

1 ROBBINS GELLER RUDMAN  
 & DOWD LLP  
 2 PATRICK J. COUGHLIN (111070)  
 patc@rgrdlaw.com  
 3 X. JAY ALVAREZ (134781)  
 jaya@rgrdlaw.com  
 4 JASON A. FORGE (181542)  
 jforge@rgrdlaw.com  
 5 RACHEL L. JENSEN (211456)  
 rjensen@rgrdlaw.com  
 6 DANIEL J. PFEFFERBAUM (248631)  
 dpfefferbaum@rgrdlaw.com  
 7 BRIAN E. COCHRAN (286202)  
 bcochran@rgrdlaw.com  
 8 JEFFREY J. STEIN (265268)  
 jstein@rgrdlaw.com  
 9 655 West Broadway, Suite 1900  
 San Diego, CA 92101  
 10 Telephone: 619/231-1058  
 619/231-7423 (fax)

11 ZELDES HAEGGQUIST & ECK, LLP  
 12 AMBER L. ECK (177882)  
 ambere@zhlaw.com  
 13 AARON M. OLSEN (259923)  
 aaron@zhlaw.com  
 14 225 Broadway, Suite 2050  
 San Diego, CA 92101  
 15 Telephone: 619/342-8000  
 619/342-7878 (fax)

16 Class Counsel

17 UNITED STATES DISTRICT COURT  
 18 SOUTHERN DISTRICT OF CALIFORNIA

19 ART COHEN, Individually and on  
 20 Behalf of All Others Similarly Situated,

21 Plaintiff,

22 vs.

23 DONALD J. TRUMP,

24 Defendant.

No. 3:13-cv-02519-GPC-WVG

CLASS ACTION

PLAINTIFFS' RESPONSE IN  
 OPPOSITION TO DEFENDANT  
 DONALD J. TRUMP'S MOTION FOR  
 SUMMARY JUDGMENT, OR IN THE  
 ALTERNATIVE, PARTIAL  
 SUMMARY JUDGMENT

DATE: July 22, 2016  
 TIME: 1:30 p.m.  
 CTRM: 2D  
 JUDGE: Hon. Gonzalo P. Curiel

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**STATUTES, RULES AND REGULATIONS**

18 U.S.C.  
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1 **I. INTRODUCTION**

2 Donald Trump is too busy to be honest. So says Trump himself, who explains  
3 that he reviewed his own promises about his Trump University (“TU”) only “very  
4 quickly.” And therefore, he deserves summary judgment. Because he was too busy.  
5 To be honest. In addition, Trump explains that he was incapable of being honest  
6 because he “is not a lawyer.” And therefore, he deserves summary judgment.  
7 Because he was incapable of being honest. Due to not being a lawyer. Due to his  
8 integrity infirmities, Trump explains that he resorted to “marketing BS” to induce  
9 students to enroll in his Trump University. And therefore, he deserves summary  
10 judgment. Because he resorted to “marketing BS.” To induce students to enroll in his  
11 illegal “Trump University.”

12 Trump denies operating and managing the “fraudulent marketing scheme”  
13 alleged here because he only starred in the marketing materials; signed the marketing  
14 materials; corrected the marketing materials; and approved the marketing materials.  
15 And therefore, he deserves summary judgment. Because he did not operate and  
16 manage the Trump University “fraudulent marketing scheme.” He only starred in the  
17 marketing materials. Signed them. Corrected them. And approved them.

18 Trump wrote his motion for summary judgment for a District Court in Bizarro  
19 World. In this District Court, however, it is wholly without merit. Plaintiff  
20 respectfully requests that the Court deny Trump’s motion and set this case for trial as  
21 quickly as possible. On earth. In the Southern District of California.

22 **II. PLAINTIFF DISPUTES TRUMP’S STATEMENT OF**  
23 **UNDISPUTED FACTS**

24 Trump’s purported Statement of Undisputed Facts (Dkt. 180-10), is a mess.  
25 The evidence he cites bears little or no resemblance to what are typically not even  
26 facts, but rather vague and compound arguments, and these arguments are either very  
27 much in dispute or irrelevant to his motion for summary judgment. For example,  
28 Trump embraces as his own President Barack Obama’s Public Financial Disclosure

1 Report, and he attempts to support his purported facts with it. Dkt. 180-4 at 122-31  
2 (Exhibit 11). This is just one example of Trump’s statement’s complete lack of  
3 credibility and reliability.

4 This is not to say there are no relevant undisputed facts here. There are plenty.  
5 As set forth below, they all weigh in favor of Trump’s liability.

### 6 **III. RELEVANT FACTS**

7 Trump’s presidential candidacy might complicate this litigation, but it cannot  
8 complicate this case, which is a simple one. TU was Michael Sexton’s idea. Ex. A,  
9 Sexton Tr. at 25:22-24.<sup>1</sup> Sexton wanted to capitalize on Trump’s fame from The  
10 Apprentice by attaching Trump’s name to internet-based instruction. *Id.* at 25:25-  
11 26:12. Trump knew his power to influence others far better than Sexton did, so  
12 instead of a licensing deal, Trump wanted more. He wanted total control. So he took  
13 it. Trump shoved out Sexton’s original partner, grabbed a 92% share of the  
14 ownership, complete control over all major decisions, and total domination over the  
15 money. *Id.* at 31:18-38:13, 40:6-41:8; Ex. B, Sexton Tr. Ex. 125.

16 TU was “[j]ust one more investment” for Trump and the goal was to “maximize  
17 profits.” Ex. C, Weisselberg Tr. at 47:21-48:1, 111:7-15. So Trump orchestrated a  
18 multi-million-dollar marketing scheme with one goal: to influence students to enroll  
19 in TU. Ex. D, DJT Tr. at 388:4-9, 391:17-392:7. The three pillars of Trump’s success  
20 as a promoter are: (1) playing to people’s fantasies (*id.* at 206:14-207:2); (2) using  
21 hyperbole (*id.* at 205:12-17); and (3) employing what he calls “innocent exaggeration”  
22 (*id.* at 207:4-12). These are the pillars of what the rest of us would call lying. For his  
23 promotion of TU, Trump used all three pillars. He played to people’s fantasy of  
24 learning real estate from the most prominent real estate investor of all time: Donald J.  
25 Trump. Trump used hyperbole and wild exaggeration to sell this fantasy by making  
26

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27 <sup>1</sup> Here, and throughout, unless otherwise noted, references to “Ex.” are to the  
28 Exhibits attached to the Declaration of Jason A. Forge, filed concurrently herewith.

1 his integral involvement with TU *the* selling point in advertisement after  
2 advertisement, including Trump-signed “personal invitation[s]”:

- 3 • “He’s the most celebrated entrepreneur on earth. He’s earned more in a  
4 day than most people do in a lifetime. He’s living a life many men and  
5 women only dream about. And now he’s ready to share – with  
6 Americans like you – the Trump process for investing in today’s once-  
in-a-lifetime real estate market.” Ex. E, DJT Tr. Ex. 521 at 1-40, 42-53.
- 7 • “Don’t think you can profit in this market? You can. And I’ll show you  
8 how.” *Id.* at 1-21.
- 9 • “I can turn anyone into a successful real estate investor, including you. --  
10 Donald Trump.” *Id.* at 1-40, 43-60.
- 11 • “But you need to approach this with the kind of proven expertise  
12 contained in Donald Trump’s powerful techniques and strategies.” *Id.* at  
1-40, 42-53.
- 13 • “Learn from Donald Trump’s handpicked expert how you can profit  
14 from the largest real estate liquidation in history.” *Id.* at 1-40, 42-53.
- 15 • “[Y]ou’ll learn from Donald Trump’s hand-picked instructors a  
16 systematic method for investing in real estate that anyone can use  
17 effectively. *Id.* at 1-40, 42-53.
- 18 • “Learn from the **Master.**” *Id.* at 52, 54-60 (emphasis in original).
- 19 • “Let Trump’s Experts teach you the master strategies from one of the  
20 world’s most successful, and most admired, real estate investors” *Id.* at  
52, 54-60.
- 21 • “But before you jump in, I want to give you the benefit of my experience  
22 – to show you what to do and *not do* in this fast-changing market, and  
23 how to use it to turbo charge your earning power.” Ex. F, DJT Tr. Ex.  
24 511 at TU 25239 (emphasis in original).
- 25 • “[M]y hand-picked instructors will share my techniques, which took my  
26 entire career to develop.” *Id.*

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Sincerely,



• Donald Trump

*Id.*

Trump approved all these advertisements and signed all these invitations – he even dictated where the ads would be featured in newspapers. Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. G, Sexton (Low) Tr. at 398:7-20; Ex. H, Bloom Tr. at 73:3-74:2.

Of course, the most prolific advertisement was the “Main Promotional Video” (“MPV”), which had only one star: Trump, who shot this video in order to influence students to enroll in TU. Ex. D, DJT Tr. at 388:4-9. As scripted, this video was played at the start of each TU Preview,<sup>2</sup> which were the gateway for all of TU’s sales (Ex. A, Sexton Tr. at 115:4-15). The MPV was also linked to mass email blasts. Ex. K. In it, Trump implored students to enroll in TU, which he promised would be better than the best business schools because students would be “learn[ing] from me” and his handpicked professors and adjunct professors. Enrolling in TU, Trump promised, would be the “biggest step toward success.” Ex. L, MPV. In fact, he warned, anyone who “d[id]n’t learn from me” and TU’s instructors, who “are handpicked by me,” was “just not gonna make it in terms of success”:

We’re going to have professors and adjunct professors that are absolutely terrific. Terrific people, terrific brains, successful. . . . The best. We are going to have the best of the best and honestly if you don’t learn from them, if you don’t learn from me, if you don’t learn from the people that we’re going to be putting forward – and these are all people that are handpicked by me – then you’re just not going to make in terms of the world of success. And that’s ok, but you’re not going to make it in terms of success. I think the biggest step towards success is going to be: sign up for Trump University. We’re going to teach you about business, we’re going to teach you better than the business schools are going to teach you and I went to the best business school. We’re going to teach

<sup>2</sup> See Ex. I at TU 52954 (PlayBook scripted that the MPV be played at the beginning of each Preview). TU former instructor Martin similarly testified the MPV was played at the beginning of every Preview seminar. Ex. J, Martin Tr. at 109:10-19.

1           you better, it's going to be a shorter process, it's not going to involve  
2           years and years of your life, it's going to be less expensive and I think  
          it's going to be a better education.

3 Ex. L, MPV.

4           All of this – the video, the ads, the signed invitations, the name Trump  
5 University itself – was one big fraud. After doing everything to convince people to  
6 pay, Trump made them pay for trusting him by doing nothing to teach them anything.  
7 Handpicking everyone? Trump handpicked no one. Ex. D, DJT Tr. at 135:2-4,  
8 135:15-136:6, 137:24-139:4, 140:10-15, 476:16-477:10. He could not pick one out of  
9 a lineup or come up with a single name. *Id.* at 100:14-111:20, 117:3-4, 118:14-  
10 119:13, 120:19-25, 122:11-21, 124:12-125:5, 210:21-211:1, 235:7-17, 240:10-13,  
11 280:24-281:17. He did nothing to “certify” the mentors or confirm their  
12 qualifications. *Id.* at 234:24-235:6, 240:10-23, 247:24-249:5, 250:8-253:7, 300:3-25.

13           Teaching students “my techniques, which took my entire career to develop”?  
14 Trump played no role in creating or even reviewing TU’s curriculum. Ex. D, DJT Tr.  
15 at 312:8-313:16, 316:3-11, 317:7-14. In addition to not knowing who the instructors  
16 were, he had no idea what they were telling the students. *Id.* at 228:19-24, 407:4-8,  
17 477:11-478:10. He simply, and admittedly “wasn’t involved in the – in the classes.”  
18 *Id.* at 228:19-24.

19           Rather than standing behind his promises, Trump abandoned to Sexton the  
20 students he intentionally influenced to enroll. Sexton, however, had absolutely no real  
21 estate training experience. Nevertheless, he did the hiring that Trump had promised to  
22 do. Sexton picked TU’s instructors, but Trump’s MPV and the marketing materials  
23 Trump approved and signed represented just the opposite because “Michael Sexton’s  
24 handpicked instructors,” as Sexton explained, “wouldn’t have been such good copy.”  
25 Ex. A, Sexton Tr. at 145:1-146:7. Even though Trump had a number of real estate  
26 experts on his non-TU payroll (Ex. D, DJT Tr. at 42:6-15), he did not share any of  
27 them with TU (*id.* at 316:3-11). Instead, Sexton was in charge of a curriculum (*id.* at  
28

1 444:24-445:1) that Trump had promised would consist of “my techniques, which took  
2 my entire career to develop” (Ex. F, DJT Tr. Ex. 511 at TU 25239).

3         Sexton’s background was in sales (Ex. A, Sexton Tr. at 21:12-15), and given his  
4 complete lack of experience and training in real estate and education, the “instructors”  
5 he hired for TU were primarily high-pressure salesmen. *See, e.g., Low Dkt. 462-1,*  
6 *Ex. 4 (Sommer Decl.), ¶¶5-7; Ex. M, DJT Tr. Ex. 479 (Harris YouTube video).*  
7 Instead of protecting the people who believed in him, Trump threw them to the  
8 wolves. TU’s top producer, James Harris (Mr. Cohen’s Fulfillment instructor), who  
9 held himself out as having a personal relationship with Trump, was a convicted felon.  
10 *See, e.g., Low Dkt. 462-1, Ex. 5.* Trump never met him (Ex. D, DJT Tr. at 124:12-  
11 125:5), and had no idea whether he was qualified to be an instructor (*id.* at 252:13-21)  
12 or if he “slipped through the cracks” (*see id.* at 426:14-24).

13         But the TU “crack” would make the Grand Canyon look like a hairline fracture.  
14 When confronted with scripted misrepresentations delivered by each of the primary  
15 TU Live Events instructors – all claiming to be close to Trump – Trump admitted he  
16 did not know them, failed to interview or otherwise screen them, and acknowledged  
17 that they too could have “slipped through the cracks.” *See, e.g., Ex. D, DJT Tr. at*  
18 *329:4-333:10, 425:2-427:5.* TU billed Kerry Lucas (Mr. Cohen’s mentor) as a “top  
19 Trump certified” mentor. Ex. N at DT0000331. But Lucas was so unqualified (***he***  
20 ***had no real estate education or experience before being hired by TU in 2009*** (Ex. O,  
21 Lucas Tr. at 23:8-9, 24:2-12, 35:22-36:2, 55:7-56:1, 75:9-18)) that, while watching  
22 Lucas’s testimony about his lack of training and experience, Trump spontaneously  
23 remarked “he defrauded us” and that he should “[s]ue him.” *See Low Dkt. 462-1, Ex.*  
24 *10 at 3.* Trump’s only explanation was that Lucas “probably” embellished his record  
25 to the people who hired him and “he must have slipped through the cracks. *See Ex. D,*  
26 *DJT Tr. at 413:10-415:12.* No one “slipped” through any “cracks.” Trump left the  
27 door wide open because he could not have cared less about who walked through:  
28

1 Q. Before you say my handpicked instructor is going to be there, you  
2 could have sat down and personally interviewed the person, right?

3 A. I guess I could have.

4 Ex. D, DJT Tr. at 429:23-430:1.

5 Trump left the hiring and curriculum to Sexton because Trump did not care  
6 about delivering, just promising – and profiting. Because Trump’s goal was to  
7 maximize profits, he did not trust Sexton with TU’s marketing (Ex. A, Sexton Tr. at  
8 127:4-19) or money (Ex. D, DJT Tr. at 444:17-445:11). Instead, Trump starred in and  
9 approved all of TU’s marketing, and Trump’s CFO, Allen Weisselberg, who was not  
10 employed by TU, “had the authority to review requests for expenditures [from TU]  
11 and then decide the appropriateness of that request.” Ex. C, Weisselberg Tr. at 62:23-  
12 63:9. Weisselberg reviewed and decided on TU expenditures ranging from stationery  
13 and pens (*id.* at 48:11-19) to retention bonuses for employees (*id.* at 68:8-69:25).

14 In the same video that Trump used to influence students to enroll in TU, he held  
15 out TU as an elite university comparing favorably to his alma mater, Wharton. Yet, as  
16 he confessed at his deposition, Trump was aware of the issues concerning the illegal  
17 use of the “university” moniker for years prior to changing the name, but he did  
18 absolutely nothing to ensure that TU was operating lawfully (it was not). *See* Ex. D,  
19 DJT Tr. at 273:3-277:25.

20 Trump’s only defenses for his deceit and disregard are that he was too busy to  
21 be honest (Dkt. 180-1 at 3, 11); he was incapable of being honest because he is not a  
22 lawyer (*id.* at 12); no one should have believed his “marketing BS” (*id.* at 15); he  
23 played no part in the management or control of the TU marketing scheme even though  
24 he starred in and approved all of TU’s marketing materials because he only did so  
25 “very quickly” (*id.* at 11-12); and before they knew Trump had lied to them and while  
26 they were still hoping for help, student-victims gave good evaluations for TU (*id.* at  
27 23). These defenses are facially implausible, but his evaluations defense is  
28 particularly hypocritical because Trump knows the “surveys” were not anonymous,

1 and that students were promised networking opportunities. *See* Ex. D, DJT Tr. at  
2 452:18-454:11. Trump himself explains his past praise for politicians he now  
3 condemns as a natural consequence of speaking as a businessman anticipating the  
4 need for assistance and because he later learned more about these individuals. *Id.* at  
5 454:23-471:4. Trump’s own testimony confirms the unreliability of positive surveys  
6 completed when student-victims were anticipating the need for assistance and before  
7 they knew the truth. Also, Trump confessed that he had real-time awareness of  
8 millions of dollars in refunds he had paid long before they knew Trump had deceived  
9 them because it “was the honorable thing to do” and explained that TU was more like  
10 the Home Shopping Network than Wharton. *See* Ex. D, DJT Tr. at 432:11-437:19,  
11 479:5-19.

#### 12 **IV. LEGAL STANDARD**

13 A party moving for summary judgment must prove that the “pleadings,  
14 depositions, answers to interrogatories, and admissions on file, together with the  
15 affidavits, if any, show that there is no genuine issue as to any material fact and that  
16 the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v.*  
17 *Catrett*, 477 U.S. 317, 322-23 (1986);<sup>3</sup> Fed. R. Civ. P. 56(c). A fact is material when  
18 it affects the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
19 248 (1986).

20 If the moving party fails to carry his burden of proof, summary judgment must  
21 be denied, and the court need not consider the nonmoving party’s evidence. *Adickes*  
22 *v. S. H. Kress & Co.*, 398 U.S. 144, 159-60 (1970). In making this determination, the  
23 court must “view[ ] the evidence in the light most favorable to the nonmoving party.”  
24 *Fontana v. Haskin*, 262 F.3d 871, 876 (9th Cir. 2001). The Court does not engage in  
25 any credibility determinations, weighing of evidence, or drawing of legitimate  
26

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27 <sup>3</sup> Here and throughout, unless otherwise noted, emphasis is added and citations  
28 are and internal quotation marks are omitted.

1 inferences from the facts; these functions are exclusively reserved for the trier of fact.  
 2 *See Anderson*, 477 U.S. at 255.

3 As demonstrated below, Trump does not come close to carrying his burden.

4 **V. ARGUMENT**

5 **A. The RICO Statute Must Be Read Broadly**

6 Trump’s first, and thus presumably strongest, argument advocates a policy of  
 7 narrowly interpreting the RICO statutes in civil contexts. *See* Dkt. 180-1 at 8-10  
 8 (“reluctance to expand the reach of civil RICO is warranted”). Trump’s policy,  
 9 however, is out of step with reality:

10 RICO is to be read broadly. This is the lesson not only of Congress’ self-  
 11 consciously expansive language and overall approach, but also of its  
 12 express admonition that RICO is to “be *liberally construed to effectuate*  
 13 *its remedial purposes.*”

14 \* \* \*

15 Underlying the Court of Appeals’ holding was its distress at the  
 16 “extraordinary, if not outrageous,” uses to which civil RICO has been  
 17 put. Instead of being used against mobsters and organized criminals, it  
 18 has become a tool for every day fraud cases brought against “respected  
 19 and legitimate ‘enterprises.’” Yet Congress wanted to reach both  
 20 “legitimate” and “illegitimate” enterprises. The former enjoy neither an  
 21 inherent incapacity for criminal activity nor immunity from its  
 22 consequences . . . .

23 It is true that private civil actions under the statute are being brought  
 24 almost solely against such defendants, rather than against the archetypal,  
 25 intimidating mobster. Yet this defect – if defect it is – is inherent in the  
 26 statute as written, and its correction must lie with Congress.

27 *Odom v. Microsoft Corp.*, 486 F.3d 541, 546 (9th Cir. 2007) (quoting *Sedima, S.P.R.L.*  
 28 *v. Imrex Co.*, 473 U.S. 479, 497-98, 499 (1985)).

With his trademark bluster, Trump’s brief proclaims that “[t]he Ninth Circuit  
 and courts within in it have echoed this view [of restrictive interpretation].” Dkt. 180-  
 1 at 9. The paragraphs that follow, however, fail to cite a single Ninth Circuit case  
 that supports his proposed policy of narrowly interpreting and applying RICO. This  
 failure is due to the fact that Trump’s policy flatly contradicts the Ninth Circuit’s

1 decision in *Odom*.<sup>4</sup> So instead of identifying a single factually analogous case, Trump  
2 bases his entire argument on nothing more than a series of sound bites.

3 For example, Trump cites *Gomez v. Guthy-Renker, LLC*, No. EDCV14-01425  
4 JGB (KKx), 2015 WL 4270042 (C.D. Cal. July 13, 2015), but fails to acknowledge  
5 that the court's decision was explicitly based on the lack of a legitimately distinct  
6 enterprise: "IP's counsel can construct a novel 'enterprise' out of nothing more than  
7 the allegation that Provider provides services to Business." *Id.* at \*6.

8 In contrast, Trump's relationship to the enterprise here, which Trump does not  
9 even challenge, is almost identical to the enterprise in the seminal Supreme Court case  
10 of *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001). There, a  
11 competing boxing promotion company brought a civil RICO claim against Don King,  
12 the president and sole shareholder of Don King Productions, which he had allegedly  
13 used to commit "at least two instances of fraud and other RICO predicate crimes." *Id.*  
14 at 160-61. Here, Trump owned 92% of the eponymous Trump University, LLC,  
15 through which he executed his fraudulent marketing scheme. The parallels between  
16 this case and *Kushner* cannot be credibly disputed.

17 Likewise, in *Vega v. Ocwen Fin. Corp.*, No. 2:14-CV-04408-ODW (PLAx),  
18 2015 WL 1383241 (C.D. Cal. Mar. 24, 2015), the court found the RICO claim to be  
19 inadequate because it alleged a fraud based on a failure to concede a breach of  
20 contract. *See id.* at \*12. Trump fails to acknowledge, however, that the court  
21 expressly distinguished this inadequate basis from the sufficiently pled predicate fraud  
22 in *Young v. Wells Fargo & Co.*, 671 F. Supp. 2d 1007, 1027 (S.D. Iowa 2009), in  
23

24 <sup>4</sup> Instead, Trump cites two other Ninth Circuit cases. The Ninth Circuit has  
25 overruled one, *Oscar v. Univ. Students Co-Operative Ass'n*, 965 F.2d 783 (9th Cir.  
26 1992). *See Newcal Indus. v. Ikon Office Solution*, 513 F.3d 1038, 1055 (9th Cir. 2008)  
27 (citing *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc)). And the other,  
28 *River City Markets, Inc. v. Fleming Foods West, Inc.*, 960 F.2d 1458, 1464 (9th Cir.  
1992), predates and says nothing about narrowly construing RICO. Rather, the court  
found that a fraud lasting a few weeks to a month without future threat did not satisfy  
the pattern of racketeering requirement. *See id.* at 1464. Here, in contrast, Trump's  
fraud spanned years.

1 which the plaintiffs “pleaded that Wells Fargo was engaged in a cohesive scheme in  
2 which the predicate acts of mail and wire fraud involved *misrepresentations* of both  
3 excessive late fees and inspection fees.” *Vega*, 2015 WL 1383241, at \*12 (emphasis  
4 in original). Again, it is not debatable that the predicate fraud at issue here, based on  
5 Trump’s materially false and misleadingly incomplete representations, is far more  
6 analogous to the perfectly valid allegations in *Young* than to the insufficient  
7 allegations in *Vega*.

8 Having demonstrated that Trump’s first, and presumably strongest, argument  
9 conflicts with binding Ninth Circuit and Supreme Court precedent, plaintiff will  
10 proceed to Trump’s second argument.

## 11 **B. More so than Anyone Else, Trump Conducted the TU 12 Marketing Scheme**

13 Trump’s second argument asserts that the “conduct” element of plaintiff’s  
14 RICO claim fails because plaintiff cannot establish that Trump “exercised substantial  
15 control’ over TU and its allegedly fraudulent marketing scheme.” Dkt. 180-1 at 10.  
16 Trump, who by his own proclamation “know[s] words, I have the best words,”<sup>5</sup>  
17 overlooks his own. As Trump acknowledges, this whole case is about a “fraudulent  
18 marketing scheme.” Dkt. 180-1 at 10. This “fraudulent marketing scheme” comprises  
19 the pattern of racketeering activity at issue here. Dkt. 1, ¶¶19-21, 71-73. There is no  
20 question that Trump exercised substantial control over this fraudulent marketing  
21 scheme for his eponymous “university.”

### 22 **1. Trump Directly Conducted the TU Marketing Scheme**

23 Throughout the entire class period, Trump was the lone star of the MPV for TU.  
24 He, and he alone, expressly represented that TU would have “professors and adjunct  
25 professors” that were “handpicked by me,” and that TU would teach students better  
26 than the best business schools. *See* Ex. L, MPV. He chose to appear in the MPV, to

27 <sup>5</sup> *See* [https://www.youtube.com/watch?v=7UIE\\_MRAhEA](https://www.youtube.com/watch?v=7UIE_MRAhEA) (last visited May 25,  
28 2016).

1 use these words, to make these representations, and he has admitted that he did so for  
2 the specific purpose of influencing students to enroll in TU. *See* Ex. D, DJT Tr. at  
3 388:4-9, 391:17-392:7. Trump also reviewed and had final approval authority for all  
4 of TU’s other mass-marketing materials, which featured *his* name, *his* likeness, *his*  
5 quotes, and, in some instances, even *his* signature. *See* Ex. D, DJT Tr. at 280:5-16;  
6 Ex. A, Sexton Tr. at 127:12-19. Trump’s control over this marketing scheme was so  
7 complete and he was so “very hands-on” that, in addition to controlling the *content* of  
8 the marketing materials, he even controlled its placement:

9 I remember being at my desk very early in the morning and getting a call  
10 from Mr. Trump very early in the morning saying that he -- this is, you  
11 know, 7 o’clock or thereabout in the morning and I remember him  
12 saying that he had seen the advertisement and was wondering who  
13 placed the advertisement, and I said: Well, why do you ask? He said: Because  
14 it’s on an even numbered page, and when you open a newspaper in the  
15 beginning, you want to be on an odd numbered page, so because it’s a  
16 better position, and at that point -- and I said: You know, Mr. Trump,  
17 you are absolutely correct and that will never happen again, and at that  
18 point I realized that, you know, when it actually comes to placing of a  
19 newspaper, that’s probably one of the most important questions you need  
20 to ask, and, you know, I remember coming off of that phone call saying  
21 to myself that he was, you know, very, very astute and very hands-on to  
22 be able to look at that himself and be interested in knowing, you know,  
23 where that ad is placed because that is one of the most important factors,  
24 you know, in a newspaper ad.

25 *See* Ex. H, Bloom Tr. at 73:3-74:2. Michael Bloom was TU’s Chief Marketing  
26 Officer. *Id.* at 54:17-25. It is hard to imagine anyone having and exercising more  
27 control over the TU marketing scheme than someone who bossed around TU’s *Chief*  
28 Marketing Officer – about marketing. That someone was Trump.

29 Trump’s complete control over the TU marketing scheme would meet any level  
30 of control required to satisfy the “conduct” element of plaintiff’s RICO claim, so he  
31 easily satisfies the modest standard that the Supreme Court established in *Reves v.*  
32 *Ernst & Young*, 507 U.S. 170, 179 (1993): “that the defendant has ‘*some* part in’ the  
33 ‘operation or management of the enterprise itself.’” *United States v. Diaz*, No. 10-  
34 50029, 2016 WL 1583020, at \*7 (9th Cir. Apr. 20, 2016) (quoting *Reves*, 507 U.S. at  
35 179, 183) (emphasis in original); Dkt. 180-1 at 10.

1           Putting things into perspective, *United States v. Shryock*, 342 F.3d 948, 986 (9th  
2 Cir. 2003), was a RICO case involving alleged members of the Mexican Mafia  
3 enterprise. The district court erroneously instructed the jury as to what it meant to  
4 “conduct or participate” in the conduct of an enterprise’s affairs by failing to clarify  
5 that the defendants “had to be involved in the operation or management of the  
6 Mexican Mafia.” *Id.* Nevertheless, the Ninth Circuit concluded that this error was  
7 harmless because it was beyond any reasonable doubt that the defendant “clearly  
8 participated in the operation and management of the Mexican Mafia because he served  
9 as a messenger between incarcerated members and members on the street, and helped  
10 organize criminal activities on behalf of the organization. *Id.*

11           As *Shryock* demonstrates, a mere messenger *within* an enterprise who only  
12 *helped* organize criminal activities on behalf of the enterprise so clearly conducts the  
13 enterprise’s affairs that he may be convicted without a jury ever having to make such  
14 a finding. In a *criminal* case. Here, Trump’s messages – those he personally  
15 delivered and all the others, which featured him and which he approved – were not  
16 only within the TU enterprise. They extended throughout the country, and they did  
17 not merely *help* the criminal activities of TU; they were the criminal activities of TU.  
18 So it is indisputable that Trump directly conducted and participated in the affairs of  
19 the TU enterprise.

20           With such overwhelming evidence of his complete control over the promising,  
21 yet utter lack of care in delivering, Trump embraces this devastating evidence as if it  
22 helps his cause. Dkt. 180-1 at 10-12. In truth, however, it confirms the profoundly  
23 fraudulent nature of Trump’s marketing scheme, which he executed *through* TU. Of  
24 course, he was not involved in educating anyone. That is because TU did not educate  
25 anyone, much less educate them through Trump’s handpicked instructors teaching his  
26 unique real estate techniques. That is what Trump promised. That is what Trump  
27 admittedly marketed for the purpose of influencing students to enroll. But that is not  
28 what Trump delivered, and that is what makes the whole thing a fraud.

1 Trump seems to think that he figured out how to escape responsibility for  
2 anything: by lying about *everything*. He could not be more wrong. He directly  
3 controlled the TU marketing scheme, which he executed to defraud people through  
4 materially false and misleadingly incomplete statements. This is a crystal-clear RICO  
5 violation. *See, e.g., In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21, 39  
6 (1st Cir. 2013) (affirming civil RICO verdict based on “Pfizer’s fraudulent marketing  
7 plan, meant to increase its revenues and profits”); *United States v. Philip Morris USA,*  
8 *Inc.*, 566 F.3d 1095, 1144 (D.C. Cir. 2009) (affirming district court’s finding that  
9 “Defendants violated RICO by making false and fraudulent statements to consumers  
10 about their products”); *In re Testosterone Replacement Therapy Prods. Liab. Litig.*  
11 *Coordinated Pretrial Proceedings*, No. 14 C 1748, 2016 WL 427553, at \*9 (N.D. Ill.  
12 Feb. 3, 2016) (collecting cases approving RICO claims based on fraudulent marketing  
13 schemes, where fraudulent marketing was directed at plaintiff-victims).

## 14 2. Trump Indirectly Conducted the TU Marketing Scheme

15 Despite six pages of argument about what does and does not constitute a RICO  
16 violation, Trump ignores the language of the RICO statutes themselves, which  
17 provide, in pertinent part,

18 (c) It shall be unlawful for any person employed by or associated  
19 with any enterprise engaged in, or the activities of which affect,  
20 interstate or foreign commerce, to conduct or participate, directly or  
*indirectly*, in the conduct of such enterprise’s affairs through a pattern of  
racketeering activity or collection of unlawful debt.

21 18 U.S.C. §1962(c). As demonstrated above, it is apparent that Trump *directly*  
22 conducted TU’s marketing scheme. But he also *indirectly* conducted TU’s affairs,  
23 and that is also expressly prohibited, though completely ignored by Trump.

24 Consistent with the §1962(c)’s express language, a principal “cannot avoid  
25 RICO liability merely by acting through a subsidiary when undertaking or engaging in  
26 a racketeering scheme with others.” *Blue Cross & Blue Shield of N.J., Inc. v. Philip*  
27 *Morris, Inc.*, 113 F. Supp. 2d 345, 368 (E.D.N.Y. 2000) (denying summary judgment  
28 because parent-corporation’s active direction of subsidiary’s fraudulent conduct

1 “sufficient to raise a material question for the jury as to whether [parent] was, at a  
2 minimum, indirectly and knowingly involved in orchestrating or directing the affairs  
3 of the Manufacturers’ Enterprises”); *see also Brady v. Dairy Fresh Prods. Co.*, 974  
4 F.2d 1149, 1154 (9th Cir. 1992) (“We hold that an employer that is benefited by its  
5 employee or agent’s violations of section 1962(c) may be held liable under the  
6 doctrines of *respondeat superior* and agency when the employer is distinct from the  
7 enterprise.”).

8 Here, Trump conducted the financial aspects of TU through his agent Allen  
9 Weisselberg:

10 In order to establish agency such that [a principal] may be liable for [an  
11 agent’s] conduct, Plaintiff must demonstrate that a fiduciary relationship  
12 exists between the [agent] and [the principal], which requires that the  
13 following elements be satisfied: (1) the principal . . . manifests assent to  
the agent . . . that the agent will act on the principal’s behalf; (2) the  
agent manifests assent to so act; and (3) there is an understanding that  
the agent will act subject to the principal’s control.

14 *Roman v. Los Angeles Cty. Dep’t of Soc. Servs.*, No. CV 12-437 PSG (SHx), 2013 WL  
15 11316939, at \*2 (C.D. Cal. Mar. 12, 2013).

16 Weisselberg, who serves as Trump’s economic “eyes and ears” for his  
17 investments, directly interacted with Trump several times a week throughout the time  
18 TU was operating. *See* Ex. C, Weisselberg Tr. at 25:2-23. Trump’s control over TU’s  
19 finances was so complete that the only individuals authorized to sign checks drawn on  
20 TU’s bank accounts were Weisselberg, Trump, and Trump’s kids. *Id.* at 54:2-22.  
21 Weisselberg “had the authority to review requests for expenditures [from TU] and  
22 then decide the appropriateness of that request.” *Id.* at 63:6-9. Weisselberg reviewed  
23 and decided on TU expenditures ranging from stationery and pens (*id.* at 48:11-19) to  
24 retention bonuses for employees (*id.* at 68:8-69:25), and he did all of this as Trump’s  
25 agent. *Id.* at 252:5-20.

26 So Trump directly conducted TU’s pattern of racketeering activity, and he  
27 indirectly conducted TU’s financial activity. There is no question that the “conduct”  
28 element is satisfied here, and that Trump’s second argument is meritless.

1           **C. Trump’s Puffery Argument Is Mere Puffery that This**  
2           **Court Has Already Rejected**

3           Trump’s third argument is that he should escape liability here because he should  
4 not be held to his word. Dkt. 180-1 at 14-19. Trump promised students that he was  
5 integrally involved with TU. Indeed, the principle focus of his promotion of TU was  
6 that he was promising prospective students that “my hand-picked instructors will  
7 share my techniques, which took my entire career to develop.” Ex. F, DJT Tr. Ex. 511  
8 at TU 25239; *see also* Ex. L, MPV (“these [TU instructors] are all . . . handpicked by  
9 me”). Similarly, his promotional efforts included his comparison of TU to the best  
10 business schools. *Id.* Trump has admitted that he promoted TU with the specific  
11 intent of influencing people to enroll. *See* Ex. D, DJT Tr. at 388:4-9, 391:17-392:7.  
12 He has also admitted that he wants people to consider him to be credible and reliable  
13 (*id.* at 377:22-379:8), so he cannot reasonably maintain that he expected would-be  
14 victims to ignore his promises.

15           Yet, his promise of his handpicked instructors teaching TU’s Live Events was  
16 false (*id.* at 135:15-136:6, 476:16-477:10), and he never disclosed that TU was  
17 unlawfully holding itself out as a “university,” in flagrant defiance of a directive from  
18 the New York State Education Department (“NYSED”). So Trump indisputably used  
19 false and incomplete representations to influence students to enroll in TU, and he  
20 wants people to consider him credible and reliable, but he argues that he should not  
21 have to stand behind his own words, which he contends “are no more than mere sales  
22 puffery.” Dkt. 180-1 at 14.

23           This is the same argument, citing the same cases, Trump made in his motion to  
24 dismiss. *Compare* Dkt. 9-1 at 11-13 (Trump’s motion to dismiss (citing *Cty. of Marin*  
25 *v. Deloitte Consulting LLP*, 836 F. Supp. 2d 1030 (N.D. Cal. 2011)) *with* Dkt. 180-1  
26 at 15 (same). This Court rejected Trump’s “puffery” argument then (*see* Dkt. 21 at 9-  
27 12), but Trump contends that, “As noted by the Court in denying defendant’s motion  
28 to dismiss, puffery is appropriately decided on motions for summary judgment.” *See*

1 Dkt. 180-1 at 14. Pardon the bluntness, but this is just a lie. The Court’s Order  
2 denying Trump’s motion to dismiss and expressly rejecting his puffery argument  
3 “noted” absolutely nothing about later revisiting this issue in the context of a motion  
4 for summary judgment. Dkt. 21 at 9-12. Trump fails to cite to any portion of this  
5 Court’s Order in support of his false assertion. Instead, he cites a decision of the  
6 Honorable Marilyn L. Huff (Dkt. 180-1 at 14 (citing *Peviani v. Nat’l Balance, Inc.*,  
7 774 F. Supp. 2d 1066, 1072 n.1 (S.D. Cal. 2011)), but even that decision did not hold  
8 that “puffery is appropriately decided on motions for summary judgment.” Rather,  
9 Judge Huff merely “note[d] that Natural Balance is free to raise the issue of puffery  
10 again on a motion for summary judgment.” *Id.* at 1072 n.1.

11 Defendant’s resort to fabrication demonstrates that there is no legitimate basis  
12 to revisit, let alone change, the Court’s prior rejection of defendant’s puffery  
13 argument. This ruling remains the law of the case:

14 A court may have discretion to depart from the law of the case where: 1)  
15 the first decision was clearly erroneous; 2) an intervening change in the  
16 law has occurred; 3) the evidence on remand is substantially different; 4)  
17 other changed circumstances exist; or 5) a manifest injustice would  
18 otherwise result. Failure to apply the doctrine of the law of the case  
19 absent one of the requisite conditions constitutes an abuse of discretion.

20 *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). As can be seen,  
21 enlisting five different sets of attorneys (including his in-house counsel) is not one of  
22 the requisite conditions for departing from the law of the case.

23 Nor has Trump’s argument improved with time. The examples set forth in his  
24 brief are such easily distinguished gimmicks that they confirm the wisdom of the  
25 Court’s prior ruling. The lone “‘hand’ picked” example Trump provides, after years  
26 of searching, used quotation marks around the word “hand” (Dkt. 180-1 at 17), which  
27 clearly signaled to the reader that this was a simple turn of phrase, rather than an  
28 assurance such as Trump’s. Indeed, “Michigan Mittens” was the company that used  
this turn of phrase. *See* <https://www.smores.com/0shwh-you-ve-been-hand-picked>  
 (“Michigan Mittens has added a few select exciting, NEW products that make perfect

1 gifts and souvenirs!”) (last visited May 25, 2016). A play on words by a mitten  
2 company about being “hand” picked for a promotion is obvious to everyone, which is  
3 why Trump omitted this information from his brief. The MPV, including Trump’s  
4 emphasis on the words, “and these are all people that are *handpicked* by me” (*see* Ex.  
5 L), as well as the many print ads and signed letters, make it crystal clear that Trump’s  
6 main selling point for TU was learning from *him*, and that *his* personal integral  
7 involvement (*i.e.*, handpicking instructors to teach his real estate strategies and  
8 techniques) is what made that possible.

9 Likewise, Trump’s “university” examples prove once again that he has no  
10 answer for the true “university” aspect of this case. Instead, he tries to shoot down  
11 what this case is not about. Unlike all of Trump’s examples, Trump himself compared  
12 the education at TU to an actual Ivy League education. Only better: “we’re going to  
13 teach you better than the business schools are going to teach you and I went to the best  
14 business school.” *See* Ex. L, MPV. Unlike all of Trump’s examples, TU’s  
15 “Marketing Guidelines” were intentionally designed to create the impression that it  
16 was a legitimate university, mandating certain “messaging,” including use of the  
17 following themes and “Catch Phrases”:

- 18 • “Ivy League quality”
- 19 • “Faculty”
- 20 • “Program Directors (Trump University’s Admissions Department)”
- 21 • “Think of Trump University as a real University, with a real Admissions  
22 process – *i.e.*, not everyone who applies, is accepted.”

23 Ex. P at TU-DONNELLY0000016-17.

24 And unlike all of Trump’s examples, TU *charged* students tens of thousands of  
25 dollars to “enroll.” Most importantly, unlike all of Trump’s examples, the NYSED  
26 expressly told Trump and his coconspirator Sexton that it was unlawful for them to  
27 hold out TU as a “university.” Ex. Q, NYSED 000106-07. They did so anyway. For  
28

1 the entire class period. It was clearly misleading for Trump to make these statements  
 2 and engage (and cause others to engage) in this conduct while concealing the  
 3 unlawfulness of their use of the “university” title. *See, e.g., United States v.*  
 4 *Brugnara*, No. CR 14-0306 WHA, 2015 WL 5915567, at \*10 (N.D. Cal. Oct. 9, 2015)  
 5 (mail and wire fraud require proof of “a scheme or plan to defraud, or a scheme or  
 6 plan for obtaining money or property by means of false or fraudulent pretenses,  
 7 representations, promises, *or by means of statements made misleading by reason of*  
 8 *omissions of fact*”).

9 Plaintiff adopts by this reference his prior opposition to Trump’s puffery  
 10 argument (Dkt. 16 at 11-15), as well this Court’s unequivocal rejection of Trump’s  
 11 argument (Dkt. 21 at 9-12), which the Court should reject again.

## 12 **D. Trump’s Representations Were False and Misleading**

### 13 **1. Trump Has Confessed the Falsity of His Representations**

14 After 18 pages of risible arguments, Trump manages to stoop lower when he  
 15 attempts not only to defend the veracity of his statements, but also to proclaim them to  
 16 be accurate *as a matter of law*. Dkt. 180-1 at 19-22. Trump’s argument begins by  
 17 declaring that he “shared his secrets with students.” *Id.* at 19. Trump himself,  
 18 however, has admitted that he has no idea what the TU instructors said to his student-  
 19 victims because he was not involved in the classes:

20 Q. You don’t know anything that any of the live events instructors  
 21 said to the students; correct?

22 \* \* \*

23 [A.] No, I wasn’t involved in the -- in the classes.

24 Ex. D, DJT Tr. at 228:19-24. TU’s instructors and employees have also confirmed  
 25 that TU did not teach Trump’s secrets to student-victims. *See, e.g., Ex. J, Martin Tr.*  
 26 *at 58:10-24; Ex. R, Nicholas Tr. at 150:16-151:8.*

27 Indeed, Trump himself confirmed that he has no secret or unique real estate  
 28 techniques, as “everything I know is in the books” that he has published and sold

1 publicly. Ex. D, DJT Tr. at 320:17-18. Even Trump's own paid expert confirmed that  
2 there are no secret or unique real estate techniques. *See* Ex. S, Wallace Tr. at 249:7-  
3 250:4. If either side is entitled to a ruling as matter of law regarding the deceptiveness  
4 of Trump's promise to deliver his unique real estate techniques, it would be plaintiff.

5 Trump next declares that he was "integrally involved in the instructor and  
6 mentor selection process." Dkt. 180-1 at 20. But as shown above, Trump has  
7 confirmed that he did not meet TU's Live Events instructors and mentors. He did not  
8 handpick them. He did not "certify" them. He did not audition them. He did not  
9 listen to transcripts of their presentations. Quite simply, and indisputably, he had no  
10 involvement whatsoever in their selection. Again, if either side is entitled to a ruling  
11 as matter of law regarding the deceptiveness of Trump's promise to have handpicked  
12 TU's Live Events instructors and mentors, it would be plaintiff.

## 13 **2. Trump's Statements About TU Were Misleadingly** 14 **Incomplete**

15 Trump returns to his attack on the university aspect of his scheme and continues  
16 to ignore the core of plaintiff's allegation: Trump's use of the name Trump University  
17 and all of Trump's statements about TU were highly misleading because he concealed  
18 the fact that TU was so woefully unqualified, it was unlawful for Trump to represent it  
19 to be a university. Whatever one thinks the name "university" implies, no reasonable  
20 consumer would interpret it to mean an enterprise whose very use of the name is  
21 against the law. TU was operating unlawfully and its founders, Trump and Sexton,  
22 were so lacking in integrity as to be willing to break the law in order to use a name  
23 that was more effective in terms of marketing. No court has ever ruled that statements  
24 and actions that call into question the integrity of a company's management in terms  
25 of how they market the company are immaterial as a matter of law. *See, e.g., Takara*  
26 *Trust v. Molex Inc.*, 429 F. Supp. 2d 960, 978 (N.D. Ill. 2006) ("If a company's  
27 leaders knowingly misrepresented their earnings, investors may reasonably question  
28

1 the integrity of the company’s management, and thus cause an alleged misstatement or  
2 omission to be material.”).

3 **E. Trump Knowingly Participated in the Scheme to Defraud**

4 Trump concludes his brief with two more meritless arguments.

5 **1. Trump’s Participation Is Undeniable**

6 Trump’s penultimate argument simply cross-references his argument regarding  
7 the conduct element of plaintiff’s RICO claim, and contends that, because he relied on  
8 others to run TU on a daily basis, he “did not and could not have knowingly  
9 participated in a scheme to defraud.” Dkt. 180-1 at 22. As explained above, Trump  
10 *was* the TU fraudulent marketing scheme. He was the lone star, he approved all of the  
11 misleading advertisements, and he alone had complete control over whether to fulfill  
12 his promise of integral involvement or to render it false. He chose to render it false.  
13 As such, Trump’s argument in the context of the RICO “conduct” element was not at  
14 all availing. It is even less compelling in the context of the commission of the mail  
15 and wire fraud schemes because such schemes do not require any level of control:

16 The government must show specific intent to defraud, [*United States v.*]  
17 *Munoz*, 233 F.3d [1117, 1129 (9th Cir. 2000)], but contrary to Manion’s  
18 assertion, the intentional *devising* of a scheme is not an essential element  
19 of mail or wire fraud. In this circuit, “[i]n order to sustain a conviction  
20 under the federal mail fraud statutes, it is not necessary that the  
21 defendant be the mastermind of the operation, but it is necessary to show  
22 willful participation in a scheme with knowledge of its fraudulent nature  
and with intent that these illicit objectives be achieved.” In fact, “[i]t has  
long been settled, contrary to the defendant’s construction of the statute,  
that anyone who ‘knowingly and intentionally’ participates in the  
execution of the fraudulent scheme comes within the prohibition of the  
[mail and wire fraud] statute[s]” regardless of whether the defendant  
devised the scheme.

23 *United States v. Manion*, 339 F.3d 1153, 1156 (9th Cir. 2003) (emphasis in original).

24 This explains why Trump fails to cite a single case in support of his penultimate  
25 argument, which the Court should reject as summarily as Trump presents it – in all of  
26 three sentences.

27

28

## 2. The Evidence of Trump's Intent to Defraud Is Overwhelming

Trump has admitted to making false statements in order influence students to enroll in TU. *See, e.g.*, Ex. D, DJT Tr. at 388:4-9, 391:17-392:7 (he promoted TU to influence students to enroll); Ex. L (MPV promising that he handpicked instructors); Ex. T (promotional print ads promising that he handpicked instructors); Ex. U (signed personal invitation promising that handpicked instructors); Ex. D, DJT Tr. at 135:2-4, 135:15-136:6, 137:24-139:4, 140:10-15, 234:24-235:6, 240:10-23, 247:24-249:5, 250:8-253:7, 300:3-25, 425:2-427:5, 476:16-477:10 (admitting that he did not handpick a single Live Events instructor/mentor or do anything to confirm whether they were qualified). Yet, his final argument denies that there is any evidence that he intended to defraud students. Dkt. 180-1 at 22.

Like all of his other arguments, this is nonsensical. Wrongful intent “may be inferred from circumstantial evidence of fraudulent intent.” *United States v. Dearing*, 504 F.3d 897, 901 (9th Cir. 2007). “We have repeatedly held that the intent to defraud may be proven through reckless indifference to the truth or falsity of statements.” *Id.* at 903 (citing *Munoz*, 233 F.3d at 1136 (mail fraud)).

Here, there is abundant evidence – much of which comes from his own mouth – of Trump's wrongful intent, including:

Trump's promotional statements, which he admittedly made to influence students to enroll in TU:

- “[T]hese are all people that are *handpicked* by me.” Ex. L, MPV.
- “Nobody on the planet can teach you how to make money in real estate better than I can.” Ex. T, TU 62093.
- “[M]y hand-picked instructors will share my techniques, which took my entire career to develop.” Ex. F, DJT Tr. Ex. 511 at TU 25239.

Trump's admissions:

Q. . . . Before you say my handpicked instructor is going to be there, you could have sat down and personally interviewed the person, right?

1 A. I guess I could have.

2 Ex. D, DJT Tr. at 429:23-430:1.

3 Q. You didn't personally select these instructors, correct?

4 A. No.

5 Q. That's correct?

6 A. That is correct.

7 Q. And you don't personally know what they told the students at  
8 these events, correct?

9 A. I think we have concepts and ideas, but no, I don't. Every  
instructor has a different method of teaching.

10 \* \* \*

11 Q. Now, you could have called them in and said, Okay, present to me  
12 what you're going to present to the students?

13 A. Well, but that's what I had Michael Sexton and the people -- that's  
14 what you have management for.

15 Q. So you use other people to do that?

16 A. I do.

17 Q. You did not do that yourself?

18 A. I did not.

19 Q. But you could have?

20 \* \* \*

21 [A.] Well, I could have; I guess I could have.

22 *Id.* at 477:6-478:8.

23 Q. Now, you could have actually insisted upon meeting and  
interviewing each of the mentors, right?

24 A. I could have. Other than I'm doing, running a massive company  
that everybody knows that.

25 Q. But so you could have, but you didn't?

26 A. I did not, no.

27 *Id.* at 413:21-414:1.

28 Trump's profit motive:

1 • TU was “[j]ust one more investment.” Ex. C, Weisselberg Tr. at 47:21-  
2 48:1.

3 • The objective was to “maximize the profitability.” *Id.* at 111:7-15.

4 Trump knew that his representations about handpicking TU’s instructors were  
5 false; he knew that TU was paying out “millions” in refunds (Ex. D, DJT Tr. at 434:2-  
6 5). Yet, Trump never availed himself of his immediate access to every bit of  
7 information about TU, including presentation recordings, transcripts, and student  
8 complaints. Similarly, Trump knew there were legal problems with TU’s use of the  
9 term “university,” but he continued using the term for years without even asking if the  
10 problems had been resolved (*id.* at 273:3-274:24).

11 So in addition to the direct evidence of Trump’s actual knowledge of the falsity  
12 of his own representations, there is overwhelming evidence that Trump buried his  
13 head in the sand in response to other significant red flags, which demonstrates his  
14 reckless indifference to the truth or falsity of his statements:

15 Q. Did Mr. Trump -- if Mr. Trump had asked you to provide him with  
16 any scripts that were being circulated, would you have done so?

17 A. Of course.

18 Q. If he had asked you to provide him with any of the recordings of  
19 the presentations, would you have done so?

20 A. Yes.

21 Q. If he’d asked you to provide him with any of the transcripts of the  
22 presentations, would you have done so?

23 A. Yes.

\* \* \*

24 Q. If he had asked you about the status of Trump University’s New  
25 York LLC would you have told him?

26 A. Yes.

27 Q. Is there any information about Trump University that you  
28 wouldn’t have readily provided to Mr. Trump if he had just simply  
asked?

A. No.

1 Q. That includes any student complaints?

2 A. Yes.

3 Ex. A, Sexton Tr. at 292:3-293:3.

4 Realistically speaking, it is hard to imagine stronger proof of actual knowledge  
5 of falsity, as well as reckless indifference – both of which clearly support a strong  
6 inference of Trump’s intent to defraud. This evidence reveals Trump’s final argument  
7 to be as frivolous as his others.

8 **VI. CONCLUSION**

9 Plaintiff respectfully submits that Trump’s motion should be denied in its  
10 entirety and this case set for trial as quickly as possible.

11 DATED: June 3, 2016

Respectfully submitted,

12 ROBBINS GELLER RUDMAN  
13 & DOWD LLP  
14 PATRICK J. COUGHLIN  
15 X. JAY ALVAREZ  
16 JASON A. FORGE  
17 RACHEL L. JENSEN  
18 DANIEL J. PFEFFERBAUM  
19 BRIAN E. COCHRAN  
20 JEFFREY J. STEIN

s/ Jason A. Forge

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JASON A. FORGE

655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

22 ZELDES HAEGGQUIST & ECK, LLP  
23 AMBER L. ECK  
24 AARON M. OLSEN  
25 225 Broadway, Suite 2050  
26 San Diego, CA 92101  
27 Telephone: 619/342-8000  
28 619/342-7878 (fax)

Class Counsel

1  
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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 3, 2016.

s/ Jason A. Forge  
JASON A. FORGE  
  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)  
  
E-mail: jforge@rgrdlaw.com

## Mailing Information for a Case 3:13-cv-02519-GPC-WVG Cohen v. Trump

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Xavier Jay Alvarez**  
jaya@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Brian E. Cochran**  
bcochran@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Patrick J Coughlin**  
patc@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,susanm@rgrdlaw.com
- **Amber Lee Eck**  
ambere@zhlaw.com,winkyc@zhlaw.com,nadiak@zhlaw.com
- **Jason A Forge**  
jforge@rgrdlaw.com,llenzion@rgrdlaw.com,tholindrake@rgrdlaw.com,mbacci@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Jeffrey L. Goldman**  
jgoldman@bbwg.com
- **Alreen Haeggquist**  
alreenh@zhlaw.com,winkyc@zhlaw.com,nadiak@zhlaw.com
- **Rachel L Jensen**  
rjensen@rgrdlaw.com,hbrown@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,JayA@rgrdlaw.com,KLavelle@rgrdlaw.com
- **David Lee Kirman**  
dkirman@omm.com,iyanniello@omm.com,sbrown@omm.com
- **Matthew R. Maron**  
mmaron@trumporg.com,carce@trumporg.com
- **Jill Ann Martin**  
jmartin@trumpnational.com,lvincen@trumpnational.com
- **Maureen E. Mueller**  
mmueller@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Aaron M. Olsen**  
aaron@zhlaw.com,winkyc@zhlaw.com
- **Daniel M. Petrocelli**  
dpetrocelli@omm.com
- **Daniel Jacob Pfefferbaum**  
dpfefferbaum@rgrdlaw.com
- **Jeffrey J. Stein**  
JStein@rgrdlaw.com
- **WP Company LLC d/b/a The Washington Post**  
danlaidman@dwt.com
- **Alonzo Wickers , IV**  
alonzowickers@dwt.com,carolinasolano@dwt.com,ellenduncan@dwt.com,danlaidman@dwt.com
- **Helen Irene Zeldes**  
helenz@zhlaw.com,winkyc@zhlaw.com

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The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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