Prepared by the Court

SUPERIOR COURT OF CALIFORNIA

County Of San Francisco

Department No. 302

CAIONLEAN ARRING, et al,

Plaintiffs,

v.

GOLDEN GATE UNIVERSITY, et al,

Defendants.

No. CGC-12-517837

ORDER OVERRULING DEMURRER TO FIRST AMENDED COMPLAINT

On June 13, 2012 a hearing was held on defendant Golden Gate University's demurrer to the first amended complaint. The demurrer asserted three grounds why the claims alleged by the plaintiffs were deficient: 1) all three claims fail because they did not allege that defendant's statements were likely to deceive reasonable prospective and current law students; 2) the claim under the Consumer Legal Remedies Act (CLRA) fails because education is neither a good nor a service as those terms are defined in the CLRA; and 3) the Unfair Competition Law (UCL) claim

is time-barred. At the hearing I orally rejected the third ground. At the conclusion of the hearing I took the first and second grounds under submission so that I could more fully consider the parties' oral and written arguments as to those grounds. Having completed my further review, I reject the first and second grounds asserted by defendant and thus overrule the demurrer in its entirety.

California case law establishes that ordinarily the issue of whether a statement is likely to deceive a reasonable consumer is a question of fact. Relying heavily on the reasoning of a New York trial court decision, defendant argues that a reasonable prospective or current law student would surely understand that the statements attributed to the defendant did not pertain only to jobs requiring or preferring a law school degree. Accepting the truth of plaintiffs' well-pleaded allegations, as I am required to do at this stage of the case, I disagree.

Each of the plaintiffs allege that they were in fact deceived by the statements they attribute to the defendant, and there is nothing before me to suggest that any of the plaintiffs were not reasonable consumers of a law school education. Moreover, the statements attributed to defendant were allegedly made in a context (i.e. in materials designed to attract and retain law students to defendant's law school) where a reasonable prospective or current law student could reasonably believe that the statements pertained only to jobs for which a law school education is a requirement or preference and did not include jobs for which a law school education is irrelevant or of minimal utility. This issue is simply not amenable to resolution on a demurrer and must await factual development by the parties.

The New York trial court decision is distinguishable to the extent that there are different rules for deciding motions to dismiss in New York than there are for deciding demurrers, different rules as to the scope of judicial notice, and differences in the governing substantive law. To the extent, if any, the New York trial court decision rests on the same procedural and

substantive law that apply to deciding the cognizability of plaintiffs' claims, the New York decision is not in accord with California procedural and substantive law and thus I decline to follow it.

The provision of education, and specifically a law school education, falls well within CLRA's broad definition of "services." Therefore, per *Fairbanks v. Superior Court* (2009) 46 Cal. 4th 56, which teaches that no further inquiry is needed when the statutory language resolves the issue, defendant's second ground lacks merit. Defendant places much emphasis on a single paragraph in *Fairbanks*, which states that the legislative history of the CLRA showing that the statute had been adapted from a model law that included the word "insurance" within the definition of services confirms that insurance, which is not explicitly included in the CLRA's definition of services, is outside of CLRA"s definition of services. There are several problems with this argument as pertains to the issue of whether education is within CLRA"s definition of "services."

First, the word "education" appears in the model act not by itself but as an object to the antecedent phrase of "privileges with respect to." This strongly suggests that the drafters of the model act had something in mind other that just the provision of education when the word education was included in the model act's definition of services. This is, in marked contrast, to the unqualified word "insurance" used in the model act.

Second, defendant's argument does not account for the fact that none of the activities specifically identified in the model act as services that appear in the same subsection of the model act as the word "education" ("transportation, hotel and restaurant accommodations ...entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations") appear in CLRA"s definition of services. Yet many, if not all, of those

activities unquestionably fall within CLRA"s definition of services and the CLRA has been applied to many of them.

Third, defendant's argument fails to take into account that *Fairbanks* also looked to the Unruh Act for confirmation of its holding that life insurance is not within the CLRA's definition of services because the word insurance does appear in the Unruh Act's definition of services. In contrast, the word education is not expressly included in the Unruh Act's definition of services, yet there are cases that have applied that statute to educational instituitons.

Accordingly, for the reasons set forth above and at the hearing, defendant's demurrer is overruled in its entirety.

IT IS SO ORDERED.

Dated: July 19, 2012

Harold Kahn
Superior Court Judge

Superior Court of California
County of San Francisco

CAIONLEAN ARRING, et al, Plaintiff(s) vs. GOLDEN GATE UNIVERSITY, et al, Defendant(s)	Case Number: CGC-12-517837 **CERTIFICATE OF MAILING** (CCP 1013a (4))

I, Gina Gonzales, 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 July 19, 2012, I served the attached Order Overruling Demurrer To First Amended Complaint by placing a copy thereof in a sealed envelope, addressed as follows:

ROSEMARY M. RIVAS, ESQ.
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and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: July 19, 2012

MICHAEL YUEN, Clerk

By: Gina Gonzales
Gina Gonzales, Deputy Clerk