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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 IOLA FAVELL, SUE ZARNOWSKI,  
19 MARIAH CUMMINGS, and AHMAD  
MURTADA, *on behalf of themselves and all*  
20 *others similarly situated,*

21 Plaintiffs,

22 v.

23 UNIVERSITY OF SOUTHERN  
24 CALIFORNIA and 2U, INC.,

25 Defendants.  
26  
27  
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Case No. 2:23-cv-00846-GW-MAR

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

1 Plaintiffs Iola Favell, Sue Zarnowski, Ahmad Murtada, and Mariah Cummings  
2 (“Plaintiffs”), on behalf of themselves and all others similarly situated, bring this Class  
3 Action Complaint against Defendants University of Southern California (“USC”) and  
4 2U, Inc. (“2U”) (collectively, “Defendants”). Plaintiffs, by and through their counsel,  
5 make the following allegations pursuant to the investigation of their counsel and based  
6 upon information and belief, except as to the allegations specifically pertaining to  
7 themselves, which are based on personal knowledge.

## 8 INTRODUCTION

9 1. In March 2022, USC made headlines for its decision to withdraw its  
10 Rossier School of Education (“USC Rossier”) from the U.S. News & World Report’s  
11 (“US News”) ranking of graduate schools of education. The US News annual ranking  
12 of educational institutions is the single most referenced source of school prestige and  
13 academic standing that prospective students consult when selecting a school. Through  
14 a single number on a list, the rankings are intended to convey each university’s  
15 selectivity, reputation, and academic quality. The rankings play a critical role in  
16 prospective students’ academic decisions, making USC’s recent decision to withdraw  
17 from these rankings shocking. Even more shocking was the reason why: an internal  
18 investigation by USC’s counsel Jones Day revealed that USC had submitted erroneous  
19 data to inflate USC Rossier’s rankings for years.

20 2. This Complaint centers on USC’s rankings fraud, and in particular, the  
21 way in which USC and its partner and for-profit, publicly-traded corporation,  
22 Defendant 2U aggressively advertised USC Rossier’s rankings to grow enrollment in  
23 the school’s online programs. Defendant 2U offers technology platforms for the  
24 provision of online programs and uses the name and branding of schools like USC,  
25 which can charge students top dollar. USC hired 2U not only to provide technical  
26 support, but to run the advertising and recruiting for those online programs. The two  
27 agreed to split the profits, with 2U, the recruiter, receiving an estimated 60% of all  
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1 tuition revenues, while USC, the ostensible educator, received only 40%. This  
2 arrangement may be illegal; under most circumstances, federal regulations prohibit  
3 institutions from compensating recruiters based on enrollment, in recognition of the  
4 way financial motivations can incentivize fraudulent, negligent, or otherwise unfair  
5 recruiting practices.

6         3. When 2U first began operations in 2008, online schools were not widely  
7 trusted by the public, and certainly not seen as the province of elite institutions. In  
8 opening an online program with a for-profit partner, USC risked reputational damage  
9 to USC Rossier and the institution as a whole. As for 2U, USC was its first and only  
10 customer at the time, and 2U's ability to attract other partners depended on its ability  
11 to build trust in USC's online degrees. When the relationship was forged, USC Rossier  
12 ranked #38 in the US News annual "Best Graduate Schools of Education" ("Best  
13 Education Schools"), and Defendants knew that preserving or bettering that ranking  
14 was key to growing USC Rossier's online program while furthering their reputational  
15 and financial interests.

16         4. Around the time USC and 2U finalized their contract, USC submitted its  
17 first batch of altered data to US News. Specifically, it cherry-picked amongst USC  
18 Rossier's admissions selectivity data, capturing only a small percentage of its in-person  
19 doctoral students for its submission, a game it would play until it was caught in 2021.  
20 USC's fraud paid off: between 2008 and 2009, USC Rossier vaulted from #38 to #22.  
21 In the years that followed, USC Rossier jumped even further, consistently landing in  
22 the top 20, ultimately soaring to an inflated high of #10 in 2018—all while USC  
23 Rossier's online offerings and enrollment expanded.

24         5. As time went on, public trust in online programs grew, but so did the  
25 financial stakes, as Defendants faced increased competition in the online space from  
26 other schools and online program management companies ("OPMs"). Competition  
27 had grown so fierce that in 2013, US News rolled out its first edition of a specialized  
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1 ranking of best *online* education graduate programs—and USC Rossier only ranked #44.  
 2 In 2014, when USC was one of just five clients and its largest revenue source, USC  
 3 Rossier did not participate in those rankings. 2U went public that same year, and there  
 4 is no public record of the school’s participation in that less publicized specialty ranking  
 5 since. Instead, Defendants relied exclusively on USC’s doctored ranking in the better-  
 6 known Best Education Schools ranking going forward—both in marketing and in 2U’s  
 7 revenue projections. As 2U told investors, “***any decline in the ranking of one of our***  
 8 ***clients’ programs or other impairment of their reputation, could have a***  
 9 ***disproportionate effect on our business.***” It emphasized that student enrollment in  
 10 its online programs at USC, and therefore 2U’s revenue, would drop if there was “[a]ny  
 11 ***decline in USC’s reputation.***”

12 6. To reach more students, in 2015, 2U and USC rolled out an online  
 13 doctorate degree. At that time, USC Rossier’s rankings—and 2U’s revenues—had been  
 14 kept afloat because the rankings data submitted had excluded most of its doctoral  
 15 students. With the then-dean admitting that the inclusion of data on the hundreds of  
 16 new online doctoral students would cause USC Rossier to “***drop like a rock in the***  
 17 ***rankings,***” there would be no turning back. Ultimately, USC never submitted ***any***  
 18 selectivity data from Rossier’s online EdD program, nor any other online program, to  
 19 the Best Education Schools ranking, as these programs standing alone would have been  
 20 poorly ranked in comparison to the in-person programs.

21 7. For years, USC and 2U leveraged USC Rossier’s new ranking by making  
 22 the rankings a centerpiece in advertising and recruiting. Indeed, the rankings are so  
 23 important to a student’s academic choices that one study found that a school’s increase  
 24 in the US News rankings by only one point (e.g., from #19 to #18) on average raises  
 25 the number of applicants to the school by 0.9%. Because USC did not meaningfully  
 26 restrict the number of people that could be enrolled in the online programs, USC  
 27 Rossier’s jump in its US News rankings from #38 to #10 would have translated to a  
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1 25% increase in applicants with a corresponding increase in enrollment and revenue,  
2 and thus, Defendants had every incentive to advertise the ranking far and wide. And  
3 2U had every incentive to ignore the signs that the ranking was manipulated. As the  
4 years went by, the rankings were increasingly promoted on the USC Rossier's  
5 homepage, as well as on pages of the website relating to the school's online degrees. To  
6 reinforce the message with prospective students, 2U spent millions on search term  
7 optimization and broad-based online advertising campaigns that targeted prospective  
8 students. And both Defendants touted the ranking via social media posts and press  
9 releases, ensuring the message reached all prospective online students multiple times.

10 8. But those applicants interested in the online programs were never told  
11 that the ranking relied on data measuring only a select portion of USC Rossier's in-  
12 person degree programs. This was by design: 2U's contract with USC required USC to  
13 promote the online degrees in a manner comparable to the promotion of the in-person  
14 degrees and included other language to ensure consistent marketing. While 2U denies  
15 knowledge of USC's fraud during the time it was promoting the rankings, the generous  
16 tuition sharing arrangement provided every incentive for 2U to grow the program at a  
17 rate that would alter its selectivity—a key factor in the rankings.

18 9. Knowing that USC Rossier's ranking would suffer, following the  
19 uncovering of USC's US News rankings fraud, USC Rossier withdrew itself from that  
20 year's edition of the Best Education Schools ranking rather than reveal its true selectivity  
21 numbers. And on December 15, 2022, the dean of USC Rossier stated that the school  
22 had voluntarily decided to no longer participate in future editions of the rankings.  
23 Rather than accept the financial and reputational ruin that would follow from the  
24 submission of accurate data, particularly about its online students, the truth remains  
25 hidden.

26 10. USC's ranking fraud paid off, and students paid the price. Since USC's  
27 manipulation of the data supplied to US News, USC Rossier's ranking has stayed  
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comfortably in the top 20 – out of hundreds of education schools. While, at the outset, USC’s fraud may have been contained to a small number of students attending in person programs, once it was combined with its legally dubious tuition sharing arrangement with 2U, it exploded. 2U’s online platform, sophisticated recruitment strategies, and huge profit incentives caused USC’s fraud to spill off the campus, reaching hundreds more students all over the country. Many of the students were or wanted to be teachers, and the inflated rankings and powerful advertising caused them to enroll at the school, and pay its steep price tag. Indeed, USC Rossier is one of the most expensive education schools in the country, and its students paid a significant premium for the privilege of attending what Defendants caused them to believe was a highly ranked graduate program. All the while, 2U catapulted from one of the first start-ups of its kind to a \$2 billion-dollar, publicly traded education industry juggernaut. Boasting of the profits it had unfairly earned, 2U’s CEO stated in 2019: “*The partnership with USC Rossier built the entire company.*”

11. Plaintiffs bring this lawsuit on behalf of themselves and the class of similarly situated USC Rossier students who paid tuition that they would not have otherwise paid (or would have paid substantially less), had they not been drawn in by USC Rossier’s fraudulently obtained US News ranking. USC Rossier’s misleading, years-long efforts to boost USC Rossier’s US News ranking and Defendants’ related efforts to disseminate that ranking via a long-term false advertising campaign, and violated California’s Consumer Legal Remedies Act (“CLRA”) (Cal. Civ. Code §§ 1750 *et seq.*).

### **THE PARTIES**

12. Plaintiff Iola Favell is a resident of Los Angeles, California.

13. Plaintiff Sue Zarnowski is a resident of West Haven, Connecticut.

14. Plaintiff Mariah Cummings is a resident of New York City, but until 2020, resided in San Mateo, California.





of Civ. Proc. § 410.10, Bus. & Prof. Code § 17204, Cal. Civ. Code § 1780(c), and the California Constitution. After filing, Defendants removed to this Court pursuant to the Class Action Fairness Act, and after removal, admitted that this Court lacked equitable jurisdiction over the claims and sought their dismissal. In light of questions regarding the federal court's equitable jurisdiction over the equitable claims asserted in the original complaint filed in this action, on March 29, 2023, Plaintiffs filed an amended complaint seeking only damages pursuant to Cal. Civ. Code § 1782(a), while dismissing the equitable causes of action. Those equitable causes of action are pled in a second filed action, *Favell, et. al., v. University of Southern California, et. al.*, Case No. 23STCV06899, which was subsequently removed by Defendants to the Central District of California, Case No. 2:23-cv-03389 ("Second Class Action"), and related to this Action.

### **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

#### **A. At the Heart of USC and 2U's Relationship is a Problematic Agreement that Provides Financial Incentives to 2U to Aggressively Recruit Students to USC Rossier's Online Graduate Programs**

23. USC is a well-known, private non-profit university that has historically offered a vast array of in-person graduate and undergraduate degree programs, including through its school of education, USC Rossier.

24. 2U is a for-profit, online program management ("OPM") corporation that began operating as an education technology start-up in 2008, primarily to service USC, its first customer and, to this day, its largest client. In or around 2008, USC entered into a joint venture with 2U to develop the first of USC Rossier's online programs, a Master of Arts in Teaching ("MAT"), which went live in June of 2009.<sup>2</sup>

25. OPMs like 2U contract with universities to create and oversee online courses and programs and are typically engaged to set up technology platforms for the

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<sup>2</sup> *USC Rossier, 2tor Inc. Offer Online Degree*, USC News (Sept. 15, 2008), [news.usc.edu/15353/USC-Rossier-2tor-Inc-Offer-Online-Degree/](https://news.usc.edu/15353/USC-Rossier-2tor-Inc-Offer-Online-Degree/).



1 online classroom, recruit students for the program, and help develop the curriculum.  
 2 2U and other OPMs have been criticized for their tuition-sharing arrangements.<sup>3</sup> These  
 3 arrangements commit an often significant and ongoing percentage of student tuition  
 4 revenue to the OPM, potentially in violation of the Incentive Compensation Ban in the  
 5 Higher Education Act, which prohibits institutions participating in federal student loan  
 6 programs from providing “incentive payment based directly or indirectly on success in  
 7 securing enrollments or financial aid to any persons or entities engaged in any student  
 8 recruiting or admission activities.” 20 U.S.C. § 1094(a)(20). The law was passed to  
 9 protect students from recruiting practices and ballooning student loan debt that serve  
 10 the financial interests of the recruiter at the expense of the students’ educational needs.  
 11 Institutions participating in the federal student loan program must warrant to the  
 12 Department of Education that they are in compliance with the Incentive Compensation  
 13 Ban in order to be eligible to receive federal student loan money (i.e., enroll students  
 14 who pay for the program with federal student loans).

15 26. As discussed herein, USC and 2U’s tuition-sharing model resulted in the  
 16 persistent, unfair, and oppressive marketing and recruitment practices that the Incentive  
 17 Compensation Ban is designed to stop.

18 **1. USC Financially Incentivized Recruitment When It**  
 19 **Agreed to Pay 2U a Substantial Portion of Tuition for**  
 20 **the Students Recruited for Online Degrees at USC**  
 21 **Rossier.**

22 27. On October 29, 2008, following Defendants’ development and  
 23 announcement of USC Rossier’s first online Master of Arts in Teaching program, and  
 24 shortly before the program went live, Defendants entered into a services contract.<sup>4</sup> A

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25 <sup>3</sup> Letter from United States Senators Elizabeth Warren, Sherrod Brown, and Tina Smith to OPM  
 26 Executives (January 14, 2022),  
[https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20\(OPMs\).pdf](https://www.warren.senate.gov/imo/media/doc/2022.01.14%20Follow%20up%20letter%20to%20Online%20Program%20Managers%20(OPMs).pdf)

27 <sup>4</sup> Attached as Exhibit A is a public version of the Services Agreement, dated Oct. 29, 2008, as  
 28 retrieved from the website of the Securities Exchange Commission, at

version of this contract is still in effect today, though it was amended on at least one occasion, on or around 2015, when USC and 2U began offering online Doctor of Education degrees (“EdDs”). (The 2009 contract, and any amendments thereto are collectively referred to herein as the “2U/Rossier Services Contract” or “Contract.”) The Contract will remain in effect through at least 2030.<sup>5</sup> This Contract has many of the hallmarks of the problematic business practices for which OPM partnerships have been criticized.

28. For example, under the terms of the 2U/Rossier Services Contract, 2U receives repayment for advancements it made to build the program, as well as an undisclosed percentage of tuition revenue from students enrolled in USC Rossier’s online degree programs, and receives a higher percentage of tuition revenue if a certain enrollment threshold is met.<sup>6</sup> As 2U explained:

Under our contracts with each of Rossier and the School of Social Work, we are entitled to a specified percentage of the net program proceeds. With Rossier, we are eligible for an increased percentage of net program proceeds if the net program proceeds exceed a specified level. We advanced funds to Rossier to help fund the startup of the MAT program, and these advanced amounts were subject to recoupment against portions of the net program proceeds under specified conditions.

29. 2U receives tuition revenue “for virtually all the degree programs” it supports.<sup>7</sup> According to a July 6, 2022, report in the Wall Street Journal, “Universities

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[www.sec.gov/Archives/edgar/data/1459417/000104746914001172/a2218267zex-10\\_1.htm](https://www.sec.gov/Archives/edgar/data/1459417/000104746914001172/a2218267zex-10_1.htm). A number of terms were redacted by 2U prior to its submission of the document to the SEC and remain in Defendants’ exclusive control.

<sup>5</sup> See 2U, Inc., *2U, Inc. Reports First Quarter 2016 Financial Results*, PR Newswire (May 5, 2016), <https://www.prnewswire.com/news-releases/2u-inc-reports-first-quarter-2016-financial-results-300263949.html> (2U press release announcing that its contract with USC Rossier was extended through 2030).

<sup>6</sup> 2U, Inc., Prospectus (Form 424(b)4) (March 27, 2014), at 94, <https://www.sec.gov/Archives/edgar/data/1459417/000104746914003136/a2219368z424b4.htm> (“Prospectus”); see also Ex. A at § 3(C).

<sup>7</sup> Letter from 2U, Inc. CEO Christopher Paucek to United States Senators Sherrod Brown, Tina Smith, and Elizabeth Warren (Jan. 28, 2022), at 2, [ddfoqzqsu0zvp.cloudfront.net/media/documents/FINAL\\_2U\\_Response\\_to\\_Senators\\_Brown\\_Smith\\_Warren\\_2022\\_luDAKtT.pdf](https://ddfoqzqsu0zvp.cloudfront.net/media/documents/FINAL_2U_Response_to_Senators_Brown_Smith_Warren_2022_luDAKtT.pdf).

frequently provide 2U with *60%* of the tuition for online degree programs.”<sup>8</sup> The percentage 2U receives from USC Rossier is likely similarly high, in keeping with 2U’s arrangements with other graduate degree programs.

30. The arrangement was suspect from the get-go as a tuition-sharing agreement of this nature is a straightforward violation of that Incentive Compensation Ban. As discussed in the next section, 2U, like many OPMs, relies on the legally dubious “bundled services exception” to the Ban. But even if Defendants’ arrangement could satisfy the criteria needed for that narrow exception to apply, tuition sharing between OPMs and schools leads to bad outcomes for students.

31. On December 3, 2022, a group of U.S. Senators and House members called on the Department of Education to take a critical look at OPMs revenue-sharing practices generally. Among the examples of fraudulent and problematic conduct they identified was a recent scandal at the online division of USC’s School of Social Work, also run by 2U.<sup>9</sup> Among other problems, the Wall Street Journal reported that the program “had one of the worst combinations of debt and earnings” compared to similar master’s degree programs.<sup>10</sup>

32. Even 2U’s founder, who left the company in 2012, now speaks critically of tuition-sharing arrangements, stating that such arrangements “blur the lines

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<sup>8</sup> Lisa Bannon & Rebecca Smith, *That Fancy University Course? It Might Actually Come From an Education Company*, The Wall Street Journal (July 6, 2022), <https://www.wsj.com/articles/that-fancy-university-course-it-might-actually-come-from-an-education-company-11657126489> (emphasis added).

<sup>9</sup> See generally, Robert C. Scott, et al., *Letter to Miguel Cardona, Secretary of the Department of Education*, House Committee on Education and Labor (Dec. 2, 2022), n. 13, [https://edlabor.house.gov/imo/media/doc/scott\\_deLauro\\_murray\\_warren\\_smith\\_letter\\_to\\_ed\\_re\\_online\\_program\\_managers.pdf](https://edlabor.house.gov/imo/media/doc/scott_deLauro_murray_warren_smith_letter_to_ed_re_online_program_managers.pdf) (citing Lisa Bannon & Andrea Fuller, *USC Pushed a \$115,000 Online Degree. Graduates Got Low Salaries, Huge Debts.*, The Wall Street Journal (Nov. 9, 2021), <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900>).

<sup>10</sup> Bannon & Fuller, *supra* n. 9.

1 separating what's best for the student and what's best for the recruiter.”<sup>11</sup> And other  
 2 universities are finding that incentive compensation does not work. In December 2022,  
 3 the president of the online division of the University of Arizona explained that the  
 4 school decided to terminate its relationship with an OPM because the OPM's financial  
 5 motives were at odds with students' interests. Specifically, he stated:

6 Like most other OPMs, its operations focused on generating leads and  
 7 recruiting students — more so than retention and student success. In  
 8 exchange for its services, Zovio took a cut of UAGC's revenue. We found  
 we had irreconcilable differences because this approach was not student-  
 centered.<sup>12</sup>

9 33. With millions of dollars in federal student aid going to online degree  
 10 programs every year, educational industry experts as well as regulators have expressed  
 11 concern that nonprofit educational institutions like USC will become reliant on OPM  
 12 partnerships to generate revenue and that profit motivations will compromise student  
 13 education, while driving up student debt loads.<sup>13</sup> To that point, 2U included in the  
 14 2U/Rossier Services Contract, a provision that has been referred to as a “poison tail”;  
 15 even if USC Rossier provides 2U with the agreed-upon one-year written notice of  
 16 termination, it must continue paying 2U a share of revenue for up to three additional  
 17 years after termination (or until all currently enrolled online students complete their  
 18 degrees). *See* Ex. A, at 5(E)(ii)-(iii). Without early termination, USC Rossier's current  
 19 Contract with 2U will not expire until **2030**. 2U's CEO has bragged to the media that  
 20 the company's contracts with its partner universities are “non-cancelable.”<sup>14</sup>

21  
 22 <sup>11</sup> John Katzman, *Opinion: Why are colleges and universities handing over more than half of their tuition to online*  
 23 *program managers?*, The Hechinger Report (Dec. 26, 2016), [https://hechingerreport.org/colleges-](https://hechingerreport.org/colleges-universities-handing-half-tuition-online-program-managers)  
[universities-handing-half-tuition-online-program-managers](https://hechingerreport.org/colleges-universities-handing-half-tuition-online-program-managers).

24 <sup>12</sup> Paul Pastorek, *President Speaks: To put students first, colleges need to rethink the OPM model*, Higher Ed  
 25 *Drive* (Dec. 12, 2022), [https://www.highereddive.com/news/president-speaks-university-arizona-](https://www.highereddive.com/news/president-speaks-university-arizona-global-campus-uagc-cut-ties-opm/638420)  
[global-campus-uagc-cut-ties-opm/638420](https://www.highereddive.com/news/president-speaks-university-arizona-global-campus-uagc-cut-ties-opm/638420).

26 <sup>13</sup> *See* n. 3, 9, *supra*.

27 <sup>14</sup> Harriet Ryan & Matt Hamilton, *Must Reads: Online degrees made USC the world's biggest social work*  
 28 *school. Then things went terribly wrong*, Los Angeles Times (June 6, 2019),  
<https://www.latimes.com/local/lanow/la-me-usc-social-work-20190606-story.html>.

## 2. Defendants' Contract Lacked Important Safeguards to Prevent Aggressive, Deceptive Recruiting.

34. Notwithstanding the Incentive Compensation Ban, in 2011, the Department of Education published a non-binding Dear Colleague Letter (“DCL”) to advise that the incentive compensation ban might not apply to entities who provide both recruiting and services such as “marketing, counseling, and support services.”<sup>15</sup> The Department explained that for this bundled services exception to apply, the school had to “provide[] the actual teaching and educational services,” and set enrollment numbers, stating:

When the institution determines the number of enrollments and hires an unaffiliated third party to provide bundled services that include recruitment, payment based on the amount of tuition generated does not incentivize the recruiting as it does when the recruiter is determining the enrollment numbers and there is essentially no limitation on enrollment.<sup>16</sup>

35. There is no public evidence that USC ever placed limitations on 2U’s recruitment numbers, and their arrangement incentivized the parties to act otherwise. While Defendants’ contract states that enrollment shall be limited to 50 students for the “initial semester, in order to give both parties the opportunity to further develop the Program,” the contract does not identify any limit to the number of students that can be enrolled in the Online Programs after that.<sup>17</sup> Rather, as set forth in Paragraphs 37 and 40, ***the contract pays 2U a higher percentage if it recruits more students.***

36. While the contract gives USC the right and discretion to set unspecified admissions standards and determine which qualified students shall be accepted, the 2U/Rossier Services Contract gave 2U outsized influence on that process. In particular, it required USC and 2U to “cooperate to make the admissions process and the application of Admissions Standards streamlined, transparent and clear to enable [2U]

<sup>15</sup> See March 17, 2011 Letter from the U.S. Department of Education, Office of Postsecondary Education, GEN-11-05, at 11 (available at <https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf>).

<sup>16</sup> *Id.*

<sup>17</sup> Ex. A § 5(A).



1 to target its promotional efforts to students likely to be accepted,” and not merely those  
2 who were qualified.<sup>18</sup>

3 37. The contract also had other terms that aligned USC’s interests in  
4 expanding enrollment with 2U’s. Because USC was also responsible for expenses  
5 associated with the offering of online programs, and 2U was taking an enormous share  
6 of tuition, capping enrollment would not serve its financial interests. Moreover, 2U  
7 “advanced funds to Rossier to help fund the startup of the MAT program, and these  
8 advanced amounts were subject to recoupment against portions of the net program  
9 proceeds under specified conditions.”<sup>19</sup> The higher the enrollment revenue, the faster  
10 USC’s debt to 2U would be reduced.

11 38. Even if USC were to restrict enrollment or raise admissions standards, 2U  
12 retained leverage. As it explained to investors, while 2U typically agreed not to contract  
13 with another institution to offer a competing degree program, that agreement “becomes  
14 inapplicable if a client either refuses to scale the program to accommodate all students  
15 qualifying for admission into the program, or raises the program admissions standards  
16 above those at the time of contract execution.”<sup>20</sup> Were USC to try to restrict admissions,  
17 it risked 2U initiating a competing program elsewhere.

18 39. Because USC did not set strict and meaningful enrollment limits, any  
19 unfair, fraudulent, or questionable advertising message it endorsed carried an especially  
20 dangerous risk of harming an increasingly larger number of students, particularly  
21 because online programs do not have the same barriers to enrollment that in-person  
22 programs do. Online programs do not have physical space limitations restricting the  
23 number of students who are able to attend any given class or program, and enrollment  
24 can expand without the same corresponding increase in fixed costs. While some online

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26 <sup>18</sup> *Id.* § 1(B), 2(A).

27 <sup>19</sup> Prospectus at 94. *See also* Ex. A, § 2(C) (iii) (redacted schedule of advancement of funds), §2(D)(iv)  
(redacted schedule of repayment of funds).

28 <sup>20</sup> *Id.* at 94.



1 classes were live, at times, USC and 2U also used pre-recorded or other asynchronous  
 2 instructions, and thus, money could be saved on faculty costs and teaching time. And  
 3 interest in the programs would not be limited to only those who wanted to live in Los  
 4 Angeles.

5 40. For 2U, a publicly traded company that is obligated to maximize returns  
 6 for its shareholders, driving up enrollment is critically important. As 2U's CEO put it  
 7 in 2018:

8 [G]enerating enrollments from an existing thing is good, but it doesn't pay  
 9 long-term. You have to be able to continue to deliver on it, year after year.  
 10 And if you got 100 students in a program, it's a lot harder to have it be  
 150, and then have it be 200, and have it be 250, so we have to continue  
 to innovate. We [2U] do that.<sup>21</sup>

11 In short, 2U's primary mission is not to educate students, but to grow its business by  
 12 continuously profiting from an increasing number of students. 2U has grown into a \$2  
 13 billion company by doing so.

14 41. It was no surprise then that 2U would use aggressive recruiting and that  
 15 USC would permit it. 2U's application advisors persistently called student applicants,  
 16 sometimes as often as every other day, to pressure applicants to enroll in USC Rossier.  
 17 They were authorized to waive application fees to remove barriers to capture and ensure  
 18 enrollment, resulting in students paying to attend the costly online degree programs.

19 42. As hundreds of students enroll every year, 2U's revenues from  
 20 Defendants' partnership are substantial. Indeed, since Defendants' partnership began,  
 21 USC has charged between \$38,000 and \$148,000 for USC Rossier's online degrees. The  
 22 popular online Master of Arts in Teaching degree has historically cost upwards of  
 23 \$50,000; many of the online EdD programs cost more than \$100,000. Because of the  
 24 high cost of these programs, students by and large rely heavily on federal student loan  
 25 money to pay for some or all of these costs. Defendants know that student eligibility  
 26 \_\_\_\_\_

27 <sup>21</sup> 2U Q4 2018 Earnings Call Transcript, The Motley Fool (April 15, 2019),  
 28 <https://www.fool.com/earnings/call-transcripts/2019/02/26/2u-twou-q4-2018-earnings-conference-call-transcrip.aspx>

1 for these loans turns on USC's compliance with the Incentive Compensation Ban, and  
 2 that they would be unable to enroll as many students, or do so at such a high price tag,  
 3 were it not for the availability of these loans.

4 **3. To Ensure the Success of 2U's Online Programs,**  
 5 **Defendants Agree to Position Them as Equivalent to**  
 6 **Traditional In-Person Education.**

7 43. At the time Defendants' partnership began in 2008, public trust in online  
 8 educational programs was low. The most well-known online degree programs were  
 9 those associated with for-profit schools, several of whom were defending lawsuits by  
 10 regulators and consumers over their fraudulent tactics. With the launch of USC  
 11 Rossier's online programs and the outsourcing of key aspects of those programs to 2U,  
 12 USC took the risk that by associating itself with online degree offerings, its reputation  
 13 and ranking would suffer. And 2U's revenue and growth model hinged on its ability to  
 14 change public perceptions of online programs. In describing its risks to investors, 2U  
 15 stated in 2014 that, "Students may be reluctant to enroll in online programs for fear  
 16 that the learning experience may be substandard, that employers may be averse to hiring  
 17 students who received their education online or that organizations granting professional  
 18 licenses or certifications may be reluctant to grant them based on degrees earned  
 19 through online education."<sup>22</sup>

20 44. 2U accordingly sought out elite institutions that could lend credibility to  
 21 online degrees and be marketed in a way that would be attractive to students. And to  
 22 this end, USC did not want its reputation harmed by this same distrust of online degrees.  
 23 Accordingly, Defendants incorporated into the 2U/Rossier Services Contract a  
 24 provision that USC Rossier's online programs would be marketed as consistent with  
 25 the in-person programs, without any carve out for situations where doing so would be  
 26 misleading. Specifically, in Section 2(A) of their Contract, labeled "Recruitment,"  
 27 Defendants agree these online programs "shall be branded as 'USC/Rossier,'" and USC

28 <sup>22</sup> Prospectus at 15.

1 commits to “promote the [online MAT] Program . . . in a manner comparable to the  
2 promotion of [USC] Rossier’s in-classroom MAT program.”

3 45. The Contract also contains other provisions to ensure the online  
4 programs were seen as the same as the rest of USC Rossier. USC agreed to permit 2U  
5 to use USC’s trademarks and other branding elements to facilitate 2U’s “marketing and  
6 promotion” efforts.<sup>23</sup> While USC retained the right to approve all marketing materials,  
7 USC was required to “consult with 2tor in the development of additional Promotion  
8 Strategies.”<sup>24</sup> And USC broadly delegated to 2U responsibilities relating to “recruiting  
9 students into the [MAT] Program” at USC Rossier,<sup>25</sup> and creating and executing  
10 “marketing and promotional strategies” to attract students to the online programs.<sup>26</sup>

11 46. In accordance with the contract, since the beginning of their relationship,  
12 Defendants have marketed USC Rossier’s online degrees to prospective students as  
13 equivalent to USC Rossier’s in-person degrees, which are exclusively delivered and  
14 administered by the non-profit USC Rossier.

15 47. For example, during the class period, USC maintained the main Rossier  
16 website, rossier.usc.edu (“Rossier Website”) and Defendants shared responsibility for  
17 managing the pages that were specific to the online degrees, located at  
18 rossieronline.usc.edu (“Rossier Online Webpages”). But the Rossier Website advertised  
19 the online programs side by side with the in-person programs, and was designed to  
20 allow seamless navigation to the online pages to obtain more information about those  
21 specific degrees. “USC Rossier” was featured prominently on all Rossier Online  
22 Webpages, and reference to 2U generally only appeared in fine print.

23 <sup>23</sup> See Privacy Policy, USC Rossier Online (April 29, 2021), § 4(A),  
24 [www.rossieronline.usc.edu/legal/privacy-policy/](http://www.rossieronline.usc.edu/legal/privacy-policy/).

25 <sup>24</sup> Ex. A, § (2)(A)

26 <sup>25</sup> *Id.* § 1(A).

27 <sup>26</sup> *Id.*

48. Defendants also used “application advisors,” who were supposed to help students through the application process, but in actuality were employed to drive up enrollment and revenue for Defendants. Although these application advisors were employed by 2U, not USC Rossier, they used rossieronline.edu email addresses and their email signatures did not disclose any affiliation with 2U, but rather falsely identified them with the USC Rossier Office of Admission and Scholarship.

**B. Throughout the Class Period, USC Engaged in a Campaign to Fraudulently Improve USC Rossier’s Standing in the US News Rankings to Elevate the Reputation of Online Programs.**

49. USC looked to market the in-person and online degrees in a unified, comparable manner, and found a solution in the US News rankings. When USC and 2U began exploring the possibility of working together, USC Rossier was ranked as the 38th best graduate education program in US News. What followed next was a series of actions that would ultimately result in hundreds of students being harmed. In particular, USC manipulated and artificially inflated USC Rossier’s rankings to recruit prospective students into online degree programs, for which they would charge top dollar. As Defendants expanded the online programs, the differences between the in-person and online programs grew, but Defendants pushed harder to equate the two. USC omitted data on online students and Defendants held those rankings out as not just legitimate, but applicable to USC Rossier’s online students, when they were not. As a result, students paid tuition price premiums that they otherwise would not have.

50. Through the manipulation of data, USC Rossier would jump to #22 in the edition of the rankings published a few months after Defendants formed their Contract and just before 2U’s marketing would ramp up. This jump in the rankings did not happen by luck or stricter admissions criteria. USC’s rankings game was fraud, as revealed through an internal investigation conducted by USC’s outside counsel, the law firm Jones Day. Among other things, USC had manipulated its student selectivity data to cause its “doctoral acceptance rate” to plummet *from 50.7% in the 2009 edition to*

1 *only 10.5% in the 2010 edition.* The result was that USC Rossier was ranked in the  
 2 Top 20, out of hundreds of schools, for years.

3 51. Defendants used USC Rossier’s US News ranking as a centerpiece of their  
 4 efforts to drive students to the online degrees. To drive enrollment to the online  
 5 programs, USC consistently and knowingly submitted inaccurate, incomplete data to  
 6 US News to increase USC Rossier’s Best Education Schools ranking<sup>27</sup> Further, as  
 7 discussed in more detail in Section C, *infra*, USC and 2U spread that ranking to students  
 8 seeking online degrees, while USC continued to withhold data from those online  
 9 degrees that would have affected their rankings.

10 **1. The US News Annual School Rankings are Critically**  
 11 **Important to Schools for Marketing Purposes and for**  
**Students in Deciding Where to Attend**

12 52. The US News school rankings have “become the dominant source of  
 13 college rankings for schools, students, and news outlets.”<sup>28</sup> A 2013 study found that a  
 14 school’s increase in the US News rankings by only one point (e.g., from #19 to #18),  
 15 will raise the number of applicants to the school by 0.9%.<sup>29</sup> USC’s jump in its US News  
 16 rankings from #38 to a high of #10 over the time period of 2009–2021 would thus  
 17 translate to a 25% increase in applicants each year with a corresponding increase in  
 18 enrollment and revenue.

19 53. Because the Department of Education does not require universities to  
 20 publish data regarding the university’s individual graduate programs, prospective  
 21 graduate students are even more dependent on the US News rankings than prospective  
 22 undergraduate students.

23  
 24  
 25 <sup>27</sup> *Best Education Programs* (Ranked in 2008), U.S. News & World Report, [archived by the WayBack  
 26 Machine (Sept. 13, 2008), [web.archive.org/web/20080913195215/http://grad-schools.usnews.rankingsandreviews.com/grad/edu/search/page+2](http://web.archive.org/web/20080913195215/http://grad-schools.usnews.rankingsandreviews.com/grad/edu/search/page+2)].

27 <sup>28</sup> Michael Luca & Jonathan Smith, *Salience in Quality Disclosure: Evidence from the U.S. News College*  
*Rankings*, 22 J. Econ & Mgmt. Strategy 58, 59 (2013).

28 <sup>29</sup> *Id.* at 58.

54. Although participation in US News rankings is voluntary, USC and other schools have historically participated because they know how important the rankings are to academic decision-making. The updating of rankings each year has been described as “a marquee event in higher education.”<sup>30</sup> Schools, including USC Rossier, extensively promote their rankings in marketing materials and merchandise, and even develop “strategic plans around the rankings.”<sup>31</sup> Robert Morse, the chief data strategist for US News, who has run its annual rankings projects since 1989, stated that US News receives several phone calls *per week* from university administrators who ask “why they rank the way they do.”<sup>32</sup>

55. US News prepares its annual Best Education Schools rankings by soliciting and receiving certain data from graduate education schools. The publication’s rankings team develops surveys and accompanying instructions to ensure that schools are collecting data in a consistent way. The Best Education School rankings are published annually, typically in March, using data collected for the academic year that begins the prior fall. Each edition, however, uses the following calendar year in its title. For example, US News published the “2021” rankings in March of 2020 using data collected in the fall of 2019 for those students enrolled during the fall 2019 semester.<sup>33</sup>

56. As of the US News 2022 rankings, US News scored education graduate schools based on eleven criteria, each of which receive a raw score that is assigned a

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<sup>30</sup> Daniel de Vise, *U.S. News colleges rankings are denounced but not ignored*, Washington Post (Sept. 3, 2011), [https://www.washingtonpost.com/local/education/us-news-college-rankings-are-denounced-but-not-ignored/2011/09/02/gIQAn6BzzJ\\_story.html](https://www.washingtonpost.com/local/education/us-news-college-rankings-are-denounced-but-not-ignored/2011/09/02/gIQAn6BzzJ_story.html).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., *School of Education Rankings Data Reporting Investigation*, Jones Day (Apr. 27, 2022), at 4, [customsitesmedia.usc.edu/wp-content/uploads/sites/545/2022/04/29110617/Rossier-Rankings-Report-4.27.22.pdf](https://customsitesmedia.usc.edu/wp-content/uploads/sites/545/2022/04/29110617/Rossier-Rankings-Report-4.27.22.pdf) (“Jones Day Report”) (“In the fall of 2017, US News released its 2018 survey (for the 2019 rankings”).



different weight based on its perceived importance to determining academic quality.<sup>34</sup> In relevant part, “student selectivity”—designed to measure the incoming doctoral student body’s academic competitiveness—is weighted to 18% of the education school’s total score, and is comprised of three sub-criteria: (1) acceptance rate (6%); (2) mean GRE quantitative scores (6%); and (3) mean GRE verbal scores (6%).<sup>35</sup> US News’ annual rankings publish each school’s reported student selectivity metrics—including the school’s mean GRE scores and acceptance rate—alongside the school’s ranking.

57. Despite the focus of US News methodology on the selectivity of doctoral degree programs (as opposed to master’s degree programs), the Best Education Schools rankings are intended to be a measure of an institution’s overall graduate education offerings, and were used by Defendants to market to those seeking both master’s and doctorate degrees. Indeed, US News refers to the ranking as “the overall Best Education Schools ranking.” Moreover, the methodology does not distinguish between data relating to a school’s in-person and online degrees.<sup>36</sup>

## 2. For Years, USC Provided Inaccurate, Flawed Data to US News, Which Resulted in an Inflated Ranking for USC Rossier in the US News Best Education Schools Rankings.

58. In the 2009 edition of the US News Best Education Schools, published in the spring of 2008, USC Rossier was ranked #38. USC Rossier, like all schools that submitted data in connection with that edition, would have gathered data in the fall of 2007 for those students enrolled in the 2007-2008 academic year. By the fall of 2008, USC and 2U had entered into their first contract. In June of 2009, the first 50 students

<sup>34</sup> See, e.g., Jones Day Report at 31, App’x A (presentation created by USC Rossier demonstrating calculation of rankings using weighted criteria).

<sup>35</sup> Robert Morse et al., *Methodology: 2023 Best Education Schools Rankings*, U.S. News & World Report (Mar. 28, 2022), [www.usnews.com/education/best-graduate-schools/articles/education-schools-methodology](https://www.usnews.com/education/best-graduate-schools/articles/education-schools-methodology)

<sup>36</sup> E.g., Jones Day Report at 24, App’x A (2014 Best Education Schools Rankings, asking for information regarding “doctoral programs” without distinguishing between in-person and online programs); Morse, *Methodology: 2023 Best Education Schools Rankings* (Mar. 28, 2022).

1 began the pilot semester of the online Master of Arts in Education degree, and efforts  
 2 to enroll more students for future semesters were underway. In early 2009, US News  
 3 published the 2010 edition of the rankings (compiling data gathered in the fall of 2008),  
 4 and USC shot up to #22.<sup>37</sup> From that point on, USC consistently scored in the top 20.  
 5 USC Rossier's rankings in recent years were: #15 (2017 ed.); #10 (2018 ed.); #12 (2019  
 6 ed.); #12 (2020 ed.); #11 (2021 ed.).<sup>38</sup>

7 59. Jones Day's report, published in April 2022, revealed that the data USC  
 8 Rossier submitted to US News was plagued with problems. The most documented  
 9 problem was that, contrary to US News's instructions, USC only submitted data for  
 10 purposes of determining "student selectivity" from its highly selective in-person Ph.D.  
 11 program and not from its significantly less-competitive EdD programs, which initially  
 12 were offered only in-person, but after 2015, were also offered online.<sup>39</sup> The result was  
 13 that USC Rossier's "doctoral acceptance rate" dropped forty percentage points in one  
 14 year.<sup>40</sup> Following the uncovering of USC Rossier's rankings fraud in 2022, USC Rossier  
 15 withdrew from the rankings and is currently listed as "unranked."

16 60. While the precise methodology employed by US News may have changed  
 17 in certain respects over the years, throughout the period relevant to this action (2009  
 18 through 2021), US News always included student selectivity in its formula, and required  
 19 schools to submit data, including student selectivity data, regarding *all* of the school's  
 20 education doctoral programs.<sup>41</sup>

21 \_\_\_\_\_  
 22 <sup>37</sup> *News Alert: U.S. News & World Report Ranks USC Rossier School of Education among Top 25 in 2010*  
 23 *'America's Best Graduate Schools in Education,' among Top 10 in Private Universities*, (Apr. 23, 2009),  
 24 [web.archive.org/web/20090526024726/http://rossier.usc.edu/images/world\\_news\\_report.pdf](http://web.archive.org/web/20090526024726/http://rossier.usc.edu/images/world_news_report.pdf)

25 <sup>38</sup> US News publishes the annual editions of the rankings in the preceding calendar year. Thus, the  
 26 2021 edition was published in 2020.

27 <sup>39</sup> Jones Day Report at 1.

28 <sup>40</sup> *Id.* at 18.

<sup>41</sup> *Id.* (stating that the 2002 US News rankings included the "Ph.D and EdD acceptance rate" as a  
 criterion for ranking education schools)

61. Although Jones Day reported that it was unable to locate a complete set of records from the earlier years that the fraud was occurring, it “reviewed available US News rankings for education schools over the last two decades and observed that the School of Education’s doctoral acceptance rate dropped drastically between the 2009 and 2010 rankings (50.7% in 2009; 10.5% in 2010),” which explains USC Rossier’s dramatic 16-point rise in the rankings.<sup>42</sup>

62. In those first years of Defendants’ partnership, from 2009 through 2014, USC Rossier typically admitted approximately 15 PhD students a year, while admitting hundreds of EdD students. Because USC Rossier’s EdD programs are less selective, USC Rossier would have been lower ranked if data from those programs had been included in the school’s survey submissions to US News.

63. In 2012, personnel at USC Rossier challenged its decision to exclude EdD data, demonstrating that USC understood that the omitted data was required. In response, then-Dean of USC Rossier Karen Symms Gallagher stated: “[W]e would look terrible if they [US News] counted the EdDs the same as PhDs.”<sup>43</sup>

64. Shortly thereafter, in 2014, 2U went public. At the time, USC was one of only five 2U clients, and critical to its profitability, accounted for 69% of revenues.<sup>44</sup> As it told investors:

We expect USC will continue to account for a large portion of our revenue until our other client programs become more mature and achieve significantly higher enrollment levels. Any decline in USC's reputation, any increase in USC's tuition, or any changes in USC's policies could adversely affect the number of students that enroll in these two programs.

65. In 2015, public acceptance of online degrees had grown, but competition among online programs was increasing. To attract more students and drive growth, 2U ventured into offering online doctoral degrees, and with USC, it launched an online

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<sup>42</sup> *Id.* at 6, n. 3.

<sup>43</sup> *Id.*; *see also*, Prospectus at 20.

<sup>44</sup> *Id.*

EdD program. Because it was a longer program than the master's degree in Education, Defendants could charge over \$100,000 in tuition. 2U's ability to turn a profit from an EdD program with USC depended on its ability to recruit and enroll a large number of students, which would be stymied if it had to adhere to the doctoral selectivity number that USC was submitting to US News (reflecting only PhD admissions, not in-person EdD admissions), and admit just 10% of applicants.

66. In launching this EdD program, USC stood to gain more than ever from the misrepresentation of data to US News. USC understood that accurate reporting of selectivity data would lower USC Rossier's ranking even further once they rolled out the new EdD online program in 2015 and enrolled even more students.

67. In late 2015 and 2016, USC would have been preparing its 2016 survey responses for the 2017 edition of the rankings. At that time, the first of the new online doctoral students, recruited by 2U, were beginning their studies in the new Organizational Change and Leadership ("OCL") EdD program, and were supposed to be captured in the survey responses. But Defendants refused, opting to continue to supply incomplete information. In March 2016, Dean Gallagher stated: "I plan to begin a campaign with [US News] this spring that will explain why we are not going to continue giving any information about any of our EdD programs. ***Unless we are successful, we will drop like a rock in the rankings***, particularly when the OCL has over 500 EdDs enrolled at any one time and that number is combined with our on campus ed leadership program."<sup>45</sup>

68. While USC had always been concerned about the impact the EdD data would have on its selectivity score, and by extension, its ranking, the addition of the online EdD program significantly exacerbated those concerns. A USC Rossier

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<sup>45</sup> *Id.* at 8–9 (emphasis added). There is no discussion in the Jones Day Report of any "campaign" involving US News ever happening. Instead, the Jones Day Report remarks that most alleged communications between USC Rossier and US News "were not well documented, if documented at all." Jones Day Report at 8, n. 5.

1 employee admitted to Jones Day that Gallagher “wanted online EdD programs  
 2 excluded because [she] thought that they would affect the School’s selectivity score.”<sup>46</sup>  
 3 As a result, from 2016 onwards USC was not providing US News with any selectivity  
 4 data from its online programs, even though Defendants intended to and did aggressively  
 5 promote the resulting rankings to students considering their online programs. And, as  
 6 discussed in Paragraph 87(c), around that same time, Defendants even increased their  
 7 marketing efforts around the rankings.

8         69. While USC was excluding the online EdD students from the rankings, it  
 9 also had to grapple with a different way in which US News rankings system threatened  
 10 to expose the lower standards of the online program. Beginning in 2013, US News  
 11 began conducting a less-publicized specialty ranking of online master’s degrees in  
 12 education, ranking the schools that voluntarily participated. That year, the online Master  
 13 of Arts in Teaching degree offered by Defendants was ranked at #44, below a number  
 14 of state schools. It appears after that, USC Rossier stopped participating in this ranking  
 15 all together to avoid reconciling its poor showing with the inflated general ranking that  
 16 was central to their message to online students. While US News does not make  
 17 complete sets of historical of these rankings available to the public, USC Rossier does  
 18 not appear in any publicly available ranking. From what can be identified in the public  
 19 record, USC Rossier did not participate at all in the rankings in 2014 or 2016. For 2015,  
 20 the top 174 schools are publicly available, and it does not appear in that list, so it either  
 21 did not participate or was ranked even lower. Similarly, for 2017, USC Rossier does not  
 22 appear in the publicly available list of the top 123 schools; in the list of the top 60  
 23 schools for 2018-2020; or the top 40 schools for 2021.

24         70. While the Jones Day report states that online data was submitted for this  
 25 specialty online ranking, it also notes that “some ambiguity existed.”<sup>47</sup> With respect to  
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27 <sup>46</sup> *Id.*

28 <sup>47</sup> *Id.* at 20.



1 the 2014 and 2016 rankings, USC Rossier did not participate. To the extent it  
2 participated again, the 2013 ranking was a high-water mark.

3 71. The doctoring of selectivity metrics and the inconvenient online MAT  
4 rankings were not the only problems. While USC has not made the full extent of the  
5 fraud known, the Jones Day report confirms that there were many other irregularities  
6 in the submission of USC Rossier data, explaining:

7 While this investigation focused on the School's reporting of doctoral  
8 selectivity metrics, Jones Day confirmed during the course of the  
9 investigation the existence of irregularities in the School's calculation and  
10 reporting of research expenditures, and identified other potential data  
11 misreporting issues, such as issues relating to the exclusion of online EdD  
12 programs, the designation of EdD students as part-time, certain faculty-  
13 related metrics, and the School's reporting of teacher job placement and  
14 retention statistics. Based on US News's rankings methodology, some of  
15 these metrics may have affected the School's US News ranking and  
16 warrant further examination.

17 72. The misreporting of data continued through a change in leadership. In  
18 July 2020, Pedro Noguera replaced Gallagher as USC Rossier's Dean, and in early 2021,  
19 Noguera asked others at the school why in-person EdD data was being excluded from  
20 the school's survey submissions. He was "told it was to increase the School's ranking."<sup>48</sup>  
21 Despite this acknowledgment that USC Rossier was gaming the rankings, Noguera  
22 again authorized the submission of survey data to US News that excluded EdD data.

23 73. The decision to exclude EdD data from USC Rossier's survey submissions  
24 was not the product of any mistake or innocent misreading of the US News survey  
25 instructions. Rather, USC Rossier did so after ignoring US News' explicit instructions  
26 to the contrary and over objections by colleagues that the school was submitting  
27 inaccurate survey data. Jones Day concluded the excuses offered by the witnesses it  
28 interviewed "do not provide a persuasive justification for that practice."<sup>49</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 16.



74. In the spring of 2022, after years of gaming the rankings, USC abruptly pulled out of consideration after being instructed by USC's Provost to submit survey data that included EdD and PhD data. USC Rossier chose to opt out rather than have US News calculate its ranking based on survey data that included EdD data.<sup>50</sup> In June 2022, US News wrote to USC to ask for "an update and timeline on any further examination of" the other inaccuracies identified by Jones Day, discussed in Paragraph 71. And it reminded USC that it needed to adhere to heightened data requirements to certify the accuracy of its data submissions going forward.<sup>51</sup>

75. But in the end, USC decided that it would not reveal the truth. Rather, on December 15, 2022, USC announced it would no longer participate in the rankings.

**C. For Years, Defendants Marketed the Best Education Schools Rankings that USC Had Obtained by Fraud to Prospective Online Students**

76. Throughout the class period, Defendants have heavily marketed USC Rossier's rapid rise toward the top of the US News Best Education Schools rankings to boost student enrollment in the online programs. While USC orchestrated USC Rossier's rise in the rankings, it depended on its partner and agent, 2U to push the rankings out on a much broader scale, directing its rankings-centric advertising around the country. At all times, when disseminating the rankings in advertising, Defendants were carrying out steps as part of one cohesive rankings-centric advertising plan, pursuant to the 2U/Rossier Services Contract and its requirements that Defendants consult one another on promotional strategies, and that the online and in-person degrees be marketed as comparable to one another. *See* Paragraphs 44-45, *supra*.

77. At all times, USC knew those rankings were misleading to prospective students, and in particular, prospective online students. For its part, 2U knew or should

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<sup>50</sup> *Id.*

<sup>51</sup> Letter from Kim Castro to Rick J. Caruso and Carol L. Folt (June 6, 2022), available at: <https://www.usnews.com/cmsmedia/1d/9d/00ca127c4d1da0641202b13ad519/letter-re-usc-rossier-school-of-education-6-6-2022.pdf>

1 have known that the rankings were procured by fraud, as discussed in Section D, *infra*.  
2 Moreover, 2U knew that featuring the high rankings in advertising would deliver more  
3 students and more money, as discussed in Section E, *infra*. As a result of 2U's financial  
4 incentives to grow the program, the message spread farther and wider than USC would  
5 have accomplished on its own. Not only did students see advertisements first-hand, so  
6 did education professionals, family members, academic advisors, and other people  
7 mentoring students on their education choices. Defendants took a variety of steps to  
8 ensure this broad audience was exposed to USC's ranking. Examples of the types of  
9 advertising that Defendants undertook as part of their rankings-centric advertising  
10 campaign include, but are not limited to the multitude of advertising described below.

11 78. **First**, Defendants know that prospective students routinely consult US  
12 News rankings in deciding where to apply and attend, and that the overall Best  
13 Education Schools ranking was consulted by students seeking online opportunities.  
14 Merely by securing USC Rossier's high ranking, which was published and disseminated  
15 by US News, prospective students visiting US News's website were left with the belief  
16 that they were applying to online programs that were more competitive and higher  
17 quality than in reality. USC caused that fraudulent ranking to first appear in the  
18 publication in the spring of 2009, where it continued to appear and be consulted by  
19 prospective students until the spring of 2022.

20 79. **Second**, 2U utilized paid online advertising to expand the reach of USC  
21 Rossier's rankings to more prospective students. At various points during the class  
22 period, 2U purchased search terms from Google, allowing them to display  
23 advertisements about USC Rossier to those who sought out top-ranked education  
24 graduate programs or similar. These advertisements either represented that USC  
25 Rossier was ranked highly by US News or were designed to display an ad for USC  
26 Rossier in response to a Google search for top-ranked education graduate schools.

1           80. Similarly, 2U invested in advertising via display ad networks, authorizing  
2 the ad networks to track and disseminate online advertising about the top ranked USC  
3 Rossier to visitors to its Rossier Website, including the Rossier Online Webpages. To  
4 accomplish this, USC and 2U would have to embed pixels and other tracking  
5 technology on their websites, including the Rossier Online Webpages, which in turn  
6 allowed the ad networks to monitor visitors' activity around the internet. At 2U's  
7 direction, the ad networks would have purchased advertising space on a variety of  
8 websites, such as those hosted by news outlets, bloggers, or other forums that rely on  
9 advertising for revenue, so that when a visitor to the USC Rossier website visited those  
10 other websites, the display ad network disseminated 2U's desired advertising about the  
11 top ranked nature of USC Rossier to prospective applicants in the advertising space on  
12 the other websites.

13           81. 2U also ran advertising to promote USC Rossier's US News ranking on  
14 social media websites, such as Facebook, and on websites geared towards professional  
15 advancement, such as LinkedIn. In so doing, 2U used various targeting tools to reach  
16 potential applicants.

17           82. During the class period, 2U's investments in online advertising were  
18 substantial, revealing how broadly and aggressively 2U utilized these tools. For example,  
19 in 2014, 2U spent \$65,218 in program sales and marketing, its most significant expense,  
20 most of which was likely expended on USC given that throughout the class period, a  
21 significant amount of 2U's revenue was still derived from USC. 2U's yearly program  
22 sales and marketing expenses remained massive through the class period, totaling more  
23 than half of what it earned in revenue from 2015 through 2021, and just under half of  
24 its revenue in 2022.

25           83. ***Third***, since it first decided in late 2008 to exclude in-person and online  
26 EdD data from its survey submissions and continuing until it withdrew from the  
27  
28

rankings, USC has regularly issued news releases celebrating the school's U.S. News ranking.<sup>52</sup> For instance:

- a. On April 23, 2009, USC published a "News Alert" on the Rossier Website celebrating the fact that it "ha[d] just been ranked 22nd in U.S. News and World Report's 2010 edition of America's Best Graduate Schools";
- b. On April 19, 2011, USC published a press release regarding Defendants' Online MAT Program, promoting the fact that "the USC Rossier School was ranked #14 . . . by U.S. News and World Report this year";
- c. A February 6, 2013, USC Rossier press release entitled "USC Rossier Dean Gallagher Honored by California Superintendents" stated, "Since becoming dean of the USC Rossier School of Education in 2000, Gallagher has moved the school to #15 in the US News & World Report national rankings"; and
- d. A January 10, 2018, press release authored by USC and a partner education company stated that USC Rossier is "consistently ranked as one of the nation's premier education schools by U.S. News & World Report."

These press releases were intended to get picked up by the media who could and did disseminate that ranking in news stories, blog posts, social media posts, and other fora, to be read by prospective students and others who might share the information with them.

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<sup>52</sup> *News Alert: U.S. News & World Report Ranks USC Rossier School of Education among Top 25 in 2010 'America's Best Graduate Schools in Education,' among Top 10 in Private Universities* (Apr. 23, 2009), [archived by the WayBack Machine, [web.archive.org/web/20090526024726/http://rossier.usc.edu/images/world\\_news\\_report.pdf](http://web.archive.org/web/20090526024726/http://rossier.usc.edu/images/world_news_report.pdf)].

84. *Fourth*, throughout the class period, USC Rossier celebrated its rankings via social media, including its Twitter account. For example:





85. Gallagher similarly marketed USC Rossier's rankings on her Twitter account when she was serving as the school's Dean:



86. *Fifth*, at numerous points throughout the class period, and beginning consistently in 2017, Defendants touted that they were a top-ranked school by US News on the Rossier Website. In particular, USC, with 2U's knowledge, put on the main homepage for the Rossier Website a statement advertising that the school was top ranked by US News. By emphasizing that US News had ranked USC Rossier highly, Defendants ensured that visitors to the Rossier Website would learn of the top ranking that USC Rossier had obtained that year. And because students must submit online applications through the Rossier website to apply, by placing it on the Rossier Website's



home page, Defendants further ensured that every student, including the online students, saw that USC was a top-ranked school by US News.

87. Several illustrative examples of the Rossier Website's homepage over the years show how USC, with 2U's consultation, displayed the School's Best Graduate Education Schools ranking at different points during the class period:

a. May 17, 2009:



b. December 24, 2013:



c. From at least March 2017 through at least March 12, 2022—less than two months before the Jones Day Report was published—the Rossier Website consistently displayed its Best Graduate Education Schools ranking on the homepage. Examples of how it appeared in December 6, 2018 (top) and February 13, 2020 (bottom) are below:





1           88. *Sixth*, throughout the class period, Defendants promoted USC Rossier’s  
 2 inflated Best Education Schools ranking across-the-board, to both in-person and online  
 3 students, masking the difference in its in-person and online degree programs that the  
 4 data would have revealed. To that end, Defendants repeated on the Rossier Online  
 5 Webpage that USC Rossier was top ranked. For example:

6           a. In 2013, a link to an article celebrating USC Rossier’s #17 Best Education  
 7 Schools rank was featured prominently on the Rossier Online Webpages  
 8 homepage.<sup>53</sup>

9           b. In 2017, the first sentence of the Rossier Online Webpages’ “About USC  
 10 Rossier” page stated: “The USC Rossier School of Education, ranked #15  
 11 among graduate schools of education by *U.S. News & World Report*, is one  
 12 of the world’s premier centers for graduate study in urban education.”<sup>54</sup>

13           c. In 2018, Defendants refer to USC Rossier as “top-ranked” in the first  
 14 sentence of the 2U-run webpage devoted to USC Rossier’ online MAT  
 15 program, with a note referring to USC Rossier’s #10 2018 ranking in US  
 16 News’ “Best Graduate Schools of Education.”<sup>55</sup> 2U has also used the  
 17 same “top-ranked” language to describe USC Rossier’s Online Degrees in  
 18 other marketing materials, including press releases.<sup>56</sup>

19           89. All the while, Defendants consistently omitted information about its lower  
 20 (or non-existent) position in US News’ rankings of online master’s degrees in education  
 21

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22 <sup>53</sup> USC Rossier Homepage [archived by the Wayback Machine (May 26, 2013),  
 23 <https://web.archive.org/web/20130526034931/http://www.rossier.usc.edu/>].

24 <sup>54</sup> USC Rossier Online, *About USC Rossier* [archived by the Wayback Machine (Nov. 16, 2017),  
 25 <https://web.archive.org/web/20171116152842/https://rossieronline.usc.edu/about/usc-rossier-school-of-education>].

26 <sup>56</sup> PRNewswire, *The USC Rossier School of Education Opens Applications for a New Online Master of*  
 27 *Education in School Counseling* (Sept. 25, 2017), [www.prnewswire.com/news-releases/the-usc-rossier-school-of-education-opens-applications-for-a-new-online-master-of-education-in-school-counseling-300525108.html](http://www.prnewswire.com/news-releases/the-usc-rossier-school-of-education-opens-applications-for-a-new-online-master-of-education-in-school-counseling-300525108.html).  
 28

1 when advertising to online students. Defendants knew this ranking was not well known,  
2 would not be sought out by students, and was published at a different time than the  
3 Best Graduate Schools of Education ranking, and did not drive the same kind of  
4 publicity or interest.

5 90. *Seventh*, in carrying out this campaign, information was consistently  
6 omitted that may have alerted prospective students to the fact that USC Rossier's  
7 rankings were inflated. At no point during the class period did the Rossier Website state  
8 that the data used to obtain the US News ranking excluded EdD students, both online  
9 and in-person. Rather, Defendants' website structure and representations reveal that  
10 they intended for those seeking Online Degrees to view and rely on the Best Education  
11 Schools ranking. And Defendants also failed to disclose other information about the  
12 Online Degrees that would lead a prospective student to question the reliability of the  
13 ranking. For example, Defendants did not disclose on the Rossier Online Webpages  
14 things like selectivity information, or average GRE scores.

91. The legacy of Defendants’ campaign still lives on, with these advertisements and social media posts leaving an indelible imprint on the web. Even though USC Rossier has abandoned the Best Education Schools Rankings, the “bio” at the top of USC Rossier’s MAT program’s Twitter page (@USCTeacher) still referred to the “top-ranked @USCRossier School of Education” as of the date of filing this complaint.



But USC Rossier is unranked, and its prior rankings were a lie.

**D. 2U Knew or Should Have Known that USC Rossier’s Rankings Were Fraudulently Obtained.**

92. USC’s fraudulent submissions were “no secret” amongst school administration and faculty, and were discussed extensively at meetings and in various communications with multiple people associated with the school.<sup>57</sup> Whether or not 2U representatives were privy to these communications, 2U’s role, special

<sup>57</sup> See Jones Day Report at 2.



1 arrangement with USC, and access to information should have, at a minimum, caused  
2 it to evaluate the advertising for its truthfulness.

3 93. As discussed above, 2U was no mere contractor performing discrete tasks  
4 for USC, but was instead at least an equal partner with USC in the development and  
5 promotion of USC Rossier's online degree programs—and the superior partner in  
6 terms of generating revenues from the expansion of those programs. Because of 2U's  
7 significant role in the development and promotion of USC Rossier's online degree  
8 programs throughout the class period, 2U either knew or should have known that  
9 USC Rossier's rankings were the product of USC's fraud.

10 94. **First**, 2U is an education company that has long worked with a variety of  
11 colleges and universities. It has both general knowledge and industry-specific  
12 knowledge about customs and practices in the industry. As discussed in Paragraph 44,  
13 *supra*, it routinely advertised US News rankings for other programs, including other  
14 online programs at elite graduate schools of education. And because it works with so  
15 many different colleges and universities, it has an unusual level of access to admissions  
16 data and practices at other institutions, including those directly competing with USC  
17 Rossier, such as the Peabody College at Vanderbilt, where, beginning in 2018, 2U also  
18 offered an online EdD program. At all times, it had access to information, resources,  
19 and best practices with respect to US News reporting and advertising, and knew or  
20 should have known that USC's practices were unfair and problematic.

21 95. **Second**, as discussed in Paragraph 45, *supra*, the contract between USC  
22 and 2U broadly delegated to 2U responsibilities relating to marketing and promoting  
23 USC Rossier's online degree programs. As part of 2U's marketing and promotion  
24 responsibilities, USC was required to provide 2U with admittance data for USC  
25 Rossier's online degree programs:

a. 2U was required to target its promotion strategies toward those “students likely to be accepted.”<sup>58</sup> 2U had to avail itself of USC Rossier’s actual admittance data—including the actual acceptance rates and GRE scores for USC Rossier’s online degree programs—in order to identify the “students likely to be accepted.”

b. The contract also stated, “USC shall provide 2U with access to information pertaining to both classroom-based and online students’ admissions, performance, and post-graduation outcomes. . . .”<sup>59</sup>

96. Because 2U received USC Rossier’s actual admittance data pursuant to the parties’ services contract and business relationship, 2U knew or at least should have known USC Rossier’s actual “student selectivity” metrics, including the actual acceptance rate for the school’s online degree programs, and the programs’ actual average GRE scores.

97. Further, because of 2U’s outsized role in marketing and developing USC Rossier’s online degree programs, 2U should have discovered through the exercise of reasonable care the discrepancy between USC Rossier’s actual student selectivity data, on the one hand, and the fraudulently manipulated data that USC Rossier submitted to US News, on the other hand. This is especially true given the extent to which 2U aggressively marketed USC Rossier’s US News ranking to prospective online degree students throughout the class period. 2U had ample opportunity to compare the student selectivity data reported by USC Rossier and published by US News to the actual student selectivity data that 2U reviewed in connection with its marketing and promotion obligations.

98. **Third**, 2U oversaw the rapid expansion of student enrollment in USC Rossier’s online degree programs during the Class Period. In particular, USC Rossier’s

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<sup>58</sup> Ex. A § 2(B).

<sup>59</sup> *Id.* § 2(G).

1 online Organizational Change and Leadership program, which Defendants launched  
 2 in 2015, enrolled over 500 students per year. Because 2U was paid for each student  
 3 enrolled and provided them services, 2U knew how many of its recruited applicants  
 4 were actually accepted. And because USC had to provide 2U with information that  
 5 allowed it to recruit only “students likely to be accepted”<sup>60</sup> 2U knew that a high  
 6 number of the students it was recruiting were in fact accepted. Despite this obvious  
 7 increase in student enrollment and decline in student selectivity, USC Rossier  
 8 remained in the top 20 schools in US News’ annual rankings, for which selectivity is  
 9 an important factor. 2U should have realized that this dramatic expansion of online  
 10 student enrollment would negatively impact USC Rossier’s student selectivity, and  
 11 therefore its ranking. The fact that the ranking did not change should have alerted 2U  
 12 to the fact that USC was misreporting student selectivity data to US News, if 2U didn’t  
 13 already know it.

14 99. **Fourth**, 2U, as the party primarily responsible for marketing USC  
 15 Rossier’s online degree programs, should have suspected that USC Rossier’s Best  
 16 Education Schools ranking was inflated after US News published its 2013 edition of  
 17 the Best Online Education Schools, in which USC Rossier received its mediocre #44  
 18 ranking. By contrast, USC Rossier was ranked #17 in US News’ 2013 edition of the  
 19 Best Education Schools rankings.<sup>61</sup> Had it exercised reasonable care, 2U would have  
 20 investigated this discrepancy and learned of the falsity of USC Rossier’s Best  
 21 Education Schools ranking.

22 100. **Fifth**, 2U is well-aware of the Department of Education’s prohibition on  
 23 incentive compensation, and the Department’s concerns over the way in which  
 24 incentive compensation has historically led to fraud and other dishonest and unfair  
 25

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26 <sup>60</sup> Ex. A § 2(B).

27 <sup>61</sup> U.S. News, 2013 Best Education Schools Rankings [archived on the WayBack Machine (Sept. 22,  
 28 2013), [web.archive.org/web/20130922064426/http://grad-schools.usnews.rankingsandreviews.com:80/best-graduate-schools/top-education-schools/edu-rankings](http://web.archive.org/web/20130922064426/http://grad-schools.usnews.rankingsandreviews.com:80/best-graduate-schools/top-education-schools/edu-rankings)]

1 recruiting practices. 2U is fully aware of the risks that were introduced by tying its own  
 2 profits to enrollment in USC's online programs. While 2U lobbied the Department  
 3 for the "bundled services" exception to that prohibition, discussed in Paragraph 34,  
 4 2U knows this exception has not assuaged critics of its tuition-share agreements, and  
 5 the public's concerns about misleading and unfair recruitment practices remain. And  
 6 2U knew that the majority of the students it recruits finance their education through  
 7 taxpayer backed federal student loans, a substantial portion of which flows to it. Its  
 8 knowledge of the risk of fraud inherent in its arrangement with USC, and the fact that  
 9 it was profiting from taxpayer money, should have prompted 2U to investigate or  
 10 inquire further into the claims it was making to students.

11 **E. USC Carried Out the Rankings Fraud, and 2U Promoted USC**  
 12 **Rossier's US News Ranking, Because Defendants Knew USC's**  
 13 **Rank Was Material to Prospective Students and Would Drive**  
 14 **Revenues.**

15 101. USC fraudulently manufactured USC Rossier's ranking, and Defendants  
 16 aggressively promoted this ranking because they knew that rankings matter. Indeed,  
 17 2U's CEO Christopher "Chip" Paucek tacitly acknowledged the importance of the  
 18 rankings when explaining that the brands associated with elite universities "drive  
 19 improved enrollments," which is key to increasing 2U's revenue.<sup>62</sup>

20 102. In fact, 2U has repeatedly acknowledged that rankings go to the core of  
 21 public trust in a program, and are a material consideration for graduate students, and  
 22 therefore, 2U's bottom line. For example, it told investors that a poor ranking would  
 23 hurt their investment, stating:

24 *Damage to client reputation.* Because we market a specific client degree  
 25 program to potential students, the reputations of our clients are critical to  
 26 our ability to enroll students. Many factors affecting our clients'  
 27 reputations are beyond our control and can change over time, including

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28 <sup>62</sup> 2U Q3 2019 Earnings Call Transcript, The Motley Fool (Nov. 13, 2019),  
[www.fool.com/earnings/call-transcripts/2019/11/13/2u-inc-twou-q3-2019-earnings-call-transcript.aspx](http://www.fool.com/earnings/call-transcripts/2019/11/13/2u-inc-twou-q3-2019-earnings-call-transcript.aspx).

1           their academic performance and ranking among nonprofit educational  
2           institutions offering a particular degree program.<sup>63</sup>

3           Similarly, it explained to investors that they faced risks if rankings declined, explaining:  
4           “As a result of the small number of programs, the material underperformance of any  
5           one program, including the failure to increase student enrollment in a program, or any  
6           decline in the ranking of one of our clients’ programs or other impairment of their  
7           reputation, could have a disproportionate effect on our business.”<sup>64</sup>

8           103. Furthermore, as 2U has acknowledged, online degree programs are often  
9           associated with for-profit schools, which have a decidedly negative reputation.<sup>65</sup>  
10          Importing the prestige of an elite university’s brand to the online programs operated by  
11          Defendants is critical to 2U’s business model, because it gives the imprimatur of the  
12          school to 2U’s online degree programs. 2U has not just promoted USC Rossier’s  
13          ranking, but does so for many of its other clients, and continues to do so to this day.  
14          For example, since 2018, when 2U began offering an online EdD degree at Vanderbilt  
15          University, it has displayed that school’s high US News rank prominently on the online  
16          portion of the website.<sup>66</sup> 2U regularly lauds its programs’ U.S. News rankings in other  
17          marketing materials, as well..<sup>67</sup> Thus, while rankings are material for in person students,

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18          <sup>63</sup> Prospectus at 15.

19          <sup>64</sup> *Id.* at 20.

20          <sup>65</sup> See 2U, Inc., Annual Report (Form 10-K) (Mar. 10, 2016), at 29–30, available at  
21          [www.sec.gov/Archives/edgar/data/1459417/000104746916010989/a2227489z10-k.htm](http://www.sec.gov/Archives/edgar/data/1459417/000104746916010989/a2227489z10-k.htm) (stating  
22          that “significant adverse media coverage” of for-profit online programs could contribute “to  
skepticism” about 2U’s “solutions”).

23          <sup>66</sup> Peabody Online ([peabodyonline.vanderbilt.edu](http://peabodyonline.vanderbilt.edu)) (stating that Vanderbilt University’s Peabody  
College of Education is “[r]anked as a top-5 education school in the nation by *U.S. News & World*  
Report in 2021”).

24          <sup>67</sup> See 2U, Inc., *2U, Inc. and Pepperdine University Graziadio Business School Expand their Partnership to Deliver*  
25          *an Online MBA* (July 27, 2018), [investor.2u.com/news-and-events/press-releases/news-](http://investor.2u.com/news-and-events/press-releases/news-details/2018/2U-Inc-and-Pepperdine-University-Graziadio-Business-School-Expand-their-Partnership-to-Deliver-an-Online-MBA/default.aspx)  
26          [details/2018/2U-Inc-and-Pepperdine-University-Graziadio-Business-School-Expand-their-](http://investor.2u.com/news-and-events/press-releases/news-details/2018/2U-Inc-and-Pepperdine-University-Graziadio-Business-School-Expand-their-Partnership-to-Deliver-an-Online-MBA/default.aspx)  
27          [Partnership-to-Deliver-an-Online-MBA/default.aspx](http://investor.2u.com/news-and-events/press-releases/news-details/2018/2U-Inc-and-Pepperdine-University-Graziadio-Business-School-Expand-their-Partnership-to-Deliver-an-Online-MBA/default.aspx) (touting the Pepperdine Graziadio Business  
School’s #19 U.S. News ranking); Marlen Lebish, 2U, Inc., *Miami Herbert Partners With 2U, Inc. to Power*  
28          *its Online MBA* (July 28, 2021), [news.miami.edu/miamiherbert/stories/2021/07/miami-herbert-](http://news.miami.edu/miamiherbert/stories/2021/07/miami-herbert-partners-with-2u-inc-to-power-its-online-mba.html)  
partners-with-2u-inc-to-power-its-online-mba.html (“The University of Miami’s online MBA is  
ranked in the U.S. News & World Report Top 50 online MBA programs.”).

1 2U knows that the rankings are especially valuable for recruiting students into the online  
2 programs.

3 104. In this instance, that borrowed legitimacy, when coupled with and  
4 supported by USC Rossier's high US News rankings, was material to students seeking  
5 an online education program. This is especially true where, as here, the marketing  
6 materials for USC Rossier's Online Degrees explicitly touted USC Rossier's "top-  
7 ranked" status, even though there is no evidence that USC Rossier's Online Degrees  
8 broke into the top 40 education schools in US News' Best Online Education Programs  
9 rankings from 2013–2021, and in most years was ranked much lower or not ranked at  
10 all.

11 105. Defendants' actions demonstrate that they understood that USC Rossier's  
12 high US News ranking would cause more students to enroll in Defendants' online  
13 programs.

14 106. **First**, USC Rossier was never required to participate in the US News  
15 rankings, which requires considerable effort to prepare and submit responses to US  
16 News survey questions on a yearly basis. USC demonstrated, by choosing to do so, that  
17 US News rankings were important for marketing purposes and to increase school  
18 enrollment.

19 107. **Second**, USC's deliberate decision to exclude EdD data from USC  
20 Rossier's survey submissions to US News for over ten years for the purpose of inflating  
21 USC Rossier's ranking confirms the materiality of these rankings. As discussed above,  
22 during her tenure as USC Rossier's Dean, Gallagher continuously maintained that USC  
23 Rossier had to exclude EdD data to avoid dropping in the rankings. Gallagher did so  
24 even while she and her colleagues at USC Rossier acknowledged that US News's survey  
25 submissions required this data. Indeed, both Gallagher and Noguera continued to  
26 exclude EdD data even after US News's survey instructions in 2018 expressly  
27 confirmed what had always been the case: schools were required to submit this data.  
28



1           108. **Third**, Defendants’ decision to heavily promote USC Rossier’s US News  
 2 rankings during the relevant period demonstrates their understanding of the materiality  
 3 of these rankings. Defendants would not have celebrated the school’s rankings in these  
 4 materials if they did not think prospective students would rely on this information in  
 5 deciding where to enroll. And as of July 2023, both Defendants were touting US News  
 6 rankings in other ways for other programs, reflecting that they still see these rankings  
 7 as material. For example, USC promotes the fact that US News ranked it one of the  
 8 best colleges for veterans.<sup>68</sup> And as discussed in Paragraph 103, 2U was still advertising  
 9 the top US News rankings of the programs it services to other prospective online  
 10 students at the other universities with which it partners – even other prospective online  
 11 EdD programs like Vanderbilt.

12           109. **Fourth**, the publication of the Jones Day report in April 2022, detailing  
 13 USC’s years-long misreporting scheme arrived in the wake of similar US News ranking  
 14 fraud scandals (including a criminal charge of wire fraud) that has plagued well-known  
 15 institutions like Columbia University, Rutgers Business School, and Temple University  
 16 Business School.<sup>69</sup> These revelations underscore the industry-wide understanding,  
 17 shared by Gallagher and Noguera, as well as 2U, that US News rankings were critically  
 18 important to the perception of a school, and to students’ decisions regarding where to  
 19 enroll.

20  
 21  
 22  
 23 <sup>68</sup> <https://vrc.usc.edu/> (last accessed July 19, 2023).

24 <sup>69</sup> Nick Anderson, Susan Svrluga, *Columbia acknowledges giving incorrect data for U.S. News rankings*,  
 25 Washington Post (Sept. 9, 2022), [www.washingtonpost.com/education/2022/09/09/columbia-](https://www.washingtonpost.com/education/2022/09/09/columbia-usnews-college-ranking/)  
 26 [usnews-college-ranking/](https://www.washingtonpost.com/education/2022/09/09/columbia-usnews-college-ranking/); Ted Sherman, *Rutgers created fake jobs for graduates to boost MBA program*  
 27 *rankings, lawsuit charges*, NJ.com (Apr. 10, 2022), [www.nj.com/education/2022/04/rutgers-created-](https://www.nj.com/education/2022/04/rutgers-created-fake-jobs-for-graduates-to-boost-mba-program-rankings-lawsuit-charges.html)  
 28 [fake-jobs-for-graduates-to-boost-mba-program-rankings-lawsuit-charges.html](https://www.nj.com/education/2022/04/rutgers-created-fake-jobs-for-graduates-to-boost-mba-program-rankings-lawsuit-charges.html); Associated Press,  
*Former Temple U Business Dean Sentenced in Rankings Scandal*, US News, (Mar. 11, 2022),  
[www.usnews.com/news/us/articles/2022-03-11/former-temple-u-business-dean-sentenced-in-](https://www.usnews.com/news/us/articles/2022-03-11/former-temple-u-business-dean-sentenced-in-rankings-scandal)  
[rankings-scandal](https://www.usnews.com/news/us/articles/2022-03-11/former-temple-u-business-dean-sentenced-in-rankings-scandal).

**F. Students Were Harmed by Defendants’ Misconduct and Profit-Seeking Motives.**

110. USC’s fraudulent efforts to climb the US News rankings, and 2U’s reckless dissemination of those rankings to grow its revenues has benefited both Defendants tremendously, at the expense of the students who were overcharged. Motivated by the financial incentives provided under the 2U/Rossier Services Contract, 2U was able to recruit hundreds of students each year – students who in turn were driven by the false perception that USC Rossier is a “top-ranked” program. Further, USC Rossier’s artificially inflated US News ranking has enabled Defendants to charge these students significantly higher tuition than these students would pay if they attended other online or in-person graduate education programs in California.

111. Because rankings are so important, class members relied on them to their detriment. Not only did many thousands of students enroll, but they did so at a steep premium, as prospective education students who considered attending USC Rossier’s online programs from 2009–2021 had many cheaper options for graduate education schools to attend. For instance, between the 2014–2015 and 2015–2016 academic years, USC Rossier’s Online MAT program cost between \$48,060 and \$53,726.<sup>70</sup> These steep prices are significantly higher than the tuition charged by other in-person or online graduate schools of education programs.

112. Because USC is one of the most expensive schools in the country, 2U’s relationship with USC was a big profit-driver for 2U. For example, for an EdD student

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<sup>70</sup> See USC Rossier Online, *Tuition & Financial Aid*, (2014–2015), <http://rossieronline.usc.edu/academics/master-of-arts-in-teaching-program/tuition-financial-aid> [archived by the WayBack Machine, <https://web.archive.org/web/20150413055050/http://rossieronline.usc.edu/academics/master-of-arts-in-teaching-program/tuition-financial-aid/> (citing a capture dated April 13, 2015)]; see also, USC Rossier Online, *Tuition & Financial Aid*, (2015–2016), <https://rossieronline.usc.edu/academics/master-of-arts-in-teaching-program/tuition-financial-aid>, [archived by the WayBack Machine, <https://web.archive.org/web/20160425150610/https://rossieronline.usc.edu/academics/master-of-arts-in-teaching-program/tuition-financial-aid> (citing a capture dated April 13, 2015)].

1 seeking a Doctor of Education in Organizational Leadership, who paid up to \$115,680  
 2 in the 2019–2020 academic year for their degree, 2U would have received \$69,408 from  
 3 this student under an agreement where it would receive 60% of tuition, its typical  
 4 arrangement. With 2U enrolling hundreds of such students every year, it may have  
 5 earned \$14 million or more annually from that one degree.

6 113. In 2014, 2U was able to go public, even though 70% of its revenue came  
 7 from its partnership with just two schools: USC Rossier and USC’s Dworak-Peck  
 8 School of Social Work.<sup>71</sup> In the years that followed, while 2U continued to form  
 9 partnerships with more universities, acquiring more revenue sources, USC continued  
 10 to be a steady source of revenue. As of 2019, over one-fifth of 2U’s revenue came from  
 11 USC.<sup>72</sup> Given 2U’s financial dependence on USC and the importance of the rankings  
 12 to its advertising, it had a particularly strong monetary incentive to use the rankings to  
 13 recruit more students and disregard the evidence as to their misleading nature.

14 114. 2U has emphasized the need to drive enrollment for USC’s programs in  
 15 particular, stating in 2018: “A significant portion of our revenue is currently attributable  
 16 to graduate programs with the University of Southern California. *The loss of, or a*  
 17 *decline in enrollment in, these programs could significantly reduce our*  
 18 *revenue.*”<sup>73</sup>

19 115. As described in Paragraphs 35-37, there is no evidence that USC put limits  
 20 on the number of people enrolled, and rather, left it to 2U’s discretion. What’s more,  
 21

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22 <sup>71</sup> Ryan & Hamilton, *supra* n. 14. In 2018, a Wall Street Journal investigation into that school of  
 23 social work found that instead of maximizing their educational opportunities, 2U maximized its  
 24 profits by leveraging USC’s prestige image to aggressively target prospective students into the online  
 25 school, where the education provided was not the same as what was offered to those attending in-  
 26 person. *See* Bannon & Fuller, *supra* n. 9. The students in turn took on huge debt loads to pay the  
 same tuition rates for an in-person master’s degree, despite not receiving a comparable education. *Id.*

26 <sup>72</sup> *Id.*

27 <sup>73</sup> 2U, Inc., Annual Report (Form 10-K) (Feb. 27, 2018) at 22,  
 28 [www.sec.gov/Archives/edgar/data/1459417/000104746918001109/a2234625z10-k.htm](http://www.sec.gov/Archives/edgar/data/1459417/000104746918001109/a2234625z10-k.htm) 10-K  
 (emphasis added).

1 under their contract, 2U would receive a higher percentage of revenues if it recruited  
 2 more people, and if USC restricted enrollment or imposed stricter admissions criteria,  
 3 2U could blow up the parties' non-compete agreement.

4 116. Typically, institutions of higher education have no incentive to allow their  
 5 OPMs to engage in unlimited recruitment and use weakened admissions criteria. Doing  
 6 so would hurt their standing in the US News rankings, because it would give them a  
 7 worse student selectivity score. And it would be a futile endeavor, because in the end,  
 8 the lower ranking would decrease enrollment, cannibalizing any prospect of increased  
 9 revenue. Here, however, the Best Education Schools ranking did not require any  
 10 reporting of selectivity numbers for online MAT students, and thus, it did not present  
 11 a barrier to unlimited enrollment—which no doubt made it an attractive degree to  
 12 serve as a launchpad for 2U's business in the first instance. And while US News required  
 13 selectivity numbers for the EdD programs, USC overcame that by just not providing  
 14 accurate data.

## 15 **EXPERIENCES OF THE NAMED PLAINTIFFS**

### 16 **A. Iola Favell**

17 117. Iola Favell grew up in California and was a first-generation college student  
 18 who received her undergraduate degree in 2019 from the University of Alabama.

19 118. Ms. Favell graduated with honors from the University of Alabama with a  
 20 3.8 grade point average and was a strong candidate for a selective graduate program in  
 21 teaching.

22 119. Ms. Favell planned to return to California to begin her teaching career and  
 23 to pursue a master's degree. When choosing a master's program, Ms. Favell wanted to  
 24 attend a well-known, prestigious school.

25 120. Ms. Favell was familiar with US News' rankings of educational institutions  
 26 and considered US News rankings to be an important resource when determining where  
 27 to enroll in a graduate education program. In or about the first part of 2020, while living  
 28

1 in Newport Beach, California, Ms. Favell reviewed the US News “2021 Best Education  
2 Schools” list (US News sometimes publishes a year’s rankings during the prior year).  
3 Ms. Favell became interested in USC Rossier because it was ranked highly (number 12)  
4 on US News’ Best Education Schools rankings. This ranking was a significant factor in  
5 Ms. Favell’s decision-making process.

6 121. Around that same time, in or about the first part of 2020, Ms. Favell also  
7 reviewed the Rossier Website. Ms. Favell saw that USC Rossier represented on its  
8 homepage, [rossier.usc.edu](https://rossier.usc.edu), that it was ranked #12 among the “best schools of  
9 education,” by US News. USC Rossier’s website prominently displayed its US News  
10 ranking on its homepage, as shown in this archived screenshot from February 22,  
11 2020:<sup>74</sup>



12 122. Around this time, Defendants assigned Ms. Favell an “application  
13 advisor,” who provided personal assistance throughout her application process. The  
14 advisor, unbeknownst to Ms. Favell was employed by 2U, not USC Rossier. The  
15 application advisor’s email signature falsely identified the advisor as an “Executive  
16 Admissions Counselor” with the USC Rossier Office of Admission and Scholarship.  
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28 <sup>74</sup> USC Rossier Homepage [archived on the WayBack Machine (Feb. 22, 2020),  
<https://web.archive.org/web/20200222044804/https://rossier.usc.edu/>].



1           123. In at least one conversation in or around March 2020, Ms. Favell informed  
2 her advisor of the importance of USC Rossier's ranking in her decision to apply. The  
3 application advisor called Ms. Favell, sometimes as often as every other day, to help  
4 with different components of her application. The advisor offered to waive application  
5 fees, and Ms. Favell received fee waivers for all components of her application.

6           124. In or around May 2020, Ms. Favell was accepted to the USC Rossier MAT  
7 program. Ms. Favell's application advisor personally called to tell her the news.

8           125. The US News rankings were the most important reason that Ms. Favell  
9 accepted the offer of admission to USC Rossier's online Master of Arts in Teaching  
10 program. She enrolled and began coursework for her degree in August 2020 and  
11 graduated in May 2021.

12           126. Ms. Favell is now a public elementary school teacher in Los Angeles, with  
13 over \$100,000 in student loan debt attributable to the cost of attending USC Rossier.

14           127. Ms. Favell relied to her detriment on the falsified US News ranking,  
15 including the advertising featuring that ranking, when deciding to attend USC Rossier  
16 and pay the associated costs. To pay for the tuition, fees, and other expenses associated  
17 with the program, Ms. Favell took out Grad PLUS and Stafford federal student loans.  
18 Ms. Favell incurred significant debt and out of pocket expense in reliance on USC  
19 Rossier's position in the US News ranking. She regrets her decision to attend USC  
20 Rossier because of the false rankings information. She would not have attended had  
21 USC Rossier been ranked in a lower position given the high price tag of the school  
22 and/or would not have paid nearly as much.

23           **B. Sue Zarnowski**

24           128. Sue Zarnowski grew up in Connecticut and received undergraduate degrees  
25 in Communications and Spanish from Southern Connecticut State University in 2011  
26 and a master's degree in industrial and organizational psychology from the University  
27 of New Haven in 2012.



1           129. Between 2012 and 2018, Ms. Zarnowski held a variety of positions in the  
2 higher education space, including the division of student affairs and Dean of Students  
3 office. Her mentor advised Ms. Zarnowski to obtain a doctorate if she wanted to  
4 advance in the higher education field. At the time, she was living in Indiana and wanted  
5 the flexibility of online classes.

6           130. In or around 2016, Ms. Zarnowski became interested in getting a  
7 doctorate in education. When researching institutions for her doctoral degree, Ms.  
8 Zarnowski wanted a university with brand name recognition and prestige. She recalls  
9 conducting Google searches for top EdD programs, and the paid search results  
10 displayed USC Rossier. During all relevant times, 2U purchased Google search terms,  
11 which caused Ms. Zarnowski to receive paid search result advertisements highlighting  
12 USC Rossier's rankings. She performed additional research, confirming that USC  
13 Rossier offered an online EdD program and was highly ranked by US News. She also  
14 understood that USC classes would be small, allowing her to build relationships with  
15 professors. While she began an application and provided her contact information to  
16 USC Rossier, she decided to postpone her graduate studies, and she did not complete  
17 her application.

18           131. In or around April of 2018, Ms. Zarnowski received an advertisement  
19 stating that USC Rossier was ranked as a Top 10 graduate school by US News. She  
20 decided that it was a good time to revisit her goal of getting an EdD and conducted  
21 further research. She again researched online doctoral programs on Google, and again  
22 received paid search ads that promoted USC Rossier's ranking as a result of 2U's efforts.

132. Between April and June 2018, Ms. Zarnowski visited the USC Rossier website and saw that it represented on its homepage, [rossier.usc.edu](http://rossier.usc.edu), that it was ranked #10 among the “best schools of education,” by US News. USC Rossier’s website prominently displayed its US News ranking on its homepage, as shown in this archived screenshot from June 12, 2018:<sup>75</sup>



133. Around that same time, on various occasions when she visited Facebook, she received advertisements for USC Rossier that said the school was top ranked by US News. During all relevant times, 2U and USC maintained pixels and other tracking tools on their website, and 2U purchased targeted advertising on Facebook. Ms. Zarnowski received these paid display advertisements highlighting USC Rossier’s ranking because of those tracking efforts.

134. In or around June 2018, Defendants assigned Ms. Zarnowski an admissions counselor. The advisor’s email signature falsely identified the advisor as an

<sup>75</sup> USC Rossier Homepage [archived on the WayBack Machine (June 12, 2018) <https://web.archive.org/web/20180612111325/https://rossier.usc.edu/>].

1 “Admissions Counselor” with the Rossier School of Education and did not disclose an  
2 affiliation with 2U.

3 135. Ms. Zarnowski applied to USC Rossier’s Doctor of Education in  
4 Organizational Change and Leadership program in June 2018. The most significant  
5 factor in Ms. Zarnowski’s decision to apply, and later, to accept, was its high ranking in  
6 the US News & World Report ranking of “Best Graduate Schools – Education  
7 Schools.” Ms. Zarnowski was particularly drawn to the USC Rossier’s position among  
8 the top ten education schools. She was very familiar with the importance of the rankings  
9 from her work in higher education. She believed that the reputation and US News  
10 ranking would provide a strong return on her investment.

11 136. Around that same time, Ms. Zarnowski discussed with her advisor the  
12 importance of USC Rossier’s high ranking in her decision to attend the School.

13 137. Ms. Zarnowski was accepted into the program in July 2018, and started  
14 classes in August. She found that her cohort was over-enrolled. Her professors  
15 regularly complained that it was difficult to give feedback to so many students.

16 138. Ms. Zarnowski graduated from USC Rossier with her Doctor of  
17 Education in 2021. She thought she would be able to secure a higher-level job in the  
18 field but has been unable to do so. She is no longer working in higher education.

19 139. Ms. Zarnowski relied to her detriment on the falsified US News ranking,  
20 including the advertising featuring that ranking, when deciding to attend USC Rossier  
21 and pay the associated costs. To pay for the tuition, fees, and other expenses associated  
22 with the program, she incurred around \$100,000 in debt—most of which was federal  
23 student loans—and used savings along with a \$7,500 scholarship. She still owes \$41,000  
24 in loan payments. She regrets her decision to attend USC Rossier because of the false  
25 ranking information. She would not have attended had USC Rossier been ranked in a  
26 lower position given the high price tag of the school and/or would not have paid nearly  
27 as much.

1           140. Ms. Zarnowski currently holds two jobs to help pay off her \$41,000 debt  
2 and is living with her parents.

3           **C.     Mariah Cummings**

4           141. Mariah Cummings grew up in California and received her undergraduate  
5 degree from San Francisco State University in 2018.

6           142. Ms. Cummings graduated from San Francisco State University with a 3.8  
7 grade point average and was a strong candidate for a selective graduate program in  
8 teaching.

9           143. In or around the end of 2018 or beginning of 2019, while Ms. Cummings  
10 was living in California, she decided to pursue a master's degree in teaching but wanted  
11 the flexibility to attend from any location and thus focused on institutions that offered  
12 programs online. Ms. Cummings wanted to attend a high-quality, selective institution  
13 and was a strong candidate to do so.

14           144. Ms. Cummings was familiar with US News' rankings of educational  
15 institutions and considered them as an important resource when determining where to  
16 enroll in a graduate education program. Ms. Cummings researched where to enroll in  
17 or around the end of 2018 or the beginning of 2019. During this time, Ms. Cummings  
18 reviewed the US News "2018 Best Education Schools" rankings on the US News  
19 website. USC Rossier's high position in these rankings (#10) confirmed to her that the  
20 school was a selective institution and was a significant factor in her decision-making  
21 process.

1           145. Around that same time, in or around the end of 2018 or the beginning of  
2 2019, Ms. Cummings also visited the Rossier Website. Ms. Cummings saw on USC  
3 Rossier's homepage, rossier.usc.edu, that USC was ranked #10 among "Best Schools  
4 of Education" by US News. USC Rossier's website prominently displayed its US News  
5 ranking on its homepage, as shown on the below archived screenshot from December  
6 6, 2018:



18           146. Around this same time, Ms. Cummings also conducted at least one  
19 Google search to identify prestigious graduate education schools where she might be  
20 able to obtain an online degree, and the paid search results advertised USC Rossier as a  
21 top-ranked school. During all relevant times, 2U purchased Google search terms, which  
22 caused Ms. Cummings to receive paid search result advertisements highlighting USC  
23 Rossier's rankings.

24           147. 2U also paid to have advertising about USC Rossier's Best Education  
25 Schools rankings disseminated via a display advertising network, causing Ms.  
26 Cummings to view additional advertising about USC Rossier's ranking when browsing  
27 the internet for unrelated matters.  
28



1           148. Ms. Cummings was admitted to USC Rossier four weeks after she applied.  
2 The US News rankings were the most important reason that Ms. Cummings accepted  
3 the offer of admission to USC Rossier's online Master of Arts in Teaching (MAT)  
4 program. She enrolled and began coursework for her degree in May 2019 and graduated  
5 in May 2021.

6           149. Ms. Cummings relied to her detriment on the falsified US News ranking,  
7 including the advertising featuring that ranking, when deciding to attend USC Rossier  
8 and pay the associated costs. To pay for the tuition, fees, and other expenses associated  
9 with the program, Ms. Cummings took out federal student loans. Ms. Cummings  
10 incurred significant debt and out of pocket expense in reliance on USC Rossier's  
11 position in the US News ranking. Ms. Cummings still has more than \$100,000 in student  
12 loan debt. She regrets her decision to attend USC Rossier because of the false rankings  
13 information. She would not have attended had USC Rossier been ranked in a lower  
14 position, given the high price tag of the school and/or would not have paid nearly as  
15 much.

16           **D. Ahmad Murtada**

17           150. Ahmad Murtada grew up in Southern California and received his  
18 undergraduate degree in International Business and Marketing Management from  
19 California State Polytechnic University, Pomona, and received his Master's Degree in  
20 Supply Chain Management from California State University, San Bernardino.

21           151. In or around January 2019, Mr. Murtada decided to seek an Organizational  
22 Change and Leadership doctorate. Because Mr. Murtada intended to work full time  
23 while pursuing his doctorate, he valued the convenience offered by online degree  
24 programs.

25           152. Mr. Murtada was familiar with US News' rankings of educational  
26 institutions and considered them as an important resource when determining where  
27 to enroll in a graduate education program. Mr. Murtada researched where to enroll in  
28

1 or around January 2019. Around this time, he saw an advertisement for USC Rossier's  
2 online EdD program offerings on LinkedIn.

3 153. After reviewing this advertisement, in or around January 2019, Mr.  
4 Murtada visited the Rossier Website. Mr. Murtada saw on USC Rossier's webpage  
5 entitled "About the USC Rossier School of Education" that USC Rossier was ranked  
6 "the 10th best school of education in the country" by US News.<sup>76</sup>

7 154. Prior to enrolling in USC Rossier's Doctor of Education in Organizational  
8 Change and Leadership Program, Defendants assigned Mr. Murtada an admissions  
9 counselor. This admissions counselor informed Mr. Murtada that USC Rossier was a  
10 "top-ranked program."

11 155. Mr. Murtada applied to USC Rossier's Doctor of Education in  
12 Organizational Change and Leadership program in January 2019. The most significant  
13 factor in Mr. Murtada's decision to apply, and later, to accept, was its high ranking in  
14 US News' Best Education Schools rankings. Mr. Murtada believed that the reputation  
15 and US News ranking justified the relatively high cost of USC Rossier's online degree  
16 program compared to other schools in Southern California.

17 156. Mr. Murtada was accepted into the program in February 2019. Mr.  
18 Murtada began coursework for her degree in May 2019 and graduated in May 2023.

19 157. Mr. Murtada relied to his detriment on the falsified US News ranking,  
20 including the advertising featuring that ranking, when deciding to attend USC Rossier  
21 and pay the associated costs. To pay for the tuition, fees, and other expenses associated  
22 with the program, he incurred over \$90,000 in federal student loan debt. Mr. Murtada  
23 would not have attended USC Rossier had it been ranked in a lower position given  
24 the high price tag of the school and/or would not have paid nearly as much.

25 158. Mr. Murtada is currently working as a supply chain manager.  
26

27  
28 <sup>76</sup> USC Rossier, "About the USC Rossier School of Education," [archived on the WayBack Machine]  
(Jan. 26, 2019), [web.archive.org/web/20190126032819/https://rossier.usc.edu/about/](https://web.archive.org/web/20190126032819/https://rossier.usc.edu/about/)

**CLASS ACTION ALLEGATIONS**

159. Plaintiffs bring this class action on behalf of themselves and the following  
Classes of persons:

Class: All students who were enrolled in an online graduate degree program at USC Rossier, from April 1, 2009, through April 27, 2022. Excluded from the Class are Defendants' officers, directors, affiliates, representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

160. Numerosity: The members of the proposed Class are so numerous that individual joinder of all members is impracticable. Review of USC Rossier's recent graduate ceremony programs reveals that there have been approximately 300 students enrolled just in Defendants' online Master of Arts in Teaching program each year. Hundreds more were enrolled each year in each of Defendants' other five online master's degree programs, and in Defendants' four online EdD programs. Thus, many thousands of current and former students are likely included in the Class. The exact number and identities of the members of the proposed Classes are unknown at this time, but can be ascertained through appropriate discovery, which is exclusively in Defendants' possession.

161. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiffs and the Classes and those questions substantially predominate over any questions that may affect individual Class members. Common questions of law and fact include, but are not limited to:

- a. Did USC knowingly misreport data in surveys submitted by USC Rossier to US News?
- b. Did Defendants promote USC Rossier's US News rankings to prospective applicants to Rossier's online programs, when Defendants knew or should have known that the rankings were based on false and incomplete information?

1 c. Did USC falsely, state or misrepresent that USC Rossier's Best Education  
2 Schools ranking applied to its Online Degree programs?

3 d. Did 2U negligently or recklessly advertise that USC Rossier's Best  
4 Education Schools applied to its Online Degree programs?

5 e. Did Defendants violate the CLRA?

6 162. Typicality: Plaintiffs' claims are typical of the claims of the members of  
7 the Class. Plaintiffs and all members of the Class have been similarly affected by the  
8 actions of Defendants. Defendants' conduct as described herein is the same or  
9 substantially the same for Plaintiffs and all members of the Class. Defendants advertised  
10 the fraudulent rankings in a systematic and widespread way, and have established  
11 systematic and automated policies and practices to govern recruitment and the manner  
12 in which they enroll students. Thus, the experiences of Plaintiffs are typical.

13 163. Adequacy of Representation: Plaintiffs will fairly and adequately represent  
14 and protect the interests of the Class. Plaintiffs have retained counsel at Tycko &  
15 Zavareei LLP with substantial experience in prosecuting complex and consumer class  
16 action litigation, as well as with experience litigating against schools and universities  
17 more specifically. Plaintiffs have also retained counsel at the National Student Legal  
18 Defense Network, who are experts in higher education law and policy, and have  
19 significant experience litigating to protect students' rights, including class action  
20 litigation on behalf of students misled by for-profit colleges. Plaintiffs and their counsel  
21 are committed to vigorously prosecuting this action on behalf of the Class and have the  
22 financial resources to do so.

23 164. Superiority of Class Action: Plaintiffs and the members of the Class  
24 suffered, and will continue to suffer, harm as a result of Defendants' unfair, unlawful  
25 and wrongful conduct. A class action is superior to other available methods for the fair  
26 and efficient adjudication of the present controversy. Individual joinder of all members  
27 of the Class is impractical. Even if individual Class members had the resources to pursue  
28

individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties, as well as the court system, in resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class members' claims over which it has jurisdiction in a single forum. Where, as here, Defendants removed and moved to dismiss the equitable claims over which this Court lacked jurisdiction, the conduct of this case as a class action and coordination of it with the Second Class Action conserves the resources of the parties and of the judicial system and protects the rights of the Class members.

165. Risk of Inconsistent or Varying Adjudication: Class treatment is proper and this action should be maintained as a class action because the risks of separate actions by individual members of the Class would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants as the parties opposing the Class; and/or (b) adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

166. Action Generally Applicable to Classes as a Whole: Defendants, as the parties that may potentially oppose certification of the Class, have acted or refused to act on grounds generally applicable to them, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to them as a whole.

#### **DISCOVERY RULE AND FRAUDULENT CONCEALMENT TOLLING**

167. While USC Rossier began submitting inaccurate, incomplete data to US News in connection with the Best Education Schools ranking in or around the fall of 2008, USC Rossier did not make known the omissions and inaccuracies in its survey



1 responses to US News in connection with the ranking until the public release of the  
2 Jones Day report in April 2022.

3 168. As the Jones Day report identifies other discrepancies and calls for further  
4 investigation,<sup>77</sup> the full extent of Defendants' misconduct is still not known. Defendants  
5 have never made USC Rossier's survey responses nor the data on which USC Rossier  
6 relied and excluded public. USC knew the data submissions were fraudulent and  
7 concealed the fraud to protect its reputation and financial interests. USC's December  
8 15, 2022, announcement that it would withdraw from the rankings, rather than accept  
9 a ranking based on complete data, indicates that USC always intended to withhold this  
10 information from the public, and wishes to continue to do so.

11 169. Class members who were enrolled in a USC Rossier online graduate  
12 program outside of the applicable statute of limitations could not have discovered  
13 through the exercise of reasonable diligence that USC Rossier was concealing the  
14 conduct complained of herein and submitting fraudulent data to US News.

15 170. For these reasons, all applicable statutes of limitations have been tolled by  
16 operation of the discovery rule with respect to all claims set forth below. And all  
17 applicable statutes of limitation have also been tolled by USC's knowing and active  
18 fraudulent concealment of the facts alleged herein throughout the time period relevant  
19 to this action.

20  
21 **FIRST CAUSE OF ACTION**  
22 **Violations of Civil Code § 1770**  
23 **(Consumer Legal Remedies Act)**  
24 **By Plaintiffs and on Behalf of the Class**  
25 **Against Defendants USC and 2U**

26 171. Plaintiffs restate and incorporate by reference the allegations in all  
27 Paragraphs above as though fully set forth herein.

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28 <sup>77</sup> Ex. B, §IV.B.

1           172. From a date unknown to Plaintiffs and continuing to the present,  
2 Defendants USC and 2U have and continue to engage in, including by aiding and  
3 abetting each other, practices that violate the Consumer Legal Remedies Act, Civil  
4 Code § 1770 *et seq.*

5           173. **Who:** Defendants USC and 2U are persons within the meaning of section  
6 1761(c). Defendants agreed in or around 2008 to a long term contract, renewed in  
7 2015, by which they would market online degree programs as comparable to the in-  
8 person degree programs, and consult each other on promotional strategies, and did  
9 indeed, do so, as set forth in ¶¶ 44-45.

10           174. **Intent to Sell to Consumers:** Pursuant to section 1770(a), at all times  
11 when engaged in the challenged practices, USC and 2U were undertaking them in the  
12 course of transactions that were intended to result in the sale to consumers of the  
13 professional graduate degree or certification programs promoted and provided by  
14 Defendants (which are “services” as defined by Civil Code § 1761(b)). Plaintiffs and  
15 the members of the Class are “consumers” as defined by Civil Code § 1761(d).

16           175. **False & Misleading Representations Disseminated to Public:** USC  
17 and 2U made, disseminated, and/or caused to be made or disseminated a long term  
18 advertising campaign to the public, including to Plaintiffs and the Class, regarding USC  
19 Rossier’s status as a school with in-person and online degree programs that are highly  
20 ranked by US News. USC enabled USC Rossier to achieve its rankings from 2009-2021  
21 only by intentionally submitting false data to US News regarding USC Rossier’s student  
22 selectivity, and potentially other criteria. Defendants’ online programs were never truly  
23 “top ranked” by US News because said ranking was artificially inflated by USC’s  
24 submission of false information. Examples of Defendants long term advertising  
25 campaign and pattern of false and misleading advertising at issue include:

- 26           a. Beginning in 2008 and continuing to 2022, USC caused US News to  
27           publish false rankings through the manipulation of data, knowing that  
28

1 students would view the publication on US News's website, print  
2 magazines, and similar, as pled throughout.

3 b. At various points during the class period, 2U took steps to cause online  
4 display ads and paid search term ads to be disseminated to class members  
5 on Google and other third party websites, such as LinkedIn and  
6 Facebook, to promote USC Rossier's ranking, and 2U and USC took steps  
7 to ensure that visitors to USC Rossier's website could be tracked and  
8 shown more advertising as to the school's ranking, as detailed in ¶¶ 79-81.

9 c. At various points throughout the class period, USC published and  
10 disseminated its rankings through press releases and social media, as  
11 detailed in ¶¶ 83-85.

12 d. Throughout the class period, USC and 2U displayed USC's ranking on the  
13 home page of the Rossier Website, where they knew online students  
14 would visit, as well as on pages of the website directed to online students,  
15 at various points beginning in 2009, and continuing throughout the Class  
16 Period, including at all times between March 2017 and March 2022, as set  
17 forth in ¶¶ 86-88.

18 176. **Violations of the CLRA:** The practices engaged in by USC and 2U  
19 violated the Consumer Legal Remedies Act as follows:

20 a. Civil Code § 1770(a)(1): USC and 2U represented that the online graduate  
21 degree programs were highly ranked, when in fact they were not.

22 b. Civil Code § 1770(a)(2): USC and 2U represented that the online graduate  
23 degree programs had been given a high rank by US News, reflecting an  
24 approval or certification that the degree programs did not have.

25 c. Civil Code § 1770(a)(3): USC and 2U represented that the online graduate  
26 degree programs had an affiliation, connection, or association with US  
27 News' highly ranked programs when they did not.

d. Civil Code § 1770(a)(5): USC and 2U represented that the online graduate degree programs have an approval of US News as highly ranked, and have the characteristics of a highly ranked program, when they do not.

e. Civil Code § 1770(a)(7): USC and 2U represented that the online graduate degree programs were of a standard, grade, or style associated with highly ranked schools, when they were not.

f. Civil Code § 1770(a)(9). USC advertised the online graduate degree programs as highly ranked when it did not have the intent to provide a highly ranked program.

177. **Scienter:** USC engaged in the aforementioned acts knowingly and fraudulently, as well as negligently. At a minimum, 2U engaged in the aforementioned acts negligently, and as set forth in ¶¶ 92-100, should have known of their fraudulent nature. Specific details as to when 2U learned of the fraud are in the exclusive control of 2U and USC, and Plaintiffs reserve the right to seek leave to amend.

178. **Causation and Damages:** Plaintiffs were damaged as a result of Defendants' actions as follows:

- a. Iola Favell (Paragraph 121, 127);
- b. Sue Zarnowski (Paragraph 130-133, 139);
- c. Mariah Cummings (Paragraph 145-147, 149); and
- d. Ahmad Murtada (Paragraph 153, 157).

179. **CLRA § 1782 Notice:** On December 20, 2022, counsel for Plaintiffs Favell, Zarnowski, and Cummings provided separate written notices of their intent to pursue claims on behalf of themselves and "all other persons similarly situated," under the CLRA and an opportunity for USC and 2U to cure via certified mail to Defendants at their principal places of business. The letter defined those similarly situated, i.e., the class, "as all students enrolled in an online graduate degree program at USC Rossier from April 1, 2009 through April 27, 2022." Plaintiff Murtada is one such person, as

he was enrolled in Defendants' online degree programs during that time. The domestic return receipts show that USC's letter was received and signed for on December 29, 2022; and 2U's letter was received and signed for on December 28, 2022. Plaintiffs sent additional written notices to 2U and USC on February 10, 2023, further describing the allegations underlying Plaintiffs' CLRA Claim on behalf of the class. True and correct copies of the December 20, 2022, written notice to USC and the related return receipt are attached to this Complaint as Exhibit B. True and correct copies of the December 20, 2022, written notice to 2U and the related return receipt are attached to this Complaint as Exhibit C. True and correct copies of the February 10, 2023 written notices to USC and 2U are attached to this Complaint as Exhibits D and E, respectively.

180. To date, neither Defendant has taken any action to remedy their deceptive conduct or otherwise address the CLRA violations outlined in the written notices sent by Plaintiffs' counsel. Therefore, Plaintiffs amend their complaint pursuant to Cal. Civ. Code § 1782(b) and (d) to seek actual and punitive damages and attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, request that this Court:

- (a) Certify this case as a class action and appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- (b) Award Plaintiffs and Class Members declaratory relief as permitted by law or equity;
- (c) Award Plaintiffs and Class Members actual, incidental, and consequential damages and available forms of recovery in an amount to be proven at trial, including any and all available compensatory damages, punitive damages, any applicable penalties and interest;



- 1 (d) Award all reasonable costs and attorneys' fees incurred by Plaintiffs,  
 2 pursuant to, without limitation, the California Legal Remedies Act  
 3 and California Code of Civil Procedure § 1021.5;  
 4 (e) Set a trial by jury of all matters; and  
 5 (f) Award such other and further relief as the Court may deem just and  
 6 equitable.

7 Date: July 28, 2023

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