SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Petitioner,

-against-

Index No. 451463/2013
IAS Part 55
Assigned to Justice Kern

THE TRUMP ENTREPRENEUR INITIATIVE LLC f/k/a TRUMP UNIVERSITY LLC, DJT ENTREPRENEUR MEMBER LLC f/k/a DJT UNIVERSITY MEMBER LLC, DJT ENTREPRENEUR MANAGING MEMBER LLC f/k/a DJT UNIVERSITY MANAGING MEMBER LLC, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DONALD J. TRUMP, and MICHAEL SEXTON,

Respondents.

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AFFIRMATION OF ASSISTANT ATTORNEY GENERAL TRISTAN C. SNELL IN FURTHER SUPPORT OF THE VERIFIED PETITION AND IN OPPOSITION TO RESPONDENTS' MOTIONS TO DISMISS, OR IN THE ALTERNATIVE, LEAVE TO FILE AN ANSWER

TRISTAN C. SNELL, an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General in the office of Eric T. Schneiderman, Attorney General of the State of New York. I make this reply affirmation (i) in opposition to respondents' motion to dismiss, (ii) in partial opposition to respondents' motion, in the alternative, for leave to file an answer and opposition papers and (iii) in further support of the Verified Petition and the relief sought therein.

2. I am familiar with the facts and circumstances of this proceeding. The facts set forth in this affirmation are based upon information contained in the investigative files of the Office of the Attorney General ("OAG").

INTRODUCTION

3. The Verified Petition alleges that respondents The Trump Entrepreneur Initiative LLC ("Trump University"), DJT Entrepreneur Member LLC, DJT Entrepreneur Managing Member LLC, The Trump Organization, Inc., Trump Organization LLC, Donald J. Trump, and Michael Sexton have engaged in repeated and persistent fraudulent, deceptive, and illegal conduct in connection with the operation of Trump University, an unlicensed educational institution, in violation of Executive Law § 63(12), General Business Law §§ 349 and 350, Education Law §§ 224, 5001-5010, and 16 C.F.R. § 429.

4. The Attorney General has submitted abundant evidence in support of the Verified Petition, including 28 sworn customer affidavits, 43 customer complaints submitted to either the OAG, other government agencies, or the Better Business Bureau ("BBB"), an affidavit from Carole Yates, the director of the Bureau of Proprietary School Supervision at the New York State Education Department ("NYSED"), sworn testimony of respondent and former Trump University President Michael Sexton and Trump University Controller Steven Matejek, Trump University advertisements and direct mail solicitations, transcripts of Trump University live seminars and excerpts from Trump University seminar presentations, the Trump University Playbook, and numerous additional documents produced by respondents, and third parties hired by respondents, in response to OAG subpoenas. The Attorney General has received an additional 52 affidavits and 43 complaints from former defrauded Trump University students since filing this proceeding.

5. The evidence shows that respondents operated an unlicensed, illegal educational institution from 2005 through 2011, intentionally defrauding and misleading over 5000 students nationwide, including over 600 New York residents, into paying as much as $35,000 each to participate in live seminars and mentorship programs with the false promise of learning Donald Trump's real estate investing techniques. The pattern of deceptions included false advertisements in newspapers and direct mail solicitations, styled as letters from Donald Trump, to prospective students both in New York and across the country claiming that the students would be taught by successful real estate "experts" "handpicked" by Donald Trump, as well as bait and switch tactics, and other misrepresentations and fraudulent practices. Students were lured at every step of the process by false promises, inducing them to purchase increasingly expensive seminars and programs. Students purchased the $1495 three-day program on the promise that they would learn everything they needed to know to be a successful real estate investor — and were later told by Trump instructors, consistent with instructions in the Trump University Playbook, that the three-day program was not enough and they needed to purchase expensive mentorships ranging from $10,000 to over $35,000. Respondents explicitly assured students they would recoup their investments in a matter of months and that respondents would provide mentoring for at least a year so that students would achieve these results. As the students' sworn affidavits document, respondents failed to provide the promised assistance, and students did not achieve anything close to the promised results. Through the use of the "Trump University" name and other indicia such as diploma-like certificates, Respondents deceived students into believing the school was chartered, licensed, and accredited and would provide the standard of teaching befitting a university. Respondents used the name "Trump University" until May 2010 despite lacking the charter necessary under New York law. Respondents never sought

or obtained a license to operate a school in New York, nor did they ever seek or obtain licenses for their teachers, certificates for their sales agents, or approval of their courses from NYSED, all of which were legally required under New York Education Law.

6. In the face of these fraudulent, misleading, deceptive and illegal practices, the Trump respondents[1] grandstand and baselessly accuse the Attorney General of filing this summary proceeding outside of the applicable statute of limitations for professional aggrandizement. These inflammatory and gratuitous attacks have no place in a motion to dismiss and deserve no response. They are brazen attempts to deflect attention from respondents' own practices, which harmed thousands of Trump University students.

7. Each of respondents' legal arguments in support of their motion to dismiss is without merit: this proceeding was filed within the statute of limitations, respondents are not entitled to an administrative hearing, and injunctive relief is both authorized by statute and necessary to protect consumers given Donald Trump's stated intention to restart Trump University. Respondents also request leave to file an answer and opposition to the Petition in the event their motion is denied. OAG opposes respondents' motion with respect to the fourth and fifth causes of action, the Education Law violations, because respondents admit all material facts leading to liability and there are no colorable issues in dispute. The court should thus make a summary determination in OAG's favor on these causes of action now.

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[1] "Trump respondents" refers to Donald J. Trump, The Trump Entrepreneur Initiative LLC f/k/a Trump University LLC, DJT Entrepreneur Member LLC f/k/a DJT University Member LLC, DJT Entrepreneur Managing Member LLC f/k/a DJT University Managing Member LLC, The Trump Organization, Inc. and Trump Organization LLC, who collectively filed a single motion to dismiss. Respondent Michael Sexton filed a separate motion to dismiss raising some, but not all, of the same arguments.

RESPONDENTS HAVE NO GROUNDS FOR A MOTION TO DISMISS

A Six-Year Limitation Period Applies to All of Petitioner's Claims Under Executive Law § 63(12)

8. Respondents have offered two legal theories with regard to statutes of limitation: (a) that any "statutory" cause of action is subject to the three-year limitation period of C.P.L.R. 214(2), and (b) that the Attorney General's Executive Law § 63(12) must plead the elements of common law fraud in order to be governed by a six-year limitation period, despite clear Court of Appeals precedents that have repeatedly rejected those views. (Memorandum of Law in Support of Trump Respondents' Motion to Dismiss ("Trump Mem.") at 2-3, 10-15.) As demonstrated fully in petitioner's Memorandum of Law in Further Support of the Petition and in Opposition to the Motion to Dismiss ("Pet. Mem. in Opp."), respondents' arguments for dismissal on statute of limitations grounds are entirely meritless.

9. First, binding precedents of the Court of Appeals and the First and Third Departments of the Appellate Division hold that the applicable limitation period for claims under Executive Law § 63(12) is six years under C.P.L.R. 213(1). (*See* Pet. Mem. in Opp. at 7-9.)

10. Second, although there is no requirement that the Attorney General plead common law fraud in a proceeding under § 63(12), the allegations of the Petition do in fact include all of the elements of common law fraud such that a six-year limitation period applies to petitioner's § 63(12) fraud claim even if one were to apply respondents' erroneous view of the law.

11. The Petition and supporting evidence plainly establish the elements of common law fraud, including intent to deceive, actual deception, and reliance. The Petition and Snell Affirmation contain myriad, detailed allegations that respondents engaged in deliberate, intentional fraudulent conduct that was designed to deceive consumers, that respondents knew or

should have known that they were misrepresenting the nature of Trump University and the services provided, and that consumers relied on and were in fact deceived by respondents' fraudulent conduct.

12. For example, the Petition alleges that "[t]hrough their deceptive and unlawful practices, respondents intentionally misled over 5000 individuals nationwide, including over 600 New Yorkers, into paying as much as $35,000 each to participate in live seminars and mentorship programs with the promise of learning Donald Trump's real estate investing techniques." (Pet. ¶ 4 (emphasis added); *see also* Snell Aff. ¶ 12.)

13. The Petition and supporting documentation show that respondents knowingly made multiple misrepresentations concerning nearly every aspect of Trump University. For example, although respondents knew that they were not legally permitted to use the name "Trump University," they continued to do so from 2005 through 2010 and "repeatedly deceived students into thinking that they were attending a legally chartered 'university.'" (Pet. ¶¶ 26, 141, 148; *see also* Snell Aff. ¶¶ 17, 26, 31.) Respondents repeatedly misrepresented, through advertisements and oral misrepresentations, that prospective students would be taught by successful real estate "experts" who were "handpicked" by Donald Trump. Donald Trump recorded an introductory video routinely shown to Trump University students in which he claimed he had "handpicked" all of the "professors" — and many of the instructors claimed that they themselves had been "handpicked" by Donald Trump — when, in fact, not a single one was handpicked by Donald Trump. (Pet. ¶¶ 2, 36-37, 39, 43, 44, 52-57, 93, 95, 98; *see also* Snell Aff. ¶¶ 12, 34, 44, 47-48, 117.) Respondents also engaged in "a methodical, systematic series of misrepresentations designed to convince students to sign up for" for respondents' paid seminars. (Pet. ¶ 47; *see also* Snell Aff. ¶ 40.) Respondents repeatedly and methodically misrepresented

that consumers would be taught Donald Trump's "personal strategies and techniques," and that the seminar materials and curricula were drawn from Donald Trump's own proprietary information — claims designed "to lure students with Donald Trump's fame and celebrity status" — when Donald Trump "never" reviewed Trump University's curricula or live seminar content, and the seminars were in fact created and developed by a third-party company that designs seminars and sales materials for motivational speakers and timeshare rental companies. (Pet. ¶¶ 60-64, 93, 95; *see also* Snell Aff. ¶¶ 55-61.)

14. Respondents also carried out a deliberate, methodically designed bait-and-switch, misrepresenting that students enrolling in Trump University's three-day seminar costing $1495 would teach students "everything you need to know" about investing in real estate and would "be the last real estate education you will ever need for the rest of your life." (Pet. ¶ 68; *see also* Snell Aff. ¶ 63.) Yet at the three-day seminars, Trump University's Playbook explicitly directed instructors to tell students the exact opposite: "We need longer than three days!" Instructors were also told not to "let [the students] think three days will be enough to make them successful" and that "[i]f all Trump U team members are following these procedures it will greatly improve our chances to sell elite packages. Even one coordinator giving them the impression three days is enough that can hurt sales." (Pet. ¶ 88; *see also* Pet. ¶¶ 48-49, 86-89; Snell Aff. ¶¶ 75-78.)

15. Instead, the three-day seminars contained numerous additional misrepresentations about Trump University's "Elite" programs, including, *inter alia*: (a) that students would recoup the cost of the courses in a few months, including further misrepresentations that the instructors would personally work with the students until they recouped their "investments" in the Trump Elite programs (Pet. ¶¶ 108-113; *see also* Snell Aff. ¶¶ 85-89, 97-98); (b) that students would receive "comprehensive one-on-one training during which students would have personal

assistance every step of the way until they executed their first real estate investment deals," when in reality the mentors routinely disappeared and failed even to return students' phone calls (Pet. ¶¶ 94-100; *see also* Snell Aff. ¶¶ 85-90); (c) that students should request increases in their credit limits purportedly to obtain additional capital for real estate transactions and property improvements, when the real reason was so that students could use the additional credit to purchase the expensive Trump Elite programs, even going so far as to provide scripts to students so they could deceive their credit card companies (Pet. ¶¶ 104-07; *see also* Snell Aff. ¶¶ 94-96); and (d) that students would have special access to "private" or "hard money" lenders, when no such access or financing ever materialized (Pet. ¶¶ 101-03; *see also* Snell Aff. ¶ 91). Moreover, respondents knew that students were not receiving the services promised but failed to fix the known problems with the mentorships, and respondents also knew that many instructors' and mentors' claimed qualifications were unverifiable, exaggerated, false, or highly questionable, yet retained the individuals as instructors and mentors anyway and touted them as experts and successful real estate investors. (Pet. ¶¶ 113, 115-20; *see also* Snell Aff. ¶¶ 101-04.)

16. The Petition also clearly alleges consumer reliance and injury. For example, "relying on these representations, individuals spent thousands of dollars of their savings or took on thousands of dollars in debt" to purchase Trump University programs. (Pet. ¶¶ 2, 111; *see also* Pet. ¶¶ 26 (students deceived by, and relied on, the deceptive use of the name "Trump University" to pay for Trump University programs); 102 (students relied on representations about access to finance to purchase Trump programs); 130 (students relied on explicit representations that they would make their money back in thirty or sixty days or on the first deal, costing some students their life savings or thousands in credit card debt); Snell Aff. ¶¶ 31, 92, 98, 110.)

This Proceeding is Timely Even Under a Three-Year Limitation Period

17. Even assuming that some or all of petitioner's claims are subject to a three-year limitation period,[2] this proceeding would still be timely. First, regardless of what limitation periods are applied to petitioner's claims, the limitation periods were tolled while respondents continued to violate New York law, which was up through at least September 28, 2010, well within even a three-year limitation period. (*See* Pet. Mem. in Opp. at 23-25.) Second, with respect to petitioner's cause of action for deceptive business practices under GBL § 349(b), that claim did not accrue until respondents made their last document production on May 11, 2012 in response to the investigatory subpoena served on them by OAG in May 2011, or in the alternative, after OAG and NYSED discussed this matter in March 2011, which began OAG's investigation. (*See* Pet. Mem. in Opp. at 25-28.) Third, respondents continued to engage in fraudulent and illegal conduct within three years of the commencement of this proceeding, including holding courses and enrolling more than 450 new students. (*See* Pet. Mem. in Opp. at 28-30.)

18. As to respondents' recurring and continuous violations, it is undisputed that respondents operated Trump University illegally without any of the licenses, charters, or certificates required by Education Law §§ 224 and 5001-5010. The school itself was unlicensed and unchartered, its teachers were unlicensed, and its sales agents were uncertified. Further, it is undisputed that respondents never received NYSED approval for any of its courses pursuant to Education Law § 5003(6)(b)(7).

19. There is also overwhelming evidence of respondents' continuous pattern of misrepresentations to each of its students regarding, *inter alia*, the nature of Trump University,

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[2] The parties agree that tolling agreements were in effect from May 31, 2013 to August 24, 2013, when the instant proceeding was commenced. Thus for the purpose of this Affirmation, May 31, 2010 will be referred to as the operative date in calculating any three-year limitation period.

Donald Trump's involvement with the school (including purportedly handpicking the instructors and mentors), the comprehensiveness of what would be taught in the three-day seminars, students' ability to recoup their Elite tuition payments within a few months, special access to financing, the duration and scope of the mentorships, the availability of the mentors during the mentorships, and the past investing success and expertise of the mentors. (*See, e.g.*, Pet. ¶¶ 47-131; Snell Aff. ¶¶ 42-104.)

20. Consequently, respondents committed a violation of New York law each time they solicited, enrolled, or taught a student, and each time they offered a course, as well as each time they subjected a student to the misrepresentations of their classes and sales pitches, or failed to deliver to a student what was promised. Respondents' continuous pattern of legal violations thus persisted until the date when Trump University finally stopped soliciting, enrolling, instructing, deceiving, or failing to deliver promised services to students.

21. Respondents' own documents demonstrate that students were still being enrolled in Trump University as late as September 28, 2010. First, enrollment data produced by Trump University shows enrollments up through September 28, 2010. (Ex. A (excerpt from Trump University spreadsheet showing enrollments from June 1, 2010 to September 28, 2010).)[3] Respondents' internal communications also show that Trump University continued to hold seminars and training programs throughout the summer and into the fall of 2010. (*See* Exs. B-E (e-mails among Trump University and Trump Organization employees, July through November 2010).) Moreover, Trump University's communications with NYSED during this same time period show that respondents continued to ignore NYSED's clear statements that Trump

[3] This spreadsheet was created directly from a spreadsheet produced by Trump University pursuant to OAG's subpoena, which contained data showing all of the enrollments in Trump University. OAG sorted this data by enrollment date, printed the data from June 1, 2010 to September 28, 2010 into a .pdf file, and redacted the students' names and personal contact information. The spreadsheet produced by Trump University is available upon request.

University was illegally operating without a license and that respondents repeatedly attempted to delay any meetings or discussions with NYSED regarding licensure — up until October 7, 2010, when Michael Sexton finally wrote Carole Yates at NYSED to inform her that respondents had "stopped marketing products and services" and that thus any discussion of compliance with New York law was "premature." (Yates Aff. (Snell Aff., Ex. C) ¶¶ 23-30; Snell Aff., Ex. G2 (e-mails between Sexton and Yates).) Accordingly it is clear that Trump University was operating — and thus continuing to violate all of the laws at issue in this case — until at least September 28, 2010, and thus any limitation period was tolled up until that date.

22. In addition, the Attorney General's claims for deceptive practices under GBL § 349(b) did not accrue until either May 11, 2012 when respondents made their last document production pursuant to the investigatory subpoena served on them in May 2011 or, in the alternative, in March 2011 when OAG began its investigation after discussions with NYSED. (*See* Pet. Mem. in Opp. at 28-30.)

23. The Attorney General began an investigation into respondents' practices after discussions between OAG attorneys and NYSED officials in March 2011 regarding potential misconduct by a number of proprietary schools, including Trump University.

24. The Attorney General, pursuant to his statutory authority under GBL § 349(f) and Executive Law § 63(12), served a subpoena duces tecum on respondents for documents related to their operation of Trump University on May 17, 2011. The subpoena directed production by May 31, 2011. Respondents began their document production in June 2011 and made sporadic productions in subsequent months. However, despite repeated efforts by OAG, respondents' production was still not complete as of May 2012. On May 5, 2012, OAG made a demand for certain outstanding documents, which were produced on May 11, 2012.

25. The Attorney General commenced this proceeding just little over a year after that last document production. However, the Attorney General was entitled under GBL § 349(b) to wait for respondents' last production to assess the evidence in its entirety before commencing this proceeding. (*See* Pet. Mem. in Opp. at 27-28.)

26. Even if a three-year limitation period were to be applied without any tolling and without regard to when petitioner's GBL § 349 accrued, the Petition cannot be dismissed. As described in detail above (*see supra* ¶ 21), there is clear and ample evidence that respondents were still engaging in repeated and persistent fraud and illegal conduct after May 31, 2010. Specifically, Trump University continued to offer educational programs and executed **455 new enrollments** between May 31, 2010 and September 28, 2010. (Ex. A (excerpt from Trump University spreadsheet showing enrollments from June 1, 2010 to September 28, 2010).)

The Attorney General Has Clear Jurisdiction to Bring this Enforcement Proceeding

27. Respondents' contentions that this proceeding must be dismissed because the Attorney General did not exhaust administrative remedies and that respondents are being denied due process of law are without any merit whatsoever.

28. As explained in Pet. Mem. in Opp. at 32-34, OAG has jurisdiction to bring a § 63(12) action for repeated or persistent fraud or illegality even where an administrative agency has statutory jurisdiction over a business' general activities. In addition, separate and apart from the Attorney General's § 63(12) authority, Education Law § 5003(5) explicitly authorizes the Attorney General to commence an action such as the one here upon his or her own initiative or upon request of the Commissioner of NYSED. NYSED referred this matter to the Attorney General in 2011 "for further investigation and appropriate action in accordance with Section 5003(5) of the New York State Education Law" after NYSED determined "there exist reasonable

grounds that Trump University LLC, also known as Trump Institute and Trump Entrepreneur Initiative is operating an unlicensed proprietary school in violation of Article 101 of the Education Law." (Ex. F.)

29. Further, the Education Law provides no support whatsoever for the Trump respondents' contention that respondents are entitled to an administrative hearing on the issues raised by this proceeding. The provisions of Education Law §§ 5003(2) and (3) governing disciplinary proceedings on which the Trump respondents rely apply only to schools that are "authorized to operate" under Article 101 of the Education Law. (*See* Pet. Mem. in Opp. at 34.) It is undisputed that Trump University was an unlicensed, and thus unauthorized, school. (Yates Aff. (Snell Aff., Ex. C) ¶¶ 32-27; Goldman Aff. ¶ 10-11, 13; Sexton Aff. ¶ 65.)

30. Moreover, not only was there no obligation on NYSED to first bring an administrative action here before the Attorney General could act, but respondents completely mischaracterize NYSED's actions in their motion papers. Nothing in the history of this matter indicates that NYSED was "satisf[ied]" with respondents' conduct or that it "showed no interest in the matter." (Goldman Aff. ¶ 9; Trump Mem. at 7.) To the contrary, NYSED had repeatedly told respondents that they were illegally using the term "University" and that they needed a license in order to operate in New York — and they had been assured by respondent Sexton in 2005 that respondents would relocate Trump University such that New York's licensure requirements would not apply.

31. The Trump respondents' inaccurate attempt to portray NYSED as unconcerned with respondents' law violations — thus excusing them from illegal misconduct for which they have no valid defense — is based in part upon an affidavit from Kathy Ahearn, Trump co-

counsel and former NYSED Counsel and Deputy Commissioner for Legal Affairs. For the reasons set forth below, the Ahearn affidavit should be disregarded in its entirety.

32. Ahearn avers that she "oversaw all of the legal work of SED, including enforcement actions against proprietary schools" and "served as the primary contact person between SED and OAG, including the prosecution of cases against proprietary schools." (Ahearn Aff. ¶ 3.) By her own admission, her oversight encompassed the Trump University matter. Indeed, although she neglects to mention it in her affidavit, Ahearn was copied on the May 27, 2005 letter from NYSED official Joseph Frey to Donald Trump informing Trump that use of the name "Trump University" violated the Education Law and asking him to discontinue use of the name and provide proof to NYSED that he had done so. (*See* Snell Aff., Ex. D1). Public Officers Law § 73(8) provides that

> no person who has served as a state officer or employee shall after the termination of such service or employment . . . receive compensation for any such services . . . in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

The combination of Ahearn's supervisory authority and her receipt of this letter raise serious and troubling questions as to whether the lifetime ban under Public Officers Law § 73(8) applies to Ahearn's legal representation of the Trump respondents. She may also be in the possession of client confidences obtained through her NYSED representation that would prohibit her from representing the Trump respondents here without informed consent from NYSED. *See* Rule of Professional Conduct 1.9.

33. Moreover, to the extent that Ahearn is acting as a fact witness by offering testimony concerning NYSED's practices and procedures based upon her personal experience as NYSED Counsel and Deputy Commissioner for Legal Affairs (*see, e.g.*, Ahearn Aff. ¶ 6 ("based

upon my past experience as General Counsel at SED, I cannot recall an enforcement action . . ."), ¶ 8 ("I cannot recall a single instance during my 16-year tenure. . ."), ¶ 10 ("in my experience . . .")), she is prohibited from offering expert testimony. Her affidavit is rife with inadmissible legal opinions and conclusions, including legal opinions relating to the scope of OAG's authority, which falls well outside whatever expertise she may possess with respect to NYSED. For example, she opines that OAG's action is barred by the applicable statute of limitations, that the OAG "usurped" the role of NYSED and the Commissioner, and denied respondents "due process." (Aff. ¶¶ 5, 17.) She also opines that respondents' violation of Education Law § 224 was "*de minimus.*" (*Id.* ¶ 9.) Expert witnesses, including affiant-attorneys, are prohibited from offering opinions as to legal conclusions, as it is the exclusive province of the court to interpret the law. (*See* Pet. Mem. in Opp. at 33 n.10.)

34. Furthermore, the Trump respondents' unfounded assertions that the Education Law violations were not substantial, and that NYSED "made the decision not to pursue these claims" and was "obviously able to satisfy themselves that there was no violation" (Goldman Aff. ¶ 9), are not only irrelevant as a matter of law but completely at odds with the facts. As set forth in the Affidavit of Carole Yates (Snell Aff., Ex. C), the Director of the Bureau of Proprietary School Supervision at NYSED, starting in 2005, NYSED repeatedly informed respondents, including Donald Trump, that respondents were illegally using the term "University" and operating an unlicensed school. (*Id.* ¶¶ 6-11, 15-30.) The sole reason that NYSED did not pursue the matter further between July 2005 and January 2009 was because Sexton represented to NYSED in June 2005 that the issues would be rectified. (*Id.* ¶¶ 10-12.) NYSED had no reason at that time to believe otherwise.

35. Similarly unfounded is respondents' attempt to minimize their illegal conduct. It is a class A misdemeanor under the Education Law to knowingly operate an unlicensed school. N.Y. Educ. Law § 5003(7)(b). It is a class B misdemeanor to knowingly violate any of the other provisions of Article 101, and any second offense within five years is punishable as a class A misdemeanor. N.Y. Educ. Law § 5003(7)(a). It is also a misdemeanor to use the name "university" without the proper charter. N.Y. Educ. Law §§ 224(4). The Education Law also provides an array of civil penalties and restitution to students for violations of Article 101. *See, e.g.*, N.Y. Educ. Law §§ 5003(6), 5004(5).

36. Far from establishing that NYSED regarded respondents' violations as *de minimus*, the real, documented history of this matter demonstrates that the violations were substantial and that respondents knowingly violated them after notifications from NYSED — and that they continued violating the Education Law even after assuring NYSED that they would cease doing so. In June 2005, Sexton communicated in a series of e-mails and telephone calls with Joseph Frey, then the Assistant Commissioner of the Office of Quality Assurance of the Office of Higher Education at NYSED. (*See* Yates Aff. (Snell Aff., Ex. C) ¶¶ 10-11; Snell Aff., Ex. D (emails between Frey and Sexton).) Frey told Sexton that Trump University would not be subject to the New York Education Law licensure requirement if it did not have a physical presence in New York State, predicated on two conditions: (a) Trump University needed to have its place of business and its corporate organization outside New York, and (b) it could not run live programs or other live training in or from New York. (*Id.* ¶ 10.) Sexton responded that Trump University would abide by those conditions by creating a new limited liability company in Delaware, "merging the NY LLC into the Delaware LLC," relocating to a new address outside

New York, and that Trump University would refrain from holding live programs in New York. (*Id.* ¶ 11.)

37. In 2009 NYSED learned that respondents did not abide by their promises, when NYSED became aware that Trump University was offering live instruction in New York. (*Id.* ¶ 14.) At that point, NYSED again approached Trump University regarding its lack of licensure and illegal use of the name "university." Two NYSED officials visited Trump University's office in Manhattan and spoke with Trump University's controller, Steven Matejek, and director of customer service, Brad Schneider, about these violations of the Education Law. (*Id.* ¶ 15.) NYSED subsequently had numerous telephone conversations and written correspondence with respondents, including a March 30, 2010, letter sent by Frey to Donald Trump to inform him that Trump University was illegally using the name "university" without a charter, in violation of New York Education Law § 224, and that Trump University needed to cease use of the "university" name immediately. Further, the letter again advised Trump to review NYSED's regulations regarding school licensure and asked him to state the company's intentions with regard to the licensure requirement and Education Law regulations within 30 days. (*Id.* ¶ 20; Snell Aff., Ex. F (letter from NYSED to Donald Trump, Mar. 30, 2010)). This letter to Donald Trump was copied to Erin O'Grady-Parent (then Erin O'Grady), at that time the Acting Counsel & Deputy Commissioner for Legal Affairs of NYSED and now the law partner of Trump co-counsel and former NYSED counsel Kathy Ahearn (and the individual who notarized the affidavit respondents have proffered from Ahearn). These potential conflicts raise obvious concerns.

38. After a series of telephone conversations between NYSED and The Trump Organization's assistant general counsel, George Sorial in 2010, regarding the March 30, 2010

letter, Trump University LLC finally changed its name to The Trump Entrepreneur Initiative LLC ("TEI"), on May 20, 2010. (*See id.* ¶ 22; Snell Aff., Ex. A1 (Certificate of Amendment).) Yet NYSED continued to inform Sexton that the school needed to abide by the licensure requirements of Article 101 of the Education Law in order to operate in New York and that TEI must cease all instruction and training in New York until it obtained a license from NYSED. (Yates Aff. (Snell Aff., Ex. C) ¶¶ 23-28; Snell Aff., Exs. G1-G2 (e-mails between NYSED and Sexton).) On October 7, 2010, Sexton finally informed Yates that TEI had stopped operations and that thus any license application was "premature." (Yates Aff. (Snell Aff., Ex. C) ¶ 30.)

39. In March 2011, as part of a broader discussion between officials at NYSED and attorneys at OAG about potential misconduct by proprietary schools in New York State, NYSED identified Trump University as a school that they reasonably believed was in violation of New York law. On July 12, 2011, NYSED referred this matter to the Attorney General "for further investigation and appropriate action in accordance with Section 5003(5) of the New York State Education Law" after NYSED made a determination that "there exist reasonable grounds that Trump University LLC, also known as Trump Institute and Trump Entrepreneur Initiative is operating an unlicensed proprietary school in violation of Article 101 of the Education Law." (*See* Ex. F.) Thus, contrary to the Trump respondents' assertions (Ahearn Aff. ¶ 10), NYSED's repeated actions to secure respondents' compliance with the Education Law and its referral of the matter to OAG shows that NYSED viewed the violations as anything but "minor."

PETITIONER IS ENTITLED TO A PERMANENT INJUNCTION

40. Although not properly raised in this motion to dismiss, the Trump respondents' claim that no injunctive relief is warranted because it ceased operations in 2010 must also be rejected. (*See* Pet. Mem. in Opp. at 35-38.) The voluntary discontinuance of fraudulent or

deceptive practices does not obviate the need for injunctive relief, as there is no assurance that the fraud, misconduct, and illegal activity alleged will not be renewed. Respondents continuing use of the Trump "University" name and its operation without a license for five years despite being warned repeatedly by NYSED that they were violating the law provides reason alone for the Court to grant a permanent injunction in this case. A permanent injunction is also particularly necessary here because Donald Trump has consistently and repeatedly stated that respondents have merely suspended the operations of Trump University or TEI "temporarily" and will restart it again:

- On August 26, 2013, during a live interview on MSNBC's *Morning Joe*, Donald Trump said the following:

  MSNBC: Why did you stop doing it?

  Trump: . . . the profits would have gone to charity and you know, we end up getting sued. I think it's very very sad.

  MSNBC: What happened to the school though, why is it . . .

  Trump: What we did is, we closed it temporarily until we get this worked out, because, you know, we have to get the approvals; and we closed the school, it's ready to go and ready to open — people want it to open . . .

  Morning Joe (MSNBC television broadcast Aug. 26, 2013) (emphasis added).[4]

- That same day, on Fox News's *Fox & Friends*, Donald Trump said:

  Fox News: Also, are you shutting down this University then?

  Trump: I'm temporarily, because you can't operate it, but when I got a letter I closed it down. Now it's not closed closed, but we would open it again . . .

  Fox & Friends (Fox News broadcast, Aug. 26, 2013) (emphasis added).

- On September 12, 2012, Donald Trump testified under oath in response to the question of whether Michael Sexton, Trump University's president, left Trump University voluntarily:

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[4] Video recordings of the live interviews are available upon request.

I would say we became more and more inactive, because of schedules -- my schedule in particular, I guess.

And we'll possibly start this up again in a heavy way. But yes, I would say the word would be -- he did leave voluntarily, yes.

(Ex. G (publicly available excerpts of Deposition of Donald J. Trump, Sr., *Makaeff v. Trump University*, No. 10-cv-940 (S.D. Cal. Sept. 12, 2012)) (emphasis added); *see also* Ex. H (May 19, 2011 *New York Times* article describing OAG's for-profit school investigation and quoting Trump and respondents' "executives" regarding the "overhauling of the curriculum" in preparation for future operations).)

PETITIONER SHOULD BE GRANTED SUMMARY DETERMINATION ON THE VIOLATIONS OF NEW YORK EDUCATION LAW BECAUSE THERE ARE NO MATERIAL FACTS IN DISPUTE AND NO AFFIRMATIVE DEFENSES

41. The Court should deny leave to file an answer with respect to petitioner's fourth and fifth causes of action — violations of Education Law §§ 224 and 5001-5010 — and grant summary determination in petitioner's favor because there are no factual issues in dispute that bear upon liability and no meritorious defenses. It is this simple: respondents were legally obligated to follow the Education Law and failed to do so. Respondents admit, and the evidence shows, they used the term "University" from at least 2005 through May 2010 without possessing the charter required under Education Law § 224 (Fourth Cause of Action). (*See* Goldman Aff. ¶ 10-11, 13; Sexton Aff. ¶ 65; Yates Aff. (Snell Aff., Ex. C) ¶ 22; Snell Aff., Ex. A1 (certificate of amendment for Trump University LLC).) Respondents also admit, and the evidence shows, that respondents lacked the necessary license to operate a private school under Education Law § 5001(1) (Fifth Cause of Action) at least through September 2010. (Goldman Aff. ¶ 10-11, 13; Sexton Aff. ¶ 65; Yates Aff. (Snell Aff., Ex. C) ¶¶ 32-37; Ex. A (excerpt from Trump University spreadsheet showing 455 student enrollments from June 1, 2010 to September 28, 2010); Exs. B-E (e-mails among employees of Trump University and The Trump Organization from July

through November 2010 reflecting courses held).) Nor did respondents ever seek or obtain the required individual licenses for Trump University's teachers under Education Law § 5002(6) or obtain the required certificates for Trump University's sales agents under Education Law § 5004(1). (Yates Aff. (Snell Aff., Ex. C) ¶¶ 33-34.)

42. Thus, while the Trump respondents spend a lot of time opining that NYSED somehow did not care or did not pursue these Education Law violations, even if that were the case (which it is not), it is not a defense to their failure to comply with the law. It is clear from OAG's voluminous evidence and from respondents' lengthy papers and multiple exhibits that there are no material facts in dispute and no meritorious defenses.

RESPONDENTS' STATEMENTS REGARDING THE STUDENT AFFIDAVITS AND COMPLAINTS DO NOT RAISE ISSUES OF MATERIAL FACT

43. While OAG does not oppose respondents' motion to answer the first, second, third, and sixth causes of action, respondents, despite their rhetoric, have not, and ultimately will be unable to, identify any material issues of fact. In particular, the Trump respondents' attempt to distort the affidavits and complaints from former Trump University students in order to suggest that these affidavits and complaints raise material issues of fact must fail.

44. The Trump respondents cherry-pick and paraphrase select sentences or phrases out of context from some of the 28 consumer affidavits included as exhibits to the Snell Affirmation. However, a full reading of those affidavits shows that the Trump respondents fail to rebut the facts sworn to by the students. In many cases, the Trump respondents isolate a single discrete phrase from the affiants' early experiences with Trump University to suggest that the students were fully satisfied with the Trump programs or speakers, when a complete reading of the affidavit shows they were misled and were ultimately dissatisfied.

45. For example, the Trump respondents point to the statement by affiant Nelly Cunningham that after Trump University instructor Gerald Martin completed his presentation she felt confident that she would become a more knowledgeable investor by the end of the program. (Trump Mem. at 41; Goldman Aff. ¶ 102.) What the Trump respondents conveniently ignore is what happened at the end of this $1495 program, when Cunningham was assigned to speak with a Trump University representative to discuss purchasing a further mentorship. After she explained her situation involving two problematic real estate investment properties she already owned, the representative had her speak with Gerald Martin. Martin promised to assign Stephen Gilpin as her mentor and assured her that her worries would be over soon. (Cunningham Aff. (Snell Aff., Ex. K6) ¶ 6.) Cunningham thus spent an additional $24,995, her entire savings, to purchase the mentorship with Gilpin. (*Id.*) Her Gilpin "mentorship" consisted of three telephone calls, including one in which he told her he could not assist her with her real estate problem, called her a name and made other disparaging comments about her situation. (*Id.* ¶ 7-8.) She "felt disrespected, demeaned, and heartbroken by Mr. Gilpin's comments," and that he was "unprofessional, unhelpful, and did not have the level of knowledge in the matter that I had expected given what Trump had said about him." (*Id.*) She did not receive help with her real estate investments nor learn "anything of application to other real estate transactions." (*Id.* ¶ 12.)

46. Similarly, the Trump respondents point to Frank Anderson's affidavit and paraphrase his statement that the "presentation sound[ed] engaging because of [the instructor's knowledge and charisma." (Anderson Aff. (Snell Aff., Ex. K1) ¶ 4; Trump Mem. at 40, first bullet point.) Yet the Trump respondents omit that Anderson was referring to Bill Cannon, the main speaker at the free seminar Anderson attended, and that Cannon later pressured Anderson

to sign up for a $2,995 guided bus tour that Cannon promised would teach Anderson, among other things, how to make profits doing real estate deals. (Anderson Aff. (Snell Aff., Ex. K1) ¶ 5.) When Anderson took the tour he found it a "waste of both time and money" and told the instructor how "disgusted [he] was with the entire program." (*Id.* ¶ 7, 11.) The Trump respondents do not dispute a single fact sworn to by Anderson in his affidavit; they simply choose to rely on the one statement by Anderson that they believe supports their position, conveniently ignoring everything else.

47. In another example, Trump points to the portion of Arlene Cohen's affidavit where she states that she felt "overwhelmed" by the sheer volume of information during the seminars, as if having a student be "overwhelmed" is a positive attribute of an educational program. (Cohen Aff. (Snell Aff., Ex. K5) ¶ 6; Trump. Mem. at 41, third bullet point.) But in fact, the full context of Cohen's testimony makes it clear that she was far from satisfied:

> I felt overwhelmed by the sheer volume of information that was tossed at me, and the lack of clarity. The impression I was given was that, without the assistance of a mentor, I would be unable to invest independently. It was not a course designed to prepare a student without any real estate experience to get started in real estate investment. . . . Furthermore, I realized that the speakers were discouraging questions from students who would challenge them, and were targeting the most seemingly vulnerable students to pitch their mentorship programs to. The entire three-day seminar felt like a sales pitch to pressure students into signing up for the Trump mentorship packages, which ranged anywhere from $10,000 to $35,000. . . . I am disappointed that the speakers at the initial free session said that we would learn everything we needed to get started in real estate investment at the three-day seminar, when in fact, we would not.

(Cohen Aff. (Snell Aff., Ex. K5) ¶¶ 6-7, 9.) Again, the Trump respondents do not dispute the material fact that Cohen purchased the $1495 sessions based on the false promise that she would learn everything she needed to start investing in real estate.

Dated: November 22, 2013
New York, New York

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