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Attorneys for Defendants
IEC CORPORATION and
IEC/AAI HOLDINGS, INC., DOING BUSINESS AS
UEI COLLEGE (erroneously named as
UNITED EDUCATION INSTITUTE)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

JOSHUA JONES, an individual;
JESUS CACIQUE, an individual;
DOMINIQUE CALDERON, an individual;
JAMIE CALLEJAS, an individual;
ADRIAN CORTEZ, an individual;
AGUSTIN CRUZ, an individual;
LISHI LEE, an individual;
OMRI OROZCO TORRES, an individual;
NICK PETREE, an individual;
CHARLES RIVAS, an individual;
MICHAEL TORRES, an individual; and
AARON VANG, an individual;

Plaintiffs,

vs.

UNITED EDUCATION INSTITUTE, a California
corporation; IEC Corporation, a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CECG02897

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS’ DEMURRER TO
PLAINTIFFS’ COMPLAINT**

Date: April 18, 2024
Time: 3:30 p.m.
Dept.: 501
Judge: Hon. D. Tyler Tharpe

Complaint Filed: July 18, 2023

IEC Corporation (“IEC”) and IEC/AAI Holdings, Inc., doing business as UEI College¹ (the “College”) (collectively, “Defendants”) hereby demur to Plaintiffs’² complaint on the grounds that it fails to state a cause of action for fraud, intentional misrepresentation, and negligent misrepresentation.

I. INTRODUCTION

Defendants bring this demurrer as a challenge to Plaintiffs’ causes of action for fraud, intentional misrepresentation, and negligent misrepresentation.

The linchpin of Plaintiffs’ entire case is that the corporate Defendants and their employees and agents made false representations and used misleading high-pressure tactics in order to recruit Plaintiffs and induce them into enrolling at the College. This serious attack on character is meritless.

Stripped of its baseless, nonspecific allegations and contentions and conclusions of law, Plaintiffs’ hollow complaint cannot withstand this demurrer. It is a fundamental principle of law at the pleading stage that claims sounding in fraud must be dismissed unless a plaintiff pleads with specificity facts which show how, when, where, to whom, and by what means the alleged misrepresentations were tendered. This high pleading standard is “even greater” where, as here, the Defendants are corporations, requiring Plaintiffs to also allege the *names* of the persons who made the allegedly fraudulent representations, their *authority* to speak, to whom they spoke, what they said or wrote, and *when* it was said or written.

The complaint fails to meet this high standard. Rather, it lumps the alleged misrepresentations together, thereby effectively precluding Defendants from understanding which charges are asserted against the College and which are asserted against IEC, which in turn deprives Defendants of the opportunity to adequately defend the allegations. The complaint’s inadequacies, however, are more substantial. It marshals nonspecific allegations of oral misrepresentations that were allegedly made to Plaintiffs by “employees,” “agents,” and “admissions recruiters” of Defendants, without alleging the dates of the misrepresentations, or the individuals’ names or authority to speak on behalf of Defendants.

¹ The complaint erroneously names this Defendant as United Education Institute.

² “Plaintiffs” refers collectively to Joshua Jones, Jesus Cacique, Dominique Calderon, Jamie Callejas, Adrian Cortez, Agustin Cruz, Lishi Lee, Omri Orozco Torres, Nick Petree, Charles Rivas, Michael Torres, and Aaron Vang.

For these reasons, and as detailed more specifically below, this demurrer should be sustained.

II. SUMMARY OF COMPLAINT

Plaintiffs are twelve former students of the College's. (*See* Complaint [*"Compl."*] ¶¶ 7–17.) Each enrolled in the College's Heating, Ventilation, and Air Conditioning Program ("HVAC" or "HVAC Program") at some point in 2021 and 2022. (*Id.* ¶ 44.) The College provides career preparation and training for students at thirteen California campuses, including Fresno – where Plaintiffs completed their education. (*Id.* ¶ 7–17, 19.) The College offers various programs, including HVAC. (*Id.* ¶ 19.) IEC is the College's parent company. (*Id.* ¶ 21.)

On July 18, 2023, Plaintiffs filed a complaint with this Court. The complaint alleges that Defendants used deceptive practices and made misrepresentations to induce Plaintiffs into enrolling at the College, and asserts causes of action for fraud, intentional misrepresentation, and negligent misrepresentation, among others. (*See generally id.*)

Plaintiffs' 33-page complaint distills to three categories of allegations. The first category consists of alleged misrepresentations that were made to Plaintiffs by the corporate Defendants or employees and agents of Defendants whose identities and names are entirely absent from the complaint. Examples of Plaintiffs' nonspecific allegations include:

- An unnamed "admissions recruiter" at some unidentified time period allegedly falsely told Jones that he was guaranteed a high paying job upon graduating from the College; and that Defendants would help him with his resume and interviewing skills and refer him to employers who were hiring HVAC technicians. (*Id.* ¶ 26.)
- The College – a business entity with hundreds of employees – purportedly falsely told an unidentified Plaintiff at some unidentified time period that his criminal record would not affect his ability to obtain employment. (*Id.* ¶¶ 40–41.)
- The College at some unidentified time period allegedly falsely assured Cruz that his new HVAC career would improve his earnings and allow him more time with his family. (*Id.* ¶ 42.)
- An unnamed "admissions recruiter" at some unidentified time period purportedly falsely told Torres that he would have a job waiting for him after graduation if he enrolled at the College. (*Id.* ¶ 43.)

Similar nonspecific and vague allegations appear throughout the complaint. (*See, e.g., id.* ¶¶ 27, 37–38, 64, 71, 105, 110, 130, 136, 140, 147, 151.)

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1 The second category of allegations consist of legal conclusions. Examples include:

- 2 • Conclusory remarks that the College is subject to the requirements of the Private
3 Postsecondary Educational Act of 2009, that Defendants do not meet the requirements for
4 exemption under Cal. Educ. Code § 94874, and that Defendants are subject to Title 5, Division
5 7.5 of the Code of Regulations. (*Id.* ¶¶ 20, 49, 66.)
- 6 • Conclusory and unsubstantiated allegation that Defendants, among other things, are
7 “coconspirators.” (*Id.* ¶ 23.)
- 8 • Conclusory statements regarding requirements allegedly imposed by certain sections of the
9 California Education Code. (*See, e.g., id.* ¶ 67 [alleging “Education Code sections 94910,
10 94929.5, and 94929.7 require that, prior to enrollment, post-secondary educational institutes
11 must provide prospective students a performance fact sheet disclosing accurate historical
12 information pertaining to” rate of programs completion, employment after graduation, and
13 average annual salaries].) Similar improper and sweeping legal conclusions appear at
14 paragraphs 68–70 of the complaint.

15 The last category of allegations are asserted upon information and belief. (*See, e.g., id.* ¶ 56,
16 italics added [alleging that “Plaintiffs *are informed and believe* that” the College engages in deceptive
17 trade practices from the recruitment stage through job placement after graduation.]; *id.* ¶ 60, italics
18 added [alleging that “Plaintiffs *are informed and believe* that” the College failed and continues to fail
19 to disclose the total cost of tuition in *any* way prior to students executing their enrollment
20 agreements.]; *id.* ¶ 61, italics added [alleging that “Plaintiffs *are informed and believe* that” the
21 College’s admissions representatives use a standardized, high-pressure recruitment program to induce
22 prospective students into enrolling at the College in order to maximize loan money.].) Nowhere in
23 the complaint do Plaintiffs address – let alone sufficiently allege – the basis for their asserted belief.
24 (*See generally id.*) Other similar, baseless allegations appear at paragraphs 59, 62, 66, and 70 of the
25 complaint.

26 As demonstrated below, once stripped of its baseless, vague and nonspecific allegations, and
27 conclusions of law, Plaintiffs’ complaint cannot survive this demurrer.

28 **III. LEGAL STANDARD**

29 “A demurrer tests the legal sufficiency of factual allegations in a complaint.” (*Behnke v. State*
30 *Farm Gen. Ins. Co.* (2011) 196 Cal.App.4th 1443, 1452.) A demurrer should be sustained where
31 “[t]he pleading does not state facts sufficient to constitute a cause of action.” (Cal. Code Civ. Proc. §
32 430.10(e).) “Whether a complaint states facts sufficient to constitute a cause of action is a question of
33 law.” (*Behnke, supra*, 196 Cal.App.4th at 1452.) When ruling on a demurrer, only properly pleaded

1 facts alleged in a complaint are treated as true, and courts “do not assume the truth of contentions,
2 deductions, or conclusions of fact or law” (*Fischer v. Time Warner Cable Inc.* (2015) 234
3 Cal.App.4th 784, 790.)

4 To state a claim for fraud or intentional misrepresentation, a plaintiff must adequately plead
5 facts demonstrating (1) a misrepresentation; (2) knowledge of falsity, or “scienter”; (3) intend to
6 defraud, *i.e.*, induce reliance; (4) justifiable reliance; and (5) resulting damages. (*See Chapman v.*
7 *Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231 [listing elements for intentional misrepresentation];
8 *Hypertouch, Inc. v. ValueClick, Inc.* (2011) 192 Cal.App.4th 805, 820 [listing elements for common
9 law fraud].) “The essential elements of a count for negligent misrepresentation are the same except
10 that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person
11 who has no reasonable grounds for believing it to be true.” (*Chapman, supra*, 220 Cal.App.4th at 231.)

12 “In California, fraud must be pled specifically; general and conclusory allegations do not
13 suffice.” (*Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 645.) As such, in a complaint where fraud or
14 intentional misrepresentation is alleged, the policy of liberal construction of the pleadings will *not* be
15 invoked to sustain a pleading defective in *any* material respect. (*Id.*) The heightened pleading standard
16 for fraud requires “pleading *facts* which ‘show how, when, where, to whom, and by what means the
17 representations were tendered.’” (*Id.* [quoting *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74],
18 *italics in original.*) The particularity requirement applies with equal force to a cause of action for
19 negligent misrepresentation. (*See SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th
20 146, 155 [citing *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184-185, fn. 14].)

21 “The requirement of specificity in a fraud action against a corporation requires the plaintiff to
22 allege the *names* of the persons who made the allegedly fraudulent representations, their *authority* to
23 speak, to whom they spoke, what they said or wrote, and *when* it was said or written.” (*Tarmann v.*
24 *State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157, *italics added*; *see also Lazar, supra*,
25 12 Cal.4th at 645 [same].)

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1 **IV. ARGUMENT**

2 **A. The Court Should Disregard Each Allegation Asserted Based on Information**
3 **and Belief in Ruling on Defendants’ Demurrer**

4 In ruling on this demurrer, the Court should disregard any allegations in the complaint that
5 Plaintiffs asserted on information and belief. Such allegations may be considered where fraud is
6 alleged only where “‘the facts upon which the belief is founded are stated in the complaint.’” (*Findley*
7 *v. Garrett* (1952) 109 Cal.App.2d 166, 176 [quoting *Dowling v. Spring Val. Water Co.* (1917) 174
8 Cal. 218, 221].) Here, Plaintiffs allege no facts to support numerous, serious allegations that are based
9 on information and belief, including alleged deception by the College, *see Compl.* ¶ 56; the types of
10 financing students use to pay for their tuition, *id.* ¶ 59; alleged nondisclosure of total tuition costs, *id.*
11 ¶ 60; alleged use of a standardized, high-pressure, scripted recruitment process, *id.* ¶¶ 61–62; alleged
12 continued violations of the Education Code, *id.* ¶ 66; and other wholly unsubstantiated allegations.
13 (*See, e.g., id.* ¶¶ 55, 70.) Because Plaintiffs fail to offer any facts to support their asserted belief, the
14 Court may not properly consider these allegations.

15 **B. The Demurrer Should Be Sustained in its Entirety, At Minimum, as to IEC**
16 **Because the Complaint Lumps Together the Allegations of Misrepresentations**
Asserted against Defendants

17 The majority of the allegations of misrepresentations in the complaint are lumped together
18 without identifying which of the alleged false statements are attributable to the College and which are
19 attributable to IEC. This fails the heightened pleading requirement for fraud. (*See Swartz v. KPMG*
20 *LLP* (9th Cir. 2007) 476 F.3d 756, 764–765 [The specificity requirement “does not allow a complaint
21 to merely lump multiple defendants together but ‘require[s] plaintiffs to differentiate their allegations
22 when suing more than one defendant and inform each defendant separately of the allegations
23 surrounding [the defendant’s] alleged participation in the fraud.”]; *see also Saldate v. Wilshire Credit*
24 *Corp.* (E.D. Cal. 2010) 268 F.R.D. 87, 102, internal citations and quotation marks omitted [“As to
25 multiple fraud defendants, a plaintiff must provide each and every defendant with enough information
26 to enable them to know what misrepresentations are attributable to them and what fraudulent conduct
27 they are charged with.”].)³

28 ³ Although unpublished, a California appellate decision reinforces that California’s pleading

Furthermore, no specific allegations are asserted against IEC. (*See generally Compl.*) Indeed, the few paragraphs of the complaint that generally allege oral misrepresentations made by “employees” and “admissions recruiters,” reference only the College. (*See id.* ¶¶ 26–27, 37–38, 40, 42, and 43.) As demonstrated below, even these allegations fail as a matter of law.

C. **Demurrer Should Be Sustained Because Plaintiffs Fail to Plead the Names and Authority of the Employees Who Made the Alleged Misrepresentations**

The causes of action Defendants challenge in this demurrer are premised on alleged false, oral representations that unidentified and unnamed employees and agents of Defendants orally made to Plaintiffs before they enrolled at the College. (*See, e.g., Compl.* ¶¶ 25–26, 37–38, 40–43, 64.) Plaintiffs’ vague allegations – which fail to specify the names of the employees, agents, and admissions recruiters who allegedly made the false statements – fall short of the high pleading standard required to state a claim for fraud, and intentional or negligent misrepresentation. (*See Tarmann, supra*, 2 Cal.App.4th at 157 [specificity requires plaintiff to allege the names of the persons who made the allegedly fraudulent representations].) Defendants are corporate entities with hundreds of employees and agents. Without the names and identities of the employees and agents who allegedly made false representations to Plaintiffs, the complaint fails to furnish “notice to [Defendants]” of “certain definite charges” to which Defendants can prepare a defense. (*Committee On Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, superseded by statute on other grounds [discussing the purpose behind the specificity requirement]; *see also Aspiras v. Wells Fargo Bank, N.A.* (Ct. App. 2013) 162 Cal.Rptr.3d 230, 238, abrogated on other grounds [holding that the specificity requirement was not met where the complaint “lack[ed] the required specifics as to the name of the person at Wells Fargo who spoke and his or her authority to speak.”].)

Plaintiffs’ complaint is further deficient in that it does not allege with specificity how Defendants authorized the misrepresentations supposedly made by Defendants’ employees, agents, and admissions representatives. (*See generally Compl.*) Although the complaint alleges in a

requirement for fraud is similar to the federal pleading requirement under Rule 9(b). (*See Heurlin v. CitiMortgage Inc.* (Cal. Ct. App. Jan. 9, 2015) No. G048922, 2015 WL 134161, at *12 [“California’s particularity requirement for pleading fraud is congruent with the federal requirement.”].)

1 conclusory fashion that Defendants’ “owners and management authorized and ratified the unlawful
2 conduct alleged herein,” such general allegations do not meet the particularity requirement. (*See*,
3 *supra*, *Lazar*, 12 Cal.4th at 645 [“fraud must be pled specifically” and “general ... allegations do not
4 suffice.”]; *see also Tarmann, supra*, 2 Cal.App.4th at 157–158 [sustaining a demurrer in a fraud action
5 where the plaintiff “generally alleged that the persons were ‘authorized agents of State Farm ...
6 cloaked with such authority’” but failed to allege the agents’ “names”].)

7 Indeed, the complaint provides no additional information that would allow the Court or
8 Defendants to conclude that the College – let alone IEC – necessarily has superior knowledge of the
9 names or identities of the persons who allegedly made the oral misrepresentations to Plaintiffs. (*See*
10 *Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1471 [“[T]o the extent any misrepresentation
11 was verbal, the complaint fails to demonstrate why defendants would ‘necessarily possess full
12 information’ regarding their employees’ conversations with plaintiffs.”]; *Aspiras, supra*, 162
13 Cal.Rptr.3d at 239, internal citations omitted and alteration in original [plaintiff offered no allegations
14 to show that the corporate defendant has “more reason to know who made the allegedly false
15 representations to [plaintiffs] than [plaintiffs].”].)

16 The failures outlined above require that the Court sustain this demurrer in its entirety.

17 **D. Demurrer Should Be Sustained Because the Complaint Fails to Sufficiently**
18 **Plead “When” the Misrepresentations Were Allegedly Made to Plaintiffs**

19 The complaint fails to allege with specificity the dates of when Defendants’ employees and
20 agents supposedly made the oral misrepresentations to Plaintiffs. (*See generally Compl.*) Although
21 the complaint alleges that Plaintiffs enrolled at the College in “2021 and 2022,” *id.* ¶ 44, this time
22 period is too broad for the College and IEC to ascertain which of its hundreds of employees, agents,
23 and admissions representatives made the alleged misrepresentations. Indeed, many of the allegations
24 in the complaint suggest that the alleged misrepresentations were made at some unidentified date or
25 time period that *precedes* Plaintiffs’ enrollment at the College. (*See, e.g., id.* ¶¶ 26–27.) These
26 inadequacies are fatal to Plaintiffs’ complaint. (*See, e.g., Scott v. JPMorgan Chase Bank, N.A.* (2013)
27 214 Cal.App.4th 743, 763 [fraud allegations insufficient where no allegations as to who made
28 statements or *when* they were made]; *see also Roumen B. Antonov v. Gen. Motors LLC et al.* (C.D.

1 Cal. Jan. 19, 2024) No. 823CV01593FWSMJR, 2024 WL 217825, at *8 [finding that the plaintiff
2 failed to adequately plead fraudulent misrepresentations where the complaint did “not adequately
3 allege ... the dates the alleged misrepresentations were made”].)

4 Indeed, the complaint does not even attempt to narrow the range of dates on which the
5 conversations allegedly took place. (*See generally Compl.*) This failure effectively precludes
6 Defendants from investigating Plaintiffs’ fraud allegations and launching a defense, especially since
7 Plaintiffs allege the false representations were made *orally*.

8 In sum, Plaintiffs’ allegations are inadequate and the Court should sustain this demurrer.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Court should sustain this demurrer in its entirety and dismiss
11 Plaintiffs’ causes of action for fraud, intentional misrepresentation, and negligent misrepresentation.

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13 Respectfully Submitted,

14 Dated: January 31, 2024

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