SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

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 ORDER ON (1) DEFENDANTS' DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND (2) DEFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendants' Demurrer to Plaintiff's Second Amended Complaint and Defendants' Motion to Strike Portions of Plaintiff's Second Amended Complaint came on for hearing on April 4, 2024. Having considered the pleadings and papers on file in the action, and the arguments of counsel presented at the hearing, the Court hereby rules as follows.

BACKGROUND

On July 20, 2023, Plaintiff Elva Lopez ("Plaintiff") filed this action against Defendants California Institute of Technology ("Caltech") and Simplilearn Americas, Inc. ("Fullstack") (collectively, "Defendants").[1] In the operative Second Amended Complaint ("SAC"), filed on December 21, 2023,

[1] Defendants state that Simplilearn acquired Fullstack in 2022 and all of Plaintiff's claims arose during the "period when Fullstack operated the Bootcamp." (Demurrer, 7 fn. 1.) For clarity, the Court utilizes

Plaintiff alleges four causes of action: (1) violations of the False Advertising Law ("FAL"); (2) violations of the Consumer Legal Remedies Act ("CLRA"); (3) unjust enrichment; and (4) violations of the Unfair Competition Law ("UCL"). (SAC ¶¶ 97-124.) Plaintiff alleges as follows.

In October 2020, Plaintiff enrolled in an online Cybersecurity Bootcamp ("Bootcamp") through the Caltech Center for Technology and Management Education ("CTME"). (*Id.* ¶¶ 4, 20.) Plaintiff paid approximately $13,000 to enroll in the Bootcamp. (*Id.* ¶ 20.) Plaintiff believed the Bootcamp was "a Caltech program, with Caltech curriculum taught by Caltech personnel." (*Id.* ¶¶ 10, 14.) However, Plaintiff learned during the Bootcamp that "the program [was] entirely outsourced" to Fullstack. (*Id.* ¶¶ 15, 79.) The Bootcamp prominently displays Caltech's name in its logo; is located on a "Caltech.edu" web address; and is advertised as the "Caltech Cybersecurity Bootcamp." (*Id.* ¶¶ 28, 30.) Prospective students can view a sample certificate, which states "Caltech" prominently at the top. (*Id.* ¶ 37.) Prospective applicants provide their contact information to Caltech to obtain a brochure for the Bootcamp from Caltech. (*Id.* ¶ 38.) The Caltech CTME website repeats the same misrepresentations as those made on the primary website. (*Id.* ¶¶ 41-48.) The Caltech CTME website describes the Bootcamp teachers as part of the Caltech CTME team, which includes industry experts. (*Id.* ¶¶ 44-46.) The Caltech CTME website does not disclose Fullstack's involvement. (*Id.* ¶ 47.)

Plaintiff received emails from a student advisor with a Caltech email address whose signature line provided a street address at Caltech and a phone number with a Pasadena area code. (*Id.* ¶¶ 74-75.) "Caltech's advertisements, websites, and representations portray to a reasonable consumer that Caltech is substantively involved in providing the Bootcamp." (*Id.* ¶ 7.) Defendants' primary website states that the Bootcamp is "powered by" Fullstack. (*Id.* ¶ 36.) However, Plaintiff did not understand this to mean that Caltech would be uninvolved in the Bootcamp. (*Id.*) Rather, based upon these various representations, Plaintiff believed she had been admitted into a Caltech program and "was excited about the opportunity to attend a program offered by such a prestigious school." (*Id.* ¶ 74.) However, Plaintiff later learned that the Bootcamp is "entirely created and administered by [Fullstack]." (*Id.* ¶ 8.) Plaintiff would not have

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the term "Fullstack" to refer to Fullstack/Simplilearn.

enrolled in the Bootcamp absent Defendants' representations. (*Id.* ¶¶ 82-84.)

Defendants now demur to the SAC on the grounds that Plaintiff's claims are barred by the education malpractice doctrine and Plaintiff has failed to state a claim. (Demurrer, 2; Opening Brief, 7-20.) Plaintiff opposes the demurrer.

In the alternative, Defendants move to strike: (1) Plaintiff's requests for restitution in the SAC on the ground that Plaintiff has adequate remedies at law; and (2) Plaintiff's references to the Caltech and CTME websites. (Motion, 1-2.) Plaintiff opposes the motion.

LEGAL STANDARD

A demurrer lies where "the pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc. § 430.10(e).) A demurrer admits "all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The complaint is given a reasonable interpretation, reading it as a whole and its parts in their context. (*Id.*) The Court accepts as true, and liberally construes, all properly pleaded allegations of material fact, as well as those facts which may be implied or reasonably inferred from those allegations; its sole consideration is whether the plaintiff's complaint is sufficient to state a cause of action under any legal theory. (*O'Grady v. Merchant Exchange Prods., Inc.* (2019) 41 Cal.App.5th 771, 776-777.)

"The court may, upon a motion made pursuant to [Code of Civil Procedure] Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading; (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (*Id.* § 437(a).) Courts have admonished that use of a motion to strike "should be cautious and sparing," and is not intended to create "a procedural 'line item veto' for the civil defendant." (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

REQUEST FOR JUDICIAL NOTICE

Defendants seek judicial notice of four documents: versions of two Caltech Bootcamp websites as they appeared on the Internet on October 22, 2020 (Kilgore Decl. Exs. A, B); a September 5, 2020 email

purportedly sent to Plaintiff (*id.* Ex. C); and a Student Enrollment Agreement signed by Plaintiff on September 24, 2020. (*Id.* Ex. D.) Defendants' request for judicial notice is denied. "[A] court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." (*New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 716 (cleaned up); *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114-115 [error to take judicial notice of parties' letter agreement on demurrer].) Further, Defendants have not established a proper foundation for two of the documents in question. (See Kilgore Decl. ¶¶ 4, 5 [stating that declarant is "informed" that Simplilearn's records include attached documents].) Finally, the Student Enrollment Agreement is mentioned nowhere in the SAC.

DISCUSSION

I. First, Second, and Fourth Causes of Action – FAL, CLRA, and UCL

Defendants demur to the first, second, and fourth causes of action on the grounds that Plaintiff's claims are barred by the educational malpractice doctrine and that Plaintiff fails to state a claim. (Demurrer, 3; Opening Brief, 13-20; Reply ISO Demurrer, 3-10.) The Court disagrees.

A. Plaintiff's Claims Are Not Barred By The Educational Malpractice Doctrine.

Defendants argue that Plaintiff's claims necessarily require this Court to analyze the quality of the Bootcamp's instructors and teaching methodology and are therefore barred by the educational malpractice doctrine. (Opening Brief, 13-16; Reply, 3-6.) The Court disagrees.

The educational malpractice doctrine bars claims that require "judgments about pedagogical methods or the quality of [a] school's classes, instructors, curriculum, textbooks, or learning aids" or "the evaluation of individual students' educational progress or achievement." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1212.) Indeed, "the failure of educational achievement may not be characterized as an 'injury' within the meaning of tort law." (*Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 826.) For example, a claim is barred which alleges a public school failed to provide an adequate education and permitted a student to graduate from high school without basic proficiencies. (*Id.*) Such claims are barred by the educational malpractice doctrine because there is "no

conceivable workability of a rule of care against which [school] defendants' alleged conduct may be measured." (*Id.* at 825 (cleaned up).) However, claims against educational institutions are not barred by the doctrine insofar "as such claims do not challenge the educational quality or results of the school's programs." (*Wells*, 39 Cal.4th at 1212.)

Defendants contend that Plaintiff's claims require an assessment of the Bootcamp's educational quality, noting allegations in the SAC in which Plaintiff discusses the quality of education she expected to receive. (Opening Brief, 8.) For example, Defendants note that "Plaintiff enrolled in the [B]ootcamp because of Caltech's reputation as a prestigious technical school" and that Plaintiff understands that Caltech is associated with "exceptional education" where students learn "the cutting edge of science and engineering." (Opening Brief, 14-15, quoting SAC ¶¶ 2-3, 15, 23-25.)[2] Plaintiff's decision to enroll in the Bootcamp undoubtedly was tied in part to the quality of education she expected to receive. (See SAC ¶¶ 76, 82-83.) However, Plaintiff's claims are not barred simply because Plaintiff was induced to enroll in the Bootcamp based in part upon her expectations that Caltech could be trusted to provide high quality training.

The California Supreme Court has made clear that claims that "do not challenge the *educational quality or results* of the school's programs" are not precluded by the educational malpractice doctrine. (*Wells*, 39 Cal.4th at 1213.) There, the Court found the doctrine did not bar a claim against a public charter school alleging the school breached "promises it made to induce enrollment" in order to fraudulently obtain public funding. (*Id.* at 1212.) Plaintiff's false advertising claims are more akin to the allegations of fraud in *Wells* than the negligence claims in *Peter W.*, which necessarily required the court to consider the quality of the school's pedagogical methodologies to determine whether the school

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[2] Defendants claim the SAC is "fatally inconsistent" with Plaintiff's prior pleadings and therefore request the Court consider allegations in the prior pleadings. (Opening Brief, 7, 12-13; Reply, 3-5; see, e.g., *Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1061 ["[A]dmissions in an original complaint that has been superseded by an amended pleading remain within the court's cognizance and the alteration of such statements by amendment designed to conceal fundamental vulnerabilities in a plaintiff's case will not be accepted."].) However, Defendants do not cite to a single contradictory omission. Rather, Defendants state the ways in which the "FAC similarly attacked the Bootcamp's quality." (Reply, 3.) Regardless, Defendants' argument is moot because Plaintiff's claims regarding Defendants' misrepresentations do not require the Court to assess the quality of instruction.

breached a duty to provide a quality education to the student.[3]

Defendants argue that Plaintiff's claims are "fundamentally an attack on the quality of education she received," and the only way to assess Plaintiff's claims is to determine whether Plaintiff received the quality of education she expected. (Opening Brief, 7, 14.) However, Plaintiff's FAL, CLRA, and UCL claims do not require the Court to assess the quality of instruction provided by the Bootcamp. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310 is illustrative. In *Kwikset*, the plaintiff purchased locksets that were labeled as "Made in America" but instead received locksets that were made elsewhere. (*Id.* at 328.) The Court explained the ways in which a complaint may discuss a product's quality without requiring the Court to address quality in its analysis of FAL and UCL claims. "The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities they may come to associate with a particular source." (*Id.*) "A range of motivations may fuel this preference." (*Id.* at 329.) Where a consumer "is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she *paid more for* than he or she otherwise might have been willing to pay if the product had been labeled accurately." (*Id.* at 330.) "The economic harm . . . is the same whether or not a court might objectively view the products as functionally equivalent." (*Id.*) The misrepresentation in *Kwikset* was that the defendant sold locksets mislabeled as "Made in America" and plaintiff allegedly paid more for the locksets because of this misrepresentation.

The same reasoning applies here. Plaintiff contends she enrolled in the Bootcamp because she believed she would receive training from Caltech, but instead Plaintiff unwittingly enrolled in a program

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[3] Plaintiff argues that the educational malpractice doctrine does not apply to private companies such as Fullstack. (Opposition, 11.) Plaintiff concedes the doctrine applies to Caltech as a private university. (*Id.*; see, e.g., *Wells*, 39 Cal.4th at 1210-1213 [applying the doctrine to publicly-funded charter school]; *Paulsen v. Golden Gate University* (1979) 25 Cal.3d 803, 808 [discussing application to private university].) However, Plaintiff contends the doctrine should not be expanded to immunize the conduct of "for-profit, short-term, continuing education program[s]." (Opposition, 11.) There is no precedent on point. Plaintiff cites to a lower federal court decision which questioned whether the doctrine applies to "private, unaccredited, and for-profit companies selling educational seminars." (*Makaeff v. Trump University, LLC* (S.D. Cal., Oct. 12, 2010) 2010 WL 3988684, at *2.) However, the court in *Makaeff* did not decide the issue, since it found that plaintiffs' allegations did not implicate the educational malpractice doctrine. (*Id.*) Likewise, the Court here need not reach this issue.

entirely operated by Fullstack. (SAC ¶¶ 15, 74, 76, 79, 82-86.) Indeed, she alleges she obtained private loans in order to attend what she believed was a Caltech program. (*Id.* ¶¶ 76-77.) Plaintiff's claims turn on whether Defendants' practices were misleading. Whether the quality of the Bootcamp was functionally equivalent to a Caltech course of study is of no consequence to the analysis under the FAL, CLRA, and UCL. Thus, because Plaintiff's claims do not challenge the educational quality or results of the Bootcamp, they are not barred by the educational malpractice doctrine.

B. Plaintiff Sufficiently Pleads Causes Of Action For Violations Of The FAL, CLRA, and UCL.

Defendants argue that Plaintiff's SAC cannot withstand demurrer because Plaintiff: (1) fails to plead with reasonable particularity; (2) fails to allege any false statement of fact that would be likely to deceive a reasonable consumer; and (3) fails to allege a sufficient injury under the CLRA. (Opening Brief, 7-8, 16-20; Reply, 2-3, 5.) The Court disagrees.

The FAL, CLRA, and UCL, which are the bases for Plaintiff's first, second, and fourth causes of action, provide protections for consumers from misleading advertisements. The FAL prohibits "any advertising device . . . which is untrue or misleading." (Bus. & Prof. Code § 17500 *et seq.*) "The CLRA prohibits 'unfair methods of competition and unfair or deceptive acts or practices' in transactions involving the sale of goods or services to any consumer." (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1249, quoting Civ. Code § 1770.) The UCL prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the FAL]." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949, quoting Bus. & Prof. Code § 17200 *et seq.*)

To state a claim based on misleading advertising under the FAL, CLRA, or UCL, a plaintiff need only show that a reasonable consumer is likely to be deceived. (See *Kasky*, 27 Cal.4th at 950-951 [FAL and UCL]; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1135-1136 [CLRA]; *Hill v. Roll Internat. Corp.* (2011) 195 Cal.App.4th 1295, 1303 [CLRA].) The FAL, CLRA, and UCL prohibit false advertising as well as "advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public." (*Kasky*, 27 Cal.4th at 951 [referring to

the FAL and UCL] (cleaned up); see also *Shaeffer*, 44 Cal.App.5th at 1137 [referring to the CLRA].) Thus, an actionable statement "may be accurate on some level, but will nonetheless tend to mislead or deceive" a reasonable consumer. (*Day v. AT & T Corp.* (1998) 63 Cal.App.4th 325, 332.) "California courts have recognized that whether a business practice is deceptive will usually be a question of fact not appropriate for decision on demurrer." (*Salazar v. Walmart, Inc.* (2022) 83 Cal.App.5th 561, 566 (cleaned up).)

To satisfy the standing requirements under the FAL, CLRA, and UCL, a plaintiff must plead a loss or deprivation of money or property sufficient to qualify as an injury in fact (economic injury) and that the economic injury was caused by the unfair business practice that is the gravamen of the claim. (*Kwikset*, 51 Cal.4th at 320-321.) The causation element "requires a showing of a causal connection or reliance on the alleged misrepresentation." (*Id.* at 326 (cleaned up).) "[A]lleging . . . that [plaintiff] would not have bought the product but for [defendant's] misrepresentation" is "sufficient to allege causation" and "economic injury," pursuant to the FAL and UCL. (*Id.* at 330.) A plaintiff must plead "with reasonable particularity, which is a more lenient pleading standard than is applied to common law fraud claims." (*Gutierrez*, 19 Cal.App.5th at 1261.)

1. Plaintiff Pleads With Reasonable Particularity.

Defendants contend that Plaintiff fails to state with sufficient particularity what misrepresentations Defendants have made. (Opening Brief, 16-17; Reply, 2-3.) The Court disagrees.

The SAC describes Defendants' allegedly deceptive marketing tactics with reasonable particularity. Plaintiff has identified a variety of representations which, when considered together, allegedly misled Plaintiff to believe that Caltech would be involved in the Bootcamp. In particular, Plaintiff alleges visual and textual misrepresentations appeared on both the CTME and Bootcamp websites and in emails from Bootcamp staff. (SAC ¶¶ 28-47.) These allegations are sufficient to place Defendants on notice as to the claims asserted against them.

2. Plaintiff Sufficiently Alleges Defendants' Conduct Was Likely To Deceive A Reasonable Consumer.

Defendants contend that Plaintiff's interpretation of the use of the Caltech name and logo is

"unreasonable as a matter of law" because Plaintiff has taken certain statements out of context and because Defendants did not make any affirmative representations as to Caltech's involvement in the Bootcamp. (Opening Brief, 16-18, 20.) The Court disagrees.

"A reasonable consumer is an ordinary consumer acting reasonably under the circumstances." (*Salazar v. Walmart, Inc.* (2022) 83 Cal.App.5th 561, 566.) A reasonable consumer need not be "exceptionally acute and sophisticated," nor "wary or suspicious of advertising claims." (*Id.*) "Rather, to meet the reasonable consumer standard, a plaintiff need only show that members of the public are likely to be deceived by the defendant's advertising." (*Id.* (cleaned up).) "Members of the public are likely to be deceived by advertising that is false and by advertising that, although true, is either actually misleading or . . . has a capacity, likelihood, or tendency to deceive or confuse the public." (*Id.* (cleaned up).) "[T]rue statements couched in such a manner that are likely to mislead or deceive the consumer are actionable." (*Id.* at 567.)

"[W]hether consumers are likely to be deceived is typically a question of fact" that cannot be decided on demurrer. (*Shaeffer*, 44 Cal.App.5th at 1140 (cleaned up).) However, the "issue may be resolved on demurrer if the facts alleged fail as a matter of law to show that a reasonable consumer would be misled." (*Id.* (cleaned up).) For example, a reasonable consumer would not be deceived into believing a water bottle was endorsed as climate friendly simply because it displayed a plain green drop that bore no recognized name or logo and provided no other indication that the drop was anything other than the water bottle company's symbol. (See *Hill*, 195 Cal.App.4th at 1303 [affirming trial court's order sustaining demurrer] (cleaned up).) Conversely, a reasonable consumer could be misled to believe that White Baking Chips are made of white chocolate where the packaging and placement on the shelf next to white chocolate chips are misleading even though the label itself does not state White Baking Chips are not made of white chocolate. (*Salazar*, 83 Cal.App.5th at 564-565, 567-570 [declining to find as a matter of law that a reasonable consumer would not be deceived].)

Here, Plaintiff's allegations do not qualify the case as one of those "rare situations" in which a court may sustain a demurrer on the ground that a representation is not misleading as a matter of law. (*Salazar*, 83 Cal.App.5th at 570.) Defendants contend that the use of Caltech's name and logo is not an

affirmative assertion, let alone a representation that is likely to mislead a reasonable consumer. (Opening Brief, 9, 16-17.) However, Defendants' argument is inconsistent with binding and persuasive precedent that a reasonable consumer could be deceived by misleading marketing that does not include any affirmative representation or literal untruth. (See, e.g., *Salazar*, 83 Cal.App.5th at 564-565, 567-570 [deceptive product placement and label design]; *Williams v. Gerber Products Co.* (9th Cir. 2008) 552 F.3d 934, 939 [finding reasonable consumer could be deceived by snack packaging with images of fruit, but where the snack did not include real fruit as an ingredient].)

Defendants attempt to draw a bright line distinction between descriptive brand names, which may be misleading by themselves, and cases where the brand name itself is not descriptive. For example, in *Brady v. Bayer Corp.* (2018) 26 Cal.App.5th 1156, the court found that the trial court erred in sustaining a demurrer to a complaint against the defendant vitamin manufacturer under the CLRA, the UCL, and express warranty law for utilizing the brand name "One A Day," even though the label in small print recommended that consumers take *two* gummies (tablets) daily. The court found that the fine print was not enough to overcome "the prominent and arguably advisory brand name of the product." (*Id.* at 1162.) Defendants contend that in contrast, use of the term "CalTech" is not necessarily misleading in and of itself. However, *Brady* did not rely exclusively on the brand name itself. Rather, it discussed what it discerned as "four discrete themes" emerging from CLRA and UCL claims focused on allegedly misleading labels. (*Id.* at 1165.) Thus, the *Brady* court addressed common sense; literal truth or falsity; the "front-back dichotomy"; and brand names misleading in themselves. (*Id.* at 1165-1171.) It found that all four themes "uniformly point to the same result in this case: allowing Brady's claim to proceed beyond the pleading stage." (*Id.* at 1172.) As to the first, it observed that "[if] a claim of misleading labeling runs counter to ordinary common sense or the obvious nature of the product the claim is fit for disposition at the demurrer stage of the litigation." (*Id.* at 1165.) Second, it observed that "[l]iteral truth can sometimes protect a product manufacturer from a mislabeling claim, but it is no guarantee." (*Id.* at 1166.) Rather, courts must scrutinize the statement "in context." (*Id.*) The third theme is "the degree to which qualifiers in the packaging can ameliorate any tendency of the label to mislead." (*Id.* at 1167.) Fourth, and most clearly analogous to the case before the *Brady* court, "[a]ny number of cases have held that brand names

by themselves can be misleading in the context of the product being marketed." (*Id.* at 1170.) The court emphasized, as Defendants do here, that "marketing theory emphasizes the use of *descriptive* brand names as a marketing strategy." (*Id.*)

These factors do not map precisely onto the case involved here, which of course does not involve alleged mislabeling or packaging of food or other consumer products, but instead marketing of an educational or training program. Nevertheless, finding *Brady*'s discussion persuasive, the Court cannot conclude, as a matter of law, that a reasonable consumer would not have been deceived by Defendants' alleged representations. Perhaps most importantly, it is hardly "counter to ordinary common sense or the obvious nature of the product" (*id.* at 1165) to conclude that a reasonable consumer would believe that Caltech supplies educational content, including curriculum and instruction, to a "Caltech Cybersecurity Bootcamp" program that utilizes the Caltech name and logo and is featured on a Caltech CTME website. To the contrary, it seems to the Court that precisely the opposite would be the case, particularly "in the context of the product being marketed." (*Id.* at 1170.) After all, why else would an educational or training program utilize an educational institution's name, logo, and website unless the institution had some substantial connection with the program?[4]

Defendants also rely upon *Rubenstein v. Gap* (2017) 14 Cal.App.5th 870, but that case is readily distinguishable. (Opening Brief, 9, 13, 18.) There, the court found that "[a]s a matter of law, Gap's use of its own brand name labels on clothing that it manufactures and sells at Gap-owned stores is not deceptive, regardless of the quality of the merchandise or whether it was ever for sale at other Gap-owned stores." (*Rubenstein*, 14 Cal.App.5th at 876.) As the court explained, "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.) Here,

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[4] At the hearing, Defendants argued that the Bootcamp's use of the Caltech name and logo is comparable to grocery stores' names on "private labels" or "house brands" of products that are widely known to have been produced or grown by third party companies. (See, e.g., *Gedalia v. Whole Foods Market Services, Inc.* (S.D. Tex. 2014) 53 F.Supp.3d 943, 946 [discussing claims against Whole Foods for private-label 365 Organic and 365 Everyday Value products].) The Court cannot say, as a matter of law, that it is common knowledge that educational institutions engage in the same practice. Educational programs are not groceries.

in contrast, Plaintiff alleges that Caltech faculty played no role in developing the curriculum or designing the coursework, that Caltech staff had no responsibility for admissions, and that the Bootcamp has no connection with Calttech other than through a marketing affiliation that enables Fullstack to utilize its name and logo. In other words, Caltech was not using its brand name to sell its *own* services; rather, it allegedly allowed a third party, Fullstack, to use the Caltech brand name to sell *Fullstack*'s services.[5] Again, the Court cannot conclude as a matter of law that such a practice is not likely to deceive a reasonable consumer.[6]

Defendants also argue that their disclosures render Plaintiff's interpretation unreasonable. (Opening Brief, 19-20; Reply, 6-9.) For example, Defendants state that the website disclosed that the Bootcamp was "powered by Fullstack" and contend a reasonable consumer could only interpret this to mean "that Fullstack plays an integral part in operating the Bootcamp." (Opening Brief, 20.) Plaintiff conversely argues that "powered by" is ambiguous and does not unequivocally inform a consumer that Fullstack operates the Bootcamp. (Opposition, 19.) The Court agrees. It is entirely conceivable that "powered by" could mean only that Fullstack provides the back-office functions necessary to operate the Bootcamp's online platform. As the Court pointed out at the hearing, Caltech could have easily avoided any confusion by requiring an unequivocal disclosure (such as "educational content provided exclusively

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[5] Defendants rely on *TrafficSchool.com, Inc. v. Edriver Inc.* (9th Cir. 2011) 653 F.3d 820, but that case arguably supports Plaintiff's position, not Defendants'. In *TrafficSchool.com*, defendants owned and managed DMV.org, a for-profit website that assisted consumers with driver's licenses, car insurance, driving records, traffic tickets, driver's education programs, and other services. Plaintiffs successfully claimed that defendants violated federal false advertising laws (the Lanham Act) by "actively fostering the belief that DMV.org is an official state DMV website, or is affiliated or endorsed by a state DMV," warranting the issuance of injunctive relief ordering DMV.org to present every site visitor with a prominent disclaimer. (*Id.* at 824, 829.) The Ninth Circuit explained, "It stands to reason that defendants will capture a larger share of the referral market . . . if they mislead consumers into believing that DMV.org's referrals are recommended by their state's DMV." (*Id.* at 826.) Here, Fullstack's use of the Caltech name and logo would similarly seem to foster the false belief that the Bootcamp is an "official" Caltech program, or at least one operated or recommended by Caltech.

[6] Defendants also cite to other unpersuasive and distinguishable authority. (Opening Brief, 17-18.) For example, the instant action is distinguishable from *La Barbera v. Ole* (C.D. Cal., May 18, 2023), 2023 WL 4162348 *15, where the court held that a reasonable consumer would not be deceived as a matter of law into believing that "Taste of Mexico" meant "Made in Mexico." The court noted that it would be "somewhat nonsensical to say that anything tastes like a country." (*Id.*) Here, in contrast, it could be reasonable for a consumer to assume that Caltech would be involved in the management and instruction of a Bootcamp bearing Caltech's name and logo and promoted on its website.

by Fullstack"), rather than relying upon an ambiguous phrase such as "powered by." In any event, the Court cannot determine as a matter of law that Defendants' disclosures were sufficient to establish that a reasonable consumer could *only* believe that the Bootcamp was operated entirely by Fullstack. (See, e.g., *Day*, 63 Cal.App.4th at 333-334 [reversing order sustaining defendants' demurrer where court "decline[d] to conclude on the facts alleged . . . that no reasonable consumer . . . would be likely to be misled or deceived by [defendants'] practices"]; *Brady*, 26 Cal.App.4th at 1160, 1163-1164 [reversing order sustaining demurrer where court could not conclude "that a hypothetical 'reasonable consumer" would, *as a matter of law*," not be likely to be misled].) This contested factual issue cannot be decided on demurrer.

Accordingly, based on the face of the SAC, the Court cannot decide as a matter of law that Defendants' marketing tactics would be unlikely to deceive a reasonable consumer.

3. Plaintiff Sufficiently Alleges Damages Pursuant To The CLRA.

Defendants argue that Plaintiff fails to plead damages sufficient to establish standing under the CLRA. (Reply, 5.) This argument is improperly asserted for the first time in Defendants' reply. (See, e.g., *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1212 [a trial court has discretion whether to accept arguments or evidence made for the first time in reply].) In any event, Defendants' argument is unpersuasive.

"The CLRA authorizes any consumer 'who suffers any damage' because of a[n] unlawful method, act or practice to bring an action for various forms of relief, including (1) actual damages, (2) an order enjoining the methods, acts, or practices, (3) restitution of property, (4) punitive damages, and (5) any other relief the court deems proper." (*Gutierrez*, 19 Cal.App.5th at 1263, citing Civ. Code § 1780.) "[A] plaintiff pursuing a CLRA action must plead facts showing he or she suffered 'any damage' as that phrase is used in Civil Code section 1780, subdivision (a), which is not synonymous with 'actual damages' and may encompass harms other than pecuniary damages." (*Id.*) Where a plaintiff alleges she "would not have purchased [a given item] if he or she had known [certain] undisclosed information, [that] is sufficient to allege the purchaser suffered 'any damage.'" (*Id.* at 1264.)[7]

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[7]Defendants fail to discuss *Gutierrez* and instead offer an out-of-context quotation from a distinguishable case. (See Reply, 5; *Bower v. AT&T Mobility, LLC* (2011) 196 Cal.App.4th 1545.) Defendants cite

Here, Plaintiff enrolled in the Bootcamp in October 2020 and alleges that she would not have enrolled in the Bootcamp absent Defendants' representations. (SAC ¶¶ 82-84.) Plaintiff accepted more than $13,000 in private loans in order to enroll in a course which she believed was operated by Caltech, but was instead operated entirely by Fullstack. (SAC ¶¶ 20, 77-78.) Thus, Plaintiff sufficiently alleges damages pursuant to the CLRA.

Accordingly, Defendants' demurrer is overruled as to the first, second, and fourth causes of action.

II. Third Cause of Action – Unjust Enrichment

Defendant demurs to the third cause of action on the ground that unjust enrichment is not an independent cause of action under California law. (Opening Brief, 10, 21; Reply, 10-11.) The Court agrees.

"Unjust enrichment is not a cause of action. It is just a restitution claim." (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 870, quoting *Hill v. Roll Int'l Corp.* (2011) 195 Cal.App.4th 1295, 1307; accord, *Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 336 ["summary adjudication of [an unjust enrichment] claim was proper because California does not recognize a cause of action for unjust enrichment."]; *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 955 [same]; *Everett v. Mountains Recreation & Conservation Authority* (2015) 239 Cal.App.4th 541, 533 [demurrer sustained because "there is no cause of action in California for unjust enrichment"]; *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387 ["Unjust enrichment is not a cause of action . . . . or even a remedy, but rather a general principle, underlying various legal doctrines and remedies"].)

Bower for the assertion that there can be no CLRA action where a plaintiff does not allege that a misrepresentation resulted in a "tangible increased cost or burden." (See Reply, 5, quoting *Bower*, 196 Cal.App.4th at 1556.) The court in *Bower* found a plaintiff did not allege sufficient damages where the plaintiff alleged "she was denied the opportunity to shop around for a retailer that does not charge sales tax reimbursement on the full, undiscounted price of a cellular telephone as part of a bundled transaction," but that plaintiff "did not allege that she could have obtained [a contract] . . . at a lower price from another source." (*Bower v. AT&T Mobility, LLC* (2011) 196 Cal.App.4th 1545, 1556.) *Bower* is not analogous. Additionally, *Bower* cites to a California Supreme Court opinion which provides greater clarity as to the CLRA's standing requirements. (See *Meyer*, 45 Cal.4th at 641, 643.) The plaintiff in *Meyer* sought to enjoin a defendant from enforcing an unconscionable contract clause, but the defendant had not invoked the contract clause and therefore had not yet "require[d] plaintiffs to expend greater costs" pursuant to the unconscionable clause. (*Id.* at 643.) The court found no tangible economic injury had yet been suffered. (*Id.*) Here, Plaintiff has alleged she suffered a tangible economic injury because she would not have enrolled in the Bootcamp but for Defendants' representations.

Further, courts have found that the FAL, UCL, and CLRA provide adequate remedies such that a separate cause of action for unjust enrichment is unnecessary. (See, e.g., *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 260 [dismissing unjust enrichment claim]; *Sepanossian v. National Ready Mix Company, Inc.* (2023) 97 Cal.App.5th 192, 207 [finding complaint did not state a claim for unjust enrichment where restitution provided under UCL].) Because the statutory claims provide a basis for Plaintiff to seek restitution, the third cause of action adds nothing to the SAC. Therefore, Defendant's demurrer to the third cause of action is sustained without leave to amend.

III. Motion To Strike

Defendants move to strike "requests for equitable restitution and equitable disgorgement because Plaintiff has an adequate remedy at law." (Motion, 1.) Defendants' motion is denied as to Plaintiff's request for equitable restitution and is moot as to equitable disgorgement. Restitution is available pursuant to the FAL, CLRA, and UCL. (See Civ. Code § 1780(a) [CLRA provides for "restitution of property" and "[a]ny other relief the court deems proper"]; see, e.g., *Kasky*, 27 Cal.4th at 950 [FAL and UCL]; *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 694 [describing courts' broad discretion to grant equitable relief that is "supported by substantial evidence"].) Equitable disgorgement is not available under the UCL. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148 [nonrestitutionary disgorgement of profits is not an available remedy under the UCL]; *Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440, 460 ["while *restitutionary* disgorgement may be an available remedy under the UCL, *nonrestitutionary* disgorgement is not available" even in a class action].) However, as Defendants' demurrer is sustained as to the third cause of action, Defendants' motion to strike is moot as to the remedies sought in paragraph 116. (Motion, 1; SAC ¶ 116.)

Defendants move to strike references to the Caltech and CTME websites on the grounds that these allegations are improper because "Plaintiff does not allege that she ever visited" these websites. (Motion, 1-2.) A demurrer admits "all material facts properly pleaded," and the Court accepts as true, and liberally construes, all properly pleaded allegations of material fact. (*Blank*, 39 Cal.3d at 318; see *O'Grady*, 41 Cal.App.5th at 776-777.) A plaintiff must show actual reliance on allegedly misleading statements to

have standing under the FAL, CLRA, and UCL. (See *Salazar v. Target Corporation* (2022) 83 Cal.App.5th 571, 578 [finding plaintiff lacked standing under FAL, CLRA, and UCL where plaintiff did not allege that he visited website or relied on it in deciding whether to purchase product].) Plaintiff alleges that after seeing a pop-up advertisement for the Bootcamp, she visited "the primary webpage for the Caltech Cybersecurity Bootcamp." (SAC ¶¶ 14, 73-75.) Plaintiff does not expressly allege that she visited or relied on the "Caltech CTME website." (E.g., SAC ¶¶ 41-48.) However, Plaintiff expressly alleges that the "Caltech CTME webpage for the Caltech Cybersecurity Bootcamp and the primary webpage each provide links to the other." (*Id.* ¶ 49; see also *id.* ¶ 30.) Accordingly, Defendants' motion to strike is denied.

CONCLUSION

For the foregoing reasons, Defendants' demurrer to the third cause of action of the Second Amended Complaint is sustained without leave to amend, and the demurrer to the remaining causes of action is overruled. Defendants' motion to strike is denied.

IT IS SO ORDERED.

Dated: April 11, 2024

Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 11, 2024, I electronically served ORDER ON (1) DEFENDANTS' DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND (2) DEFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: APR 11 2024

Brandon E. Riley, Court Executive Officer

By: Felicia Green
Felicia Green, Deputy Clerk