

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)
 aarono@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
 Behalf of All Others Similarly Situated,
 20 Plaintiff,
 21 vs.
 22 DONALD J. TRUMP,
 23 Defendant.

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

CLASS ACTION

PLAINTIFF’S RESPONSES TO
 DEFENDANT DONALD J. TRUMP’S
 SEPARATE STATEMENT OF
 PURPORTED UNDISPUTED
 “FACTS” IN SUPPORT OF HIS
 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

1 Set forth in Attachment A are Plaintiff Art Cohen’s Responses to the Separate
2 Statement of Purported Undisputed “Facts” in Support of Defendant Donald J.
3 Trump’s Motion for Summary Judgment, or in the Alternative, Partial Summary
4 Judgment.

5 DATED: June 3, 2016

ROBBINS GELLER RUDMAN
& DOWD LLP
PATRICK J. COUGHLIN
X. JAY ALVAREZ
JASON A. FORGE
RACHEL L. JENSEN
DANIEL J. PFEFFERBAUM
BRIAN E. COCHRAN
JEFFREY J. STEIN

s/ Jason A. Forge

JASON A. FORGE

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

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

Class Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,lvincent@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

Manual Notice List

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.

- (No manual recipients)

ATTACHMENT A

Cohen v. Trump

No. 3:13-cv-2519-GPC-WVG

Plaintiff’s Responses to Defendant Donald J. Trump’s Separate Statement of Purported Undisputed “Facts” in Support of His Motion for Summary Judgment

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
<p>1. Defendant is Chairman of the board of directors, President and Chief Executive Officer of The Trump Organization.</p>	<ul style="list-style-type: none"> • Ex. 11.³ • Ex. 1, at 62:4-13. 	<p>Disputed.</p> <p>Exhibit 11 is President Barack Obama’s Public Financial Disclosure Report, and it does not mention Trump Organization.</p> <p>Ex. 1 at 62:4-13 has nothing to do with this assertion. In fact, this excerpt does not even mention Trump Organization.</p> <p>“Trump [Organization] is really nothing more than a shell entity that we set up and we don’t even use in the day-to-day operation. It doesn’t have a bank account.” Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.⁴</p>

¹ Plaintiff objects to defendant’s Statement of “Facts” to the extent that the citations to “supporting evidence” do not support those “undisputed” facts, which is rife throughout defendant’s statement. The most egregious examples are noted below. Further, plaintiff does not concede that any evidence referenced by defendant is admissible at trial.

² While the evidence referenced herein, along with the evidence referenced in plaintiff’s opposition brief, filed concurrently herewith, is sufficient to preclude summary judgment, it represents only a sampling of the evidence that plaintiff intends to put on at trial.

³ Here, and throughout, unless otherwise noted, references to numbered “Ex.” are to the Exhibits attached to the Declaration of David Kirman in Support of defendant’s motion (Dkt. 180-2).

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
2. The Trump Organization is a large company that conducts business all around the world.	<ul style="list-style-type: none"> • Ex. 1, at 62:4-13; • Ex. 11. 	<p>Disputed.</p> <p>Ex. 1 at 62:4-13 has nothing to do with this assertion. In fact, this excerpt does not even mention Trump Organization.</p> <p>Exhibit 11 is President Barack Obama's Public Financial Disclosure Report, and it does not mention Trump Organization.</p> <p>"Trump [Organization] is really nothing more than a shell entity that we set up and we don't even use in the day-to-day operation. It doesn't have a bank account." Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.</p>
3. The Trump Organization is affiliated with over five hundred companies.	<ul style="list-style-type: none"> • Ex. 1, at 9:14-24; • Ex. 11. 	<p>Disputed.</p> <p>Ex. 1 at 9:14-24 has nothing to do with this assertion. In fact, this excerpt does not even mention Trump Organization.</p> <p>Exhibit 11 is President Barack Obama's Public Financial Disclosure Report, and it does not mention Trump Organization.</p> <p>"Trump [Organization] is really nothing more than a shell entity that we set up and we don't even use in the day-to-day operation. It doesn't have a bank account." Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.</p>
4. Defendant's business requires	<ul style="list-style-type: none"> • Ex. 1, at 62:4-13. 	<p>Disputed.</p>

⁴ Here, and throughout, unless otherwise noted, references to lettered "Ex." are to the Exhibits attached to the Declaration of Jason A. Forge, filed concurrently herewith.

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
him to be involved in numerous business ventures at any given time.		This assertion is far too vague to be deemed an undisputed fact. Moreover, Ex. 1 at 62:4-13, says nothing about Trump being "require[d]" to be involved in numerous business ventures around the world. Also, the amount of time Trump has dedicated to his Presidential campaign belies the premise of this assertion that he did not have time to fulfill his promised integral involvement with Trump University ("TU").
5. Defendant does not personally manage all business operations of The Trump Organization.	<ul style="list-style-type: none"> • Ex. 1, at 7:23-8:6, 61:14-22. 	Disputed. Ex. 1 at 7:23-8:6 and 61:14-22, has nothing to do with this assertion. In fact, these excerpts do not even mention Trump Organization. "Trump [Organization] is really nothing more than a shell entity that we set up and we don't even use in the day-to-day operation. It doesn't have a bank account." Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.
6. Defendant does not personally manage the operations of The Trump Organization's many affiliate businesses.	<ul style="list-style-type: none"> • Ex. 1, at 7:23-8:6, 61:14-22. 	Disputed. Ex. 1 at 7:23-8:6, 61:14-22, has nothing to do with this assertion. In fact, these excerpts do not even mention Trump Organization. "Trump [Organization] is really nothing more than a shell entity that we set up and we don't even use in the day-to-day operation. It doesn't have a bank account." Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.
7. Defendant entrusts management of	<ul style="list-style-type: none"> • Ex. 1, at 7:23-8:6, 61:14-22, 66:23-25. 	Disputed. Ex. 1 at 7:23-8:6, 61:14-22, and 66:23-25, has nothing to do with this assertion. In fact, these excerpts do not even mention Trump

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
The Trump Organization's affiliate companies to the executives of such companies.		Organization. "Trump [Organization] is really nothing more than a shell entity that we set up and we don't even use in the day-to-day operation. It doesn't have a bank account." Ex. C, Weisselberg Tr. at 21:1-8, 23:3-13.
8. In 2004, Michael Sexton met with Defendant to pitch a business idea to create a company that would provide educational training products through the Internet.	<ul style="list-style-type: none"> Ex. 2, at 81:11-83:24; 127:25-128:4. 	Disputed. Ex. 2 at 81:11-83:24 and 127:25-128:4, mentions nothing about meeting with Trump to discuss "educational training products." Sexton simply wanted to license Trump's name. He was not "pitch[ing]" Trump for money. Ex. A, Sexton Tr. at 28:10-29:13.
9. Defendant liked the idea and agreed to invest in the company, which later became Trump University, LLC.	<ul style="list-style-type: none"> Ex. 1, at 66:13-19. 	Disputed. Ex. 1 at 66:13-19 does not mention anything about liking Sexton's idea or agreeing to invest. Trump did <i>not</i> agree to Sexton's idea, which was simply to license Trump's name. Instead, Trump co-opted 92% of the ownership and cut out Sexton's original partner. Ex. A, Sexton Tr. at 28:10-35:13.

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
10. Defendant considered TU an opportunity to empower people by teaching them about real estate investment as a means to improve their lives.	<ul style="list-style-type: none"> • Ex. 1, at 66:13-19, 8:13-9:8. 	<p>Disputed.</p> <p>Ex. 1 at 66:13-19 and 8:13-9:8, does not mention anything about TU being an opportunity to empower people. Rather, these are non-responsive answers (about what a great guy Trump considers himself to be) to the following two questions:</p> <ol style="list-style-type: none"> 1. "Mr. Trump, you could have sat down and personally interviewed each of these folks, correct?" Ex. 1 at 66:6-7. 2. "What were your responsibilities while you were with Trump University?" Ex. 1 at 8:11-12. <p>Trump saw TU as just another opportunity to make money, not to empower people, which is why he did not deliver on his promises and "wasn't involved in the . . . classes" (Ex. D, DJT Tr. at 228:23-24); TU was viewed as "Just one more investment" (Ex. C, Weisselberg Tr. at 47:21-48:1); and the objective was to maximize profits (<i>id.</i> at 111:7-15), according to Trump's CFO and member of his inner circle (Ex. D, DJT Tr. at 471:20-472:6), Allen Weisselberg. That is why he so tightly controlled TU's finances, including not allowing Sexton to have signature authority on TU's bank account. Ex. D, DJT Tr. at 445:2-11.</p>
11. Defendant wanted to impart to students the practical lessons	<ul style="list-style-type: none"> • Ex. 1, at 66:13-19, 67:12-21. 	<p>Disputed.</p> <p>Ex. 1 at 66:13-19 and 67:12-21, does not say that was Trump's motivation. Rather, these are non-responsive answers (about what a great</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
about real estate investing that Defendant learned "the hard way."		<p>guy Trump considers himself to be and TU's great reviews) to the following two questions:</p> <ol style="list-style-type: none"> 1. "Mr. Trump, you could have sat down and personally interviewed each of these folks, correct?" Ex. 1 at 66:6-7. 2. "[Y]ou certainly had time to do a final interview of six people, right?" Ex. 1 at 67:7-8. <p>Trump saw TU as just another opportunity to make money, not to empower people, which is why he did not deliver on his promises and "wasn't involved in the . . . classes" (Ex. D, DJT Tr. at 228:23-24); TU was viewed as "Just one more investment" (Ex. C, Weisselberg Tr. at 47:21-48:1) and the objective was to maximize profits (<i>id.</i> at 111:7-15), according to Trump's CFO and member of his inner circle (Ex. D, DJT Tr. at 471:20-472:6), Allen Weisselberg. That is why he so tightly controlled TU's finances, including not allowing Sexton to have signature authority on TU's bank account. Ex. D, DJT Tr. at 445:2-11.</p>
12. Trump University began business operations in or around 2004.	<ul style="list-style-type: none"> • Ex. 2, at 134:8-13; • Ex. 29. 	Not disputed.
13. Trump University began	<ul style="list-style-type: none"> • Ex. 2, at 86:16-87:6. 	Disputed. TU began its operations an exclusively e-learning (online) platform. Ex.

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
business operations as a company that provided real estate training and education through the internet.		2 at 87:7-13. Beyond that, defendant's cited "evidence" is simply an excerpt from Sexton's deposition. Since Sexton has no real estate experience, education, or training (Ex. A, Sexton Tr. at 121:23-122:10), he is not qualified to opine as to whether or not TU ever provided actual real estate training and education, nor did he attempt to offer such an opinion in the cited excerpt.
14. Michael Sexton was at all relevant times the President of Trump University.	<ul style="list-style-type: none"> • Ex. 29; • Ex. 3, at 170:4-5. 	Not disputed.
15. Michael Sexton was in charge of the operations of Trump University.	<ul style="list-style-type: none"> • Ex. 1, at 37:11-24, 64:14-16; • Ex. 29. 	<p>Disputed.</p> <p>Plaintiff does not dispute that Sexton, who had no real estate experience or education (Ex. A, Sexton Tr. at 121:23-122:10), was in charge of creating TU's "curriculum" and hiring its salesmen/"educators" (Ex. D, DJT Tr. at 135:2-4, 444:17-445:11).</p> <p>Trump was in charge of TU's marketing (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2) and TU's finances (Ex. C, Weisselberg Tr. at 48:11-19, 54:2-22, 63:6-9, 68:8-69:25, 252:5-20).</p>
16. Before the class period, ¹	<ul style="list-style-type: none"> • Ex. 1, at 16:19-18:23, 21:9- 	<p>Disputed, as written.</p> <p>Plaintiff does not dispute the following representation from Trump's</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
<p>Defendant met with Mr. Sexton numerous times to discuss his goals and expectations related to Trump University.</p> <p>¹ The Court certified a class of “[a]ll persons who purchased Live Events from Trump University throughout the United States from January 1, 2007.” Dkt 53, at 22-23.</p>	<p>22:24, 24:18-23, 41:13-42:9;</p> <ul style="list-style-type: none"> • Ex. 2, at 131:20-132: 2; • Ex. 22, Nos. 10, 14. 	<p>brief: “Defendant and Sexton met 19 times between 2005 and 2006, while the two met only 8 times over the following four years.” Dkt. 180-1 at 12 n.7.</p> <p>This purported “fact” No. 16 is vague and not related to the cited evidence:</p> <ul style="list-style-type: none"> • Ex. 1 at 16:19-18:23, 21:9-22:24, 24:18-23, 41:13-42:9; and Ex. 2 at 131:20-132:2 say nothing about Trump meeting with Sexton. • Ex. 22, Nos. 10 and 14 say nothing about meetings occurring <i>before</i> the class period. This is also hearsay when offered by Trump because it is not an affidavit or declaration made exclusively “on personal knowledge” (Fed. R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” to his interrogatory responses is signed upon “information and belief.” Ex. 22 at 405.
<p>17. Before the class period, Defendant also</p>	<ul style="list-style-type: none"> • Ex. 1, at 16:19-18:23, 21:9-22:24,24:18-23, 	<p>Disputed, as written.</p> <p>Plaintiff does not dispute the following representation from Trump’s brief: “Defendant and Sexton met 19 times between 2005 and 2006,</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
<p>met with Sexton to approve the TU business plan and discuss curricula for TU.</p>	<p>41:13-42:9; <ul style="list-style-type: none"> • Ex. 2, at 131:20-132: 2; • Ex. 22, Nos. 10, 14. </p>	<p>while the two met only 8 times over the following four years.” Dkt. 180-1 at 12 n.7.</p> <p>This purported “fact” No. 17 is vague and not related to the cited evidence:</p> <ul style="list-style-type: none"> • Ex. 1 at 16:19-18:23, 21:9-22:24, 24:18-23, 41:13-42:9; and Ex. 2 at 131:20-132: 2 say nothing about Trump meeting with Sexton. • Ex. 22, Nos. 10 and 14 say nothing about meetings occurring <i>before</i> the class period. This is also hearsay when offered by Trump because it is not an affidavit or declaration made exclusively “on personal knowledge” (Fed. R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” to his interrogatory responses is signed upon “information and belief.” Ex. 22 at 405.
<p>18. Defendant was personally involved in hiring decisions related to the original instructors for TU.</p>	<ul style="list-style-type: none"> • Ex. 1, at 16:19-18:23, 21:9-22:24, 24:18-23, 41:13-42:9, 47:7-9; • Ex. 2, at 133:7-23; • Ex. 22, Nos. 10, 14. 	<p>Disputed.</p> <p>The testimony from his deposition that Trump cites does not stand for this assertion, and the testimony that he omits directly refutes it. Trump’s response to Interrogatory No. 10, which sought a detailed description of Trump’s involvement with TU, describes meetings with non-Live-Event instructors, but it absolutely does not assert that Trump was involved in hiring decisions related to any instructors. <i>See</i> Ex. 22, No. 10. Although Trump’s response included equivocal language (“Mr. Trump’s involvement has included, but not been limited to”), plaintiff expressly asked Trump about the completeness of his response and Trump confirmed it was complete:</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)^{1,2}</u></p>
		<p>Q. If you look at the second sentence of your response, line -- it begins on line 26: “Mr. Trump’s involvement has included, but not limited to the following” --</p> <p>MR. PETROCELLI: “Not been limited to.”</p> <p>Q. -- “but not been limited to the following.” Mr. Trump, is there anything – any details regarding your involvement with Trump University that are left out of this response?</p> <p>A. I can’t think of any. That was just in case I did think of something --</p> <p>Q. And that’s why I’m asking.</p> <p>A. This seems to be very complete.</p> <p>Ex. D, DJT Tr. at 149:20-150:9.</p> <p>Having confirmed that his involvement with TU did not go beyond the description in his response to Interrogatory No. 10, meaning that it did not include being involved in the hiring decision for any TU instructors, Trump cannot create an undisputed fact by using Sexton’s testimony to contradict his own.</p> <p>Moreover, Ex. 22 is hearsay when offered by Trump because it is not an affidavit or declaration made exclusively “on personal knowledge” (Fed.</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		<p>R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” to his interrogatory responses is signed upon “information and belief.” Ex. 22 at 405.</p> <p>Sexton had ultimate hiring authority at TU. Ex. D, DJT Tr. at 135:2-4.</p> <p>Defendant was not personally involved in hiring decisions related to the Live Events instructors for TU. Ex. D, DJT Tr. at 135:11-136:6.</p>
<p>19. The original instructors included Columbia University Business School professor, Don Sexton, former Stanford University, University of Virginia and University of Illinois business professor, Gary W. Eldred, PhD, Babson Professor Michael Gordon, and Columbia</p>	<ul style="list-style-type: none"> • Ex. 22, Nos. 10, 14. • Ex. 1, at 21:9-21, 52:7-15; • Ex. 3, at 177:6-15. 	<p>To the extent Trump’s reference to “original instructors” means non-Live-Events webinar presenters prior to the class period, plaintiff does not dispute this irrelevant assertion.</p> <p>Ex. 1 at 21:9-21, 52:7-15 and Ex. 3 at 177:6-15, do not state what this assertion states.</p> <p>Ex. 22 is hearsay when offered by Trump because it is not an affidavit or declaration made exclusively “on personal knowledge” (Fed. R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” to his interrogatory responses is signed upon “information and belief.” Ex. 22 at 405.</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
Business School Adjunct Profession Jack Kaplan.		
20. Defendant’s real estate case studies, business and personal philosophies, and investing strategies, were incorporated into TU’s curriculum.	<ul style="list-style-type: none"> • Ex. 22, Nos. 10, 14. • Ex. 24; • Ex. 26, at 451-456; 	<p>Disputed.</p> <p>As phrased, this assertion implies that defendant actually created and reviewed these materials. He did not. Ex. D, DJT Tr. at 312:4-316:11.</p> <p>Ex. 22 is hearsay when offered by Trump because it is not an affidavit or declaration made exclusively “on personal knowledge” (Fed. R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” to his interrogatory responses is signed upon “information and belief.” Ex. 22 at 405.</p> <p>Ex. 24 consists of selected pages from a book, and it does not establish any aspect of this assertion, including whether Trump actually wrote any of these pages and whether any of these pages were part of TU’s Live Events curriculum.</p> <p>It is not even clear what Ex. 26 is, but it certainly does not establish any aspect of this assertion, including whether Trump actually wrote any of these pages, whether they are accurate, and whether any of these pages were part of TU’s Live Events curriculum. Nor does the declarant for this exhibit, O’Melveny & Myers LLP’s attorney David Kirman, appear to possess any personal knowledge as to this document’s accuracy, authenticity, actual use, etc.</p> <p>Numerous instructors and former TU employees testified that TU did not</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		teach Trump's strategies (<i>see, e.g.</i> , Ex. J, Martin Tr. at 58:10-24; Ex. R, Nicholas Tr. at 150:18-151:8); Trump's paid expert has confirmed that Trump has no unique strategies (Ex. S, Wallace Tr. at 249:7-250:4); and all of the "case studies" referenced in Ex. 22 No. 10 were included in George Ross's book published in 2005, two years before the Live Events began (Ex. D, DJT Tr. at 163:8-164:23; Ex. V, DJT Tr. Ex. 484).
21. Defendant entrusted management and operational control of Trump University to Michael Sexton.	<ul style="list-style-type: none"> • Ex. 1, at 37:11-38: 22, 45:14-46:19; • Ex. 29. 	<p>Disputed.</p> <p>Plaintiff does not dispute that Sexton, who had no real estate experience or education (Ex. A, Sexton Tr. at 121:23-122:10), was in charge of creating TU's "curriculum" and hiring its salesmen/"educators" (Ex. D, DJT Tr. at 135:2-4; 444:17-445:11).</p> <p>Trump was in charge of TU's marketing (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2) and TU's finances (Ex. C, Weisselberg Tr. at 48:11-19; 54:2-22; 63:6-9; 68:8-69:25; 252:5-20).</p> <p>Trump testified that he did not trust Sexton to have signature authority on TU's bank accounts. Ex. D, DJT Tr. at 445:2-11.</p>
22. Defendant provided Michael Sexton with detailed hiring criteria for instructors and	<ul style="list-style-type: none"> • Ex. 2, at 141:15-142:17. 	<p>Disputed.</p> <p>Ex. 2 at 141:15-142:17, is an excerpt from Sexton's deposition, which does not include the phrase "detailed hiring criteria." Nor did the criteria include a college degree, teaching experience, a real estate license, or real estate experience.</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
mentors.		Plaintiff's promised "top Trump certified" mentor (Kerry Lucas) had no experience buying and selling real estate whatsoever; no real estate education; and no real estate related licenses. Ex. N at DT0000329; Ex. O, Lucas Tr. at 23:8-9, 24:2-12, 35:22-36:2, 55:7-56:1, 75:9-18. Trump testified that Lucas must have slipped through the cracks and conceded that all of the other primary Live Events instructors may have also slipped through the cracks. Ex. D, DJT Tr. at 413:10-415:2, 426:5-427:5.
23. Sexton periodically reported to Defendant to provide updates about the state of TU's business.	<ul style="list-style-type: none"> • Ex. 2, at 118:7-119:20; • Ex. 1, at 37:15-24. 	<p>Disputed, as written.</p> <p>Plaintiff does not dispute the following representation from Trump's brief: "Defendant and Sexton met 19 times between 2005 and 2006, while the two met only 8 times over the following four years." Dkt. 180-1 at 12 n.7.</p> <p>Ex. 2 at 118:7-119:20 is Sexton's testimony that confirms Trump approved every new TU ad, and includes that the two met "<i>Maybe</i> once a quarter" to discuss the state of the business.</p> <p>Ex. 1 at 37:15-24 says nothing regarding "updates about the state of TU's business."</p> <p>Weisselberg, who was Trump's economic eyes and ears for TU, met with him several times a week while TU was operating, which was just one more investment for Trump. Ex. C, Weisselberg Tr. at 25:2-23, 47:21-48:1.</p>
24. Mr.	<ul style="list-style-type: none"> • Ex. 2, at 118:7- 	Disputed, as written because it is too vague – "more frequently" than

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
Sexton's direct reports to Defendant occurred more frequently in the first two years of TU's operations.	119:20; <ul style="list-style-type: none"> • Ex. 30. 	what? Plaintiff does not dispute the following representation from Trump's brief: "Defendant and Sexton met 19 times between 2005 and 2006, while the two met only 8 times over the following four years." Dkt. 180-1 at 12 n.7.
25. During the class period, Sexton reported to Defendant substantially less frequently than he had during the first two years of TU's operations.	<ul style="list-style-type: none"> • Ex. 30; • Ex. 1, at 37:18-24; • Ex. 2, at 118:7-119:20. 	Not disputed, but still vague and more clearly stated in the following representation from Trump's brief: "Defendant and Sexton met 19 times between 2005 and 2006, while the two met only 8 times over the following four years." Dkt. 180-1 at 12 n.7.
26. Trump University's management team was responsible for ensuring that TU's marketing materials complied with the law.	<ul style="list-style-type: none"> • Ex. 21, ¶¶ 11, 63; • Ex. 2, at 91:14-92:17, 95:8-20, 101:17-103:15, 120:3-11. 	Disputed. Ex. 21, ¶¶ 11, 63, and Ex. 2 at 91:14-92:17, 95:8-20, 101:17-103:15, 120:3-11, do not support this assertion. Among other obvious discrepancies, the "compliance" function referenced in Ex. 2 at 95:6-22 was not legal compliance, but rather compliance with TU's internal policies (<i>e.g.</i> , recording every Live Event). Likewise, the only attorney Sexton identified is Peter Hoppenfeld, but Sexton did not know "when he came on board" (Ex. 2 at 91:19-23) and Sexton never claimed

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>Hoppenfeld, or anyone else reviewed the veracity of TU's marketing materials. Instead, Sexton simply stated that Hoppenfeld was "deep in FTC law" without any elaboration (<i>id.</i>), and it appears that Hoppenfeld's only compliance consideration was limited to student endorsements and testimonials (Ex. 4 at 192:18-193:10), which are not relevant to this case.</p> <p>Trump had final approval authority for TU's marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2), and in hundreds of pages of deposition testimony; he never once mentioned Peter Hoppenfeld. <i>See</i> Ex. W, word indices from DJT deposition transcripts.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), but never a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., United States v. Brandner</i>, No. 3:13-CR-00103-SLG, 2016 WL 354866, at *2 (D. Alaska Jan. 28, 2016) ("To qualify for an advice-of-counsel instruction, a defendant must show that he made a full</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>disclosure of all material facts to his attorney and that he then relied ‘in good faith on the specific course of conduct recommended by the attorney.’”) (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp. v. Pennzoil Co.</i>, 974 F.2d 1156, 1163 (9th Cir. 1992) (assertion of reliance on counsel waives privilege as to all related evidence and information).</p> <p>No one other than Trump himself is responsible for the veracity of the marketing statements that he personally made and approved.</p>
27. Defendant had no role in evaluating whether the marketing materials were legally compliant.	<ul style="list-style-type: none"> • Ex. 21 ¶ 63; • Ex. 2, at 91:14-92:17, 95:8-20, 100:15-20, 101:17-103:15, 120:3-11; • Ex. 3, at 173:6-175:23, 160:15-161:18. 	<p>Disputed.</p> <p>Ex. 21 ¶63, Ex. 2 at 91:14-92:17, 95:8-20, 100:15-20, 101:17-103:15, 120:3-11; Ex. 3 at 173:6-175:23, 160:15-161:18, do not and cannot disclaim Trump's responsibility for the veracity of the marketing statements that he personally made and approved.</p> <p>Trump had final approval authority for TU's marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2), and in hundreds of pages of deposition testimony, he never once mentioned Peter Hoppenfeld. See Ex. W, word indices from DJT</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>deposition transcripts.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump’s Privilege Log, dated June 22, 2015), but never a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump’s Responses to Plaintiff’s First Set of Interrogatories, No. 15 (Trump’s interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 (“To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied ‘in good faith on the specific course of conduct recommended by the attorney.’”) (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>privilege as to all related evidence and information).</p> <p>No one other than Trump himself is responsible for the veracity of the marketing statements that he personally made and approved.</p>
<p>28. Defendant did not believe he had to review marketing materials for legal compliance because TU had a robust compliance function.</p>	<ul style="list-style-type: none"> • Ex. 21 ¶¶ 58-64; • Ex. 2, at 91:14-92:17, 95:3-5, 95:8-20, 96:10-97:15, 101:17-103:7. 	<p>Disputed.</p> <p>Ex. 21 and Ex. 2 are Sexton's affidavit and deposition transcript, respectively. Not only is Sexton incapable of knowing what Trump believes, but he did not try to do so. Trump's attempt to use someone else to testify as to <i>Trump's</i> belief is as improper as it is odd.</p> <p>Trump had final approval authority for TU's marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2).</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), and he has never asserted a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g.</i>, <i>Brandner</i>, 2016 WL 354866, at *2 ("To</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied 'in good faith on the specific course of conduct recommended by the attorney.'") (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p>
<p>29. Mr. Sexton hired Trump University's management team, many of whom were dedicated to compliance matters.</p>	<ul style="list-style-type: none"> • Ex. 21 ¶¶ 58-64; • Ex. 2, at 91:14-92:17, 95:8-20, 96:10-97:15, 100:15-20, 101:17-103:15; • Ex. 4, at 184:22-24, 187:11-21, 189:17-25, 192:18-193:10. 	<p>Disputed.</p> <p>Once again, Trump's cited evidence does not support his asserted "fact." Likewise, Trump's assertion does not define "compliance matters," which appear to be limited to compliance with TU's internal policies (Ex. 2 at 95:6-22) (recording Live Events) and compliance with FTC regulations concerning student endorsements and testimonials (Ex. 4 at 192:18-193:10), neither of which is relevant to Trump's misrepresentations and omissions here.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), and he has never asserted a reliance on counsel/others defense (<i>see</i> Ex. Y,</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 ("To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied 'in good faith on the specific course of conduct recommended by the attorney.'") (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p>
30. Sexton hired Peter Hoppenfeld as	<ul style="list-style-type: none"> • Ex. 21 ¶ 63; • Ex. 2, at 100:15- 	<p>Disputed.</p> <p>Because Trump asserted the attorney-client privilege with respect to</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
independent, outside counsel for TU.	20.	<p>Hoppenfeld (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), and did not assert reliance on counsel or others defense in support of his "good faith" defense (<i>see, e.g.</i>, Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)), Hoppenfeld's role, including whether he was "independent," was not discoverable and therefore not explored. It is far too late for Trump to attempt to concoct such a defense. Fed. R. Civ. P. 37(c)(1).</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), including with respect to Hoppenfeld (<i>id.</i>), and he has never asserted a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 ("To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied 'in good faith</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		<p>on the specific course of conduct recommended by the attorney.”) (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p>
<p>31. Sexton hired Hoppenfeld because he had experience advising companies in the business seminar industry on compliance matters.</p>	<ul style="list-style-type: none"> • Ex. 21 ¶ 63; • Ex. 2, at 100:25-101:9. 	<p>Disputed.</p> <p>Once again, Trump exclusively cites Sexton’s statements for an asserted “fact” for which Sexton lacks personal knowledge: whether Peter Hoppenfeld actually “had experience advising companies in the business seminar industry on compliance matters.” Also, Sexton did not know “when he came on board” (Ex. 2 at 91:19-23) and Sexton never claimed Hoppenfeld, or anyone else reviewed the veracity of TU’s marketing materials; rather Sexton simply stated that Hoppenfeld was “deep in FTC law” without any elaboration (<i>id.</i>). It appears Hoppenfeld’s role was limited to compliance with FTC regulations concerning student endorsements and testimonials (Ex. 4 at 192:18-193:10), which are not relevant to Trump’s misrepresentations and omissions here.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), including with respect to Hoppenfeld (<i>id.</i>), including with respect to Hoppenfeld (<i>id.</i>), and he has never asserted a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g.</i>, <i>Brandner</i>, 2016 WL 354866, at *2 ("To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied 'in good faith on the specific course of conduct recommended by the attorney.'") (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		privilege as to all related evidence and information).
32. Hoppenfeld reviewed TU's advertising and marketing materials to ensure they were legally compliant.	<ul style="list-style-type: none"> • Ex. 2, at 91:14-92:17, 101:17-103:15; • Ex. 3, at 173:6-175:23, 160:15-161:18. 	<p>Disputed.</p> <p>Once again, Trump exclusively cites witnesses without personal knowledge for an asserted "fact." Exhibits 2 and 3 are excerpts from Sexton and Highbloom's depositions, and neither of them have personal knowledge as to whether Peter Hoppenfeld actually "reviewed TU's advertising and marketing materials to ensure they were legally compliant." Also, Sexton did not know "when he came on board" (Ex. 2 at 91:19-23) and Sexton never claimed Hoppenfeld, or anyone else reviewed the veracity of TU's marketing materials; rather Sexton simply stated that Hoppenfeld was "deep in FTC law" without any elaboration (<i>id.</i>). It appears Hoppenfeld's role was limited to compliance with FTC regulations concerning student endorsements and testimonials (Ex. 4 at 192:18-193:10), which are not relevant to Trump's misrepresentations and omissions here.</p> <p>Trump had final approval authority for TU's marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2), and in hundreds of pages of deposition testimony, he never once mentioned Peter Hoppenfeld. <i>See</i> Ex. W, word indices from DJT deposition transcripts.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), and he has never asserted a reliance on counsel/others defense (<i>see</i> Ex. Y,</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 ("To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied 'in good faith on the specific course of conduct recommended by the attorney.'") (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p> <p>No one other than Trump himself is responsible for the veracity of the marketing statements that he personally made and approved.</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
33. Hoppenfeld assisted TU in developing compliance policies regarding TU live events.	<ul style="list-style-type: none"> • Ex. 3, at 173:6-175:23; • Ex. 2, at 91:14-92:17, 101:17-103:15. 	<p>Disputed.</p> <p>Ex. 3 at 173:6-175:23 is limited to testimony regarding TU's internal retention policy for recordings of Live Events.</p> <p>Sexton did not know "when [Hoppenfeld] came on board" (Ex. 2 at 91:19-23) and Sexton never claimed Hoppenfeld, or anyone else reviewed the veracity of TU's marketing materials; rather Sexton simply stated that Hoppenfeld was "deep in FTC law" without any elaboration (<i>id.</i>). It appears Hoppenfeld's role was limited to compliance with FTC regulations concerning student endorsements and testimonials (Ex. 4 at 192:18-193:10), which are not relevant to Trump's misrepresentations and omissions here. Moreover, Sexton never claimed Hoppenfeld, or anyone else reviewed the veracity of TU's marketing materials.</p> <p>Trump had final approval authority for TU's marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2), and in hundreds of pages of deposition testimony, he never once mentioned Peter Hoppenfeld. <i>See</i> Ex. W, word indices from DJT deposition transcripts.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump's Privilege Log, dated June 22, 2015), including with respect to Hoppenfeld (<i>id.</i>), but never a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump's Responses to Plaintiff's First Set of Interrogatories, No. 15 (Trump's interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		<p>compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 (“To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied ‘in good faith on the specific course of conduct recommended by the attorney.’”) (citation omitted).</p> <p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p> <p>No one other than Trump himself is responsible for the veracity of the marketing statements that he personally made and approved.</p>
34. Defendant reviewed batches	<ul style="list-style-type: none"> • Ex. 2, at 118:7-119:20; 	<p>Disputed.</p> <p>Ex. 2 is Sexton’s deposition testimony, and Sexton plainly has no</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
of advertisements to see how his Brand and image were portrayed in the marketing materials.	<ul style="list-style-type: none"> Ex. 1, at 57:18–24. 	<p>personal knowledge as to Trump's purpose when Trump was reviewing TU's advertisements. In fact, in the very excerpt Trump cites, his counsel objects to Sexton's lack of foundation for such testimony. Ex. 2 at 118:21-24.</p> <p>Ex. 1 is actually Trump's testimony, and as can be seen, Trump did <i>not</i> testify to this asserted fact. Rather, Trump simply confirmed what is not disputed here: he is not aware of a single TU advertisement bearing his name that he did not approve. Trump actually cuts off the transcript of his testimony, but the page Trump tries to hide confirms this fact. Ex. D, DJT Tr. at 279:18-280:16.</p> <p>Bloom also testified that Defendant reviewed advertisements with an eye toward detail, modifying an ad because it "chopped off part of his head." Ex. H, Bloom Tr. at 83:4-84:3.</p>
35. Starting in 2007, TU had annual compliance training meetings with its live-event teams to review TU's rules and policies.	<ul style="list-style-type: none"> Ex. 21 ¶ 64. 	Undisputed that TU had uniform rules and policies that its employees and contractors were trained and required to follow, as set forth in TU's "playbook" and in circulated scripts. <i>See, e.g.</i> , Ex. G, Sexton (Low) Tr. at 163:10-15; Ex. Z, Sperry Tr. at 26:7-10.
36. Defendant cares about the	<ul style="list-style-type: none"> Ex. 1, at 9:16-11:16, 13:10- 	Disputed. Trump's only concern about his brand is being able to influence people to

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
<p>image of the Trump brand.</p>	<p>14:12; <ul style="list-style-type: none"> • Ex. 2, at 118:25-119:7; • Ex. 27. </p>	<p>buy whatever he is selling. Ex. D, DJT Tr. at 378:3-17, 379:9-380:13, 386:1-387:6, 388:4-9. The sheer volume and diversity of failed products and ventures on which Trump has attached his name, or “brand,” confirms that Trump only really cares that his image enables him to sell whatever he happens to be peddling, no matter how doomed it may be. <i>See, e.g.,</i> http://www.nationalreview.com/article/432826/donald-trump-scandals-business-failures-roundup (last visited June 3, 2016).</p> <p>In order to influence people to buy into TU, Trump sold himself as integrally involved. In order to influence people to buy into him as a presidential candidate, Trump has sold himself as a harsh critic of people he had previously complimented (when he was trying to influence them to buy into him as a business man), such as Hillary and Bill Clinton, Rick Perry, and Jeb Bush. Ex. D, DJT Tr. at 454:23-471:4.</p> <p>To many, across political lines, the Trump brand represents con artistry, xenophobia, racism, sexism, and other forms of ignorance.</p> <ul style="list-style-type: none"> • http://www.nytimes.com/2016/03/04/opinion/clash-of-republican-con-artists.html?_r=0 (last visited June 3, 2016). • http://www.usnews.com/news/articles/2016-03-03/romney-calls-on-republicans-to-dump-trump (last visited June 3, 2016). • http://www.forbes.com/sites/denizcam/2016/03/12/billionaires-rally-around-immigration-against-trumps-

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>xenophobia/#5ecbf04f608e (last visited June 3, 2016).</p> <ul style="list-style-type: none"> • http://www.nationalreview.com/article/430126/donald-trump-conservatives-oppose-nomination (last visited June 3, 2016). • http://www.chicagotribune.com/news/nationworld/politics/ct-ted-cruz-donald-trump-wives-20160325-story.html (last visited June 3, 2016). • http://www.washingtontimes.com/news/2015/sep/16/carly-fiorina-women-recognize-trumps-sexist-commen/ (last visited June 3, 2016). • http://money.cnn.com/2016/04/04/news/economy/donald-trump-bubble-debt/ (last visited June 3, 2016). <p>In light of how often and recklessly Trump changes what his brand represents, it is apparent, or at least plausible, that Trump does not care at all about how his brand's image, so long as it sells.</p>
<p>37. The Trump brand represents high quality, excellence, and luxury.</p>	<ul style="list-style-type: none"> • Ex. 1, at 60:1-7. 1; 9:16-11:16, 13:10-14:12; • Ex. 16, at 318:3-10. 	<p>Disputed.</p> <p>Trump cites two sources for this self-complimentary "fact": himself and one of his victims, a woman who was scared of her family learning about the money she dumped into TU (Ex. AA, Levand Tr. at 119:3-121:8, 183:12-17), who viewed it as positive that the instructors at TU would be handpicked by Trump (<i>id.</i> at 92:8-14), but had no idea Trump did not</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>actually pick TU’s instructors (<i>id.</i> at 121:9-17), who is in therapy (<i>id.</i> at 24:5-17), who was tricked into signing a highly misleading declaration (<i>compare</i> Ex. BB, Levand Decl., ¶5 (describing a property she purchased in June 2009 “for \$35,000, and flipped it in December for \$60,000” and explaining “I would not have been able to experience success without Trump University and their guidance”) <i>with</i> Ex. AA, Levand Tr. at 95:15-100:16 (admitting she had to spend so much money fixing this same property that she actually <i>lost</i> several thousand dollars)).</p> <p>To many, across political lines, the Trump brand represents con artistry, xenophobia, racism, sexism, and other forms of ignorance.</p> <ul style="list-style-type: none"> • http://www.nytimes.com/2016/03/04/opinion/clash-of-republican-con-artists.html?_r=0 (last visited June 3, 2016). • http://www.usnews.com/news/articles/2016-03-03/romney-calls-on-republicans-to-dump-trump (last visited June 3, 2016). • http://www.forbes.com/sites/denizcam/2016/03/12/billionaires-rally-around-immigration-against-trumps-xenophobia/#5ecbf04f608e (last visited June 3, 2016). • http://www.nationalreview.com/article/430126/donald-trump-conservatives-oppose-nomination (last visited June 3, 2016). • http://www.chicagotribune.com/news/nationworld/politics/ct-ted-

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<p>cruz-donald-trump-wives-20160325-story.html (last visited June 3, 2016).</p> <ul style="list-style-type: none"> • http://www.washingtontimes.com/news/2015/sep/16/carly-fiorina-women-recognize-trumps-sexist-commen/ (last visited June 3, 2016). • http://money.cnn.com/2016/04/04/news/economy/donald-trump-bubble-debt/ (last visited June 3, 2016). <p>Far from Trump's assertion, it is apparent that he often, and recklessly, changes what his brand represents (http://www.nationalreview.com/article/432826/donald-trump-scandals-business-failures-roundup (last visited June 3, 2016)), but one thing he gets right here is that his brand does not represent integrity.</p>
<p>38. Defendant has worked hard to ensure his brand maintains its image.</p>	<ul style="list-style-type: none"> • Ex. 1, at 60:1-7; 9:16-11:17, 13:10-14:12; • Ex. 2, at 118:25-119:7. 	<p>Disputed.</p> <p>Trump's many failures are consistent with his actions vis-à-vis TU: the only "work" he performs is in marketing, not delivering. <i>See, e.g.</i>, http://www.nationalreview.com/article/432826/donald-trump-scandals-business-failures-roundup (last visited June 3, 2016).</p> <p>Moreover, Trump has not "maintained" his image. In order to influence people to buy into him as a Presidential candidate, Trump has sold himself as a harsh critic of people he had previously complimented (when he was trying to influence them to buy into him as a business man), such</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>as Hillary and Bill Clinton, Rick Perry, and Jeb Bush. Ex. D, DJT Tr. at 454:23-471:4.</p> <p>To many, across political lines, the Trump brand now represents con artistry, xenophobia, racism, sexism, and other forms of ignorance.</p> <ul style="list-style-type: none"> • http://www.nytimes.com/2016/03/04/opinion/clash-of-republican-con-artists.html?_r=0 (last visited June 3, 2016). • http://www.usnews.com/news/articles/2016-03-03/romney-calls-on-republicans-to-dump-trump (last visited June 3, 2016). • http://www.forbes.com/sites/denizcam/2016/03/12/billionaires-rally-around-immigration-against-trumps-xenophobia/#5ecbf04f608e (last visited June 3, 2016). • http://www.nationalreview.com/article/430126/donald-trump-conservatives-oppose-nomination (last visited June 3, 2016). • http://www.chicagotribune.com/news/nationworld/politics/ct-ted-cruz-donald-trump-wives-20160325-story.html (last visited June 3, 2016). • http://www.washingtontimes.com/news/2015/sep/16/carly-fiorina-women-recognize-trumps-sexist-commen/ (last visited June 3, 2016).

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		<ul style="list-style-type: none"> • http://money.cnn.com/2016/04/04/news/economy/donald-trump-bubble-debt/ (last visited June 3, 2016).
<p>39. Defendant is very protective about how his brand is represented.</p>	<ul style="list-style-type: none"> • Ex. 2, at 118:25-119:7. 	<p>Disputed.</p> <p>Trump’s only concern about his brand is being able to influence people to buy whatever he is selling. Ex. D, DJT Tr. at 378:3-17, 379:9-380:13, 386:1-387:6, 388:4-9. The sheer volume and diversity of failed products and ventures on which Trump has attached his name, or “brand,” confirms that Trump only really cares that his image enables him to sell whatever he happens to be peddling, no matter how doomed it may be. <i>See, e.g.,</i> http://www.nationalreview.com/article/432826/donald-trump-scandals-business-failures-roundup (last visited June 3, 2016).</p> <p>In order to influence people to buy into TU, Trump sold himself as integrally involved. In order to influence people to buy into him as a Presidential candidate, Trump has sold himself as a harsh critic of people he had previously complimented (when he was trying to influence them to buy into him as a business man), such as Hillary and Bill Clinton, Rick Perry, and Jeb Bush. Ex. D, DJT Tr. at 454:23-471:4.</p> <p>To many, across political lines, the Trump brand represents con artistry, xenophobia, racism, sexism, and other forms of ignorance.</p> <ul style="list-style-type: none"> • http://www.nytimes.com/2016/03/04/opinion/clash-of-republican-con-artists.html?_r=0 (last visited June 3, 2016).

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		<ul style="list-style-type: none"> • http://www.usnews.com/news/articles/2016-03-03/romney-calls-on-republicans-to-dump-trump (last visited June 3, 2016). • http://www.forbes.com/sites/denizcam/2016/03/12/billionaires-rally-around-immigration-against-trumps-xenophobia/#5ecbf04f608e (last visited June 3, 2016). • http://www.nationalreview.com/article/430126/donald-trump-conservatives-oppose-nomination (last visited June 3, 2016). • http://www.chicagotribune.com/news/nationworld/politics/ct-ted-cruz-donald-trump-wives-20160325-story.html (last visited June 3, 2016). • http://www.washingtontimes.com/news/2015/sep/16/carly-fiorina-women-recognize-trumps-sexist-commen/ (last visited June 3, 2016). • http://money.cnn.com/2016/04/04/news/economy/donald-trump-bubble-debt/ (last visited June 3, 2016). <p>In light of how often and recklessly Trump changes what his brand represents, it is apparent, or at least plausible, that Trump does not care about protecting his brand at all, but rather he only cares about protecting its marketability.</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
40. Defendant reviewed batches of advertisements "very quickly" to review how his brand was portrayed in the marketing materials.	<ul style="list-style-type: none"> • Ex. 2, at 118:7-119:20; • Ex. 1, at 57:18–24. 	<p>Disputed.</p> <p>One does not have to look far to find examples of Trump's contradictory positions. Here, Trump asserts that he reviewed TU's marketing materials "very quickly," yet in his preceding assertion, he claimed to be "very protective about how is brand is represented." See Defendant's Purported Undisputed Fact No. 39. The reality is that Trump had, and exercised, complete authority over TU's marketing. See, e.g., Ex. D, DJT Tr. at 279:18-280:16; Ex. A, Sexton Tr. at 127:12-19. Not only did he approve each and every advertisement, but he even directed where those advertisements would be placed in newspapers (Ex. H, Bloom Tr. at 72:22-74:2) and ensured that his hair was not cut off in any of them (<i>id.</i> at 83:4-83:3).</p>
41. In 2005, Defendant was interviewed about TU and the video recording (the "Launch Video") was included in a DVD and CD compilation TU sold as the "Wealth Builder's Blueprint."	<ul style="list-style-type: none"> • Ex. 2, at 152:1-18. 	<p>Disputed.</p> <p>This excerpt from Sexton's deposition mentions nothing whatsoever about a "CD compilation" or "Wealth Builder's Blueprint." Nor does this assertion identify actual items of evidence as being the so-called "Launch Video" or the "DVD and CD compilation" so it is impossible to verify what this assertion is actually referencing. The actual video file and media to which this assertion refers would have metadata for their creation date and actual content that would provide definitive information. If Trump did not produce in discovery the so-called "Launch Video" and "DVD and CD compilation," he may not ask the Court to rely on them now. Fed. R. Civ. P. 37(c)(1).</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		In contrast, during his deposition, Trump watched the actual Main Promotional Video, which was used for the Live Events, and he confirmed that he had shot that video "to influence people to enroll in Trump University." Ex. D, DJT Tr. at 387:22-388:9.
42. The Launch Video was produced nearly two years before Trump University expanded its business operations to include Live Events.	<ul style="list-style-type: none"> • Ex. 2, at 152:1-18; • Ex. 45. 	<p>Disputed.</p> <p>Again, this assertion fails to identify an actual item of evidence as being the so-called "Launch Video," so it is impossible to verify what this assertion is actually referencing. The actual video file would have metadata for its creation date and actual content that would provide definitive information. Exhibit 45 appears to be a copy of a DVD case and a DVD, but Trump did not produce the actual DVD and he does not identify this item as having been produced in discovery, so it cannot be considered (because he did not include it with his filing) and it should not be considered (because he did not produce it in discovery) (<i>see, e.g.</i>, Fed. R. Civ. P. 37(c)(1); <i>Malico, Inc. v. Cooler Master USA, Inc.</i>, No. C 11-4537 RS, 2013 U.S. Dist. LEXIS 118119, at *21-*25 (N.D. Cal. Aug. 20, 2013) (excluding photographs that were responsive to timely written discovery request, but submitted for first time with summary judgment motion; finding prior instances in which the device depicted in the photographs was presented to the opposing party did not operate as official or valid production excusing the failure to timely produce the photographs), <i>aff'd in part, vacated in part, and remanded on other grounds</i>, 594 Fed. App'x 621 (Fed. Cir. 2014)).</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		In contrast, during his deposition, Trump watched the actual Main Promotional Video, which was used for the Live Events, and he confirmed that he had shot that video “to influence people to enroll in Trump University.” Ex. D, DJT Tr. at 387:22-388:9.
43. Defendant was personally involved in selecting instructors when he was interviewed for the Launch Video.	<ul style="list-style-type: none"> • Ex. 1, at 16:19-18:23, 21:9-22:25, 24:18-23, 41:13-42:9, 47:7-9; • Ex. 2, at 133:7-23, 152:1-18; • Ex. 22, Nos. 10, 14; • Ex 45. 	<p>Disputed.</p> <p>The testimony Trump cites from his deposition does not stand for this assertion, and the testimony that he omits directly refutes it. Trump’s response to Interrogatory No. 10, which sought a detailed description of Trump’s involvement with TU, describes meetings with non-Live-Event instructors, but it absolutely does not assert that Trump was involved in hiring decisions related to any instructors. <i>See</i> Ex. 22, No. 10. Although Trump’s response included equivocal language (“Mr. Trump’s involvement has included, but not been limited to”), plaintiff expressly asked Trump about the completeness of his response and Trump confirmed it was complete:</p> <p style="padding-left: 40px;">Q. If you look at the second sentence of your response, line -- it begins on line 26: “Mr. Trump’s involvement has included, but not limited to the following” --</p> <p style="padding-left: 40px;">MR. PETROCELLI: “Not been limited to.”</p> <p style="padding-left: 40px;">Q. -- “but not been limited to the following.” Mr. Trump, is there anything – any details regarding your involvement</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>with Trump University that are left out of this response?</p> <p>A. I can’t think of any. That was just in case I did think of something --</p> <p>Q. And that’s why I’m asking.</p> <p>A. This seems to be very complete.</p> <p>Ex. D, DJT Tr. at 149:20-150:9.</p> <p>Having confirmed that his involvement with TU did not go beyond the description in his response to Interrogatory No. 10, meaning that it did <i>not</i> include being involved in the hiring decision for <i>any</i> TU instructors, Trump cannot create an undisputed fact by using Sexton’s testimony to contradict his own.</p> <p>Moreover, Ex. 22 is hearsay when offered by Trump because it is not an affidavit or declaration “made on personal knowledge” (Fed. R. Civ. P. 56(c)(4)). Instead, Trump’s “verification” is signed upon “information and belief.” Ex. 22 at 405.</p> <p>Exhibit 45 appears to be a copy of a DVD case and a DVD, but Trump did not produce the actual DVD and he does not identify this item as having been produced in discovery, so it cannot be considered (because he did not include it with his filing) and it should not be considered (because he did not produce it in discovery) (<i>see, e.g.,</i> Fed. R. Civ. P.</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>37(c)(1); <i>Malico, Inc.</i>, 2013 U.S. Dist. LEXIS 118119, at *21-*25 (excluding photographs that were responsive to timely written discovery request, but submitted for first time with summary judgment motion; finding prior instances in which the device depicted in the photographs was presented to the opposing party did not operate as official or valid production excusing the failure to timely produce the photographs), <i>aff’d in part, vacated in part, and remanded on other grounds</i>, 594 Fed. App’x 621.</p> <p>In contrast, during his deposition, Trump watched the actual Main Promotional Video, which was used for the Live Events, and he confirmed that he had shot that video “to influence people to enroll in Trump University.” Ex. D, DJT Tr. at 387:22-388:9.</p> <p>Sexton had ultimate hiring authority at TU. Ex. D, DJT Tr. at 135:2-4.</p>
<p>44. The Launch Video was later edited by TU’s marketing department for promotional purposes.</p>	<ul style="list-style-type: none"> • Ex. 2, at 106:18-107:14, 109:2-111:23, 152:1–18. 	<p>Disputed.</p> <p>Again, this assertion fails to identify an actual item of evidence as being the so-called “Launch Video,” so it is impossible to verify what this assertion is actually referencing. The actual video file would have metadata for its creation and editing dates, as well as actual content that would provide definitive information. If Trump did not produce in discovery the so-called “Launch Video” and “DVD and CD compilation,” he may not ask the Court to rely on them now. Fed. R. Civ. P. 37(c)(1).</p> <p>In contrast, during his deposition, Trump watched the actual Main Promotional Video, which was used for the Live Events, and he</p>

<u>Defendant's Purported Undisputed "Fact"</u>	<u>Evidence</u>	<u>Plaintiff's Response (including sample contrary evidence)</u> ^{1,2}
		confirmed that he had shot that video "to influence people to enroll in Trump University." Ex. D, DJT Tr. at 387:22-388:9.
45. Defendant's investment in Trump University was not a substantial financial investment for him.	<ul style="list-style-type: none"> • Ex. 1, at 27:10-15, 66:14-15. 	<p>Disputed.</p> <p>According to Trump's CFO and member of his inner circle, Allen Weisselberg, the objective for TU was to maximize profits. Ex. C, Weisselberg Tr. at 47:21-48:1, 111:7-15; Ex. D, DJT Tr. at 471:14-472:6.</p> <p>Trump's investment was substantial enough for him to not trust Sexton, TU's President, to have signature authority for any of TU's bank accounts. Ex. D, DJT Tr. at 445:2-11.</p>
46. Defendant believed TU was providing a good program because he was informed about the many positive student reviews.	<ul style="list-style-type: none"> • Ex. 1, at 67:12-68: 16, 69:22-70:6; • Ex. 36. 	<p>Disputed.</p> <p>Trump was the lone star of the Main Promotional Video. He, and he alone, expressly represented that TU would have "professors and adjunct professors" that were "handpicked by me," and that TU would teach students better than the best business schools. See Ex. L, Main Promotional Video. Trump also reviewed and had approved all of TU's other mass-marketing materials, promising to teach <i>his</i> real estate secrets and techniques, featured combinations of <i>his</i> name, <i>his</i> likeness, <i>his</i> quotes, and/or <i>his</i> signature. See Ex. D, DJT Tr. at 280:5-16; Ex. F, DJT Tr. Ex. 511 at TU 25239; Ex. E, DJT Tr. Ex. 521; Ex. A, Sexton Tr. at 127:12-19. He chose to promote TU, to use these words, to make these representations, and he has admitted that he did so for the specific purpose of influencing students to enroll in TU. See Ex. D, DJT Tr. at 388:4-9, 391:17-392:7. Yet, he has admitted his representations were</p>

<u>Defendant’s Purported Undisputed “Fact”</u>	<u>Evidence</u>	<u>Plaintiff’s Response (including sample contrary evidence)</u> ^{1,2}
		<p>false: he did not handpick 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); he “wasn’t involved in the -- in the classes” (<i>id.</i> at 228:19-24); and he has no secret or unique real estate techniques, as “everything I know is in the books” that he has published and sold publicly. <i>Id.</i> at 320:17-18. Instructors and former TU employees have admitted that TU did not teach Trump’s techniques (<i>see, e.g.,</i> Ex. J, Martin Tr. at 58:10-24; Ex. R, Nicholas Tr. at 150:18-151:8). Even Trump’s own paid expert confirmed that Trump has no unique real estate techniques. <i>See</i> Ex. S, Wallace Tr. at 249:7-250:4.</p> <p>So Trump knew that he had deceptively influenced students to enroll, he had no idea what they were being “taught,” he knew there were issues regarding the legality of referring to TU as a university, that TU was paying out “millions” in refunds (Ex. D, DJT Tr. at 434:2-5), and that a reporter who had attended a full TU preview seminar (something Trump never did) concluded that it was a “two-hour infomercial for the workshop.” <i>See</i> http://www.latimes.com/business/la-fi-lazarus12dec12-column.html (last visited June 3, 2016). Under these circumstances, it is not credible to contend that Trump believed that the non-anonymous student reviews were reliable.</p>
<p>47. Defendant relied on TU’s hired counsel and compliance team</p>	<ul style="list-style-type: none"> • Ex. 3, at 173:6-175:23; • Ex. 2, at 91:14- 	<p>Exs. 2 and 3 are excerpts from the depositions of Sexton and Highbloom, and obviously they have no personal knowledge as to whether Trump relied on anyone, and, if so, whom.</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
<p>to review marketing materials for legal compliance</p>	<p>92:17; <ul style="list-style-type: none"> • Ex. 21 ¶; • Ex. 1, at 69:22-70:6. </p>	<p>Ex. 1 is an excerpt from Trump’s deposition, but it includes nothing supporting this assertion.</p> <p>Trump had final approval authority for TU’s marketing materials (Ex. D, DJT Tr. at 280:5-16; Ex. A, Sexton Tr. at 127:12-19; Ex. H, Bloom Tr. at 72:22-74:2), and in hundreds of pages of deposition testimony, he never once mentioned Peter Hoppenfeld. <i>See</i> Ex. W, word indices from DJT deposition transcripts.</p> <p>Moreover, Trump has repeatedly asserted the attorney-client privilege in this case (<i>see, e.g.</i>, Ex. X, Trump’s Privilege Log, dated June 22, 2015), but never a reliance on counsel/others defense (<i>see</i> Ex. Y, Trump’s Responses to Plaintiff’s First Set of Interrogatories, No. 15 (Trump’s interrogatory response regarding his good faith defense did <i>not</i> assert reliance on counsel/others for compliance)). Trump offers no evidence whatsoever that he fully disclosed to anyone that his marketing statements were false and misleadingly incomplete; that someone advised him that it was perfectly fine to continue making such false and misleadingly incomplete; or that he followed such advice in good-faith. That simply is not what happened, which is why Trump has never raised this defense. <i>Id.</i>; <i>see, e.g., Brandner</i>, 2016 WL 354866, at *2 (“To qualify for an advice-of-counsel instruction, a defendant must show that he made a full disclosure of all material facts to his attorney and that he then relied ‘in good faith on the specific course of conduct recommended by the attorney.’”) (citation omitted).</p>

<p><u>Defendant’s Purported Undisputed “Fact”</u></p>	<p><u>Evidence</u></p>	<p><u>Plaintiff’s Response (including sample contrary evidence)</u>^{1,2}</p>
		<p>Having repeatedly asserted the attorney-client privilege as to documents and testimony, and in light of his interrogatory response, it is far too late for Trump to raise a reliance-on-counsel defense. Fed. R. Civ. P. 37(c)(1). If the Court nevertheless allows him to do so, it should reopen discovery, so as to allow plaintiff to depose Trump and all other relevant witnesses, and to propound and obtain all relevant written discovery. <i>Chevron Corp.</i>, 974 F.2d at 1163 (assertion of reliance on counsel waives privilege as to all related evidence and information).</p> <p>No one other than Trump himself is responsible for the veracity of the marketing statements that he personally made and approved.</p>