

1 Prepared by the Court

**FILED**  
San Francisco County Superior Court

JUL 19 2012

CLERK OF THE COURT

BY: *Yana Gonzalez*  
Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**

9 **County Of San Francisco**

10 Department No. 302

12 CAIONLEAN ARRING, et al,

13 Plaintiffs,

14 v.

15 GOLDEN GATE UNIVERSITY, et al,

16 Defendants.

No. CGC-12-517837

ORDER OVERRULING DEMURRER TO  
FIRST AMENDED COMPLAINT

18  
19 On June 13, 2012 a hearing was held on defendant Golden Gate University's demurrer to  
20 the first amended complaint. The demurrer asserted three grounds why the claims alleged by the  
21 plaintiffs were deficient: 1) all three claims fail because they did not allege that defendant's  
22 statements were likely to deceive reasonable prospective and current law students; 2) the claim  
23 under the Consumer Legal Remedies Act (CLRA) fails because education is neither a good nor a  
24 service as those terms are defined in the CLRA; and 3) the Unfair Competition Law (UCL) claim  
25

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

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

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

21 The New York trial court decision is distinguishable to the extent that there are different  
22 rules for deciding motions to dismiss in New York than there are for deciding demurrers,  
23 different rules as to the scope of judicial notice, and differences in the governing substantive law.  
24 To the extent, if any, the New York trial court decision rests on the same procedural and  
25

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

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

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

19 Second, defendant's argument does not account for the fact that none of the activities  
20 specifically identified in the model act as services that appear in the same subsection of the  
21 model act as the word "education" ("transportation, hotel and restaurant accommodations  
22 ...entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery  
23 accommodations") appear in CLRA's definition of services. Yet many, if not all, of those  
24  
25

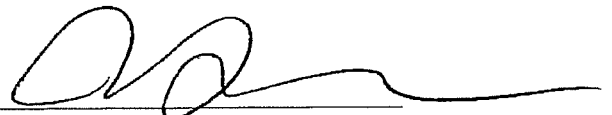
1 activities unquestionably fall within CLRA's definition of services and the CLRA has been  
2 applied to many of them.

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

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

10 IT IS SO ORDERED.

11 Dated: July 19, 2012



12  
13 Harold Kahn  
14 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.  
DANIELLE A. STOUMBOS, 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, Deputy Clerk