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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

UNIVERSITY OF SOUTHERN  
CALIFORNIA and 2U, INC.,

Defendants.

Case No. 2:23-cv-00846-GW-MAR

Assigned to: Hon. George H. Wu

**DEFENDANT UNIVERSITY OF  
SOUTHERN CALIFORNIA'S  
REPLY IN SUPPORT OF MOTION  
TO EXCLUDE OPINIONS &  
TESTIMONY OF PLAINTIFFS'  
EXPERT WITNESS SARA NEHER**

Date: October 24, 2024  
Time: 8:30 a.m.  
Ctrm: 9D

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs' Opposition has two main themes, neither of which addresses the merits  
4 of USC's Motion.

5 First, Plaintiffs mischaracterize or ignore USC's arguments in the hope this Court  
6 will misunderstand the issues. Plaintiffs repeatedly suggest USC is challenging Neher's  
7 inability to calculate an "exact" adjusted score or rank for Rossier. USC is not quibbling  
8 over Neher's precision. USC's point is that Neher's unreliable methodology, premised  
9 on her patently unsound use of a "hidden-data constant," produces numbers that are  
10 entirely meaningless. This is not a matter of how "close" Neher's adjusted scores and  
11 ranks are for Rossier, but rather a matter of how *arbitrary* those adjusted scores and  
12 ranks are due to the incoherency of Neher's model. *See id.* Plaintiffs do not actually  
13 address USC's point because they have no legitimate defense of Neher's methodology.  
14 They cannot, and do not, explain why Neher's methodology makes any mathematical  
15 sense. Nor are they able to offer anything but conclusory and incomplete arguments on  
16 the *Daubert* factors. Plaintiffs do not address falsifiability, do not cite any objective  
17 source supporting Neher's methodology, do not provide anything beyond their own  
18 word that her novel and illogical methodology is generally accepted, and do not identify  
19 any error rate (predictive or otherwise) for her model.

20 Second, Plaintiffs villainize USC in the hope this Court will overlook Plaintiffs'  
21 failure to satisfy their Rule 702 burden. The Court already knows this case is about  
22 USC misreporting data to US News. USC released the Jones Day report, voluntarily  
23 and publicly disclosing such misreporting. Yet, Plaintiffs spend much of their  
24 Opposition discussing irrelevant background details of USC's supposed "fraud" and  
25 blaming USC for Plaintiffs' own shortcomings. They even compare USC to a "person  
26 who murders his parents." Doc. 154, p. 2. Plaintiffs' distasteful hyperbole does not  
27 make Neher's methodology reliable or her opinions admissible.

1 **LEGAL STANDARD**

2 Plaintiffs begin their analysis by misstating the legal standard. There is no  
3 “presumption that expert testimony is admissible,” as Plaintiffs erroneously suggest.  
4 *See* Doc. 154, p. 9.<sup>1</sup> Plaintiffs have *the burden* to prove Neher’s testimony is  
5 admissible, and nothing within Rule 702 gives them the benefit of a presumption. To  
6 the contrary, Rule 702 “has been amended to clarify and emphasize that expert  
7 testimony may not be admitted *unless the proponent demonstrates* to the court that it  
8 is more likely than not that the proffered testimony meets the admissibility requirements  
9 set forth in the rule.” Fed. R. Evid. 702 advisory committee’s note to 2023 amendment  
10 (emphasis added). “This is the preponderance of the evidence standard that applies to  
11 most of the admissibility requirements set forth in the evidence rules.” *Id.* Given their  
12 lack of supporting evidence, it is understandable that Plaintiffs want to fall back on a  
13 presumption to save them. But any notion of a presumption of admissibility is  
14 irreconcilable with the express language of Rule 702, as amended in 2023.

15 **ARGUMENT**

16 **I. Neher’s Opinions are Not the Product of Reliable Principles and Methods.**

17 **A. Neher’s opinions regarding Rossier’s adjusted scores and ranks are**  
18 **the result of an unreliable methodology.**

19 As USC’s opening Memorandum explains, Neher’s use of a “hidden-data  
20 constant” to arrive at her adjusted scores and ranks makes no sense. Her “hidden-data  
21 constant” does not represent the value of missing data, as Neher misleadingly suggests,  
22 but rather the variable *margin of error* that results when Neher plugs the original data  
23 for each school into her nine-metric model and compares the resulting score to the score  
24 produced by US News’s methodologically-different ten-metric model. Doc. 145, p. 10-  
25 12. The margin of error that Neher’s model generates can be a large positive number  
26 (greatly undervaluing the score), a large negative number (greatly overvaluing the

27 \_\_\_\_\_  
28 <sup>1</sup> Page numbers cited herein refer to the document’s original numbering.

1 score), or somewhere in between. *Id.* at p. 5. There can also be dramatic swings in the  
2 year-to-year value of Neher’s margin of error for the same school. *Id.* at p. 5-6.

3 This unpredictable margin of error is useless when Neher plugs the substitute  
4 data into her model. *Id.* at p. 10-12. Because her nine-metric model does not match the  
5 methodology of US News’s ten-metric model (even for the nine metrics for which she  
6 does have access to data), there is absolutely no reason (or evidence) to believe that the  
7 margin of error would hold steady when Neher swaps out data. *Id.*; Doc. 145-10,  
8 p. 112:13-17 (“I don’t think we can speculate as to what the differences would have  
9 been because we don’t know the ins and outs of that model -- of the U.S. News model  
10 and how they handle all the different nuances that are part of the process.”). Yet, that is  
11 precisely what Neher assumes, as she illogically re-incorporates the backwards-looking  
12 and inconsistent margin of error derived from the original data to “predict” what  
13 Rossier’s adjusted scores and ranks may have been using the substitute data. Doc. 145,  
14 p. 10-12. This is not sound methodology or mathematics, but rather a clever attempt to  
15 disguise speculation as calculation.

16 **1. Neher’s problem is incoherency, not imprecision.**

17 USC recaps the foregoing analysis for the Court because Plaintiffs completely  
18 ignore it. Plaintiffs do not acknowledge, let alone try to defend, these obvious gaps in  
19 Neher’s logic. *See* Doc. 154, p. 13-17. Instead, as they are wont to do, Plaintiffs knock  
20 down a strawman. They mischaracterize USC as being nitpicky and faulting Neher for  
21 not arriving at “exact” adjusted scores and ranks. *Id.* at p. 13-15.

22 Neher’s problem is not the imprecision of her methodology, but the ***incoherency***  
23 of such. Her “hidden-data constant” does nothing to make up for the fact that she is not  
24 just missing data, but also missing aspects of the methodology that US News applies to  
25 the data. Without matching US News’s methodology, Neher cannot know what the  
26 difference is between her model and US News’s model when she plugs in the substitute  
27 data to which US News has never applied its methodology. *See* Doc. 145-10, p. 123:15-  
28

1 18 (“[A]bsent knowledge of the algorithm that ... U.S. News uses, it’s just hazardous  
2 to try to speculate as to what a change in -- any change in the data would do to the  
3 ranking.”). No one—not Neher, Plaintiffs, or USC—knows whether her adjusted scores  
4 and ranks are spot on, off by a little bit, off by a lot, or somewhere in between. *Id.* That  
5 is the point USC is making and Plaintiffs are willfully ignoring. Neher’s results are  
6 **arbitrary**—they lack meaning, not merely exactness—because she does not employ a  
7 coherent methodology.

8 **2. USC’s past actions did not cause, and do not excuse, Neher’s**  
9 **unreliable methodology.**

10 Attempting to divert the Court’s attention from Neher’s indefensible  
11 methodology, Plaintiffs blame USC’s misreporting of data and subsequent withdrawal  
12 from US News’s rankings for Neher’s inability to “recreate Rossier’s scores exactly.”  
13 Doc. 154, p. 15. Again, exactness is not the issue, but rather the lack of coherency in  
14 Neher’s methodology due to her bewildering use of a backwards-looking “hidden-data  
15 constant” to make purported predictions. Neher chose to use this unreliable  
16 methodology, not USC. And nothing that USC did excuses Neher’s choice or allows  
17 Plaintiffs to circumvent Rule 702. *See Dominguez v. Yahoo!, Inc.*, No. 13-1887, 2017  
18 WL 390267, at \*19-\*20 (E.D. Pa. Jan. 27, 2017).

19 By way of example, the plaintiff’s experts in *Dominguez* opined about a computer  
20 program’s capability, but their opinions were rendered untestable due to the defendant’s  
21 pre-litigation conduct. *Id.* at \*19. Specifically, the defendant (Yahoo) “had abandoned  
22 the program” at issue and could not resuscitate it, thereby preventing testing. *Id.* at \*19.  
23 The federal court nevertheless excluded the experts’ opinions under Rule 702 as  
24 untestable and thus unreliable, explaining:

25 In this discussion of testing, the Court is not necessarily being critical of  
26 Plaintiff or his counsel or experts, but rather finds that the fact that the  
27 Yahoo system is no longer operable, and could not be resuscitated,  
28



1 basically prevented any expert, no matter how qualified, to “test” the  
2 Yahoo system to meet the definition of latent capacity. The fact that  
3 because time has passed and the Yahoo system is no longer operable, may  
4 mean that Plaintiff does not have the means, no matter how much money  
5 he or his lawyers could spend on this topic, to perform any kind of “test”  
6 results in the conclusion that Plaintiff has failed to satisfy his burden of  
7 proof. ***Although this fact may generate some sympathy for Plaintiff, it***  
8 ***does not generate a viable legal theory, which is what the law requires.***

9 Because Plaintiffs’ experts’ methodologies are not testable and not  
10 falsifiable, this Court holds that the proffered expert opinions are not  
11 reliable, and are therefore not admissible.

12 *Id.* at \*20 (emphasis added). Likewise, even if USC’s past actions were truly the cause  
13 of Neher’s inability to employ a reliable methodology, that circumstance “may generate  
14 some sympathy for” Plaintiffs, but it does not make her opinions admissible. *Id.*

15 Moreover, any sympathy for Plaintiffs should be tempered. Far from exhausting  
16 all efforts, Plaintiffs decided to forgo any meaningful discovery from US News and they  
17 never asked US News to calculate Rossier’s adjusted scores and ranks based on the  
18 substitute data used by Neher. *See* Doc. 145, p. 14 & n.3; Doc. 154, p. 15 n.57. USC  
19 did not cause these failures. Had Plaintiffs diligently sought information from US  
20 News, they might have avoided reliance on Neher and her meaningless results  
21 altogether. *See* Doc. 145-10, p. 84:23-24. While Plaintiffs speculate US News would  
22 have refused to cooperate (Doc. 154, p. 15 n.57, 17), the fact remains that Plaintiffs did  
23 not even try and US News never asserted a First Amendment privilege. “Without  
24 making a credible effort to seek the information from [US News], Plaintiff[s] cannot  
25 establish that [US News] would not have cooperatively provided” the very information  
26 that Plaintiffs now complain they lack. *HighMark Dig., Inc. v. Casablanca Design*  
27 *Ctrs., Inc.*, No. 18-CV-6105, 2019 WL 13038414, at \*5 (C.D. Cal. Oct. 3, 2019).

1 Similarly, Plaintiffs cannot establish this Court would have denied a motion to compel  
2 US News to respond or produce its algorithm because no motion to compel was ever  
3 filed. Nor can Plaintiffs hold USC responsible for Plaintiffs' own failure to obtain  
4 information that they never sought from US News. *See id.* (rejecting the plaintiff's  
5 spoliation argument where the plaintiff failed to seek the deleted emails from a non-  
6 party).<sup>2</sup>

7 **B. Neher's opinions regarding Rossier's adjusted scores and ranks fail to**  
8 **satisfy the *Daubert* factors.**

9 Plaintiffs barely try to address the *Daubert* factors. Their *Daubert* analysis is  
10 conclusory, bereft of legal authority (they cite a single case in four pages of argument),  
11 and only confirms the obvious—Neher's opinions cannot possibly satisfy a single  
12 *Daubert* factor. *See* Doc. 154, p. 17-21.

13 **1. Neher's opinions are not testable.**

14 To be testable, an opinion must be "falsifiable." *City of Pomona v. SQM N. Am.*  
15 *Corp.*, 750 F.3d 1036, 1046 (9th Cir. 2014). Plaintiffs do not argue Neher's adjusted  
16 scores and ranks for Rossier are falsifiable, *i.e.*, that they can be compared to the (non-  
17 existent) adjusted scores and ranks produced by US News's model and proven either  
18 true or false. In fact, Plaintiffs admit falsifiability "isn't possible." *See* Doc. 154, p. 17.  
19 The Court's inquiry on this *Daubert* factor alone can end there. Without falsifiability,  
20 Plaintiffs cannot carry their burden of proving Neher's opinions are testable. *See*  
21 *Pomona*, 750 F.3d at 1046.

22 Nevertheless, USC will briefly address Plaintiffs' "testable" arguments. First,  
23 Plaintiffs again mischaracterize USC's argument and suggest "the fight is just over how  
24 close Neher got." Doc. 154, p. 17. That is not the "fight." The fight is over Neher  
25

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26 <sup>2</sup> To be clear, Plaintiffs do not allege USC committed any spoliation of evidence. USC  
27 cites *Highmark* because it demonstrates that, even in cases of alleged spoliation, a  
28 plaintiff has to at least *try* to get the missing information from another source before the  
defendant is held responsible for the plaintiff's lack of evidence. *See id.*

1 offering adjusted scores and ranks that no one outside of US News can either verify or  
2 debunk and that, on their face, make no logical sense. US News personnel are “the only  
3 ones who know,” but Plaintiffs did not bother asking them. Doc. 145-10, p. 84:22-85:1.  
4 Consequently, there is no way of knowing “how close Neher got” with her adjusted  
5 scores and ranks.

6 Second, Plaintiffs glibly argue USC “could test what Rossier’s ranking would be  
7 using Neher’s model with that data input changed.” Doc. 154, p. 18. This argument  
8 also makes little sense because changing the inputs does nothing more than yield the  
9 same illogical, untestable results using different inputs. That information is useless. It  
10 would not tell USC anything about how Neher’s adjusted rank compares to an adjusted  
11 rank that US News’s methodologically-different model would produce based on the  
12 altered data. And therein lies the fundamental problem—Neher’s opinions, as Plaintiffs  
13 admit, are not falsifiable.

14 Failure on the “testable” factor “renders the remaining *Daubert* factors mostly  
15 inapplicable.” *Winingham v. Sig Sauer Inc.*, No. 22-CV-1037, 2024 WL 1652788, at  
16 \*4 (D. Ariz. Apr. 17, 2024). An expert’s “theory cannot be subject to meaningful peer  
17 review” or “generally accepted” when “there is no underlying scientific method to  
18 critique.” *Id.* “Nor can there be a known or potential error rate for tests that were not  
19 conducted.” *Id.* Such is the case here.

20 **2. Neher’s opinions are not peer-reviewed, supported by any**  
21 **objective source, or based on a generally accepted approach.**

22 Plaintiffs do not dispute that Neher’s model has not been subjected to peer review  
23 or publication, or that it was created solely for this litigation. Doc. 154, p. 18. Instead,  
24 they argue “Neher can readily point to an objective source in developing her model—  
25 US News and World Report.” *Id.* This is nonsense. Neher does not have access to US  
26 News’s actual methodology, but only high level descriptions of some of its  
27 methodology. Doc. 145-3, p. 113:20-25. US News has never approved of Neher’s  
28

1 model, nor is Neher applying US News’s methodology. *Id.* at p. 116:2-5, 162:17-23,  
2 188:3-4. She is borrowing the publicly disclosed aspects of US News’s methodology  
3 and attempting to paper over the critical missing pieces with a “hidden-data constant”—  
4 a variable margin of error that US News does not use in its model. *Id.* at p. 188:21-25.  
5 US News does not, in any way, sanction Neher’s foreign and divergent model.

6 Conceding a “hidden-data constant” is not part of US News’s methodology,  
7 Plaintiffs nevertheless argue this concept is not novel. Doc. 154, p. 18. Plaintiffs’  
8 source for this proposition is, apparently, Plaintiffs themselves. *See id.* They cite  
9 nothing—no “learned treatise, the policy statement of a professional association, a  
10 published article in a reputable scientific journal or the like,” *Clausen v. M/V NEW*  
11 *CARISSA*, 339 F.3d 1049, 1058 (9th Cir. 2003)—suggesting a **backwards**-looking  
12 margin of error between two methodologically-different models has any **predictive**  
13 capacity. *See* Doc. 154, p. 18. Plaintiffs, just like an expert, cannot rely on their own  
14 “unadorned assertions that the methodology [Neher] employed comports with standard  
15 [mathematical] procedures.” *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1319  
16 (9th Cir. 1995) (“*Daubert II*”); *see also e.g., Zenith Elecs. Corp. v. WH-TV Broad.*  
17 *Corp.*, 395 F.3d 416, 419 (7th Cir. 2005) (“A witness who invokes ‘my expertise’ rather  
18 than analytic strategies widely used by specialists is not an expert as Rule 702 defines  
19 that term.”).

20 **3. Neher’s opinions are based on a model with either a high or**  
21 **unknown error rate.**

22 As USC’s opening Memorandum explains, Neher’s model has:

- 23 (1) a high error rate in terms of matching the real-world results of US News’s  
24 model based on the original data; and  
25 (2) an unknown error rate in terms of producing an adjusted score or rank based  
26 on the substitute data.

27 Doc. 145, p. 16.

1 In response, Plaintiffs address only the former, arguing Neher’s model has an  
2 “acceptable” error rate with respect to matching the real-world results. Doc. 154, p. 19.  
3 Apparently this error rate is so “acceptable” that Plaintiffs cannot be bothered to identify  
4 what, exactly, it is. *See id.* In any event, Plaintiffs’ shallow reasoning—that Neher’s  
5 “model comes close to replicating US News’s score for Rossier” based on the original  
6 data (*id.*)—is the same flimsy “reliability test” that Neher offered and that USC has  
7 already addressed. *See* Doc. 145-3, p. 191:25-192:5. Even if close for Rossier, Neher’s  
8 model is not a sound model because it is not close at all for many other schools, nor is  
9 it remotely consistent year-to-year for many schools. *See* Doc. 145, p. 16-17. That is  
10 the exact opposite of “reliable.” *See Crescenta Valley Water Dist. v. Exxon Mobile*  
11 *Corp.*, No. 07-CV-2630, 2013 WL 12116333, at \*5 (C.D. Cal. Jan. 8, 2013).

12 Plaintiffs’ explanation for these wild variances is that Neher’s model is better at  
13 replicating results for higher-ranked schools than lower-ranked schools because many  
14 lower-ranked schools have incomplete data for Neher’s nine metrics. Doc. 154, p. 19.  
15 This explanation cannot withstand even minimal scrutiny. USC deliberately gave **only**  
16 examples where no data was missing for Neher’s nine metrics, including 2019 Western  
17 Kentucky University, the example highlighted by Plaintiffs. *See* Doc. 145, p. 5-6, 16-  
18 17. That school is not missing any data for Neher’s nine metrics, yet her calculated  
19 score is not remotely close to US News’s score (off by 15.66 points). Doc. 145-6. Other  
20 examples abound, such as 2018 University of Northern Iowa (off by 6.37 points), 2019  
21 San Diego State University (off by 8.97 points), 2019 Utah State University (off by 9.56  
22 points), 2019 University at Buffalo (off by 9.02 points), and 2021 University of  
23 Massachusetts (off by -8.58 points). Doc. 145-5, Doc. 145-6, Doc. 145-8. There is not  
24 “more hidden data” for these schools, as Plaintiffs would have the Court believe. To  
25 the contrary, just like USC’s previous examples, none of these schools is missing data  
26 for Neher’s nine metrics. *See id.*

1 Plaintiffs also attempt to explain away the large discrepancy in Neher’s score for  
2 Johns Hopkins University on the basis that the school, like “a few schools that dropped  
3 out of the top 10” in 2019, was subjected to an undisclosed GRE penalty in 2019. Doc.  
4 154, p. 20-21. Contrary to this explanation, no other schools dropped out of the top 10  
5 in 2019. *See* Doc. 145-5; Doc. 145-6. Nor are Neher’s scores for any of the schools  
6 around Johns Hopkins off by double-digit points like her score for Johns Hopkins. *See*  
7 Doc. 145-6. Further, the GRE metrics account for only 12% of a school’s score  
8 (Doc. 145-1, at USC\_FAV\_000002637), so its strains credulity that an undisclosed  
9 penalty in these lesser metrics would have the “large effect” that Plaintiffs claim. Doc.  
10 154, p. 21. Neher, in fact, testified she does not know why her score is so far off for  
11 Johns Hopkins. Doc. 145-3, p. 213:23-214:2. In trying to cover for Neher after the  
12 fact, Plaintiffs are only (poorly) speculating as to what the issue might be, without  
13 expert support.

14 But even if Plaintiffs’ half-baked explanations were accepted and they were  
15 correct that Neher’s model has an (unidentified) “acceptable” error rate in terms of  
16 matching real-world results, that would not get Plaintiffs anywhere. The purpose of  
17 Neher’s model is to try to ***predict*** what Rossier’s rank would be based on the ***substitute***  
18 ***data***, not to see how close she can get to real-world results based on the original data.  
19 Doc. 145-2, p. 3; 145-3, p. 230:7-15. As Neher admits, there is no known error rate for  
20 this predictive purpose. Doc. 145-3, p. 191:6-8.

21 Plaintiffs do not argue otherwise; they simply ignore predictive capacity  
22 altogether. This is fatal to Plaintiffs’ “error rate” argument. Plaintiffs can harp all they  
23 want on Neher getting close to Rossier’s score based on the original data. That means  
24 nothing when no one—not Neher, Plaintiffs, or USC —has any idea how close or how  
25 far off Neher is when she tries to predict Rossier’s scores based on the substitute data.  
26 With no known error rate for predictive capacity, there is no assurance whatsoever that  
27 Neher’s model reliably serves its intended purpose. *See United States v. Cordoba*, 194  
28



1 F.3d 1053, 1062 (9th Cir. 1999). To reiterate, Neher’s “model is helpful only if it is  
2 predictive; if it cannot be predictive ... then it fails in its purpose.” *See Crescenta*  
3 *Valley*, 2013 WL 12116333, at \*4 (C.D. Cal. Jan. 8, 2013).

4 **C. Neher’s “other observations” are inadmissible ipse dixit and**  
5 **irrelevant.**

6 In response to USC pointing out that Neher’s “other observations” on peer  
7 assessment and expert assessment are *ipse dixit*, Plaintiffs merely repeat Neher’s *ipse*  
8 *dixit* without citing any further support. Doc. 154, p. 22. Regarding Neher’s “other  
9 observations” on GRE scores being *ipse dixit*, Plaintiffs merely repeat their speculative  
10 Johns Hopkins argument noted above. *Id.* Plaintiffs do not have any facts or data  
11 showing that Johns Hopkins “dropped 11 spots” due to an undisclosed GRE penalty, or  
12 that “Rossier would have suffered a drop similar.” *See id.* Plaintiffs’ “say-so,”  
13 unsupported by “a statistical analysis, or any other analysis for that matter,” does not  
14 suffice. *See Echo, Inc. v. Timberland Machs. & Irrigation, Inc.*, 661 F.3d 959, 965 (7th  
15 Cir. 2011) (quotations omitted).

16 *Ipsé dixit* aside, Plaintiffs do not even bother to dispute USC’s separate point that  
17 Neher’s “other observations” are vague and irrelevant. *See* Doc. 154, p. 21-22. This  
18 alternative—**and uncontested**—basis is, alone, sufficient to render Neher’s “other  
19 observations” inadmissible. *See Daubert II*, 43 F.3d at 1321 & n. 17.

20 **II. Neher is Not Qualified.**

21 Plaintiffs do not dispute Neher’s lack of training, experience, or specialized  
22 knowledge when it comes to either statistical modeling generally or, more specifically,  
23 replicating US News’s model for the “Best Graduate Schools of Education.” *See* Doc.  
24 154, p. 11-13. While Plaintiffs assert that schools “pay Neher ... to do the kind of  
25 ranking modeling she did here,” Plaintiffs omit important context. *Id.* at p. 12. The  
26 type of work Neher has previously done not only concerns different rankings (Doc. 145-  
27 3, p. 193:1-13), but also a different function. Rather than predicting what ***past*** ranks  
28

1 would have been if data was changed, as she tried to do here, Neher’s previous work  
2 concerns only trying to improve schools’ ranks in the *future*. *Id.* at p. 71:4-15, 194:7-  
3 8. This different kind of work does not make Neher experienced in the task at hand.  
4 *See Burrows v. BMW of N. Am., LLC*, No. 17-CV-6960, 2018 WL 6314187, at \*2 (C.D.  
5 Cal. Sept. 24, 2018) (“Calef lacks the specialized training and experience specific to the  
6 subject vehicle and N63 engine that would be helpful to the trier of fact in this case.”).

7 There is also no indication that Neher has actually succeeded with her previous  
8 work. Neher does not “always work with [the schools] long enough to see” whether or  
9 not their ranks improve, and she has never calculated an error rate for her other models.  
10 Doc. 145-3, p. 71:16-72:5, 195:18-23. Mere experience in creating models, without  
11 evidence of success in doing so, does not make Neher an expert. *See Morin v.*  
12 *McCulloch Corp.*, No. 01-CV-6431, 2002 WL 34357202, at \*4 (C.D. Cal. July 3, 2002).  
13 After all, anybody with spreadsheet software can make a rankings model, good or bad.

14 Further, even if Neher had relevant and successful experience, the fact remains  
15 that replicating US News’s model is not an endeavor grounded in “a recognized body  
16 of knowledge, learning or expertise.” *See In re Canvas Specialty, Inc.*, 261 B.R. 12, 19  
17 (Bankr. C.D. Cal. 2001). Plaintiffs do not credibly argue otherwise. They offer only:

- 18 • Sales puffery<sup>3</sup> from consulting firms trying to sell a service to schools that  
19 want to improve their ranks (Doc. 154, p. 12);
- 20 • Plaintiffs’ misrepresentation of a model created by expert Jonathan Smith  
21 (*id.*), who wasn’t “trying to re-create [US News’s] methodology” because  
22 the “exact features of [US News’s] methodology weren’t super important  
23 to” his specific purpose (Ex. 1, Smith Deposition, p. 104:12-17);
- 24 • Bare citation to “[o]ther academic articles [that] include ranking  
25 modeling,” with no further details regarding methodology or efficacy of  
26 such modeling (Doc. 154, p. 13); and

27 \_\_\_\_\_  
28 <sup>3</sup> This is not the first time Plaintiffs have mistaken puffery for fact. *See* Doc. 101, p. 10.



- A blog post (*id.* at p. 13 n.53) that appears to have been deleted,<sup>4</sup> and whose author refused to “publicly disclose his procedure and declined to provide details” to support his unverified claim “that he has successfully deconstructed the *U.S. News* rankings.” Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. 83, 87 n.9 (2006).

None of these sources remotely refutes USC’s point that, absent insider knowledge, it is not possible to replicate US News’s model. If Plaintiffs truly believed it were possible, and that the firms and individuals they reference could pull it off, presumably Plaintiffs would have hired one of them, not Neher—who admittedly failed to replicate US News’s model. *See* Doc. 145-3, p. 116:2-5 (agreeing her model “is not [an] exact replica of what [US News’s] model is”); p. 188:3-4 (“I’m not claiming it is identical.”).

Plaintiffs know better. Companies looking to make a buck or bloggers looking to generate eye-catching content might claim (without evidence) to be able to do the impossible, but that does not make it so. Unverified claims do not transform a pure guessing game into a legitimate “field of expertise.” *See In re Canvas*, 261 B.R. at 19. No one, Neher included, is an expert at guessing the unknowable.

### **CONCLUSION**

USC respectfully requests this Court exclude the opinions and testimony of Plaintiffs’ expert Sara Neher for purposes of class certification, summary judgment, and trial.

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<sup>4</sup> The link provided by Plaintiffs directs to a page that states: “Sorry, the page you were looking for in this blog does not exist.”

1 Dated: October 10, 2024

2 Respectfully submitted,

3 **SHOOK, HARDY & BACON L.L.P.**

4  
5 By: /s/ Michael L. Mallow

6 Michael L. Mallow

7 **Attorney for Defendant**  
8 **University of Southern California**

9  
10 **CERTIFICATE OF COMPLIANCE**

11 The undersigned counsel of record for the University of Southern California  
12 certifies that this brief contains 4,278 words, which complies with the word limit of  
13 L.R. 11-6.1.

14 By: /s/ Michael L. Mallow

15 Michael L. Mallow