A] pleading made on information and belief is insufficient if it ‘merely assert[s] the
24 facts so alleged without alleging such information that ‘lead[s] [the plaintiff] to believe that the
25 allegations are true.’” *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149,
26 1158-1159 (citing *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551). For the reasons
27 discussed above, Plaintiffs have not alleged facts rising to the level of an Unruh Act violation.
28 The “information and belief” allegations here fall short because they do not set forth the
information that leads Plaintiffs to believe the allegations of racial targeting are true. The
recruiting graphic set forth at ¶132 does not stand as a factual allegation of racial targeting with
respect to the MSW online program.

For these reasons, the Court finds the demurrer to the Unruh Act claim, based on

⁶³ FAC, ¶¶133-136.

1 Plaintiffs’ “information and belief” allegations, is also well-taken.

2 **(4) Educational Malpractice Doctrine**

3 Finally, Defendants demur to the Unruh Act claim on grounds that Plaintiffs’ “theory
4 that subclass members were targeted for an ‘inferior’ academic program fails because claims
5 based on relative academic quality are not actionable.”⁶⁴

6
7 While the Unruh Act claim is inadequately pled, the educational malpractice doctrine
8 would not stand as a basis to bar that claim or to bar the other claims at the pleading stage. As
9 Plaintiffs argue, the educational malpractice doctrine “preclude[s] an action for personal
10 educational injury based on inherently subjective standards of duty and causation[.]” *Wells v.*
11 *One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1212. Here, though, the FAC alleges
12 that Defendant’s online MSW program had different curriculum, different instructors, different
13 field placements, and different student advisors.⁶⁵ These are not subjective considerations, but
14 objective considerations which may be actionable. While the educational malpractice doctrine
15 may in fact bar Plaintiffs’ claims following discovery, at the pleading stage, the Court must take
16 the allegations as true.

17
18 **Leave to Amend**

19 The Court finds that Plaintiffs have not stated facts sufficient to constitute their Unruh
20 Act claim. The Court grants Plaintiffs thirty (30) days’ leave to amend to allege facts
21 constituting a violation of the Unruh Act.

22
23 **b. Timeliness of UCL and FAL Claims by Luna and Campos**

24 Separately, Defendant demurs to the UCL and FAL claims brought by Plaintiffs Luna
25 and Campos on grounds those claims are time-barred by the three-year statute of limitations for
26

27 ⁶⁴ Demurrer at 18:10-12.

28 ⁶⁵ Opposition at 17:14-16 (citing FAC ¶¶2, 6-7, 14, 30, 36, 38-40, 42, 44, 50, 52, 55-56, 60-85, 90-91, 103-107).

1 these claims.

2 The “discovery rule” is an exception to the general rule that an action accrues when
3 appreciable harm occurs. The accrual of certain causes of action is *postponed* “until the
4 plaintiff *discovers*, or has *reason* to discover. the cause of action.” California Practice Guide,
5 Civil Procedure Before Trial: Statutes of Limitations, ¶3:100 (The Rutter Group 2023) (citing
6 *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807; *MGA Entertainment, Inc. v.*
7 *Mattel, Inc.* (2019) 41 Cal.App.5th 554, 561, 563-564; *Otay Land Co., LLC v. U.E. Ltd., L.P.*
8 (2017) 15 Cal.App.5th 806, 850-851.

9 The discovery rule assumes the existence of all elements of the cause of action,
10 including injury, and “protects those who are *ignorant of their cause of action through no fault*
11 *of their own*. It permits delayed accrual until a plaintiff knew or should have known of the
12 wrongful conduct at issue.” California Practice Guide. Civil Procedure Before Trial: Statutes of
13 Limitations, ¶3:100 (The Rutter Group 2023) (citing *April Enterprises, Inc. v. KTTV* (1983) 147
14 Cal.App.3d 805, 832) (emphasis added).

15 “[T]he rule in California is that it is not enough to commence the running of the
16 limitations period when the plaintiff knows of her injury and its factual cause (or physical
17 cause). Rather, the plaintiff must be aware of her injury, its factual cause, and sufficient facts to
18 put her on inquiry notice of a negligent cause.” *Clark v. Baxter Healthcare Corp.* (2000) 83
19 Cal.App.4th 1048, 1057 (citing *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109-1114).

20 The Court in *Norgart v. Upjohn* (1999) 21 Cal.4th 383, 397-398 further expounded on
21 the prevailing California rule under *Jolly*:

22 ////

23 ////

24 ////

1 Under *Jolly*, which relies on decisions such as *Gutierrez* and *Sanchez*, the
2 plaintiff discovers the cause of action when he ***at least suspects a factual***
3 ***basis, as opposed to a legal theory, for its elements, even if he lacks***
4 ***knowledge thereof--when, simply put, he at least "suspects . . . that***
5 ***someone has done something wrong"*** to him (*Jolly v. Eli Lilly & Co.*,
6 *supra*, 44 Cal. 3d at p. 1110), "wrong" being used, not in any technical
7 sense, but rather in accordance with its "lay understanding" (*id.* at p. 1110,
8 fn. 7). n2 He has reason to discover the cause of action when he has reason
9 at least to suspect a factual basis for its elements. (*Jolly v. Eli Lilly & Co.*,
10 *supra*, 44 Cal. 3d at p. 1110.) He has reason to suspect when he has " ' "
11 'notice or information of circumstances to put a reasonable person *on*
12 *inquiry*' " ' " (*id.* at pp. 1110-1111, italics in original); he need not know the
13 "specific 'facts' necessary to establish" the cause of action; rather, he may
14 seek to learn such facts through the "process contemplated by pretrial
15 discovery"; but, within the applicable limitations period, he must indeed
16 seek to learn the facts necessary to bring the cause of action in the first
17 place--he "cannot wait for" them "to find" him and "sit on" his "rights"; he
18 "must go find" them himself if he can and "file suit" if he does (*id.* at p.
19 1111). (Bold italics added.)

20 Normally, the statute of limitations is raised as an affirmative defense in the answer.

21 But *where the complaint shows on its face* that the claim would be time-barred without benefit of
22 the discovery rule, plaintiff must "plead around" the statute of limitations defense. Under these
23 circumstances, if plaintiff relies on the discovery rule, the complaint must specifically allege
24 facts showing "(1) the time and manner of discovery and (2) the inability to have made earlier
25 discovery despite reasonable diligence." California Practice Guide, Civil Procedure Before Trial:
26 Statutes of Limitations, ¶3:170 (The Rutter Group 2023) (citing *Fox, supra*, 35 Cal.App.4th at
27 808; *JP Morgan Chase Bank, N.A. v. Ward* (2019) 33 Cal.App.5th 678, 688).

28 As Defendant argues, claims under the CLRA and FAL have a three-year statute of
limitations, pursuant to Civil Code §1783 and CCP §338(h). According to Defendant, the alleged
unlawful behavior (the false advertising and recruiting) occurred *before* Plaintiffs enrolled at
USC; in the case of Plaintiffs Luna and Campos, that means it was before May 2019, when they
began classes.⁶⁶ The instant lawsuit was filed May 4, 2023 – approximately four years later (and
one year outside the statutory period).

⁶⁶ FAC, ¶¶137, 156.

1 The question here is whether the FAC's allegations reveal "clearly and affirmatively" that
2 they are barred. *Citizens for a Responsible CalTrans Decision v. Dep't of Transportation* (2020)
3 46 Cal.App.5th 1103, 1117. The FAC here alleges that "[i]t was only once they had already paid
4 their tuition and enrolled, gradually as the program progressed, that Plaintiffs began to discover
5 the extent to which USC's online MSW program was not the "same" as USC's in-person MSW
6 program."⁶⁷

8 For instance, at ¶144, Plaintiffs allege:

9 The MSW program Ms. Luna received was not the MSW program that USC had
10 represented. In particular, the instructors, the curriculum and course content, and
11 the field opportunities were not the same as those provided to students in USC's in-
12 person program. For example, pre-recorded lessons didn't match up with the
13 material that was taught in live presentations. When Ms. Luna raised the issue to
14 one of her live instructors, the instructor was not familiar with the prerecorded
15 content and told her to ignore it. Many of her instructors did not teach in USC's in-
16 person MSW program.⁶⁸

14 At ¶165, Plaintiffs allege:

15 The MSW program Ms. Campos received was not the MSW program that USC had
16 represented. In particular, the instructors, the curriculum and course content, and
17 the field opportunities were not the same as those provided to students in USC's in-
18 person program. For example, Ms. Campos was not provided the live,
19 collaborative, seminar-style classes taught by esteemed faculty that USC had
20 represented. Ms. Campos' online MSW program consisted in significant part of
21 pre-recorded, "asynchronous" content, mostly of PowerPoints and YouTube
22 videos. What live classroom instruction there was would sometimes contradict or
23 otherwise completely depart from what the asynchronous material had said.⁶⁹

20 However, the alleged misrepresentations continued, according to the FAC. Paragraphs
21 144-145, and 165-166 allege misrepresentations during the course of the program. Plaintiff Luna
22 allegedly was not given a choice for field placement during the program,⁷⁰ and both Luna and
23 Campos allegedly were told to route any concerns through "student success advisors" who

25 ⁶⁷ FAC, ¶17.

26 ⁶⁸ FAC, ¶144.

27 ⁶⁹ FAC, ¶165.

28 ⁷⁰ FAC, ¶¶149-150.

1 allegedly secretly worked for 2U and not USC.⁷¹

2 These allegations regarding accrual of Plaintiffs’ claims, and whether there was delayed
3 discovery of these claims sufficient to maintain them within the limitations period, present
4 factual issues inappropriate for resolution on demurrer. The FAC does not clearly and
5 affirmatively reveal that the claims are barred; further discovery will be required for the Court to
6 make any such determination. The demurrer to the FAL and CLRA grounds based on the statute
7 of limitations is overruled.
8

9 **c. Unjust enrichment claim**

10 “Unjust enrichment is not a cause of action, however, or even a remedy, but rather “ ‘ ‘ a
11 general principle, underlying various legal doctrines and remedies” ’ [Citation.] It is
12 synonymous with restitution. [Citation.]” [Citation.] Unjust enrichment has also been
13 characterized as describing “ ‘ the result of a failure to make restitution ’ ” [Citation.]”
14 *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387.
15

16 The Second District has specifically determined that a cause of action for unjust
17 enrichment does not exist. *See Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th
18 779, 793; *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1490; and *Bank of*
19 *New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 955. The First and Fourth District
20 Courts of Appeal, respectively, also have determined that a cause of action for unjust enrichment
21 does not exist in California. *Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310,
22 1315 and *Lauriedale Assocs., Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448. *See also Levine v.*
23 *Blue Shield of California* (2010) 189 Cal.App.4th 1117. In fact, the term “unjust enrichment” “is
24 synonymous with restitution.” *Melchior, supra*, 106 Cal.App.4th at 794 (emphasis added).
25

26 Absent California law recognizing a “cause of action” for unjust enrichment, the
27

28 _____
⁷¹ FAC, ¶¶146-149, 168-169.

1 demurrer to the claim for unjust enrichment claim is sustained, without leave to amend. In
2 sustaining the demurrer without leave to amend as to the unjust enrichment claim, the Court
3 specifically notes that Plaintiffs separately seek restitution under the FAL and UCL claims.
4

5 6 IV.

7 MOTION TO STRIKE

8 1. General standards governing motions to strike

9 CCP §436(a) allows a court to “[s]trike out any irrelevant, false, or improper matter
10 inserted in any pleading.” *City of Rancho Cucamonga v. Reg’l. Water Quality Control Bd.* –
11 *Santa Ana Region* (2006) 135 Cal.App.4th 1377, 1386. CCP §431.10(b) defines an “immaterial”
12 allegation as: an allegation that is not essential to the statement of a claim or defense; an
13 allegation that is neither pertinent nor supported by an otherwise sufficient claim or defense; or a
14 demand for judgment requesting relief not supported by the allegations of the complaint or cross-
15 complaint. An “immaterial allegation” is defined as “irrelevant matter” as that term is used under
16 CCP §436. CCP §431.10(c).
17

18 19 2. Discussion

20 Defendant USC seeks an order striking two general areas of the FAC: 1) various
21 marketing statements allegedly made by USC (on grounds that the statements constitute non-
22 actionable puffery and/or constitute non-challengeable quality of USC’s MSW education under
23 the educational malpractice doctrine); and 2) purported discrimination against veterans, in
24 connection with the Unruh Act claim.
25

26 27 1. Marketing Statements

28 Puffery and opinion is not actionable under the UCL. “It is hornbook law that an

1 actionable *misrepresentation* must be made about past or existing facts; statements regarding
2 future events are merely deemed opinions. [Citations.] [Citation.]” *Neu-Visions Sports, Inc. v.*
3 *Soren/McAdam/Bartells* (2000) 86 Cal.App.4th 303, 309-310 (emphasis added). *See also Hauter*
4 *v. Zogarts* (1975) 14 Cal.3d 104, 111; *Consumer Advocates v. Echostar Satellite Corp.* (2003)
5 113 Cal.App.4th 1351, 1361 & n.3. If the statement of safety is merely a statement of opinion –
6 mere “puffing” – a defendant cannot be held liable. *Hauter v. Zogarts*, 14 Cal.3d at 111.
7 “Puffery” or general assertions of product superiority are non-actionable. *See, e.g., Consumer*
8 *Advocates*, 113 Cal.App.4th at 1361.

10 Here, Defendant USC argues that the FAC is replete with allegations of the “quality” of
11 the MSW online program which are nonactionable puffery. Defendant also argue there are
12 general, subjective statements alleged which constitute non-actionable puffery.
13

14 With respect to the first area – the “quality” of the MSW online program – the FAC
15 alleges that Defendant touted the “quality” of its MSW online program or its “rigorous
16 curriculum.” While conceptually the “quality” of the MSW online program and the alleged
17 “rigorous curriculum” lend themselves to potential puffery, “such use of the motion to strike
18 should be cautious and sparing. [Courts] have no intention of creating a procedural ‘line item
19 veto’ for the civil defendant.” *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.
20 “However, properly used and in the appropriate case, a motion to strike may lie for purposes
21 discussed [in *PH II*].” *Id.*

23 Here, the Court determines that it is premature to strike the phrases as presented in
24 Defendant’s motion. As this case is still only at the pleading stage, discovery will reveal the
25 precise nature of any factual misrepresentation. Defendant will, at the appropriate time, be
26 permitted to seek summary adjudication as to those alleged misrepresentations which they argue
27 are nonactionable puffery. At present, though, the Court must take a broad view of the
28

1 allegations, and read them in context with the pleading as a whole. Therefore, the motion to
2 strike is denied at this time with respect to the alleged quality of the MSW online program. In
3 denying the motion, though, the Court wishes to clarify that it does not pass judgment on the
4 viability of any specific statement made by Defendant in connection with the MSW online
5 program as puffery or an actionable misrepresentation.
6

7 With respect to the “educational malpractice” doctrine, the Court discusses this concept
8 in connection with its analysis of the demurrer. The Court reiterates that Plaintiffs have alleged
9 that Defendant’s online MSW program had different curriculum, different instructors, different
10 field placements, and different student advisors.⁷² At this time, the Court finds it is premature to
11 strike those provisions of the FAC which Defendant argues are implicated by the educational
12 malpractice doctrine. Once again, the Court makes no finding as to whether, in fact, the
13 educational malpractice doctrine bars the specific statements allegedly made by Defendant in
14 marketing the online MSW program.
15

16 **2. Veteran Status**

17 The Court determines the motion to strike is well-taken as to the veteran status
18 allegations. There is no allegation that any of the named Plaintiffs served as veterans, or were
19 intentionally discriminated against due to veteran status under the Unruh Act. The graphic
20 referenced at ¶132 does not, by itself, stand as a basis for Plaintiffs’ standing to bring an Unruh
21 Act claim on behalf of veterans. The individual Plaintiffs were not aggrieved by the alleged
22 discrimination against veterans within the meaning of §52(c) of the Unruh Act. The motion to
23 strike is therefore granted as to the allegations regarding veteran status, without leave to amend.
24
25
26
27
28

⁷² FAC ¶¶2, 6-7, 14, 30, 36, 38-40, 42, 44, 50, 52, 55-56, 60-85, 90-91, and 103-107.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

RULING AND ORDER

For these reasons, the demurrer is sustained, with thirty (30) days' leave to amend, as to the Unruh Act claim premised on alleged racial discrimination. The demurrer is overruled with respect to the UCL and FAL claims of Plaintiffs Luna and Campos. The demurrer is sustained, without leave to amend, as to the unjust enrichment claim.

The motion to strike is denied as to the alleged marketing allegations, and is granted, without leave to amend, with respect to the allegations of veteran status.

Plaintiffs shall have thirty (30) days leave to amend. Given the Court's order granting leave to amend the Unruh Act claim, the class discovery stay will remain in place as to that claim only. The prior stay on class discovery as to all remaining claims at issue is lifted, and class discovery as to the at-issue claims may proceed.

Dated: April 2, 2024

KENNETH R. FREEMAN

Kenneth Freeman
Judge of the Superior Court