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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELVA LOPEZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY and SIMPLILEARN AMERICAS, INC.,

Defendants.

Case No. CGC-23-607810

DEFENDANTS' DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

ASSIGNED FOR ALL PURPOSES TO:
Judge Ethan P. Schulman

Hearing Date: April 4, 2024
Hearing Time: 11:00 a.m.
Department: 304

[Motion to Strike; Request for Judicial Notice; Declaration of Collins Kilgore; Declaration of Krishna Kumar; [Proposed] Orders filed concurrently]

Complaint Filed: July 20, 2023
Trial Date: Not set

NOTICE OF DEMURRER AND DEMURRER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 4, 2024 at 11:00 a.m., or as soon thereafter as counsel may be heard in Department 304 of the above-entitled court, located at 400 McAllister St., San Francisco, California 94103, pursuant to California Code of Civil Procedure section 430.10, Defendants California Institute of Technology ("Caltech") and Simplilearn Americas, Inc. ("Simplilearn") will and hereby do bring a Demurrer to the Second Amended Complaint dated December 21, 2023 filed by Plaintiff Elva Lopez, individually and on behalf of all others similarly situated. This Demurrer is made pursuant to Code of Civil Procedure Section 430.10(e), on the ground that the Second Amended Complaint does not state facts sufficient to constitute a cause of action. Specifically:

Counts I-IV are barred by the educational malpractice doctrine, which precludes claims that "raise issues of the quality of education offered . . . or of the academic results produced." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1213, *as modified* (Oct. 25, 2006).)

Counts I-IV fail because Plaintiff has failed to allege any representation of fact by Defendants that would be "likely to deceive a reasonable consumer." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1137.)

Count IV also fails because "[u]njust enrichment is not a cause of action." (*Jogani v. Super. Ct.* (2008) 165 Cal.App.4th 901, 911.)

This Demurrer is based on this Notice, the attached Memorandum of Points and Authorities in support thereof, the Request for Judicial Notice, the Declarations of Collins Kilgore and Krishna Kumar, the pleadings and papers filed in this action, and such other matters as may be presented to the Court at the time of the hearing.

Counsel for Defendants met and conferred with counsel for Plaintiff on January 26, 2024 pursuant to Code of Civil Procedure § 430.41 and did not reach an agreement resolving the issues raised by Defendants. (Kilgore Decl. ¶ 6.)

Dated: January 31, 2024

Respectfully submitted,

HUESTON HENNIGAN LLP

By: _____
Joseph A. Reiter
Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

Dated: January 31, 2024

O'MELVENY & MYERS LLP

By: /s/ Matthew Powers
Matthew D. Powers

Attorneys for Defendant SIMPLILEARN AMERICAS, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Elva Lopez has now failed three times to overcome multiple legal barriers to her claims against Defendants California Institute of Technology ("Caltech") and Simplilearn Americas, Inc. ("Simplilearn") arising out of her attendance at a six-month cyber bootcamp ("the Bootcamp") in 2020. As with her prior pleading attempts, Plaintiff has failed to state a cognizable cause of action. The claims in her Second Amended Complaint ("SAC") are barred by the educational malpractice doctrine because Plaintiff's assertion that Caltech did not have "enough" involvement in the Bootcamp is fundamentally an attack on the quality of the education she received. Plaintiff does not and cannot identify any other reason why Caltech's involvement would matter. Even if she could, Plaintiff fails to plead that Defendants ever promised any specific level of involvement by Caltech. The most Plaintiff has alleged is that Defendants used the "Caltech name" in the title of the Bootcamp and in its advertising. Plaintiff's purported interpretation that the use of Caltech's name somehow meant she would be taught by Caltech faculty is unreasonable, particularly given that Defendants made and Plaintiff received numerous disclosures that Fullstack Academy ("Fullstack") would run the entry-level bootcamp. Because each of Plaintiff's claims continues to fail as a matter of law, and she has had multiple opportunities to cure those defects, the SAC should be dismissed in its entirety with prejudice.

For more than a decade, the Center for Technology and Management Education ("CTME") at Caltech has offered educational programs to organizations and individuals seeking training in technology, engineering, management, and other fields. In addition to more advanced courses, CTME offers beginner programs called "bootcamps" for less-experienced individuals looking to acquire or develop skills in various disciplines. CTME has partnered with Simplilearn—and previously with Simplilearn's predecessor-in-interest Fullstack[1]—to offer these bootcamps.

In fall 2020, Plaintiff enrolled in the Bootcamp, which provided online training in cybersecurity. Plaintiff completed the part-time course and received its benefits, including six

[1] Simplilearn acquired Fullstack in November 2022. Plaintiff's claims arise from the period when Fullstack operated the Bootcamp. (*See* SAC ¶ 7 & n.1.)

months of instruction (SAC ¶¶ 5, 50), Continuing Education Units (*id.*), career counseling (*id.* ¶ 80), and a certificate of completion from the "California Institute of Technology Center for Technology and Management Education" that Plaintiff could list on her resume (*id.* ¶ 37).

Plaintiff never raised a complaint with Defendants before, during, or in the more than two and a half years since completing the Bootcamp. Yet Plaintiff has now filed a lawsuit alleging for the *first* time that the quality of the Bootcamp fell below her expectations, and that she was somehow "deceived" about Caltech's level of involvement. Her claims fail for multiple reasons:

First, Plaintiff's claims are barred by the educational malpractice doctrine, which precludes claims that "raise issues of the *quality* of education offered . . . or of the academic *results* produced.'" (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1213, *as modified* (Oct. 25, 2006).) Plaintiff's claims necessarily implicate the quality of the Bootcamp and its instructors. The gravamen of Plaintiff's claims is that she "decided to enroll in the bootcamp because of Caltech's reputation as a prestigious technical school" (SAC ¶ 15) and specifically "as a school where students get an exceptional education" (*id.* ¶ 3); however, she believes she did "not get what [she] pa[id] for" because the Bootcamp instructors (allegedly) provided by Fullstack "do not necessarily have expertise in cybersecurity" (*id.* ¶¶ 72, 55). In other words, Plaintiff alleges the Bootcamp did not meet the same "standard" or "quality" she purportedly expected because Caltech allegedly did not have enough involvement. (*Id.* ¶ 107(e); *see also* First Amended Complaint ("FAC") ¶ 95(e) (alleging Defendants misrepresented that the Bootcamp "is of the same standard or quality as other continuing professional education programs operated by Caltech and the Caltech CTME, when in fact it is not").) These are *exactly* the kinds of claims that courts regularly reject at the pleading stage because they "require judgments about pedagogical methods or the quality of [a] school's classes, instructors, [or] curriculum." (*Wells*, *supra*, 39 Cal.4th at 1212.)

Second, Plaintiff fails to allege a false representation of fact that is "likely to deceive a reasonable consumer." (*Shaeffer v. Califia* (2020) 44 Cal.App.5th 1125, 1137.) Plaintiff identifies no representation that would communicate to a reasonable person that the Bootcamp instructors would be Caltech professors or employees as opposed to contractors. Instead, Plaintiff's claims are based entirely on the mere use of Caltech's name and address. (SAC ¶¶ 27-40, 74.) As multiple

courts have held, the use of an institutional or brand name promises at most an *affiliation*—it does not represent any particular involvement or quality that could mislead reasonable consumers. (*See, e.g.*, *Rubenstein v. Gap* (2017) 14 Cal.App.5th 870, 876-877 (use of "Gap" brand on clothing sold in outlet store does not promise that garments are the same, or even of same quality, as clothes sold in Gap retail stores).) None of Plaintiff's recited references to Caltech—not the Caltech name nor its web domain nor its street address—constitutes a promise that Caltech had any specific level or form of involvement in the Bootcamp—i.e., that "Caltech personnel" would make admissions decisions, design the curriculum, or provide instruction. (SAC ¶ 48.) Plaintiff's supposed expectations to the contrary cannot support her claim. (*See La Barbera v. Ole* (C.D. Cal., May 18, 2023) 2023 WL 4162348, at *15 ("A plaintiff's own unreasonable assumptions about a product's label or desire to take the label out of its proper context will not suffice.").) Similarly, no reasonable consumer would interpret references to learning from "industry experts" as a promise that any or all instructors would be "Caltech personnel." (SAC ¶ 33.) For these reasons, Plaintiff has not alleged an essential element of each of her claims—an actionable misrepresentation by Defendants.

Plaintiff's alleged expectations are also irreconcilable with Defendants' disclosures to her and other Bootcamp students. As Plaintiff admits, Defendants represented to her—numerous times and in multiple ways—that "Caltech ha[d] chosen Fullstack Academy to power" the Bootcamp. (Ex. B to Kilgore Decl. at 17; *see* SAC ¶ 36; Ex. A to Kilgore Decl. at 6.) Indeed, as explained further below, the same webpage upon which Plaintiff claims to have relied expressly disclosed that the Bootcamp would use *Fullstack's* "hands-on learning approach"—not Caltech's. (Ex. A to Kilgore Decl. at 8.) Moreover, Plaintiff signed a contract with *Fullstack* to enroll in the Bootcamp, and that contract repeatedly described *Fullstack's* role in the course. (*See, e.g.*, Ex. D to Kilgore Decl. at 26 (disclosing that she would attend class through learn.fullstackacademy.com); *id.* at 33 ("The Fullstack Academy curriculum").) "One cannot conclude that a reasonable consumer . . . would simply ignore these disclosures" (*Varela v. Walmart* (C.D. Cal., May 25, 2021) 2021 WL 2172827, at *6). Potential students were, "at the very least, on notice" of Fullstack's involvement (*Bivens v. Gallery Corp.* (Cal. Ct. App. 2005) 36 Cal.Rptr.3d 541, 554 (affirming demurrer without leave to amend based on review of advertisements attached to the complaint).)

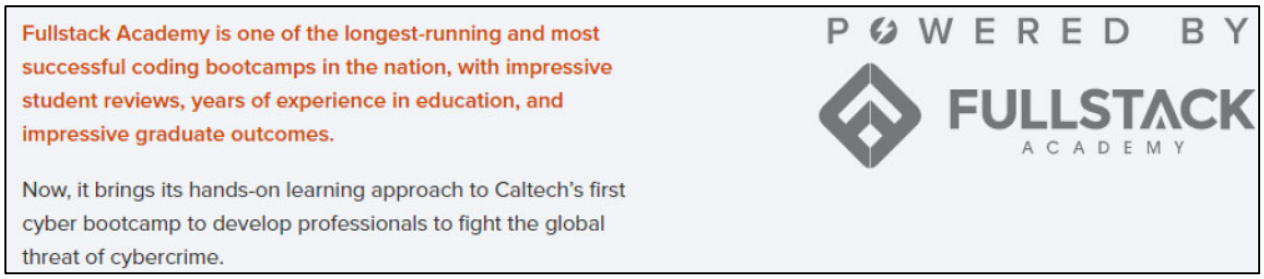
Third, Plaintiff's unjust enrichment claim fails for the additional reason that "[u]njust enrichment is not a cause of action." (*Jogani v. Super. Ct.* (2008) 165 Cal.App.4th 901, 911.)

For each of these reasons, the SAC should be dismissed in its entirety with prejudice.

II. BACKGROUND

Plaintiff's claims arise out of an online course designed for individuals with no technical background or experience in cybersecurity. (SAC ¶¶ 5, 14, 80.) The Bootcamp was offered through CTME and powered by online technical education provider Fullstack. (*Id.* ¶¶ 5, 37.) CTME operates separately from Caltech's degree-granting programs and offers educational programs for organizations and professionals. (*Id.* ¶¶ 4, 26.)

Plaintiff alleges she learned about the Bootcamp from a "pop-up advertisement" in an online game, which she followed to the "primary webpage for the bootcamp." (*Id.* ¶ 14, *see also id.* ¶¶ 73-74.) The "primary webpage" contains information about the Bootcamp, including the class schedule and course topics. (*See id.* ¶¶ 14, 31-40; Ex. A to Kilgore Decl.) As Plaintiff expressly concedes, the webpage prominently stated (three separate times) that the Bootcamp was "powered by Fullstack," including at the top of the page immediately adjacent to "Caltech Center for Technology & Management Education" and just above the course overview and class schedule (Ex. A to Kilgore Decl. at 6, 8, 13; SAC ¶ 36.) Plaintiff concedes the website provided her with this disclosure, (SAC ¶ 36), and the webpage Plaintiff saw explained to her that Fullstack is "one of the longest-running and most successful coding bootcamps in the nation" and that Fullstack had been brought in to apply *Fullstack's* "hands-on learning approach":



(Ex. A to Kilgore Decl. at 8.)[2]

CTME's webpage includes other similar disclosures specific to all of its introductory bootcamp courses, explaining to prospective students that:

> Caltech has chosen Fullstack Academy to power its tech bootcamps. Fullstack is one of the longest-running and most successful coding bootcamps in the nation. *Its* graduates are equipped to succeed in the professional world through *Fullstack*'s foundational teaching method[.] . . . Bootcamp grads also gain the assistance of *Fullstack*'s dedicated career services team and leave as members of the *Caltech-Fullstack* community[.] (emphasis added).

(Ex. B to Kilgore Decl. at 17.)

Once Plaintiff sent in her contact information, she received an email from a Student Advisor. (SAC ¶ 74.) That email included two additional and distinct disclosures: (1) a statement that the Bootcamp was "powered by Fullstack Academy," and (2) the Fullstack logo. (Ex. C to Kilgore Decl.) Indeed, the very first sentence of the email said, "Thanks for your interest in the Caltech Cyber Bootcamp powered by Fullstack Academy." (*Ibid.*)

Plaintiff applied to the Bootcamp, took an online assessment, and was admitted. (SAC ¶ 75.) Plaintiff reviewed and signed a Student Enrollment Agreement, which specifically explained that

[2] As explained in Defendants' concurrently filed Request for Judicial Notice, the SAC expressly mentions and incorporates these webpages and advertisements, as well as an email relied upon by Plaintiff and referenced in the SAC. Accordingly, the Court can and should take judicial notice of these materials for what they say. (*See Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285 n.3.) Defendants do not seek judicial notice of the truth of their contents.

Fullstack (not Caltech) collects payment, provides course materials, maintains student records, and hosts the web portal through which students attend class.[3] (Ex. D to Kilgore Decl.) Plaintiff completed the course, including six months of instruction. (SAC ¶ 80.) Plaintiff received Continuing Education Units and a certificate from "California Institute of Technology Center for Technology and Management Education," (*id.* ¶ 37), and Fullstack continued to provide Plaintiff with career counseling and support after she completed the course. (*Id.* ¶ 80.)

Plaintiff never complained about any aspect of the Bootcamp during the six months she attended classes or over the next three years. But in July 2023, she filed this lawsuit asserting claims for violation of the False Adverting Law ("FAL"), Consumers Legal Remedies Act ("CLRA"), Unfair Competition Law ("UCL"), and "unjust enrichment." (*See generally* Compl.) She amended her complaint in October 2023 (*see generally* FAC) and again that December (*see generally* SAC.).

With each amendment, Plaintiff has materially changed her theory as to how she was supposedly "deceived." In her original complaint, Plaintiff appeared to allege she was unhappy with the Bootcamp because she believed it would prepare students to become cybersecurity professionals but she was unable to obtain a cybersecurity job after completing the course. (*See* Compl. ¶¶ 6, 36, 60, 67.) Now, however, she expressly disclaims that her claims arise from her inability to find employment. (SAC ¶ 81.) Similarly, Plaintiff claimed in prior versions of the complaint that she expected to attend Caltech itself—that she was promised the "Caltech experience" (Compl. ¶ 52), that students would "experience everything Caltech has to offer" (*see id.* ¶¶ 5, 10), and that she "reasonably believed that she had gotten into a Caltech program" (*id*. ¶ 14). Plaintiff has stripped all of those allegations from the SAC. Finally, she previously alleged that no industry experts were involved in the Bootcamp at all—an allegation that is simply false, as Plaintiff has now recognized by deleting this allegation as well. (FAC ¶ 72.)

Instead, in the new SAC, Plaintiff apparently seeks to limit her claims to allegations that she was deceived to believe that the Bootcamp's instructors would be employees of Caltech rather than contractors (*see* SAC ¶ 14; *id.* ¶ 15) and that Defendants represented to her that ***only*** Caltech employees, not Fullstack, would decide who is admitted and design the curriculum. (*Id*.) Plaintiff

[3] *See* Defendants' concurrently filed Request for Judicial Notice.

does not and cannot identify any statements on any website or in any marketing materials that make these representations. Instead, Plaintiff asserts she formed these expectations because the marketing she saw used the word "Caltech" and the Caltech CTME logo, and because emails from her Student Advisor used Caltech's address and a Pasadena area code in the signature block. (*Id.* ¶¶ 73-75.)

III. LEGAL STANDARD FOR UCL, CLRA, AND FAL CLAIMS

A plaintiff bringing a UCL, CLRA, or FAL claim "must state with reasonable particularity the facts supporting the statutory elements of the violation." (*Khoury v. Lay's* (1993) 14 Cal.App.4th 612, 619; *see also Amiodarone Cases* (2022) 84 Cal.App.5th 1091, 1115 (same, as to FAL claims).) "[O]nly those statements . . . that are likely to deceive a reasonable consumer are actionable under the Unfair Competition Law, the false advertising law and the CLRA." (*Shaeffer*, *supra*, 44 Cal.App.5th at 1137 (internal quotations omitted).) "'Likely to deceive' implies more than a mere possibility that the advertisement might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner. Rather, the phrase indicates that . . . it is probable that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled." (*Salazar v. Target* (2022) 83 Cal.App.5th 571, 578.) "[C]ourts can and do sustain demurrers . . . when the facts alleged fail as a matter of law to show such a likelihood." (*Rubenstein*, *supra*, 14 Cal.App.5th at 877.)

IV. ARGUMENT

A. The Educational Malpractice Doctrine Bars Plaintiff's Claims

The educational malpractice doctrine precludes Plaintiff's claims because they challenge the quality of her education and instructors. "Courts in California and across the country have repeatedly rejected claims that seek damages for an allegedly 'subpar' education, or 'educational malpractice' claims." (*Lindner v. Occidental* (C.D. Cal., Dec. 11, 2020) 2020 WL 7350212, at *6; *see also Saroya v. Univ. of the Pacific* (N.D. Cal. 2020) 503 F.Supp.3d 986, 995 ("Courts across the country have uniformly refused, based on public policy considerations, to enter the classroom to determine claims based upon educational malpractice.").) Given "the lack of a workable rule of care against which a school district's conduct may be measured and the incalculable burden which would be imposed" (*Smith v. Alameda* (1979) 90 Cal.App.3d 929, 941), "there is a widely accepted

rule of judicial non-intervention into the academic affairs of schools" (*Paulsen v. Golden Gate* (1979) 25 Cal.3d 803, 808 (refusing to intervene in the academic decisions of a private university)).

Claims that "raise issues of the *quality* of education offered . . . or of the academic *results* produced . . . fall[] within the rule that courts will not entertain claims of 'educational malfeasance.'" (*Wells*, *supra*, 39 Cal.4th at 1213.) Claims alleging "objectively identifiable breaches of . . . promises made to induce enrollment"—for instance, allegations that "a school operator failed to provide promised equipment and supplies"—are viable only if "such claims do not challenge the educational quality or results of the school's programs." (*Id.* at 1212.) Claims that do should be dismissed. (*See, e.g.*, *Peter W. v. San Fran. Unified School Dist.* (1976) 60 Cal.App.3d 814, 817 (affirming demurrers where plaintiff claimed to have been "inadequately educated").)

Plaintiff's allegations necessarily "challenge the educational quality" of the Bootcamp (*Wells*, *supra*, 39 Cal.4th at 1212) and therefore fall squarely within the "educational malpractice" doctrine. Plaintiff alleges that "[s]he decided to enroll in the bootcamp because of Caltech's reputation as a prestigious technical school." (SAC ¶ 15; *see also id.* ¶ 76.) But Plaintiff does not dispute that she received the benefit of using Caltech's name and "reputation" when applying for jobs. (*See id.* ¶¶ 15, 25.) Nor does Plaintiff dispute that she received every promised tangible element of the Bootcamp, including six months of instruction (*id.* ¶ 5), a certificate of completion from Caltech CTME (*id.* ¶ 37), Continuing Education Units (*id.*), and career counseling (*id.* ¶ 80). Apart from course quality, there is no other explanation why Caltech's involvement could possibly matter or why Plaintiff believes she is entitled to a refund of her tuition. (*See id.* ¶ 104.) The only way the Bootcamp could have allegedly failed to deliver is if Plaintiff believes she did not receive the educational quality she expected.

Indeed, the operative SAC is loaded with allegations that Caltech's reputation is associated with an "exceptional education." (SAC ¶ 3 ("[Caltech] is known as a school where students get an exceptional education and a great return on investment."); *see also id.* ¶¶ 2-3, 23-25 (describing Caltech's "reputation" and "the achievements of Caltech's faculty"); *id.* ¶ 25 ("Caltech's education is also that Caltech students can expect to be learning at the cutting edge of science and engineering."); *id.* ¶ 26 (alleging that CTME "provides an opportunity for companies and

individuals . . . to take advantage of what Caltech has to offer").) And Plaintiff makes clear that she expected the Bootcamp to offer the same quality. (*See id.* ¶ 4 (alleging that Caltech represented that "individuals can expect to gain cutting-edge knowledge and skills" through CTME); *id.* ¶ 6 (Caltech "represents that students who enroll in the [Bootcamp] will gain the skill to become cybersecurity professionals."); *id.* ¶ 73 (Defendants "represented that the [Bootcamp] would train people with no background in the field to get high-paying cybersecurity jobs.").)

Plaintiff's attacks on the quality of the Bootcamp were even more explicit in her FAC, where she alleged that Defendants "falsely promise students a Caltech educational experience" and "everything Caltech has to offer." (FAC ¶¶ 10, 15; *see also id.* ¶ 52 ("Students in the [] Bootcamp are not provided a Caltech experience or anything like it.").) Although Plaintiff deleted these allegations from the SAC, she cannot "avoid attacks raised in demurrers" by simply omitting such "harmful allegations." (*State of Cal. v. CCC* (2007) 149 Cal.App.4th 402, 412.)

Regardless, if there were any doubt about the gravamen of Plaintiff's claims, her current allegations about Bootcamp instructors make crystal clear that she is actually concerned with their quality—not the identity of their employer. (*See* SAC ¶ 4 (Caltech "represents that Caltech hires individuals with industry experience to serve as Caltech CTME faculty"); *id.* ¶¶ 55-56 (alleging the Bootcamp instructors "do not necessarily have expertise in cybersecurity"); *id.* ¶ 78 (the "primary instructor had only recently completed the program himself and was not able to answer students' questions. Some students knew more than the instructor"); *id.* ¶ 73 ("The advertisement" stated that the Bootcamp could train inexperienced people to get cybersecurity jobs "because the instructors were experts in the field.").) Plaintiff's similar allegations in the FAC expressly challenged the qualifications of Bootcamp instructors, alleging that they "are not otherwise qualified to teach at Caltech or as part of the Caltech CTME." (FAC ¶ 47; *see also id.* ¶ 95(e) (the Bootcamp is "staffed by inexperienced and unqualified Simplilearn instructors").) In short, Plaintiff alleges that Defendants misrepresented the "***standard***" or "***quality***" of the Bootcamp by "using Simplilearn instructors and curriculum." (SAC ¶ 107(e); *see also* FAC ¶ 95(e) (alleging that Defendants misrepresented the Bootcamp as "of the same standard or quality as other continuing professional education programs operated by Caltech and the Caltech CTME, when in fact it is not").) These

allegations plainly attack the "quality of [the Bootcamp's] classes, instructors, [or] curriculum," in violation of the educational malpractice doctrine. (*See Wells*, *supra*, 39 Cal.4th at 1212.)

At bottom, Plaintiff alleges that the Bootcamp was not of "Caltech" quality because Caltech allegedly did not have enough involvement. Because determining whether Plaintiff did, in fact, receive a Caltech-quality experience "would require the Court to make judgments about the quality and value of the education" she expected to receive and of what she received (*Lindner*, *supra*, 2020 WL 7350212, at *7), the educational malpractice doctrine precludes her claims.

B. The SAC Fails to State a UCL, FAL, or CLRA Claim

Even if the educational malpractice doctrine did not bar Plaintiff's claims, her claims would still fail because she does not plead any actual "false" statement. Moreover, her interpretation of the statements she did review should be rejected as a matter of law—particularly in light of the multiple disclosures Defendants made and Plaintiff received regarding Fullstack's role in the Bootcamp. Those disclosures—which appear in the very same marketing materials Plaintiff allegedly relied on, as well as a contract signed at enrollment—preclude her claims.

1. Plaintiff Fails to Plead an Actionable False Statement

None of the alleged marketing materials referred to in the SAC—and certainly none of the ones that Plaintiff alleges she has seen, which are the only materials at issue[4]—contained any actionable representation of fact. "[A]ctionable representations of fact must make a specific and measurable claim, capable of being proved false or of being reasonably interpreted as a statement of objective fact." (*Veterans Rideshare, Inc. v. Navistar Internat. Corp*. (S.D. Cal., June 1, 2021) 2021 WL 2206479, at *8.) Plaintiff does not and cannot allege that Defendants promised that only "Caltech or Caltech CTME faculty or instructors" would teach the Bootcamp, that Caltech employees would "develop" the Bootcamp's curriculum, or that only "Caltech personnel [would]

[4] Although the SAC includes numerous allegations about websites other than the Bootcamp site—what Plaintiff calls the "Caltech" and "Caltech CTME website[s]," (*see, e.g.*, SAC ¶¶ 2, 4, 23, 30, 48)—Plaintiff does not allege that she ever visited them. (*See id.* ¶¶ 73-75.) She only alleges to have seen and relied upon (1) "a pop-up advertisement" in an online game, (*id.* ¶ 73); (2) the "primary webpage for the Caltech Cybersecurity Bootcamp," which is distinct from the Caltech or CTME websites (*id.* ¶¶ 30, 74); and (3) emails she received from a "Student Advisor." (*Id.* ¶ 75). Plaintiff lacks standing to bring claims based on the Caltech or CTME websites that she never viewed and could not have relied upon. (*See Salazar*, *supra*, 83 Cal.App.5th at 578 (plaintiff lacked standing to bring claims based on website she did not see).)

make admissions decisions." (SAC ¶¶ 14, 41, 85, 87.) Indeed, the SAC does not identify ***any*** express representation about the degree of Caltech's involvement in the Bootcamp. Instead, Plaintiff alleges that Defendants somehow "portray[ed]" (*id.* ¶ 33) Caltech as having those roles in two ways: (1) by using "Caltech" in the name of the course, hosting a website about the Bootcamp at a caltech.edu URL, and using Caltech's address and phone number in marketing emails (*id.* ¶¶ 29-40, 74-75); and (2) by stating that students would learn from "industry experts" (*id.* ¶ 33; *see* Ex. A to Kilgore Decl. at 10). Both of these theories are fatally flawed.

First, references to "Caltech" or its contact information are not representations about Caltech's level or form of involvement in the Bootcamp—let alone false ones upon which a reasonable consumer would rely. The name "Caltech" does not "affirmatively communicate[] something about the product within the brand name itself." (*Cheslow v. Ghirardelli* (N.D. Cal. 2020) 497 F. Supp. 3d 540, 545 (distinguishing "Ghirardelli" from "One a Day" vitamins or "Prescription Diet" pet food).) At most, the use of the Caltech name promised that the Bootcamp was affiliated with Caltech—and it is, which Plaintiff does not dispute. (*See* SAC ¶ 26.) The "Caltech" name does not amount to a promise that "Caltech" or "Caltech faculty" would be responsible for admissions, curriculum, or teaching. Courts have repeatedly rejected "strained and unjustified" interpretations of individual words or phrases like the one Plaintiff advances. (*See, e.g.*, *Cal. State Bd. v. Mortuary in Westminster Memorial Park* (1969) 271 Cal.App.2d 638, 642 (rejecting claim that using name "Westminster Memorial Park," for both cemetery and mortuary "gives the false impression of sole ownership"); *see also La Barbera*, *supra*, 2023 WL at 4162348, at *15 ("Only an insignificant number of unreasonable people viewing such representations in an unreasonable manner would think that 'The Taste of Mexico!' must mean 'Made in Mexico."); *Hodges v. Apple* (N.D. Cal., Dec. 19, 2013) 2013 WL 6698762, at *5; *aff'd*, (9th Cir. 2016) 640 F. App'x 687 (Apple's product names did not deceive consumers to expect the same quality across laptops produced by different manufacturers); *cf. Two Jinn. v. Government Payment Service* (2015) 233 Cal.App.4th 1321, 1346 (affirming demurrer of Lanham Act claim where plaintiff "alleged that the use of the words 'gov' and 'government' was misleading" but "did not allege that these isolated words were used in a statement of fact that was provably false or misleading").)

In *Rubenstein*, *supra*, for example, the court rejected a similar theory to Plaintiff's. Like here, the *Rubenstein* plaintiffs asserted a brand name represented more than brand affiliation: that "use of the Gap and Banana Republic brand names on factory stores and the clothing they carry" leads buyers to expect those items had previously been sold in traditional Gap and Banana Republic stores, "when in fact they are buying lesser-quality apparel." (*Rubenstein*, *supra*, 14 Cal.App.5th at 874-875.) The court disagreed: "Gap's use of its own brand names in factory store names and on factory store clothing labels is not likely to deceive a reasonable consumer for the simple reason that a purchaser is still getting a Gap or Banana Republic item." (*Id.* at 877.) Thus, the only "affirmative representation by Gap regarding factory store clothing" was "a true one—the brand of the clothing is Gap or Banana Republic." (*Id.* at 881.) Here, the name "Caltech" communicates only the true and undisputed fact that the Bootcamp is affiliated with Caltech. (*Id.*) Just as Gap's name on outlet clothing does not represent those items "were previously for sale in traditional Gap stores or were of a certain quality" (*id.* at 876), the use of Caltech's name (or address or phone number) did not make any promise about Caltech's involvement, including that Caltech would handle admissions, provide instructors, or have any other specific role in the Bootcamp. Plaintiff's view that the Bootcamp "is not living up to the quality standards [Caltech] has set for [the Caltech] brand[]" is unreasonable and does not qualify as deceptive advertising. (*Id.* at 877.)

Second, the statement that students would "learn from 'industry experts'" does not mean that any or all instructors would be Caltech or Caltech CTME faculty. (SAC ¶ 33.) The Bootcamp's instructors may be "industry experts" while not employed by Caltech; the phrase "industry experts" is not "synonymous with" "instructors from Caltech." (*See Cheslow*, *supra*, 497 F. Supp. 3d at 545 (rejecting argument that "Ghirardelli" is "synonymous with chocolate" to consumers).) Promoting the Bootcamp's industry experts in no way implies that Plaintiff's instructors would be Caltech professors. The Bootcamp could provide students access to industry experts who are not themselves employed by Caltech, such as visiting instructors, adjunct professors, or other contract faculty—or even volunteers. And Plaintiff does not explain why her instructors' employer—whether Caltech CTME, or Fullstack—even matters to her. To be relevant, her implication must be that Fullstack instructors provided a less valuable education than what she expected from Caltech instructors. But

this innuendo invites the Court to make "comparative value judgments between academic programs" and is therefore a "repackaged action[] asserting educational malpractice" that should be rejected. (*Basso v. New York Univ.* (S.D.N.Y., Nov. 30, 2020) 2020 WL 7027589, at *2, *15 (rejecting claims that NYU's campus abroad was inferior to the main campus "in significant ways," including the "experience of teachers," where plaintiffs had no "consequential damages" like lost educational opportunities, job opportunities, or specific future income).)

2. Defendants' Disclosures Preclude Plaintiff's Unreasonable Interpretation of the Alleged Statements

Plaintiff's interpretation of the Caltech name as a promise that only Caltech faculty would teach her classes is even more unreasonable in light of Defendants' repeated disclosures of Fullstack's role in the Bootcamp. (*See Hairston v. South Beach* (C.D. Cal., May 18, 2012) 2012 WL 1893818, at *4 ("Plaintiff's selective interpretation of individual words or phrases from a product's labeling cannot support a CLRA, FAL, or UCL claim"); *Freeman v. Time* (9th Cir. 1995) 68 F.3d 285, 290 ("Any ambiguity that Freeman would read into any particular statement is dispelled by the promotion as a whole.").) Far from "hiding the extent of their relationship[]" (SAC ¶ 12), Defendants prominently and repeatedly disclosed Fullstack's involvement and gave details of its role that fatally undermine Plaintiff's theory. The Court can and should consider these disclosures on demurrer. (*See*, *e.g.*, *Bivens*, *supra*, 36 Cal.Rptr.3d at 554 (affirming demurrer upon review of advertisements attached to complaint); *Girard v. Toyota* (C.D. Cal., Aug. 6, 2007) 2007 WL 9735325, at *6 (taking judicial notice to find no reasonable consumer would be misled).) To a reasonable consumer, Plaintiff's interpretation would have been dispelled by any one of three judicially noticeable items she saw before enrolling.

First, Plaintiff concedes that "the primary webpage" she viewed "states (and has stated) that the Caltech Cybersecurity Bootcamp ***is 'powered by' the for-profit partner, Simplilearn/Fullstack***." (SAC ¶ 36 (emphasis added); *see also id.* ¶ 63 (alleging that Defendants represented the Bootcamp is a "'collaboration' between Caltech and Simplilearn/Fullstack").) In fact, the primary webpage does so at least three times. (*See* Ex. A to Kilgore Decl. at 6, 8, 13.) Such language is not "hidden or unreadably small." (*Freeman*, *supra*, 68 F.3d at 289.) Rather, "powered

by Fullstack" is part of the initial description of the Bootcamp. (*See* Ex. A to Kilgore Decl. at 6.)

Second, the email Plaintiff received after giving her information (*see* SAC ¶ 74) repeated twice that the Bootcamp is "powered by Fullstack Academy"—including in the very first sentence of the email. (*See* Ex. C to Kilgore Decl.) While Plaintiff now complains that she did not understand "what 'powered by' [Fullstack] means" (SAC ¶ 34), its plain meaning is that Fullstack plays an integral part in operating the Bootcamp. (*See Varela*, *supra*, 2021 WL 2172827, at *6 (label stating amount of Vitamin E in "IUs" not misleading even if "most consumers would not know what IUs are or how to convert IUs into a measurement of the percentage of Vitamin E" in the product).) In any event, the primary webpage explains that "Fullstack Academy is one of the longest-running and most successful coding bootcamps in the nation" and that "it now brings its hands-on learning approach to Caltech's first cyber bootcamp." (*See* Ex. A to Kilgore Decl. at 8.) Defendants therefore specifically disclosed that the Bootcamp's *learning approach would be provided by Fullstack*.

Third, Plaintiff's participation in the Bootcamp was governed by a contract she signed at the time of enrollment. (*See* Ex. D to Kilgore Decl.) Her enrollment contract disclosed that: "Fullstack uses online teaching materials" (*id.* at 24; *see also id.* at 33 (how "The Fullstack Academy curriculum was developed")); class is attended through learn.fullstackacademy.com (*id.* at 26), Fullstack monitors her academic performance (*see id.* at 28 ("Fullstack Academy reserves the right to modify my course completion timeline . . . based on poor academic performance.")); and her payments go to Fullstack (*id.* at 25, 26). Plaintiff knew these terms prior to paying tuition. And the contract gave her the right to attend the first week of class and *still obtain a full refund of her tuition and fees* less her registration fee if she was unhappy with the course. (*Id.* at 26.)

In short, the Caltech name was not used "in a vacuum." (*Hairston*, *supra*, 2012 WL 1893818, at *4 (phrase "all natural" was not deceptive as a matter of law because it was followed "by the additional statement 'with vitamins' or 'with B vitamins'").) Given the lack of any affirmative representation by Defendants, Caltech's disclosures about the nature of the Bootcamp and Fullstack's involvement render Plaintiff's "selective interpretation of individual words or phrases" (*id.*)—i.e., references to "Caltech"—unreasonable as a matter of law.

C. The Unjust Enrichment Claim Fails

Plaintiff's unjust enrichment claim is predicated on the same allegedly false advertising as her other claims (*see* SAC ¶ 112) and thus fails with them. Separately, this claim should be dismissed because, "[u]njust enrichment is not a cause of action." (*Jogani*, *supra*, 165 Cal.App.4th at 911; *see also De Havilland v. FX* (2018) 21 Cal.App.5th 845, 870 ("Unjust enrichment is not a cause of action") (quoting *Hill v. Roll* (2011) 195 Cal.App.4th 1295, 1307); *Bank of New York v. Citibank* (2017) 8 Cal.App.5th 935, 955 ("Unjust enrichment is not a cause of action, or even a remedy, but rather a general principle, underlying various legal doctrines and remedies.") (cleaned up).) Rather, unjust enrichment is a theory of restitution. (*De Havilland*, *supra*, 21 Cal.App.5th at 870; *Rutherford v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231 (unjust enrichment is not a cause of action but "a quasi-contract claim" for restitution).) As explained in Defendants' Motion to Strike, Plaintiff's requests for restitution are duplicative of her requests for money damages. She thus has an adequate remedy at law and her unjust enrichment claim should be dismissed.

D. The Demurrer Should Be Sustained Without Leave to Amend

A demurrer should be sustained without leave to amend unless the plaintiff identifies "some legal theory or state of facts . . . that would change the legal effect of their pleading." (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520 n.16.) Plaintiff cannot meet this burden. This is Plaintiff's third complaint. Yet Plaintiff still has not pled viable claims under well-established law. (*See Citizens for Open Access v. Seadrift* (1998) 60 Cal.App.4th 1053, 1075 ("Appellant having already amended the pleading without curing the defects in it… the trial court did not err by sustaining the demurrer without leave to amend").) Plaintiff's theories simply fail as a matter of law. (*See Tensor Group. v. City of Glendale* (1993) 14 Cal.App.4th 154, 159 n.5 *modified* (Mar. 22, 1993) ("fundamental" deficiencies in claims "would compel this court to sustain the demurrer without leave to amend").) Leave to amend should be denied.

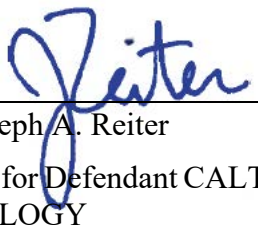
V. CONCLUSION

For the above reasons, the Court should sustain Defendants' demurrer with prejudice.

Respectfully submitted,

Dated: January 31, 2024

HUESTON HENNIGAN LLP

By: 

Joseph A. Reiter

Attorneys for Defendant CALTECH INSTITUTE OF TECHNOLOGY

Dated: January 31, 2024

O'MELVENY & MYERS LLP

By: /s/ Matthew Powers

Matthew D. Powers

Attorneys for Defendant SIMPLILEARN AMERICAS, INC.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 523 West 6th Street, Suite 400, Los Angeles, CA 90014.

On January 31, 2024, I served the foregoing document(s) described as:

DEFENDANTS' DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

on the interested parties in this action as stated below:

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☒ BY E-MAIL OR ELECTRONIC TRANSMISSION: I served the persons at the e-mail addresses listed above via File&Serve*Xpress*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2024, at Los Angeles, California.

Marina Green
(Type or print name)

(Signature)