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

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

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA,

Defendant.

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Case No. 2:23-cv-00846-GW-MAR;
Case No. 2:23-cv-03389-GW-MAR

CLASS ACTION

**MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
A.	Rossier created new online programs to grow enrollment and revenue.	2
B.	Rossier falsified data to inflate its U.S. News rankings.	3
C.	Rossier worked with 2U to broadly disseminate its fraudulent U.S. News ranking throughout the recruiting process.	7
1.	USC and 2U knew that higher rankings drive applications and enrollment decisions.	7
2.	USC and 2U bombarded prospective students with rankings information to persuade them to apply and enroll.....	8
D.	Plaintiffs all relied on Rossier’s fraudulent rank when enrolling in Rossier.....	10
E.	Rossier concealed the truth about its rankings fraud to the very end.	13
III.	ARGUMENT	14
A.	The Class satisfies all Rule 23(a) factors.....	15
1.	Numerosity is readily met here.....	15
2.	Many common questions of law and fact exist.	16
3.	Plaintiffs’ claims are typical of Class members’ claims.	17
4.	Plaintiffs and their counsel are adequate representatives.....	19
B.	The Class satisfies Rule 23(b)(3).....	21
1.	Common questions of falsity, materiality, and reliance predominate on Plaintiffs’ UCL, CLRA, and FAL claims.	21
2.	Damages and Restitution are Capable of Classwide Measurement.....	24
3.	A class action is superior to multiple individual actions.....	25
IV.	CONCLUSION	26

TABLE OF AUTHORITIES

Cases

<i>Alcantar v. Hobart Servs.</i> 800 F.3d 1047 (9th Cir. 2015)	18
<i>Amgen Inc. v. Conn. Ret. Plans & Tr. Funds</i> 568 U.S. 455 (2013)	16, 18
<i>Banks v. R.C. Bigelow, Inc.</i> No. 20-cv-06208DDP (RAOx), 2023 WL 4932894 (C.D. Cal. July 31, 2023)	26
<i>Baten v. Mich. Logistics, Inc.</i> No. 18-cv-10229-GW(MRWx), 2021 WL 4962103 (C.D. Cal. Oct. 25, 2021)	16, 17, 18, 22
<i>Bradach v. Pharmavite, LLC</i> 735 F. App'x 251 (9th Cir. 2018)	27
<i>Clevenger v. Welch Foods Inc.</i> 342 F.R.D. 446 (C.D. Cal. 2022)	20
<i>Cty. of L.A. v. Jordan</i> 459 U.S. 810 (1982)	17
<i>Ellis v. Costco Wholesale Corp.</i> 657 F.3d 970 (9th Cir. 2011)	16, 22
<i>Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.</i> 326 F.R.D. 592 (N.D. Cal. 2018)	19, 25, 26
<i>Forcellati v. Hyland's, Inc.</i> No. 12-cv-1983-GHK (MRWx), 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014)	25, 26
<i>Guzman v. Polaris Indus., Inc. – Minn.</i> No. 23-cv-2734, 2023 WL 9116743 (9th Cir. 2023)	14
<i>Guzman v. Polaris Indus., Inc.</i> 345 F.R.D. 174 (C.D. Cal. 2023)	14, 19

1	<i>Hanlon v. Chrysler Corp.</i>	
2	150 F.3d 1011 (9th Cir. 1998)	17, 20
3	<i>Hardwick v. Hoovestol, Inc.</i>	
4	No. 20-cv-7505-DMG (MAXx), 2022 WL 4596592	
5	(C.D. Cal. Sept. 12, 2022).....	17, 18, 22, 24
6	<i>In re ConAgra Foods, Inc.</i>	
7	90 F. Supp. 3d 919 (C.D. Cal. 2015).....	30
8	<i>In re Heritage Bond Litig.</i>	
9	No. 01-cv-5752 DT, 2004 WL 1638201 (C.D. Cal. July 12, 2004).....	19
10	<i>In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.</i>	
11	609 F. Supp. 3d 942 (N.D. Cal. 2022).....	<i>passim</i>
12	<i>In re PFA Ins. Mktg. Litig.</i>	
13	696 F. Supp. 3d 788 (N.D. Cal. 2021).....	29
14	<i>In re Univ. of S. Cal. Tuition & Fees COVID-19 Refund Litig.</i>	
15	695 F. Supp. 3d 1128 (C.D. Cal. 2023).....	30
16	<i>Jordan v. Cty. of L.A.</i>	
17	669 F.2d 1311 (9th Cir.)	17
18	<i>Just Film, Inc. v. Buono</i>	
19	847 F.3d 1108 (9th Cir. 2017)	20
20	<i>Keegan v. American Honda Motor Co.</i>	
21	284 F.R.D. 504 (C.D. Cal. 2012)	23
22	<i>Korolshteyn v. Costco Wholesale Corp.</i>	
23	No. 3:15-CV-709-CAB-RBB, 2017 WL 1020391 (S.D. Cal. Mar. 16, 2017).....	25
24	<i>Kumar v. Salov N. Am. Corp.</i>	
25	No. 14-cv-2411-YGR, 2016 WL 3844334 (N.D. Cal. July 15, 2016).....	26, 28
26	<i>Loc. Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.</i>	
27	244 F.3d 1152 (9th Cir. 2001)	23
28	<i>Lytle v. Nutramax Lab 'ys, Inc.</i>	
	114 F.4th 1011 (9th Cir. 2024)	<i>passim</i>

1	<i>Lytle v. Nutramax Lab'ys, Inc.</i>	
2	No. ED 19-cv-0835 FMO (SPx), 2022 WL 1600047	
3	(C.D. Cal. May 6, 2022).....	15, 19
4	<i>Mullins v. Premier Nutrition Corp.</i>	
5	No. 13-cv-01271-RS, 2016 WL 1535057 (N.D. Cal. Apr. 15, 2016)	25
6	<i>Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC</i>	
7	31 F.4th 651 (9th Cir.)	15
8	<i>Pettit v. Procter & Gamble Co.</i>	
9	No. 15-cv-02150-RS, 2017 WL 3310692 (N.D. Cal. Aug. 3, 2017)	21
10	<i>Rodriguez v. Hayes</i>	
11	591 F.3d 1105 (9th Cir. 2010)	22
12	<i>Spann v. J.C. Penney Corp.</i>	
13	307 F.R.D. 508 (C.D. Cal. 2015)	30
14	<i>StarKist Co. v. Olean Wholesale Grocery Coop., Inc., On Behalf of Itself & All</i>	
15	<i>Others Similarly Situated</i>	
16	143 S. Ct. 424, 214 L. Ed. 2d 233 (2022)	15
17	<i>U.S. v. Porat</i>	
18	No. 21-cr-170, 2022 WL 685686 (E.D. Pa. Mar. 8, 2022).....	13
19	<i>Wal-Mart Stores, Inc. v. Dukes</i>	
20	564 U.S. 338 (2011)	15, 18
21	<i>Young v. Neurobrands, LLC</i>	
22	No. 18-cv-05907-JSW, 2020 WL 11762212 (N.D. Cal. Oct. 15, 2020).....	21
23	Statutes and Regulatory Authorities	
24	20 U.S.C. § 1094(A)(20).....	6
25	20 U.S.C. § 1094(C)(3).....	13
26	34 C.F.R. § 668.71(B).....	13
27	FED. R. CIV. P. 23(A)	18, 19, 20, 24
28	FED. R. CIV. P. 23(B)(3).....	24, 28

1 FED. R. CIV. P. 23(G)(1)(A) 23, 24

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION

Favell, et al., v. Univ. of S. Cal., Nos. 2:23-cv-00846-GW-MAR; 2:23-cv-03389-GW-MAR

TABLE OF EXHIBITS

Exhibit Number	Document Description	Bates (as applicable)
1	1/3/2022 email from Ray Gonzales to Matthew Marchak & Sunnary Adeva	USC_FAV_000013234
2	Jones Day Report	USC_FAV_000095876
3	“USC Rossier: The First Century” Book	USC_FAV_000044011
4	Excerpts of the Deposition of Karen Gallagher	
5	“Transforming a School of Education” Chapter	USC_FAV_000055667
6	12/21/2021 2U-USC Services Agreement	USC_FAV_000024998
7	Digital Revol(2U)tion	
8	4/4/2014 Second Amendment to 2U-USC Services Agreement	USC_FAV_000024990
9	USC’s Revised Responses and Objections to Plaintiffs’ Second Set of Interrogatories (#22)	USC_FAV_000095912
10	10/29/2008 2U-USC Services Agreement	USC_FAV_000094402
11	4/7/2016 Third Amendment to 2U-USC Services Agreement	USC_FAV_000025008
12	6/7/2018 MAT Governance Report on CSET Failure	USC_FAV_000043414
13	9/19/2016 email from Jerry Lucido to Jeremy Shane	USC_FAV_000024687
14	2/16/2018 email from Jeremy Shane to Karen Gallagher et al.	USC_FAV_000024763
15	2022 Best Graduate Schools of Education Methodology	USC_FAV_000013096
16	2/10/2015 email from Scott Lyness to Bob Morse	USC_FAV_000024546
17	1/28/2022 “US News Rossier Rankings Submission Changes” PowerPoint	USC_FAV_000016337
18	6/23/2014 GMMB memo “Rossier + USNWR Education School Rankings”	USC_FAV_000000733
19	3/16/2016 email from Matthew Stevens to Rochelle Hardison	USC_FAV_000002216

20	6/17/2015 “USC Rossier Student Quantitative Research Study” PowerPoint	USC_FAV_000039255
21	11/29/2012 email from Karen Gallagher to Katharine Harrington	USC_FAV_000000161
22	6/3/2014 email from Scott Lyness to Cale Gosnell	USC_FAV_000024470
23	3/19/2016 email from Scott Lyness to Margo Pensavalle	USC_FAV_000002149
24	“USNWR Doctoral Definition and Its Implications” PowerPoint	USC_FAV_000016684
25	11/28/2018 email from Katharine Harrington to Ray Gonzales	USC_FAV_000002983
26	1/4/2022 email from Ray Gonzales to Matthew Marchak & Sunnary Adeva	USC_FAV_000013419
27	1/3/2022 U.S. News Statistical Survey	USC_FAV_000013376
28	1/31/2022 U.S. News Statistical Survey	USC_FAV_000016457
29	11/3/2014 email from Scott Lyness to Margo Pensavalle	USC_FAV_000001009
30	Excerpts of the Deposition of Tabitha Courtney	
31	Wayback Capture of EdD EDL	
32	FY2021 Grant Awards Spreadsheet	USC_FAV_000015505
33	1/21/2022 email from Ray Gonzales to Mark Todd	USC_FAV_000015555
34	1/24/2022 email from Ray Gonzales to Teri Adams	USC_FAV_000015596
35	1/26/2022 email from Shally Kwon to Ray Gonzales	USC_FAV_000016122
36	1/28/2022 email from Sunnary Adeva to U.S. News Data Collection	USC_FAV_000024925
37	12/4/2018 email from Karen Gallagher to Morgan Polikoff	USC_FAV_000003008
38	Excerpts of the Deposition of Jacob Garrison	
39	USC Graduate School Rankings History	USC_FAV_000003401
40	“Raising Rossier’s Profile” PowerPoint	USC_FAV_000001537
41	Declaration of Sara Neher (Dkt. 154-24)	
42	Salience in Quality Disclosure	

43	Students Top Factors in College Choice and Admissions	
44	“Enrollment and Reputation Research Phase I” PowerPoint	USC_FAV_000019604
45	6/17/2015 “USC Rossier Student Quantitative Research Study” PowerPoint	USC_FAV_000039255
46	7/9/2015 Email from Margo Pensavalle to Barbara Goen	USC_FAV_000026322
47	2U Prospectus	
48	2013 Online Marketing Plan	2U_FAVELL_00001127
49	2020 MAT Marketing Plan PowerPoint	2U_FAVELL_00000012
50	Excerpts of the Deposition of Joanna Gerber	
51	Expert Report of John Chandler	
52	Prospective Student Journey Map	USC_FAV_000024202
53	Excerpts of the Deposition of John Chandler	
54	2019 OCL Marketing Plan	2U_FAVELL_00001484
55	2015 Online Marketing Plan PowerPoint	2U_FAVELL_00000416
56	2021 Marketing Plan PowerPoint	2U_FAVELL_00000462
57	EdD Talking Points	2U_FAVELL_00001508
58	MAT Talking Points	2U_FAVELL_00001501
59	OCL Key Program Messages	2U_FAVELL_00017899
60	MAT Key Program Messages	2U_FAVELL_00017901
61	Excerpts of the Deposition of Ahmad Murtada	
62	MAT One-Sheet	2U_FAVELL_00014069
63	OCL One-Sheet	2U_FAVELL_00015868
64	2017 Admitted Student Guide	USC_FAV_000025411
65	Temple Settlement Agreement	
66	2019 MAT Marketing Plan	2U_FAVELL_00000001
67	Excerpts of the Deposition of Iola Favell	
68	Iola Favell’s Objections and Responses to USC’s First Set of Interrogatories (#4)	
69	Wayback Machine of Rossier Homepage	
70	Ahmad Murtada’s Objections and Responses to USC’s First Set of Interrogatories (#4)	

71	1/19/2019 email from Rossier to Ahmad Murtada	PL_AM_0084
72	Excerpts of the Deposition of Mariah Cummings	
73	Mariah Cummings's Objections and Responses to USC's First Set of Interrogatories (#4)	
74	Excerpts of the Deposition of Susan Zarnowski	
75	Susan Zarnowski's Objections and Responses to USC's First Set of Interrogatories (#4)	
76	4/22/2021 Client Alert: "New Theory of Criminal Liability in Higher Education Involving U.S. News Rankings"	USC_FAV_000006443
77	Substantive Privilege Log	
78	4/30/201 email from Mark Todd to Greg Condell	USC_FAV_000006470
79	7/26/2021 email from Ray Gonzales to Sunnary Adeva	USC_FAV_000007674
80	1/3/2022 email from Pedro Noguera to Wendy Shattuck et al.	USC_FAV_000013252
81	1/10/2022 email from Ray Gonzales to Mark Todd	USC_FAV_000013476
82	1/13/2022 email from Pedro Noguera to Wendy Shattuck et al.	USC_FAV_000014359
83	Excerpts of the Deposition of Ray Gonzales	
84	1/29/2022 email from Pedro Noguera to Lawrence Picus et al.	USC_FAV_000016380
85	1/14/2022 email from Jacob Garrison to Wendy Shattuck and Tabitha Courtney	USC_FAV_000015207
86	1/19/2022 email from Jacob Garrison to Wendy Shattuck et al.	USC_FAV_000015532
87	2/1/2022 email from Charles Zukoski to Carol Folt	USC_FAV_000016545
88	2/25/2022 email from Ray Gonzales to Robert Morse et al.	USC_FAV_000034321

89	Expert Report of David Monk (Dkt. 145-4)	
90	2/28/2022 Email from Ray Gonzales to Mark Todd	USC_FAV_000048886
91	2022 OIR Spreadsheet	USC_FAV_000048887
92	USC's Responses to Plaintiffs' First Set of Interrogatories (#10)	
93	USC's Supplemental Responses to Plaintiffs' First Set of Interrogatories (#10)	
94	Declaration of Anna Haac	
95	Declaration of Eric Rothschild	

1 **I. INTRODUCTION**

2 USC's Rossier School of Education submitted false data to U.S. News &
3 World Report for years, earning rankings far better than it deserved. USC recognized
4 it was "fudging their US News submission," which was confirmed by an
5 investigation conducted by the law firm Jones Day. Ex. 1. As Jones Day observed,
6 USC "was at all times free not to submit itself for rankings consideration by U.S.
7 News; having opted to submit, however, the School was not free to create its own
8 rules." Ex. 2, at 95893. Yet that is exactly what it did.

9 And USC did not stop there. USC and its for-profit partner 2U inundated
10 prospective students with unearned rankings through a multi-channel marketing
11 scheme to induce them to apply, enroll, and pay top dollar to attend Rossier's online
12 Masters and doctoral programs. Rossier's falsification and attendant
13 misrepresentation of its U.S. News ranking violated federal education law and
14 California's consumer protection laws, as did compensating 2U in lock step with
15 Rossier's student enrollment, which incentivized 2U to aggressively promote the
16 fraudulent rankings.

17 As a result, Plaintiffs and other students paid a premium to attend a school
18 that lacked the stature represented to them. Plaintiffs thus move the Court to certify
19 the following class and damages subclasses:

20 Class: All persons who: (1) were enrolled in the online
21 MAT (single subject ("SS") or multiple subject ("MS")) or
22 the online Ed.D in Organizational Change and Leadership
23 (OCL) at Rossier; (2) began classes in a program cohort
24 between August 2017 and January 2022; and (3) paid or
25 were obligated to pay tuition for classes associated with
the program in which they enrolled.¹

26 ¹ Specifically excluded from the putative Classes are Defendant, any entities in which Defendant
27 has a controlling interest, any of Defendant's parents, subsidiaries, affiliates, officers, directors,

1 Online MAT Damages Subclass: All Class Members who
2 were enrolled in the online MAT (SS or MS) at Rossier.

3 Online OCL Damages Subclass: All Class Members who
4 were enrolled in the online Ed.D in OCL at Rossier.

5 This case is ideally suited for class certification as the common questions that
6 will drive resolution of Plaintiffs’ false advertising claims—deception, materiality,
7 and reliance—will be resolved the same for all Class members based on common
8 evidentiary proof and using an objective reasonable consumer standard. Further, this
9 Court has already held that Plaintiffs’ expert, Dr. Michael Dennis, has put forward a
10 reliable classwide price premium damages model, and that Plaintiffs’ other class
11 certification experts are likewise qualified and their testimony reliable. Dkt. 173.

12 **II. BACKGROUND**

13 **A. Rossier created new online programs to grow enrollment and**
14 **revenue.**

15 Rossier’s rankings fraud coincided with a substantial expansion of program
16 offerings that began after it appointed a new Dean, Karen Gallagher. At the time,
17 Rossier was at risk of closing due to low enrollment, “mediocre students, [and] a
18 dispirited faculty.” Ex. 3, at 44061; Ex. 4, at 18:19–19:14, 22:9–15. Rossier
19 restructured its academic offerings, with its Doctor of Education (“EdD”) program—
20 which was much larger than its PhD program—intended to be “the signature
21 program of the school and a major source of revenue generation.” Ex. 5, at 55672.

22 In 2009, Rossier partnered with for-profit start-up 2U to add an online Master
23 of Arts in Teaching (MAT) program. Ex. 6; Ex. 7. Rossier’s partnership with 2U
24 was designed to dramatically increase enrollment and it did. The first year USC
25 offered the online MAT, it included 142 students, double the on-campus program,

26 _____
27 employees, and members of such persons’ immediate families, and the presiding judge in this case,
28 their staff, and his, her, or their immediate family.

1 and soon surpassed 1,000. Ex. 7. In 2015, USC expanded Rossier's EdD offerings
2 with an online program in Organizational Change and Leadership ("OCL"). Ex. 8.
3 Prior to the program's launch, Rossier enrolled a total of [REDACTED] doctoral students; by
4 2020, there were [REDACTED] students in OCL alone, making up [REDACTED] of the school's doctoral
5 students. Ex. 9.

6 Rossier's contract vested 2U with [REDACTED]
7 [REDACTED] Ex. 10, at 94402. These functions are
8 governed by the Higher Education Act's ban on "incentive payments based directly
9 or indirectly on success in securing enrollments." 20 U.S.C. § 1094(a)(20); Dkt. 67
10 at ¶¶ 25–30.² But Rossier did pay 2U for securing enrollments—[REDACTED]
11 [REDACTED] Ex. 10, at 94410; Ex. 11, at 25012–13.

12 Rossier knew full well that 2U had "a vested interest in making the conditions
13 for enrollment the lowest possible to increase the highest possible initial investment
14 by applicants/new candidate to achieve their ROI." Ex. 12, at 43417. To this end,
15 2U "repeatedly" asked Rossier to raise the enrollment cap for the OCL program, and
16 USC agreed. Ex. 13; Ex. 14. Knowing these financial incentives, USC supplied 2U
17 with falsified rankings to promote to unsuspecting students.

18 **B. Rossier falsified data to inflate its U.S. News rankings.**

19 U.S. News is the only organization that ranks schools of education. Each year,
20 U.S. News collects data from schools and ranks them using ten criteria. Ex. 15. As
21 USC knew, the rankings rewarded a low admission rate, low ratios of students and
22 graduates per faculty, and high research spending. Ex. 16. To achieve a top 15 rank
23 throughout the class period, Rossier reported the wrong data for practically every
24 element of the rankings. Ex. 17 (showing dramatic shifts in nearly every line item
25 when comparing false data submitted for Fall 2020 to accurate data for Fall 2021).

26
27 ² All docket numbers used here refer to No. 2:23-cv-00846-GW-MAR.

1 It did so knowing that a high ranking was important to prospective students. *See*,
2 *e.g.*, Ex. 18, at 739; Ex. 19; Ex. 20, at 39264. Rossier then aggressively promoted its
3 rank as a “key differentiator” on its website and through a sophisticated multi-
4 channel marketing effort led by 2U. *See infra* Sec. C.1.

5 For years, Rossier set its own rules for reporting doctoral students rather than
6 follow U.S. News’s instructions—omitting data from its EdD program, supposedly
7 “the signature program of the school.” Ex. 5, at 55672. In 2012, a USC administrator
8 noticed the “inconsistency in [Rossier’s] US News data – It seems [Rossier] reports
9 applications and GRE Scores only for Ph.D. Students and not Ed.D. Students. The
10 US News question is about Doctoral students. . . . Our strong recommendation is
11 that all doctoral students should be reported.” Ex. 21. Dean Gallagher refused: “we
12 would look terrible if they counted EdDs the same as PhDs.” Ex. 21. In 2014, a U.S.
13 News representative instructed Rossier that “[d]ata should be reported on all doctoral
14 programs that the school of education offers,” making clear that U.S. News used “the
15 term ‘doctoral’ to cover both the Ph.D. and the Ed.D. degrees.” Ex. 22. In 2017, U.S.
16 News reiterated these students should be included. Ex. 2, at 95885–86. Rossier
17 nevertheless excluded them.

18 In 2016, the Dean proposed a persuasion campaign to get U.S. News to change
19 its survey questions. “Unless we are successful, we will drop like a rock in the
20 rankings, particularly when the OCL has over 500 EdDs enrolled at any one time
21 and that number is combined with our on campus ed leadership program.” Ex. 23.
22 But when U.S. News updated its survey instructions, it *clarified* that “doctoral
23 *should include* both Ph.D. and Ed.D. students” (emphasis added). Ex. 2, at 95886;
24 Ex. 24, at slide 2. Rossier defied those instructions too. Ex. 4, at 223:18–224:9.
25 Despite this crystal-clear command, Rossier continued its “US News strategy” of
26 misreporting, which USC’s Vice President for Admissions and Planning approved,
27 “rather than lumping EdD and PhD together,” as instructed by U.S. News. Ex. 2, at

1 95886–87; Ex. 25.

2 For acceptance rates, Rossier excluded EdD students entirely. Ex. 2, at 95877.
3 USC knew that a “[l]ower acceptance rate is better” and that its “admit rate for the
4 Edd program is quite high compared to the PhD.” Ex. 16; Ex. 26. For example, when
5 it prepared its submission for the Fall 2021 class, Rossier reported an acceptance
6 rate of [REDACTED] Ex. 27, at 13385. When corrected to include EdDs, its acceptance rate
7 rose to [REDACTED]
8 [REDACTED] Ex. 28, at 16467.³

9 For doctoral enrollment, Rossier excluded online EdD students and falsely
10 designated all other EdD students as part-time, despite USC’s internal systems
11 counting them as full-time (because USC only offered full-time EdD programs). Ex.
12 2, at 95896; Ex. 29; Ex. 30, at 249:9–23; Ex. 31. Why? Because USC knew that
13 “[l]ower is better for doctoral student/faculty ratios.” Ex. 16. The difference was
14 drastic.⁴ For Fall 2021, Rossier originally reported [REDACTED] enrolled in its full-
15 time doctoral program, when in reality the figure was [REDACTED]
16 [REDACTED] Ex. 27, at 13382; Ex. 28, at 16464.

17 For doctorates granted, Rossier also excluded online EdD students. Ex. 26;
18 *see also* Ex. 2, at 95896. As with the other categories Rossier misreported, the jump
19 in graduates is stark. When accurately calculated, USC’s number of 2021 graduates
20 [REDACTED] Ex. 27, at 13392; Ex. 28, at 16476. USC welcomed the
21 revenues that came with its large EdD programs, but concealed their effects on the
22 metrics that determine rankings.

23 _____
24 ³ Rossier also excluded all EdD students from its response to survey questions about GREs,
25 because it knew that only reporting PhD outcomes could protect its ranking, especially after U.S.
26 News instituted a penalty for schools that reported that less than 50 percent of their entering
27 doctoral students took the GREs. Ex. 2, at 95907; Ex. 24, at slide 5.

26 ⁴ USC knew that U.S. News counted part-time students as one-third when calculating full-time
27 equivalents to measure student-faculty ratio. Ex. 21; Ex. 2, at 95896.

Rossier also vastly exaggerated research expenditures, counting “grants outside of Education’s accounts” as Rossier dollars, without justification. Ex. 2, at 95896–98; Ex. 32 (*see* row 390 on sheet “Summary FY2021”). Ray Gonzales, the Director of USC’s Office of Institutional Research, asked at least six administrators why Rossier counted “grants outside of Education’s accounts” as its own. Ex. 33; Ex. 34; Ex. 35. No one could explain it. *Id.* Gonzales concluded they “should be excluded.” Ex. 17, at slide 4. When accurately calculated, research expenditures for the 2020–2021 fiscal year were reduced by half, from \$30,972,939 to \$17,691,034. Ex. 36.

USC faculty and staff persistently raised Rossier’s misreporting with administration, but “feared retaliation if they did not comply with [the] Dean[’s] instructions.” Ex. 2, at 95889. When Rossier’s Faculty Council Chair expressed “a good deal of concern” amongst faculty about Rossier’s misreporting, he was admonished by Dean Gallagher. Ex. 37. Jacob Garrison, the staffer charged with preparing Rossier’s survey responses, also repeatedly raised the misreporting with both Dean Gallagher and her successor, Pedro Noguera, to no avail. Ex. 38, at 104:2–107:22; 128:23–130:12; 142:13–154:8. Garrison elected not to go outside Rossier to report the “fraudulent” misreporting when it continued under Noguera, because “USC at the time had a -- not a great reporting structure for any ethical or legal concerns.” Ex. 38, at 158:20–24, 167:13–24; Ex. 2, at 95889–92.

Every aspect of this misreporting occurred throughout the class period, resulting in a dramatic rise in Rossier’s rankings, from 38 in 2009 to as high as 10 in 2019. Ex. 39; *see also* Ex. 40, at slide 4. Plaintiffs’ expert Sara Neher calculated that with accurate data, Rossier’s rankings would have dropped significantly, as seen below:

Table 2: Rossier's U.S. News Published Rank vs. Adjusted Rank

Edition Year	2018	2019	2020	2021	2022
Initial Rank	15	10	12	11	11
Adjusted Rank	47	33	60	62	63

See Ex. 41, at 3; Dkt. 173 at 14.

C. Rossier worked with 2U to broadly disseminate its fraudulent U.S. News ranking throughout the recruiting process.

1. USC and 2U knew that higher rankings drive applications and enrollment decisions.

A school's U.S. News rank is a signaling factor to students about where to apply and where to enroll. Empirical research published by economist Dr. Jonathan Smith, USC's expert in this case, found that each one-rank improvement leads to a 1-2 percent increase in the number of applicants. Ex. 42.

Students also consider rankings when deciding where to enroll. A recent survey found that around 30 percent of students consider a school's ranking and reputation to be among their most important factors when choosing a school. Ex. 43. This outpaces the percentages of students who consider things like school size, faculty resources, and return on investment to be important factors. *Id.*

Rossier's internal communications and research corroborate these academic findings. In 2014 and 2015, a consultant working with Rossier noted that rankings contributed to "brand equity and choice" and that 50-55 percent of "high-ability students choose to enroll in the highest-ranking university." Ex. 44, at 19609. The consultant's subsequent survey of Rossier students similarly found that "rankings and USC prestige" was among the most important factors in deciding to attend USC. Ex. 45, at 39264. Accordingly, Rossier's assistant dean for communications included

1 the fact that the school “is strongly ranked in US News & World Report,” as one of
2 the “10 Things You Should Tell Potential Students About Rossier.” Ex. 46.

3 2U similarly recognized the importance of rankings. In its Form 10-K
4 disclosures, 2U noted that “[d]amage to university client reputation” would impact
5 its ability to enroll students, and that rankings were among the factors that could
6 change a university’s reputation. Ex. 47, at 16. 2U’s 2013 marketing plan included
7 [REDACTED] Ex. 48, 1129. The
8 2020 MAT marketing plan specified that “school reputation, alumni network, and
9 rankings are the most significant factors for [students] choosing a program,” and that
10 Rossier’s #12 Rank was a “program value prop” and a “differentiator.” Ex. 49, at
11 20–21; *see also* Ex. 50, at 179:25-181:12 (discussing value propositions,
12 differentiators, and rankings).

13 **2. USC and 2U bombarded prospective students with rankings**
14 **information to persuade them to apply and enroll.**

15 USC capitalized on Rossier’s artificially high rank, working with 2U to ensure
16 market saturation through a multi-channel marketing strategy. As Plaintiffs’ expert
17 Dr. John Chandler opined, it would have been virtually impossible for a student to
18 enroll in Rossier without exposure to the school’s fraudulent ranking, an opinion this
19 Court found supported by Dr. Chandler’s “expertise, comprehensive examination of
20 general marketing strategies, and a review of record evidence in this case indicating
21 that 2U and USC centrally controlled an extensive marketing strategy.” Dkt. 173 at
22 9.

23 To achieve this universal reach, 2U applied a marketing funnel framework
24 that promoted Rossier’s online programs to prospective students,⁵ using targeted

25 _____
26 ⁵ Ex. 51, at ¶ 57 (explaining how the traditional marketing funnel framework works in the higher
27 education enrollment context); *id.* at ¶¶ 59-81 (exploring in greater detail each stage of the
recruiting marketing funnel and the multichannel marketing used).

1 emails, paid search advertisements, social media advertisements, websites, and print
2 marketing. *See generally* Ex. 51, at ¶¶ 82-102 (analyzing 2U’s marketing plans for
3 USC’s online MAT and OCL programs). USC employed a similar marketing
4 scheme, identifying which marketing modalities to use with potential enrollees at
5 particular stages in the enrollment journey. *See* Ex. 52 (Prospective Student Journey
6 Map).

7 Every student who eventually enrolled in Rossier’s online programs
8 (including every class member) entered this funnel by identifying themselves as an
9 interested customer when they applied for admission—if not sooner. *See* Ex. 50, at
10 46:19-47:22 (noting 2U marketing funnel identified “prospects” as “individuals who
11 have identified their interest in a program through either 2U’s request information
12 forms or directly to [USC]”); *id.* at 50:12-21 (noting that prospects who identified
13 themselves to USC directly would be included in the 2U funnel); Ex. 53, at 222:11-
14 225:17 (explaining how all students who enroll would be included in the funnel).

15 Throughout the Class period, Rossier’s fraudulent ranking was plastered on
16 the school’s homepage—the primary repository of information for students deciding
17 whether to apply or enroll—with other pages containing either direct references or a
18 link to the U.S. News website. *See* Ex. 51, at ¶¶ 126, 161. In addition, 2U and USC
19 repeated the key rankings message throughout the funnel. Ex. 51, at ¶¶ 110-198
20 (describing the extensive use of U.S. News rankings in USC and 2U advertising
21 materials).⁶ As a 2019 2U marketing plan put it, [REDACTED]
22 [REDACTED]

23 _____
24 ⁶ For example, one 2U marketing plan [REDACTED]

[REDACTED] Ex. 55, at 425.

25 Another 2U marketing plan [REDACTED]
26 [REDACTED]

[REDACTED] Ex. 56, at 488. *See also, e.g.,* Ex. 50, at 111:16-19 (noting that 2U employs “[t]he strategy of using differentiated e-mail campaigns based on the funnel stage”).

1 [REDACTED] Ex. 54, at 1492.

2 2U's corporate representative testified that its paid email campaigns for
3 Rossier would have included the U.S. News ranking given that it was a "leading
4 differentiator." Ex. 50, at 105:14-106:9, 113:13-114:1. [REDACTED]

5 [REDACTED]
6 [REDACTED] *See, e.g.,* Ex. 57 and Ex. 58; *see also* Ex. 59; Ex. 60; *see also* Ex.
7 61, at 95:23-96:12. In addition, USC and 2U both distributed print marketing
8 materials that included Rossier's ranking. *See, e.g.,* Ex. 62; Ex. 63; Ex. 52 (noting
9 the sending of the Admitted Students Guide); Ex. 64, at 25418.

10 Every one of these marketing materials that advertised the inflated rankings
11 was misleading—and constituted a substantial misrepresentation in violation of the
12 Higher Education Act. 20 U.S.C. § 1094(c)(3); 34 C.F.R. § 668.71(b) (ban on
13 substantial misrepresentation extends to "the institution itself" and "any ineligible
14 institution, organization, or person with whom the eligible institution has an
15 agreement to provide educational programs, marketing, advertising, recruiting or
16 admissions services"); *see also* Ex. 65 (stating "The Department believes . . . each
17 knowing and intentional republication by Temple of a U.S. News and World Report
18 ranking based on the false information Temple itself provided for the purpose of
19 increasing enrollment and revenue, was a substantial misrepresentation of the nature
20 of Temple's education program in violation of 20 U.S.C. § 1094(c)(3)(A) and (B).").

21 **D. Plaintiffs all relied on Rossier's fraudulent rank when enrolling in**
22 **Rossier.**

23 Although each student's enrollment journey may have varied slightly, this
24 multi-channel advertising scheme ensured that every class member would have been
25 exposed to Rossier's fraudulently obtained rank, likely multiple times, on the road
26 to enrollment. *See, e.g.,* Ex. 53, at 301:21-302:14 (reviewing the layers of rankings
27 marketing a matriculating student encounters on the path to enrollment). As USC

1 knew, its U.S. News ranking was a “key differentiator” for students, including
2 Plaintiffs, who relied on them in choosing to enroll in Rossier. No Plaintiff would
3 have attended Rossier or paid its top of market tuition⁷ had they known USC falsified
4 data to obtain a better rank.

5 For example, Plaintiff Iola Favell enrolled in Rossier’s MAT program in
6 August 2020 “because it was a highly ranked school.” Ex. 67, at 177:12-22. At the
7 time, Rossier was ranked #12 by U.S. News based on its falsified data. Ex. 39. Favell
8 searched for the best programs in education, which brought her to the U.S. News
9 website, where she first saw USC’s fraudulent #12 ranking. *See* Ex. 67, at 48:10-19;
10 Ex. 68, at Interrogatory #4. During the application process and before enrolling,
11 Favell also reviewed Rossier’s homepage, where it was promoted. Ex. 67, at 176:5-
12 177-1; Ex. 69. Had USC submitted accurate data, Rossier would have been ranked
13 #60, not #12. Ex. 41, at 3. As Favell testified, she would not have attended USC if it
14 had accurately reported to U.S. News. Ex. 67, at 178:15-18 (noting that she would
15 not have attended a school ranked #20 because she doesn’t consider it to be top
16 ranked).

17 Plaintiff Ahmad Murtada enrolled in Rossier’s OCL program in May 2019
18 because USC was ranked #10, based on its falsified data. *See* Ex. 61, at 54:11-55:18.
19 Murtada was exposed to USC’s fraudulent ranking several times through different
20 channels: In early 2019, he received a targeted advertisement for Rossier on
21 LinkedIn, which contained a reference to the school’s top 10 ranking and a link to
22 the U.S. News website. Ex. 61, at 54:11-55:18; *see also* Ex. 70, Interrogatory #4. He
23 subsequently visited Rossier’s homepage, which said Rossier was ranked “the 10th
24 best school of education” by U.S. News. Ex. 70, at Interrogatory #4. Murtada also
25 attended webinars for the OCL program, where presenters discussed the school

26 ⁷ In 2019, for example, tuition was [REDACTED] for the MAT program, and [REDACTED] for the OCL
27 program. Ex. 66, at 5; Ex. 54, at 1488.

1 being top ranked, and he spoke to an admissions counselor who promoted the U.S.
2 News ranking. Ex. 61, at 95:23-96:24; 230:6-231:15. In January 2019, Murtada
3 received an email from USC reinforcing that Rossier was “[r]anked among the top
4 schools of education in the nation.” Ex. 70, at Interrogatory #4; Ex. 71. Had the
5 school submitted accurate data, it would have been ranked 33 instead of 10. Ex. 41,
6 at 3. And Murtada would not have attended. *See* Ex. 61, at 217:9-18.

7 Plaintiff Mariah Cummings enrolled around the same time as Murtada, in
8 Rossier’s MAT program. *See* Ex. 72, at 34:25-35:1. When deciding where to enroll,
9 she researched schools and viewed the U.S. News website, where she too saw
10 Rossier’s fraudulent #10 rank. Ex. 72, at 64:13-21. She also visited Rossier’s
11 homepage, advertising the same. Ex. 73, at Interrogatory #4. In addition, she saw
12 advertisements from a Google search promoting Rossier as a top-ranked school, with
13 similar marketing popping up on her social media and while Plaintiff browsed the
14 Internet for unrelated matters. Ex. 73, at Interrogatory #4. Cummings would not have
15 attended USC if it had been ranked in the 30s. Ex. 72, at 138:2-24; *see also id.* at
16 121:22-25; *id.* at 121:11-17.

17 Plaintiff Sue Zarnowski enrolled in the EdD OCL program in August 2018,
18 when Rossier was ranked #10 by U.S. News based on falsified data. Ex. 74, at
19 146:15-19. When researching EdD programs prior to enrollment, Zarnowski saw
20 Rossier’s ranking in sponsored results from Google searches and advertisements on
21 her social media. Ex. 75, at Interrogatory #4. In March 2018, she received an email
22 from Rossier promoting its #10 ranking. Ex. 74, at 48:10-50:7; 58:22-24. She then
23 visited the Rossier homepage, as well as RossierOnline, both of which advertised
24 the school’s #10 rank, which prompted her to visit the U.S. News website for
25 confirmation. Ex. 74, at 58:25–59:15, 60:7–62:4. In reality, USC should have been
26 ranked #33. Ex. 41, at 3. Zarnowski would not have attended USC if it had been
27 ranked in the 30s. *See* Ex. 74, at 138:17-24, 194:2-15.

E. Rossier concealed the truth about its rankings fraud to the very end.

USC leadership took no action to confront Rossier's misreporting practices until after a Dean of Temple University was indicted for rankings fraud in April 2021. Ex. 76; *U.S. v. Porat*, No. 21-cr-170, 2022 WL 685686, at *1 (E.D. Pa. Mar. 8, 2022). [REDACTED]

[REDACTED] Ex. 77, at [REDACTED] A few days later, USC's Vice Provost called for an audit of USC's rankings reporting, explicitly referencing the Temple Dean's indictment. Ex. 78; Ex. 79. The prosecution of the Temple Dean motivated staffer Jacob Garrison to confront Dean Noguera with his understanding that Rossier's reporting practices were "fraudulent." Ex. 38, at 158:20–160:17. Still, Dean Noguera "decided that we should approach it the same way we did last year." Ex. 80.

It was only at this point that USC's Provost's office intervened in the submission. After reviewing Rossier's data, OIR Director Ray Gonzales concluded that "the School of Ed has been fudging their US News submissions" and "the[ir] completions data have been cooked." Ex. 1; Ex. 26. He told USC's Vice Provost, "[i]n my mind, this means all their data are suspect." Ex. 81. The Provost then ordered Rossier to include all its doctoral programs. Ex. 82. Gonzales worked with Garrison to submit a corrected 2022 survey response that conformed with U.S. News's instructions. Ex. 38, at 185:20–22; Ex. 83, at 113:12–114:2.

USC and Rossier officials knew the school's ranking would decline as a result. Dean Noguera wrote "it appears likely that Rossier will fall from the top 20 ed schools now that we are reporting our data to US News differently." Ex. 84. Garrison stated "[w]e maybe unranked or near the bottom," and "we should expect to fall significantly in the rankings." Ex. 85; Ex. 86. The Provost warned USC's President of "[e]xpectations for drop in rankings." Ex. 87.

1 Having come to that realization, USC withdrew Rossier’s submission,
2 ensuring U.S. News never had the opportunity to accurately rank the school. Ex. 88.
3 Schools often submit updated data to U.S. News to correct mistakes, but USC never
4 did, even though Gonzales prepared a spreadsheet comparing what Rossier
5 submitted to U.S. News to what it should have submitted, revealing both the
6 magnitude of Rossier’s misreporting and its consistency throughout the Class period.
7 See Ex. 89, at ¶ 29 n.43; Ex. 83, at 115:12–117:16; Ex. 90; Ex. 91. As a result,
8 Rossier students and alumni never learned how badly they were misled.

9 **III. ARGUMENT**

10 A court has “broad discretion to determine whether a class should be
11 certified.” *Guzman v. Polaris Indus., Inc.*, 345 F.R.D. 174, 182 (C.D. Cal. 2023),
12 *leave to appeal denied sub nom. Guzman v. Polaris Indus., Inc. – Minn.*, No. 23-cv-
13 2734, 2023 WL 9116743 (9th Cir. 2023). In making this determination, the Ninth
14 Circuit has cautioned “it is critical to keep in mind that class certification is different
15 from summary judgment.” *Lytle v. Nutramax Lab’ys, Inc.*, 114 F.4th 1011, 1023 (9th
16 Cir. 2024). “A court . . . is merely to decide [whether a class action is] a suitable
17 method of adjudicating the case.” *Id.* And a plaintiff need only “prove the facts
18 necessary to carry the burden of establishing that the prerequisites of Rule 23 are
19 satisfied by a preponderance of the evidence.” *Lytle v. Nutramax Lab’ys, Inc.*, No.
20 ED 19-cv-0835 FMO (SPx), 2022 WL 1600047, at *2 (C.D. Cal. May 6, 2022), *aff’d*,
21 99 F.4th 557 (9th Cir. 2024), *opinion amended and superseded on denial of reh’g*,
22 114 F.4th 1011 (9th Cir. 2024), *and aff’d*, 114 F.4th 1011 (9th Cir. 2024) (quoting
23 *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th
24 Cir.), *cert. denied sub nom. StarKist Co. v. Olean Wholesale Grocery Coop., Inc.,*
25 *On Behalf of Itself & All Others Similarly Situated*, 143 S. Ct. 424, 214 L. Ed. 2d
26 233 (2022)).

27 On occasion, the Rule 23 analysis “will entail some overlap with the merits of

the plaintiff’s underlying claim[.]” and “sometimes it may be necessary for the court to probe behind the pleadings[.]” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 at 350-51 (2011) (internal quotation marks omitted). However, “Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). “Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites . . . are satisfied.” *Id.* “To hold otherwise would turn class certification into a mini-trial.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011) (citations omitted).

A. The Class satisfies all Rule 23(a) factors.

A class action must satisfy the requirements of Fed. R. Civ. P. 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy, as well as at least one subdivision of Fed. R. Civ. P. 23(b). Here, Plaintiffs seek certification under Rule 23(b)(3).

1. Numerosity is readily met here.

A putative class may be certified where it “is so numerous that joinder of all members is impracticable[.]” Fed. R. Civ. P. 23(a)(1). Although no specific number is needed, this Court has found, “40 or more individuals in a proposed class has been considered sufficient to satisfy the numerosity requirement.” *Baten v. Mich. Logistics, Inc.*, No. 18-cv-10229-GW(MRWx), 2021 WL 4962103, at *2 (C.D. Cal. Oct. 25, 2021); *see also Jordan v. Cty. of L.A.*, 669 F.2d 1311, 1319 (9th Cir.) (finding class sizes of 39, 64, and 71 sufficient to satisfy the numerosity requirement), *vacated on other grounds by Cty. of L.A. v. Jordan*, 459 U.S. 810 (1982). Over 2,000 students enrolled in USC’s MAT and EdD programs during the relevant time period, such that the numerosity requirement is easily satisfied. *See* Exs. 92 & 93, at Def.’s Resp. to Pl.’s Interrog. No. 10 and Def.’s Sec. Supp. Resp. to Pls.’ Interrog. No. 10 (between 2017 and 2022, 622 individuals enrolled in USC’s

1 MAT-SS program, 616 individuals enrolled in USC’s MAT-MS program, and 1,221
2 individuals enrolled in USC’s EdD-OCL program).

3 **2. Many common questions of law and fact exist.**

4 A finding of commonality requires “questions of law or fact common to the
5 class.” Fed. R. Civ. P. 23(a)(2). Courts permissively construe the commonality
6 requirement. *Baten*, 2021 WL 4962103, at * 3 (C.D. Cal. 2021) (quoting *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). It is not necessary that all
8 questions of law or fact be common. *Hardwick v. Hoovestol, Inc.*, No. 20-cv-7505-
9 DMG (MAXx), 2022 WL 4596592, at *6 (C.D. Cal. Sept. 12, 2022). Rather, a single
10 common question can suffice. *Baten*, 2021 WL 4962103, at *3. Further, “[a]
11 common contention need not be one that ‘will be answered, on the merits, in favor
12 of the class.’ It only ‘must be of such nature that it is capable of class-wide
13 resolution.’” *Alcantar v. Hobart Servs.*, 800 F.3d 1047, 1053 (9th Cir. 2015)
14 (quoting *Amgen Inc.*, 568 U.S. at 459 and *Wal-Mart Stores*, 564 U.S. at 350). “The
15 existence of shared legal issues with divergent factual predicates is sufficient, as is
16 a common core of salient facts coupled with disparate legal remedies within the
17 class.” *Hardwick*, 2022 WL 4596592, at *6.

18 This case presents numerous common questions of fact and law central to
19 Plaintiffs’ UCL, FAL, and CLRA claims, all of which originate from the same
20 conduct on USC’s part, namely utilizing falsified U.S. News rankings to induce
21 students to enroll in online programs at Rossier. Whether and to what extent USC
22 provided falsified data to U.S. News, whether it thereby inflated Rossier’s ranking,
23 whether that ranking was material to students, whether 2U was contractually
24 incentivized to market the inflated rankings to increase enrollment, and whether
25 students were misled by that ranking using an objective reasonable consumer
26 standard are all questions of fact and law that will be decided for all students using
27 common proof.

Courts often find commonality in cases involving deceptive advertising because the key issues of deception, causation, materiality, and reliance are common to all class members. *See, e.g., Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.*, 326 F.R.D. 592, 607-08 (N.D. Cal. 2018); *Guzman*, 345 F.R.D. at 184 (“To assert a claim under the UCL, FAL, or CLRA, ‘it is necessary only to show that members of the public are likely to be deceived.’ Thus, claims of this type are ideal for class certification because they do not require ‘the court to investigate class members’ individual interaction with the product.”) (citations omitted); *Lytle*, 2022 WL 1600047, at *8 (C.D. Cal. May 6, 2022), *aff’d*, 99 F.4th 557 (9th Cir. 2024), *opinion amended and superseded on denial of reh’g*, 114 F.4th 1011 (9th Cir. 2024), and *aff’d*, 114 F.4th 1011 (9th Cir. 2024) (finding “common questions relating to the likelihood of consumers being deceived by defendants’ representations, the materiality of those representations, and their veracity”). This Court should find so here as well.

3. Plaintiffs’ claims are typical of Class members’ claims.

Rule 23(a)(3) requires that the “claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” Typicality “is not demanding.” *In re Heritage Bond Litig.*, No. 01-cv-5752 DT, 2004 WL 1638201, at *4 (C.D. Cal. July 12, 2004). It “focuses on the class representative’s claim—but not the specific facts from which the claim arose—and ensures that the interest of the class representative aligns with the interests of the class.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017) (internal quotation marks omitted). The representative plaintiff’s claims need not be identical to those of the class, but rather need only be “reasonably co-extensive with those of absent class members.” *Clevenger v. Welch Foods Inc.*, 342 F.R.D. 446, 456 (C.D. Cal. 2022) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d at 1020).

Typicality is readily met here as Plaintiffs’ and the Class’s claims arise from

1 the same facts and legal theories. Like all Class members, Plaintiffs enrolled in USC
2 when Rossier was highly ranked by U.S. News based on falsified data. *See* Section
3 II.D., *supra*. Despite knowing they were fraudulent, USC and 2U prominently
4 advertised Rossier’s U.S. News rankings to prospective students, including
5 Plaintiffs, through a pervasive, multi-channel marketing effort, which ensured
6 complete saturation of USC’s top rank—a “differentiator” for students in selecting
7 schools. *Id.* As a result, all Plaintiffs and class members overpaid for a false bill of
8 goods.⁸

9 Courts routinely find similar facts sufficient for typicality. *See, e.g., In re*
10 *JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609 F. Supp. 3d 942, 961
11 (N.D. Cal. 2022); *Young v. Neurobrands, LLC*, No. 18-cv-05907-JSW, 2020 WL
12 11762212, at * 5 (N.D. Cal. Oct. 15, 2020) (finding typicality for plaintiffs who
13 alleged the same harm as absent class members based on defendant’s allegedly false
14 advertising); *Pettit v. Procter & Gamble Co.*, No. 15-cv-02150-RS, 2017 WL
15 3310692, at *4 (N.D. Cal. Aug. 3, 2017) (finding typicality where plaintiff sought
16 restitution for a premium paid for an allegedly falsely-labeled and advertised
17 product). In *In re JUUL*, for example, JUUL engaged in pervasive branding and
18 marketing that misleadingly communicated to consumers that JUUL products were
19 less addictive than combustible cigarettes, although the imagery and wording in
20 JUUL’s messaging differed among class members, whose “individualized nicotine
21 journey” and addiction experience also varied. 609 F. Supp. 3d at 987-88. The court
22 found such differences were immaterial and did not preclude typicality, as all of the
23 plaintiffs’ claims were based on the same theory, that had JUUL been truthful in its
24 health messaging, plaintiffs would have paid less or purchased different products.

25
26 ⁸ For the damages subclasses, Plaintiffs Favell and Cummings are typical of individuals that
27 enrolled in Defendant’s MAT program and Murtada and Zarnowski are typical of students that
28 enrolled in Defendant’s EdD OCL program.

1 *Id.* at 961-64.

2 Here, Plaintiffs’ claim is that all students overpaid to attend a graduate school
3 they were misleadingly told was highly ranked. And each Plaintiff testified that they
4 would not have gone to Rossier or paid its high tuition had they known its ranking
5 was inflated. *See* Section II.D., *supra*. Although there may be slight differences in
6 the experiences of Plaintiffs and class members concerning how and when they were
7 exposed to USC’s fraudulent ranking, these differences are immaterial and do not
8 preclude typicality as their claims are all of the same nature. *See In re JUUL*, 609 F.
9 Supp. 3d at 961-64; *see also Ellis*, 657 F.3d at 985 n.9 (“Differing factual scenarios
10 resulting in a claim of the same nature as other class members does not defeat
11 typicality.”).

12 **4. Plaintiffs and their counsel are adequate representatives.**

13 “The Rule 23(a)(4) adequacy determination turns on the answers to two
14 questions: (1) do the named plaintiffs and their counsel have any conflicts of interest
15 with other class members and (2) will the named plaintiffs and their counsel
16 prosecute the action vigorously on behalf of the class?” *Hardwick*, 2022 WL
17 4596592, at *6. Plaintiffs and their counsel satisfy both.

18 Adequate representation depends on “an absence of antagonism, a sharing of
19 interests between representatives and absentees, and the unlikelihood that the suit is
20 collusive.” *Baten*, 2021 WL 4962103, at *5; *see also Rodriguez v. Hayes*, 591 F.3d
21 1105, 1125 (9th Cir. 2010). No antagonism, conflict of interest, or collusion exists
22 here. Each Plaintiff shares the same core interest with absent Class members in
23 proving that: (1) USC provided false data to U.S. News that inflated its ranking; (2)
24 USC’s advertising of its fraudulent rankings was deceptive and misleading in
25 violation of California law; and (3) students were induced to enroll and overpay
26 tuition based on the fraudulent rankings.

27 Plaintiffs’ engagement with this case further confirms their adequacy. Each

1 Plaintiff sat for depositions; produced documents; answered interrogatories; and
2 kept abreast of the litigation. *See Keegan v. American Honda Motor Co.*, 284 F.R.D.
3 504, 526 (C.D. Cal. 2012) (finding adequacy met where “class representatives have
4 been engaged participants in this litigation, submitting declarations in support of
5 plaintiffs’ motions and making themselves available for deposition testimony”);
6 *Loc. Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244
7 F.3d 1152, 1162 (9th Cir. 2001) (“The record indicates clearly that [the class
8 representative] understands his duties and is currently willing and able to perform
9 them. The Rule does not require more.”).

10 Tycko & Zavareei LLP and the National Student Legal Defense Network are
11 also adequate Class Counsel. In considering adequacy, the court must consider “(i)
12 the work counsel has done in identifying or investigating potential claims in the
13 action; (ii) counsel’s experience in handling class actions, other complex litigation,
14 and the types of claims asserted in the action, (iii) counsel’s knowledge of the
15 applicable law; and (iv) the resources that counsel will commit to representing the
16 class.” Fed. R. Civ. P. 23(g)(1)(A). Each factor weighs in favor of appointment.

17 This Court is already aware of the extensive work counsel has done on behalf
18 of the Class. They have zealously litigated this case, invested tens of thousands of
19 dollars in retaining and deposing experts, and spent many hours moving the case
20 forward through discovery and motion practice. *See* Exs. 94 & 95, Declarations of
21 Counsel. Counsel’s background, experience, and areas of specialization also make
22 them ideally suited to litigate this case. Tycko & Zavareei LLP is a boutique
23 plaintiffs’ law firm that is highly experienced in false advertising and complex class
24 action litigation. *See* Ex. 94. The National Student Legal Defense Network is a
25 nonprofit working to advance students’ rights to educational opportunity, including
26 through litigation. *See* Ex. 95. It has deep experience in and knowledge of higher
27 education law and has litigated multiple class actions against education institutions

1 for fraud and other claims similar to those asserted here. *Id.* Accordingly, Plaintiffs
2 request that the Court appoint their counsel as Class Counsel under Rules 23(a)(4)
3 and 23(g).

4 **B. The Class satisfies Rule 23(b)(3).**

5 To satisfy Rule 23(b)(3), Plaintiffs must show that “questions of law or fact
6 common to class members predominate over any questions affecting only individual
7 members, and that a class action is superior to other available methods for fairly and
8 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

9 **1. Common questions of falsity, materiality and reliance**
10 **predominate on Plaintiffs’ UCL, CLRA, and FAL claims.**

11 “The predominance inquiry tests whether proposed classes are sufficiently
12 cohesive to warrant adjudication by representation.” *Hardwick*, 2022 WL 4596592,
13 at *7 (citation and quotation omitted). Courts routinely find predominance in false
14 advertising cases because the answer to whether a representation was false or
15 misleading, likely to deceive reasonable consumers, and material “will be the same
16 for the entire class.” *Korolshteyn v. Costco Wholesale Corp.*, No. 3:15-cv-709-CAB-
17 RBB, 2017 WL 1020391, at *6 (S.D. Cal. Mar. 16, 2017); *see also Mullins v.*
18 *Premier Nutrition Corp.*, No. 13-cv-01271-RS, 2016 WL 1535057, at *6-7 (N.D.
19 Cal. Apr. 15, 2016) (finding predominance in false labeling action based on common
20 questions regarding deception, materiality, and classwide proof of restitution); *In re*
21 *Tobacco II Cases*, 46 Cal. 4th 298, 312 (Cal. 2009) (holding that questions of
22 materiality and the likelihood a representation will mislead a reasonable consumer
23 predominate over individual issues). These common issues—which will be resolved
24 using common proof—will drive this litigation and predominate over all others.

25 “For purposes of class certification, the UCL, FAL, and CLRA are materially
26 indistinguishable.” *Forcellati v. Hyland’s, Inc.*, No. 12-cv-1983-GHK (MRWx),
27 2014 WL 1410264, at *9 (C.D. Cal. Apr. 9, 2014). “Each statute allows plaintiffs to

1 establish materiality and reliance (i.e., causation and injury) by showing that a
2 reasonable person would have considered the defendant’s representation material.”
3 *Fitzhenry-Russell*, 326 F.R.D. at 612 (quotation omitted). “Because of this objective
4 standard, courts have held that CLRA and related California common law claims are
5 ‘particularly suited for class treatment.’” *Banks v. R.C. Bigelow, Inc.*, No. 20-cv-
6 06208DDP (RAOx), 2023 WL 4932894, at *7 (C.D. Cal. July 31, 2023); *see also*
7 *Lytle*, 114 F.4th at 1034 (“Because materiality (and, hence, in this case reliance) may
8 be proved by reference to an objective, reasonable consumer standard, reliance under
9 the CLRA is generally susceptible to common proof.”); *Forcellati*, 2014 WL
10 1410264, at *9 (“[W]hether or not Defendants’ claims are misleading is an objective,
11 classwide inquiry for purposes of the UCL, FAL and the CLRA.”).

12 The objective materiality “standard ‘does not require that class members have
13 a uniform understanding of the meaning of’ the challenged representation.”
14 *Fitzhenry-Russell*, 326 F.R.D. at 612 (citation omitted); *Kumar v. Salov N. Am.*
15 *Corp.*, No. 14-cv-2411-YGR, 2016 WL 3844334, at *7 (N.D. Cal. July 15, 2016)
16 (“Questions of materiality and reliance are determined based upon the reasonable
17 consumer standard”). Nor must Plaintiffs prove reliance by each class member. *See,*
18 *e.g., In re Tobacco II Cases*, 46 Cal. 4th 327 (inference of reliance arises wherever
19 there is showing that a misrepresentation was material; plaintiff need not
20 demonstrate individualized reliance on specific misrepresentations). “For this
21 reason,” courts including the Ninth Circuit have routinely held “that CLRA and UCL
22 claims are ‘ideal for class certification because they will not require the court to
23 investigate class members’ individual interaction with the product.” *Bradach v.*
24 *Pharmavite, LLC*, 735 F. App’x 251, 254–55 (9th Cir. 2018); *see also Lytle*, 114
25 F.4th at 1037 (explaining that this is consistent with the “remedial objective” of
26 California’s consumer protection statutes, which are to be “liberally construed and
27 applied . . . to protect consumers against unfair and deceptive business practices”).

1 Rather, if a named plaintiff shows that they personally relied on and was
2 injured by a misrepresentation that was material and, thus likely to deceive class
3 members, that is sufficient to support a class claim for injunctive relief and
4 restitution under the UCL/FAL, as well as to give rise to a classwide presumption of
5 reliance under the CLRA. *Lytle*, 114 F.4th at 1022 (“[U]nder the CLRA, a plaintiff
6 can create a presumption of reliance by demonstrating a material misrepresentation
7 was made to the entire class.”); *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod.*
8 *Liab. Litig.*, 609 F. Supp. 3d at 987. Here, Plaintiffs all testified that if they had
9 known USC’s rankings were fraudulently inflated, they would not have attended or
10 paid the amount they did. *See* Section II.D., *supra*. Plaintiffs have thus shown actual
11 reliance and injury.

12 In addition, there is ample evidence that Rossier’s fraudulent ranking was
13 material to students’ enrollment decisions and that Rossier’s expected drop in the
14 rankings would have been significant. *See id.* USC’s own internal documents reflect
15 this, which alone is sufficient to show materiality. *See* Section II.C.1, *supra*. A
16 “representation is material if a reasonable consumer would attach importance to it
17 or if the maker of the representation knows or has reason to know that its recipient
18 regards or is likely to regard the matter as important in determining his choice of
19 action.” *See Kumar*, 2016 WL 3844334, at *8. This Court also found Plaintiffs’
20 expert Sara Neher qualified and her opinion reliable that Rossier would have
21 declined from Top 10 or Top 15 to a dramatically lower rank, which further
22 evidences materiality. *See* Dkt. 173 at 6412. In addition, 2U’s Form 10-K disclosures
23 recognize the impact rankings have on a school’s reputation and ability to enroll
24 students. Ex. 47, at 16. And academic research confirms this. Ex. 43.

25 There is also sufficient evidence of classwide exposure to give rise to a
26 presumption of reliance by the Class. Plaintiffs’ expert Dr. Chandler opines that it
27 would have been virtually impossible for a student to enroll in Rossier without being

1 exposed to its fraudulent ranking, pointing to USC and 2U’s multi-channel
2 marketing, which leveraged paid search advertisements, websites, targeted emails,
3 online social media advertisements, and print marketing to induce students to enroll,
4 and in which the U.S. News ranking was a “key differentiator.” *See* Dkt. 152 at Pg.
5 4561 (citing Chandler Rep. ¶ 14). This Court found Dr. Chandler’s exposure opinion
6 to be “supported by his expertise, comprehensive examination of general marketing
7 strategies, and a review of record evidence in this case indicating that 2U and USC
8 centrally controlled an extensive marketing strategy.” Dkt. 173 at Pg. 6407; *see also*
9 *In re JUUL*, 609 F. Supp. 3d at 993 (finding “disputed but admissible expert
10 opinions,” including of Dr. Chandler, showing “the pervasiveness of JLI’s
11 successful marketing strategy and the consistency of the message . . . support[ed] a
12 presumption of reliance for absent class members”); *In re PFA Ins. Mktg. Litig.*, 696
13 F. Supp. 3d 788, 817 (N.D. Cal. 2021) (finding that defendants’ “highly uniform and
14 centrally controlled” marketing and training permitted an inference of classwide
15 exposure).

16 This Court should find—as other courts have consistently done—that
17 questions of materiality, reliance, and whether a reasonable person was deceived by
18 USC’s misrepresentations predominate over any individual issues.

19 **2. Damages and Restitution are Capable of Classwide** 20 **Measurement.**

21 With respect to damages, the Ninth Circuit has “found class treatment to be
22 appropriate . . . based upon a showing that damages could be calculated on a
23 classwide basis, even where such calculations have not yet been performed.” *Lytle*,
24 114 F.4th at 1025 (emphasis added). This Court found Plaintiffs’ damages expert
25 Dr. Michael Dennis qualified and his classwide price premium damages model
26 reliable. Dkt. 173 at Pg. 6416. Specifically, Dr. Dennis will use conjoint surveys to
27 measure whether and by how much class members overpaid for tuition at Rossier as

a result of USC’s ranking misrepresentations. The type of conjoint survey and classwide damages model Dr. Dennis proposes has been accepted by this and other courts as being capable of measuring price premiums associated with misrepresentations in false advertising class actions across a wide range of industries, including with respect to tuition in the higher education context in another case against USC, as this Court has already recognized. *See id.* (citing *In re Univ. of S. Cal. Tuition & Fees COVID-19 Refund Litig.*, 695 F. Supp. 3d 1128, 1146 (C.D. Cal. 2023)); *see also* Dkt. 151 at 3:9, 5:20-6:5, 8:3-8:5, 8:16-8:27.

3. A class action is superior to multiple individual actions.

Certifying the proposed Class of injured students is superior to maintaining individual actions. To determine superiority, courts consider: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3); *see In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 1033 (C.D. Cal. 2015). Each factor favors a finding of superiority here.

There are no other lawsuits, individual or class, pending against USC regarding its rankings’ misrepresentations. Further, given that USC is located in this District, concentrating the litigation in this forum is particularly desirable, with no likely difficulties in managing this class action. Courts also generally find superiority met where “the disparity between litigation costs and recovery may render plaintiffs unable to proceed individually.” *Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 531 (C.D. Cal. 2015), *modified*, 314 F.R.D. 312 (C.D. Cal. 2016) (quotation omitted). Although each individual’s actual damages in this case are likely thousands of dollars, the costs of bringing such a lawsuit would dwarf any such recovery, given

1 the expert costs required.

2 **IV. CONCLUSION**

3 For the foregoing reasons, the Court should grant Plaintiffs' Motion for Class
4 Certification and appoint Plaintiffs as Class Representatives and their counsel as
5 Class Counsel.

6
7 Dated: December 2, 2024 Respectfully submitted,

8 /s/ Anna C. Haac

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17 **CERTIFICATE OF COMPLIANCE**

18 The above signed counsel of record for the Plaintiffs certifies that this brief
19 contains 8,420 words, which complies with the word limit established by the
20 Court. *See* Dkt. At Pg. 6375.
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