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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 TARLA MAKAEFF, et al. on Behalf of
16 Themselves and All Others Similarly
Situated,

17 Plaintiffs,

18 v.

19 TRUMP UNIVERSITY, LLC et al.,

20 Defendants.
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24
25
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28

Case No. 10-CV-0940-GPC(WVG)

**DEFENDANTS DONALD J.
TRUMP'S AND TRUMP
UNIVERSITY'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF
TARLA MAKAEFF'S MOTION
TO WITHDRAW**

**[DECLARATIONS OF DAVID L.
KIRMAN FILED
CONCURRENTLY HEREWITH]**

Hearing: March 11, 2016

Time: 1:30 p.m.

Courtroom: 2d

JUDGE: Hon. Gonzalo P. Curiel

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1 I. INTRODUCTION

2 After nearly six years of intensive litigation, well after the close of discovery,
 3 and in the midst of extensive trial preparation, Plaintiffs ask the Court not only to
 4 dismiss Tarla Makaeff as a named Plaintiff and lead class representative in this
 5 case, but also to allow her to renege on her sworn commitment to testify at trial.
 6 Make no mistake: this would eviscerate much of what has transpired in this case
 7 and would cause irremediable prejudice to defendants. Makaeff is *the* critical
 8 witness in this case—Plaintiffs deliberately, systematically, and successfully relied
 9 on her in every material respect in litigating this case:

- 10 • *The Complaint.* Plaintiffs featured Makaeff to allege key claims
 11 against Trump University (“TU”) and Donald J. Trump (collectively,
 12 “Defendants”).
- 13 • *Class Certification.* Plaintiffs relied heavily on Makaeff’s two
 14 declarations—including her sworn promise to be available to testify at
 15 trial—and other key evidence to persuade the Court to certify the class.
- 16 • *Summary Judgment.* Plaintiffs cited extensive Makaeff evidence to
 17 create disputes of material fact, which the Court relied upon to deny
 18 Defendants’ motion for summary judgment.
- 19 • *Decertification.* Plaintiffs cited Makaeff evidence on key issues to
 20 oppose Defendants’ motion for decertification on liability.

21 Makaeff’s central role in this litigation even extended beyond the courtroom
 22 and also included prosecuting Plaintiffs’ claims in the press. After filing this
 23 lawsuit, Makaeff embarked on a press tour to publicize her unproven allegations,
 24 conducting interviews with NBC, *Newsweek*, the *San Francisco Chronicle*, and the
 25 *New York Times*. [REDACTED]
 26 [REDACTED]

27 Now, after six years of using Makaeff to advance their positions in this case,
 28 Plaintiffs want to prevent Makaeff from being cross-examined by Defendants at

trial. This demand for immunity is unprincipled, unjustified, and would cripple Defendants' ability to defend this case. Makaeff's testimony, motives, and lack of credibility are all extremely damaging to Plaintiffs' case, and there is no basis whatsoever to insulate her from trial. If Makaeff is no longer willing to perform as class representative or attend trial, dismissal of this case is warranted.

II. FACTUAL BACKGROUND

A. TU's uniformly high approval rating reflected the quality of its programs.

Between 2005 and 2010, over 10,000 students attended TU events and seminars. Instructors, who were selected based on Mr. Trump's criteria and input, traveled to hotels across the country and taught real estate courses that incorporated Mr. Trump's case studies and philosophies. TU's organizational mission was:

[T]o provide educational programs and tools to help our clients achieve financial independence. Our success is measured by the results that our clients achieve applying what they have learned from us in the real world.

Dkt. 195-4, Ex. 83, at 456.

TU executed its mission to provide students with high-quality real estate knowledge, while at the same time emphasizing that each student's potential—and in turn, their success—would be achieved only through the student's diligence, dedication, and hard work. TU taught students these foundational principles, and the teachings were premised on Mr. Trump's own beliefs. Indeed, on the back cover of TU's book, *Trump 101*, Mr. Trump encouraged TU students:

I've known people who had fantastic ideas, but couldn't get them off the ground because they approached everything weakly. They thought that their ideas would somehow take off by themselves, or that just coming up with an idea was enough. Let me tell you something—it's not enough. It will never be enough. You have to put the idea into action. If you don't have the motivation, and enthusiasm, your great idea will simply sit on top of your desk or inside your head and go nowhere.

1 Kirman Decl. Ex. 1.¹

2 TU emphasized self-responsibility in its coursework. As one student
3 testified:

4 One of the things that was brought out in basically every seminar -- I
5 believe it was every seminar that we had -- is that not only did . . . the
6 instructor need[] to present the ideas, but the individuals needed to
7 actually act. So the word “act” was used many times. Now you’ve
8 learned. Now you need to act. You need to take action. You need to
9 take the next step to learn. The next step to learn is you have to
actually do it yourself. Just hearing about it is one thing, but you have
to be able to act to learn the rest.

10 Ex 2 at 102:23–103:16.

11 TU’s focus on student achievement earned it uniformly high approval
12 ratings. Makaeff was one of the many satisfied TU students, and she personally
13 attended TU classes, gave TU positive reviews, and even provided a videotaped
14 testimonial extolling TU’s merits. *See* Dkt. 4, Exs. C–F; Dkt. 128 ¶ 74.

15 **B. Makaeff gave TU high praise until she had financial incentives to**
16 **change her story.**

17 In August 2008, Makaeff attended one of TU’s three-day programs titled
18 “Fast Track to Foreclosure Workshop,” without availing herself of the free TU
19 90-minute preview. She split the \$1,495 fee for the three-day event with a friend
20 (Dwin Ngo), who also attended. There, Makaeff learned about the foreclosure
21 process, how to structure foreclosure and short-sale transactions, how to use
22 commercial financing, and how to improve her credit, among others. At the end of
23 the workshop, Makaeff expressed no dissatisfaction with the program. She made
24 no request for a refund. Rather, she signed up for the TU “Trump Gold Elite”
25 program at a cost of \$34,995 entitling her to attend additional workshops, receive
26 training publications, software, and other materials, and receive a three-day

27 ¹ Unless otherwise indicated, all references to “Ex.” refer to Exhibits attached to the
28 Kirman Declaration.

1 mentoring session in the field from experienced instructors. Makaeff accepted and
2 took advantage of every one of those benefits.

3 Indeed, Makaeff attended several additional TU courses and participated in
4 TU's in-field mentorship program, each time providing feedback exceeding her
5 rave reviews of the Fast Track to Foreclosure Workshop. For example:

- 6 • Makaeff rated her field mentorship "excellent" in every category and
7 called her experience: "Amazing," *see* Dkt. 4, Ex D;
- 8 • Makaeff rated the asset protection retreat with J.J. Childers as
9 "excellent" in all categories, noting that the only things she wanted in
10 addition was for TU to provide "more experience in the field," *see*
11 Dkt. 4, Ex E; and
- 12 • Makaeff rated TU's Creative Financing workshop "excellent" across
13 the board, Dkt. 4, Ex. F.

14 This was a consistent theme: while Makaeff was attending courses at TU,
15 she thought TU was "great" and was "taking [her] down a good path." Ex 3 at
16 408:5-13. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 Makaeff repeatedly asked for (and received) additional services from TU far
21 in excess of what she paid for and what TU was obligated to provide. Consistent
22 with TU's educational mission, it provided Makaeff additional support and training,
23 instructing her over and over again that she could achieve success only through
24 hard work and action. *See, e.g.*, Ex 5 (email from Makaeff's mentor stating: "When
25 you live your life in fea[r] it is not worth living at all. You go into Real Estate to
26 create wealth not to make a living. Jump in and do not look back.").

27 Despite her education, Makaeff failed to achieve success in real estate.
28 Discovery has confirmed this was due not to any failure by TU, but to her own lack

1 of effort. She simply did not put in the time, work, and perseverance necessary to
2 achieve success. Ex 6 at 82:16–23 (Makaeff’s mentor explaining that Makaeff “did
3 not put forth the steps to complete the tasks that were put out there and she did not
4 follow through and maintain her appointments and actually put the effort forth to do
5 what was put in front of her”). In fact, in the one real estate investment she made,
6 where she used her mother’s money to invest in a deal in Las Vegas, Makaeff
7 backed out of it and demanded her money back. Ex. 3 at 446:1–4, 535:15–536:23.
8 As Makaeff later learned, if she had put in the effort and stuck with the investment,
9 it would have yielded a \$35,000 profit. Ex. 7.

10 **C. Makaeff has been the face of this class action case from the start.**

11 Only after she extracted the full benefits of TU’s program for over a year did
12 Makaeff do an about-face and decide to pursue a class-action lawsuit hoping for a
13 full refund windfall and even an incentive award. Initially, she wrote complaint
14 letters to banking institutions and consumer protection agencies, claiming she
15 reluctantly purchased the Trump Gold Elite program because instructors
16 “guaranteed success” and used “high pressured sales techniques.” Directly
17 contradicting her many positive reviews, Makaeff now describes TU’s courses as
18 “infomercials” offering “little useful, and vague at best, information.” As Makaeff
19 was penning these complaints, she was shopping the case to plaintiffs’ class action
20 law firms. Ex. 8.

21 When the class action complaint in this case was filed on April 30, 2010, the
22 allegations closely mirrored Makaeff’s complaint letters. *See* Dkt. 1. On June 6,
23 2010, Plaintiffs filed their First Amended Complaint (“FAC”). Dkt. 10. Although
24 the FAC listed additional class representatives, Makaeff remained the central
25 figure. *See* Dkt. 10 at 7. Indeed, some allegations in the FAC expressly refer *only*
26 to “Plaintiff” or “Makaeff” to support the class-wide allegations. *See* Dkt. 10 at
27 17–18.

1 The Second Amended Complaint (“SAC”) filed on December 16, 2010 was
 2 no different: Makaeff remained the only class representative singled out in the
 3 complaint. *See* Dkt. 41 at 22. Plaintiffs subsequently filed the operative Third
 4 Amended Complaint on September 26, 2012, which Defendants did not challenge,
 5 based in part on allegations related to Makaeff.² Dkt. 128.

6 After filing suit, Makaeff embarked on a press tour to publicize her
 7 allegations, conducting interviews with multiple news organizations [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 **D. Other than Makaeff, Plaintiffs have played a game of musical**
 12 **chairs with their class representatives.**

13 While Makaeff remained the focus of this lawsuit, other class representatives
 14 entered and exited this case. In June 2010, Plaintiffs named four additional class
 15 representatives in their FAC: Brandon Keller, Ed Oberkrom, Patricia Murphy, and
 16 Sheri Winkelmann. *See* Dkt. 10. Plaintiffs changed their mind and dropped
 17 Winkelmann when they filed their SAC in December 2010. *See* Dkt. 41. Two
 18 years later, Plaintiffs filed their TAC, which dropped Murphy and added three new
 19 class representatives: Sonny Low, J.R. Everett, and John Brown. *See* Dkt. 128.
 20 Keller and Oberkrom were later dismissed after the Court granted in part Plaintiffs’
 21 motion for certification.

22 The only constant in this six-year-old case has been Makaeff, both in and out
 23 of court, frequently promoting her role as lead Plaintiff through numerous media
 24 outlets.³ [REDACTED]

25 ² Notably, Makaeff was also the only Plaintiff involved in TU’s counterclaim,
 26 which alleged causes of action based on defamation for the disparaging remarks
 27 Makaeff made publicly about Trump University. *See* Dkt. 4.

28 ³ *Trump Real Estate Courses Didn’t Deliver, Suit Says*, SF Gate, May 4, 2011,
<http://www.sfgate.com/politics/article/Trump-real-estate-courses-didn-t-deliver-suit-2372823.php>; *Buying a Trump Property, or So They Thought*, NY Times, May
 12, 2011, <http://www.nytimes.com/2011/05/13/nyregion/feeling-deceived-over->

1 [REDACTED]
 2 [REDACTED] Unsurprisingly,
 3 Defendants have allocated countless resources during discovery toward Makaeff
 4 and other class members whom Plaintiffs have since removed. For example,
 5 Defendants deposed Makaeff four times and Keller twice, exceeding the deposition
 6 resources used for the remaining class representatives combined.

7 **E. Plaintiffs have relied on Makaeff in key filings.**

8 The operative TAC contains numerous allegations that are specific to
 9 Makaeff and that the other class representatives did not provide. *See, e.g.*, TAC
 10 ¶¶ 26, 50, 62, 68–74, 173. Many of these allegations provided the foundation for
 11 issues that Plaintiffs have raised throughout this litigation. *See, e.g.*, TAC ¶ 70
 12 (insufficient mentoring issue: Makaeff alleges that her mentors would speak to her
 13 for “two to three minutes, offering no practical advice” and then “mostly
 14 disappeared”); ¶¶ 62, 73 (reliance issue: Makaeff was allegedly told by TU that
 15 “these deals are starting to POUR IN NOW”); ¶¶ 74, 173 (illegal practices issue:
 16 Makaeff alone alleges that she was approached by the District Attorney’s Office for
 17 “illegal” practices taught to her by TU).

18 Indeed, Makaeff’s factual allegations are by far the most robust of any class
 19 representative, which Plaintiffs then used to achieve and maintain certification and
 20 avoid dismissal. In their opposition to Defendants’ motion to dismiss, Plaintiffs
 21 asserted Makaeff’s standing to assert California statutory fraud claims against
 22 Defendants. *See* Dkt. 62 at 20. In seeking class certification, Plaintiffs submitted
 23 and cited to Makaeff’s two declarations throughout their motion, Dkt. 122-1 at 31,
 24 43, and reply, Dkt. 195 at 18, 19 n.12, 25, and this constituted important evidence
 25 on the issues of class representative typicality and adequacy. Of crucial

26
 27 *homes-that-were-trump-in-name-only.html?r=3&partner=rss&emc=rss; Lawsuit*
 28 *slams Donald Trump’s online business school as a ripoff*, NY Daily News, May 4,
 2010, <http://www.nydailynews.com/news/money/lawsuit-slams-donald-trump-online-business-school-riporff-article-1.446353>.

1 significance, Makaeff swore: **“I also understand that I may be called to testify at**
 2 **trial in this case. I am willing and able to fulfill all of my duties as a class**
 3 **representative.”** Dkt. 122–3, Ex. 6 at 2 (emphasis added).

4 In opposing summary judgment, Plaintiffs again relied heavily on Makaeff
 5 evidence (including her declarations submitted in support of class certification) in
 6 successfully opposing Defendants’ motion for summary judgment. *See, e.g.*, Dkt.
 7 386 at 17; 25 & nn.42, 45–46; 26 nn.48–49; 42–44. For example, in arguing the
 8 issues of causation and reliance, Plaintiffs cited evidence from Makaeff to argue:
 9 (1) Makaeff “said it was important to her to be a part of TU because it had Trump’s
 10 name and reputation behind it,” *id.* at 42; (2) “[a] material question of fact exists as
 11 to whether Makaeff viewed the Trump video during the Fulfillment,” *id.* at 42 n.61;
 12 (3) it was “important” to Makaeff that Mr. Trump “hand-picked” the “experts”
 13 teaching TU courses, *id.* at 43; and (4) “Makaeff . . . would not have purchased
 14 Trump programs had they known the truth,” *id.* at 44. The Court relied on these
 15 arguments and Makaeff-specific evidence in its order denying summary judgment
 16 to find that there was “a genuine dispute of material fact” regarding reliance “on
 17 core misrepresentations made by Mr. Trump.” *See* Dkt. 423 at 25–28.

18 Finally, in opposing decertification, Plaintiffs again cited extensively to
 19 Makaeff evidence. *See, e.g.*, Dkt. 405 at 21, 23. Plaintiffs used Makaeff to support
 20 their arguments that: (1) “Trump’s involvement with TU was the selling point,”
 21 (2) “very little” information was taught at TU fulfillment workshops, (3) mentors
 22 provided only generic information that students could have obtained from a
 23 bookstore, and (4) the information taught by TU was illegal “and exposed Makaeff
 24 to the risk of criminal prosecution.” *Id.* Based in part on this evidence, the Court
 25 denied Defendants’ motion to decertify the class on liability issues.

1 **III. ANALYSIS**

2 **A. Legal standard**

3 Although Plaintiffs concede that Rule 41(a)(2) of the Federal Rules of Civil
 4 Procedure governs whether the Court should permit Makaeff to withdraw as a class
 5 representative, *see* Dkt. 443-1 at 6, Plaintiffs fail to articulate the correct legal
 6 standard. Cherry-picking from *Lancaster v. Tilton*, 2007 WL 1807953, at *2 (N.D.
 7 Cal. June 21, 2007), Plaintiffs frame the legal standard for voluntary dismissal as a
 8 one-sided inquiry into the changed circumstances of the party seeking withdrawal,
 9 *see* Dkt. 443-1 at 5–6. That is not the law.⁴

10 As this Court observed in *Sherman v. Yahoo! Inc.*, “In resolving a motion
 11 under Rule 41(a)(2), the Court must make three separate determinations:
 12 (1) whether to allow dismissal; (2) whether the dismissal should be with or without
 13 prejudice; and (3) what terms and conditions, if any, should be imposed.” 2015
 14 WL 473270, at *2 (S.D. Cal. Feb. 5, 2015) (Curiel, J.). The purpose of Rule
 15 41(a)(2), this Court acknowledged, “is to permit a plaintiff to dismiss an action
 16 without prejudice *so long as the defendant will not be prejudiced, or unfairly*
 17 *affected by dismissal.*” *Id.* (quoting *Stevedoring Servs. of Am. v. Armilla Int’l, B.V.*,
 18 889 F.2d 919, 921 (9th Cir. 1989)) (emphasis added).

19
 20
 21
 22 ⁴ Plaintiffs’ own authority dispels their position. *See Lancaster*, 2007 WL
 23 1807953, at *2 (“[A] district court must not only consider the criteria of Rule 23(a)
 24 and (b) in light of factual and legal developments, but also whether the parties or
 25 the class would be unfairly prejudiced by a change in proceedings at that point.”
 26 (emphasis added) (internal quotation marks omitted)). The Ninth Circuit does, too.
 27 *See Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982)
 28 (“[T]he district court must consider the prejudice to the defendant when considering
 plaintiffs’ request for voluntary dismissal”); *see also In re Harcourt Brace*
Jovanovich, Inc. Sec. Litig., 838 F.Supp. 109, 115 (S.D.N.Y.1993) (denying request
 to allow withdrawal of named plaintiffs from class action suit where no new factual
 or legal developments were shown and where defendants had claimed the
 withdrawal would impair their defense).

B. Makaeff was pivotal to the Defendants' discovery strategy.

Makaeff's role as the lead class representative shaped Defendants' discovery and litigation strategy. Her removal would severely undermine much of the Defendants' substantial discovery efforts. Courts have deemed this sufficient to constitute legal prejudice under Rule 41(a)(2). *See Sherman*, 2015 WL 473270, at *4 ("The inability to conduct sufficient discovery for a defense can amount to legal prejudice."); *Opperman v. Path, Inc.*, 2015 U.S. Dist. LEXIS 171564, at *11 (N.D. Cal. Dec. 22, 2015) (same).

Defendants deposed Makaeff on four separate occasions, fully appreciating that this entire case could rise or fall based on Makaeff's testimony at trial on behalf of the class. Defendants formulated their deposition strategy in reliance on Makaeff's sworn representations that she would testify at trial, *see, e.g.*, Dkt. 122-3, Ex. 6, and undertook her deposition to elicit admissions and evidence to disprove Makaeff's claims and expose her lack of credibility. For example, during Makaeff's deposition:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- She admitted that her glowing video testimonial of TU was honest, explaining: "At the time, I was about to do, I believe, the Vegas house deal with Robert [Vargas], and I was excited. And so, that excitement came across in that video," Ex. 3 at 554:8–555:24;

- She contradicted her allegations that her mentors “disappeared” immediately after her in-field mentorship, testifying that she maintained email communications for over a month, Ex. 3 at 612:23–613:13.

To be sure, this discovery deposition is no proxy for presenting Makaeff’s testimony at trial, and surely her deposition would have been conducted differently had Makaeff not been the lead plaintiff who committed to testify at trial.

Furthermore, Defendants would have sought additional evidence from absent class members residing in California or otherwise within the subpoena power of the Court. Defendants would have focused greater discovery on Sonny Low, the other California class representative. Instead, Defendants spent minimal time conducting discovery related to Low and other class members. For example, Low’s deposition testimony spans 220 pages of transcript, while Makaeff’s required 900 pages.

With discovery closed for over fourteen months, dismissing Makaeff at this late stage would preclude Defendants from mounting a full and fair defense. *See Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) (“In this circuit, we have stated that a district court properly identified legal prejudice when the dismissal of a party would have rendered the remaining parties unable to conduct sufficient discovery to untangle complex . . . claims and adequately defend themselves against [the] charges[.]”).

C. Defendants formulated their trial strategy in reliance on Makaeff’s sworn promise to testify at trial.

Defendants’ defense at trial is centered on Makaeff. Defendants’ recent pretrial disclosure filings make this abundantly clear. For example, in addition to calling Makaeff as a key defense witness, Defendants anticipate seeking a court order to compel two witnesses (Walter Grieves and Dwin Ngo) (1) who have intimate knowledge of Makaeff’s experience at TU, and (2) who—unlike many of the witnesses in this case—are believed to be within the subpoena power of the

1 Court. Defendants expect Grieves and Ngo to testify about Makaeff's positive
 2 experience with TU as well as her pattern of starting but failing to complete
 3 seminar programs.

4 In sum, Makaeff is not just a key witness, she has been an indispensable
 5 party to this litigation since the outset. Makaeff's participation in this case,
 6 particularly as a live trial witness, is essential to the trial strategy and defense
 7 Defendants have been developing for almost six years. Courts have regularly
 8 denied substitution of class representatives where, as here, allowing substitution
 9 would prejudice defendants' ability to prepare their defense. *See, e.g., Soto v.*
 10 *Castlerock Farming & Transp., Inc.*, 2011 U.S. Dist. LEXIS 87680, at *19 (E.D.
 11 Cal. Aug. 8, 2011) ("[A]llowing the naming of a new class representative would
 12 unduly prejudice Defendant, because Defendant has been preparing arguments and
 13 defenses based upon the identity of the class representatives who have been named
 14 since 2009."); *In re Flash Memory Antitrust Litig.*, 2010 U.S. Dist. LEXIS 59491,
 15 at *74 (N.D. Cal. June 9, 2010) (defendants were entitled to prepare their defense
 16 "based on the identities of the class representatives identified in the pleadings"); *see*
 17 *also Osakan v. Apple Am. Grp.*, 2010 U.S. Dist. LEXIS 53830, at *13–14 (N.D.
 18 Cal. May 5, 2010) (denying motion to amend because there was undue prejudice in
 19 the "proposed joinder of four new class representatives [because]
 20 Defendants . . . have been preparing their defense based on the identity of the class
 21 representative . . . identified in the original complaint as well as the amended
 22 complaint").

23 **D. Plaintiffs failed to provide any justifiable basis for their untimely**
 24 **request seeking Makaeff's withdrawal.**

25 Plaintiffs assert that Makaeff should be dismissed from this case and from
 26 any obligation to testify at trial because she has "endured health problems, family
 27 loss, and financial troubles in the years since this case began." Dkt. 443-1 at 3.
 28 Makaeff also argues that her dismissal is warranted because "no one could have

1 anticipated that [Mr. Trump] would become a viable presidential candidate and a
2 24/7 media obsession as this case neared trial.” *Id.*

3 None of these excuses is a valid ground for Makaeff’s withdrawal, let alone
4 her desire not to appear at trial. Nor are they true. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 After six years, Makaeff has few remaining duties as a lead class
18 representative; her only obligation of consequence is to appear at trial. Makaeff
19 brought this lawsuit, allowed herself to become the public poster child for it, and
20 should be required to finish what she started and keep her sworn promises to the
21 class, the Defendants, and the Court to testify at trial.

22 Litigation is hard. Witnesses are compelled all the time to testify in criminal
23 and civil trials across the country, whether young or old, rich or poor, healthy or ill.
24 This duty to participate in the court process is necessary to assure the reliability and
25 integrity of our justice system. If third-party witnesses who have no stake in the
26 outcome of litigation can be—and are regularly—ordered to provide testimony at
27 trial, certainly the lead class representative who actively sought out this lawsuit
28 should not be permitted to disavow her commitment to testify, particularly in view

1 of her wholly inadequate reasons.⁵

2 Plaintiffs' unjustified delay in filing this motion is a well-recognized ground
3 for denying Plaintiffs' motion. *See, e.g., Perdum v. Wells Fargo Bank, N.A.*, 2015
4 U.S. Dist. LEXIS 122307, at *3 (N.D. Cal. Sept. 14, 2015) ("When determining
5 prejudice, a district court may consider such factors as the stage of litigation and the
6 moving party's delay in requesting voluntary dismissal . . ."); *see also Cent. Mont.*
7 *Rail v. BNSF Ry. Co.*, 422 F. App'x 636, 638 (9th Cir. 2011) (upholding district
8 court's consideration of delay in denying motion for voluntary dismissal); *In re*
9 *Flash Memory Antitrust Litig.*, 2010 U.S. Dist. LEXIS 66466, at *35–36 (N.D. Cal.
10 June 9, 2010) (denying leave to amend and finding prejudice and undue delay in
11 seeking to substitute new class representative thirty months after commencing suit
12 and eighteen months after an amended complaint).⁶

13 ⁵ *Cf. Schnall v. Annuity & Life Re (Holdings), Ltd.*, 2007 U.S. Dist. LEXIS 74918,
14 at *7–9 (D. Conn. Oct. 5, 2007) ("Although it is certainly within the lead plaintiffs'
15 discretion to propose their own withdrawal and substitution should it be discovered
16 that they may no longer adequately represent the interests of the purported plaintiff
17 class, here, Midstream has offered no justification for its withdrawal at this late
stage of the litigation other than its desire to avoid complying with outstanding
discovery. Absent more, and in light of Defendant's objection to the withdrawal,
this court cannot grant Midstream's request." (internal citations and quotation
marks omitted)).

18 ⁶ Moreover, courts in other circuits have routinely rejected motions under Rule
19 41(a)(2) either for undue delay or for bringing the motions too late in the course of
20 litigation. *See, e.g., Davis v. Huskipower Outdoor Equip. Corp.*, 936 F.2d 193, 199
21 (5th Cir. 1991); ("When a plaintiff fails to seek dismissal until a late stage of trial,
after the defendant has exerted significant time and effort, then a court may, in its
22 discretion, refuse to grant a voluntary dismissal."); *Zagano v. Fordham Univ.*, 900
23 F.2d 12, 14 (2d Cir. 1990) ("Under any test, the motion was made far too late. The
action had been pending for over four years, during which it was contested
24 vigorously, if sporadically, and extensive discovery had taken place."); *Robles v.*
Atl. Sounding Co., 77 F. App'x 274, 275 (5th Cir. 2003) ("[F]iling a motion for
25 voluntary dismissal at a late stage in the litigation can be grounds for denying the
motion."); *Lesti v. Wells Fargo Bank NA*, 2014 U.S. Dist. LEXIS 27360, at *6–7
26 (M.D. Fla. Mar. 4, 2014) (finding denial of motion to substitute class representative
appropriate when motion was filed after "an Answer and Motion for Summary
27 Judgment were filed" and "litigation [had] been ongoing for several years");
Hancock v. Chi. Title Ins. Co., 2010 U.S. Dist. LEXIS 102773, at *6–7 (N.D. Tex.
28 Sept. 28, 2010) ("[F]iling a motion for voluntary dismissal at a late stage in the
litigation can be grounds for denial."); *In re Vitamins Antitrust Litig.*, 198 F.R.D. at
305 ("Most denials of voluntary dismissals are justified by the fact that defendants
had already filed motions for summary judgment or that the parties were on the eve
of trial."); *cf. Buller v. Owner Operator Indep. Driver Risk Retention Grp., Inc.*,

1 **E. Plaintiffs' motion should be denied because it was brought in bad**
 2 **faith.**

3 Plaintiffs' refusal to provide either justification for or timely notice of
 4 Makaeff's desire to withdraw evidences bad faith. From the outset, this case has
 5 been a moving target. There has been a revolving door of class representatives.
 6 Each iteration of the complaint has produced new class representatives, requiring
 7 Defendants each time to shift their analysis and adapt their strategy to whomever
 8 Plaintiffs wish to name at that time. This gamesmanship is improper, and should
 9 not be reinforced and remedied by allowing Makaeff to withdraw and depriving
 10 Defendants of an integral part of their defense.

11 As this Court has ruled in the past, such "vexatious tactics" and other
 12 evidence of bad faith are reason alone to deny a motion under Rule 41(a)(2). *See*
 13 *Sherman*, 2015 WL 473270, at *3 (Curiel, J.) ("Ninth Circuit caselaw intimates
 14 that a district court may refuse to grant dismissal under Rule 41(a)(2) when
 15 exceptional circumstances suggest bad faith and/or vexatious tactics on the part of
 16 the plaintiff, and that the defendant may suffer the "legal prejudice" of never having
 17 claims resolved.'" (quoting *Manuel v. Shipyard Holdings*, 2001 U.S. Dist. LEXIS
 18 18097 (N.D. Cal. Nov. 5, 2001))); *accord In re Exxon Valdez*, 102 F.3d 429, 432
 19 (9th Cir. 1996) (affirming denial of Rule 41(a)(2) and Rule 42(a)(2) motions
 20 because, among other reasons, the court considered them to be "thinly-veiled
 21 attempts to avoid discovery" where there had been total refusal to provide
 22 discovery); *In re Urethane Antitrust Litig.*, 2006 U.S. Dist. LEXIS 38503, at *19
 23 (D. Kan. June 9, 2006) ("The court may allow a plaintiff to withdraw as a class
 24 representative when the withdrawal *is sought in good faith* and the withdrawal

25
 26 461 F. Supp. 2d 757 (S.D. Ill. 2006) (finding dismissal appropriate because,
 27 "[a]lthough this case has been pending in this Court since March 2005, it is not
 28 close to trial and procedurally is not at an advanced stage; in fact, most of the
 litigation in this case to date has been about the threshold issue of subject matter
 jurisdiction").

would not prejudice the defendant's ability to defend itself, including the ability to conduct sufficient discovery.” (emphasis added)); *see also* *Wilkinson v. Greater Dayton Reg'l Transit Auth.*, 2013 U.S. Dist. LEXIS 164382, at *5 (S.D. Ohio Dec. 10, 2013) (holding that court approval was not yet required to replace class representatives (because no class had been certified) but noting that “Plaintiffs’ Motion to Dismiss is more akin to a tactical withdrawal of Gray and Mitchell, rather than a Rule 41(a)(2) dismissal of them as named plaintiffs/putative class representatives,” and that “[p]erhaps Plaintiffs’ counsel believes that by dropping the unenthusiastic Gray and Mitchell as putative class representatives, Plaintiffs’ pending Amended Motion for Class Certification would be strengthened by leaving only enthusiastic putative class representatives.”).

F. Key motions may have been decided differently without Makaeff as a class representative.

Makaeff’s dismissal will cause Defendants incurable prejudice for the additional reason that Defendants would have developed alternative legal arguments had Makaeff not been involved in this litigation. Stripping Plaintiffs’ complaint of all its Makaeff-related allegations a completely different case. Doing so, for example, eviscerates Plaintiffs’ allegations concerning TU’s “constant up-sell pressure.” *See* Dkt. 128 at 26. Indeed, the TAC contains specific allegations stating:

Plaintiff Makaeff and the other students in her class who signed up for the \$34,995 seminar were told that deals would now be coming their way via email and that “these deals are starting to POUR IN NOW.” However, few, if any deals came in, and those that did provided only minimal positive cash flow, generally not worth enough to make the deal worthwhile, and certainly not the “tens of thousands of dollars per month” of opportunity promised by Trump University.

Id. If removed, Plaintiffs are left with nothing more than a conclusory allegation that “there was still constant up-sell pressure” during the Trump Gold Program. Plaintiffs’ contention that TU instructed its students to engage in illegal practices—

1 such as allegedly instructing TU students to use bandit signs in California—would
 2 likewise be completely wiped out. *See* Dkt. 128 at 71.

3 **G. If Makaeff is dismissed from this action, dismissal is warranted.**

4 If Makaeff is allowed to withdraw, dismissal of this six-year-old case is
 5 warranted. *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir.
 6 2010) (“[T]he inherent powers permit a district court to go as far as to dismiss
 7 entire actions to rein in abusive conduct”). Defendants have been defending this
 8 case for years and should not be required to defend what amounts to a new case.
 9 There is no principled way to mitigate prejudice related to Makaeff’s withdrawal
 10 because she is so integrally embedded in this case. Further, if the Court permits
 11 Makaeff’s dismissal, Defendants must be awarded all costs related to litigating this
 12 case against Makaeff, including vacating the anti-SLAPP award of attorneys’ fees
 13 and costs and reimbursement of Defendants’ costs associated with litigating the
 14 counterclaim. *See Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145
 15 (9th Cir. 1982) (if the district court does not deny request for dismissal, it may
 16 “address[] and dispos[e] of the issue of possible prejudice by awarding costs to
 17 defendant upon dismissal”); *Sherman*, 2015 WL 473270, at *4 (Curiel, J.) (quoting
 18 *Westlands Water Dist.*, 100 F.3d at 97) (“[T]he defendants’ interests can be
 19 protected by conditioning the dismissal without prejudice upon the payment of
 20 appropriate costs and attorney fees.”). To the extent the Court permits Makaeff’s
 21 dismissal, Defendants request supplemental briefing to account for the multitude of
 22 unnecessary expenses dedicated to conducting discovery and litigating this case in
 23 reliance on Makaeff’s involvement. *See In re Vitamins Antitrust Litig.*, 198 F.R.D.
 24 296, 304 (D.D.C. 2000) (“to the extent that defendants can show unnecessary
 25 expenses, the proper remedy for such wasted expenditures would be reimbursement
 26 of costs”); *In re Currency Conversion Fee Antitrust Litig.*, 2004 WL 2453927, at *2
 27 n.4 (S.D.N.Y. 2004) (same).

1 **H. The Court must deny Makaeff's request for an unconstitutional**
 2 **prior restraint.**

3 Plaintiffs ask the Court to enter an order preventing Mr. Trump “from using
 4 [Makaeff’s] withdrawal as a basis for any claim of attorneys’ fees or costs,
 5 malicious prosecution, abuse of process, bad faith, or the like, against
 6 plaintiff/counter-defendant or her counsel.” Dkt. 443-1 at 11. Apparently
 7 concerned about their legal exposure, Plaintiffs wish to be immunized from legal
 8 actions against Makaeff or her law firms.

9 Plaintiffs fail to cite any authority to support their request for a facially
 10 unconstitutional order. This is not surprising since their proposed order is an
 11 impermissible—and unconstitutional—prior restraint. *See Logan v. Zimmerman*
 12 *Brush Co.*, 455 U.S. 422, 429 (1982) (“Due Process Clauses protect civil litigants
 13 who seek recourse in the courts, either as defendants hoping to protect their
 14 property or as plaintiffs attempting to redress grievances.”); *Molski v. Evergreen*
 15 *Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (“pre-filing orders are an
 16 extreme remedy that should rarely be used” because such orders “can tread on a
 17 litigant’s due process right of access to the courts”); *see also Cromer v. Kraft Foods*
 18 *N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004) (“[T]he Supreme Court has
 19 explained that the particular constitutional protection afforded by access to the
 20 courts is ‘the right conservative of all other rights, and lies at the foundation of
 21 orderly government.’” (quoting *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S.
 22 142, 148 (1907))). The Court should decline Plaintiffs’ invitation to impose an
 23 unconstitutional prior restraint and make clear that Defendants to reserve all rights
 24 to redress any grievances.

25 **I. Final judgment is not appropriate.**

26 The Court should deny Plaintiffs’ request for final judgment under Federal
 27 Rule of Civil Procedure 54(b). Under Rule 54(b), “[w]hen an action presents more
 28 than one claim for relief . . . the court may direct entry of a final judgment as to one

1 or more, but fewer than all, claims or parties only if the court expressly determines
 2 that there is no just reason for delay.” Fed. R. Civ. P. 54(b). A judgment is final
 3 “in the sense that it is a decision upon a cognizable claim for relief, and it must be
 4 ‘final’ in the sense that it is ‘an ultimate disposition of an individual claim entered
 5 in the course of a multiple claims action.’” *Curtiss-Wright Corp. v. Gen. Elec. Co.*,
 6 446 U.S. 1, 7 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436
 7 (1956)). A final judgment “ends the litigation on the merits and leaves nothing for
 8 the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229,
 9 233 (1945).

10 Plaintiffs’ motion requests entry of a final judgment that is conditioned as
 11 follows: (1) withdrawing Makaeff from this case without prejudice as to her rights
 12 as an absent Class member but with prejudice with respect to the individual claims
 13 she asserted against defendants;⁷ (2) dismissing TU’s defamation counterclaim with
 14 prejudice; and (3) commanding the payment of the Anti-SLAPP fees awarded to
 15 Makaeff. The Court should deny each of Plaintiffs’ requests for a number of
 16 reasons.

17 If the Court denies Makaeff’s motion to withdraw, there is no reason to
 18 further consider this request. Even if granted, the Court should deny Makaeff’s
 19 request to enter final judgment on her individual claims because they overlap with
 20 factual issues related to the class-wide claims. *See Wood v. GCC Bend, LLC*, 422
 21 F.3d, 873, 882 (9th Cir. 2005) (“[T]he guiding principle is that ‘[a] similarity of
 22 legal or factual issues will weigh heavily against entry of judgment under [Rule
 23 54(b)].’”). Indeed, Makaeff’s common law claims present the same factual issues

24
 25 ⁷ On March 16, 2015, the Court granted the parties’ joint motion to dismiss
 26 Makaeff’s non-certified individual claims for: (1) breach of contract, (2) breach of
 27 the implied covenant of good faith and fair dealing, (3) money had and received,
 28 (4) negligent misrepresentation, (5) fraud, (6) false promise, and (7) unjust
 enrichment. (Dkt. No. 394.) Although Plaintiffs do not identify which “individual
 claims” they are referring to in seeking Rule 54(b) certification, (Dkt. 443-1 at 11),
 Defendants assume Plaintiffs are referring to these claims.

1 as the class claims for consumer fraud. *See, e.g.*, TAC ¶¶ 149–54 (breach of
 2 contract claim based on sole allegations that TU did not provide “the promised
 3 products and services” in TU seminars and programs); ¶¶ 155–61 (breach of
 4 implied covenant of good faith and fair dealing claim alleges that TU
 5 “misrepresent[ed] to Plaintiffs and the Class the true nature of the Seminars as
 6 alleged more fully elsewhere in the Complaint”); ¶¶ 162–64 (money had and
 7 received claim based on allegation that defendants have improperly received money
 8 “as a result of the conduct alleged above”); ¶¶ 165–83 (negligent misrepresentation
 9 claim identifies alleged misrepresentations made “in written materials and scripted
 10 sales pitches by instructors” of TU that include the core misrepresentations that the
 11 Court has identified in the class consumer fraud claims); ¶¶ 184–92 (fraud claim
 12 based on the same alleged misrepresentations by TU); ¶¶ 193–99 (false promise
 13 claim based on same alleged promises made by TU instructors); ¶¶ 230–33 (unjust
 14 enrichment claim asserts that, “[a]s a result of the conduct describe above,
 15 Defendants have been, and will continue to be, unjustly enriched at the expense of
 16 Plaintiffs and the Class”). Given that Plaintiffs have not asserted any pressing need
 17 for entering a final judgment as to Plaintiffs’ individual claims, the Court should
 18 deny the request. *See Wood*, 422 F.3d at 880 (reversing certification of plaintiff’s
 19 claim under Rule 54(b) where plaintiff’s “legal right to relief stem[med] largely
 20 from the same set of facts and would give rise to successive appeals that would turn
 21 largely on identical, and interrelated, facts”).

22 Second, as Defendants note above, to the extent the Court grants Makaeff’s
 23 request for dismissal, there is just reason to delay final entry of judgment related to
 24 TU’s counterclaim and Makaeff’s Anti-SLAPP judgment because TU will be
 25 entitled to an offset of costs related to unnecessary expenses litigating this case
 26 against Makaeff. *See In re Vitamins Antitrust Litig.*, 198 F.R.D. at 304.
 27 Regardless, the Court should deny Plaintiffs’ request for final judgment because
 28 they have failed to identify any “pressing needs” for early resolution of the

1 counterclaim. Despite Plaintiffs’ reliance on a footnote noting that the “issuance of
 2 a Rule 54(b) order is a fairly routine act that is reversed only in the rarest
 3 instances,” *James v. Price Stern Sloan*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002), it
 4 is well established in the Ninth Circuit that “[j]udgments under Rule 54(b) must be
 5 reserved for the unusual case in which the costs and risks of multiplying the number
 6 of proceedings and of overcrowding the appellate docket are outbalanced by
 7 pressing needs of the litigants for an early and separate judgment as to some claims
 8 or parties,”” *Becker v. Wells Fargo Bank, NA*, 2012 U.S. Dist. LEXIS 91480, at *6
 9 (E.D. Cal. June 29, 2012) (quoting *Morrison-Knudsen*, 655 F.2d 962, 965 (9th Cir.
 10 1981)); accord *United States v. Elliott*, 2014 U.S. Dist. LEXIS 132942, at *4 (C.D.
 11 Cal. Sept. 3, 2014) (same); *Garcia v. Smith*, 2014 U.S. Dist. LEXIS 5921, at *8–9
 12 (S.D. Cal. Jan. 16, 2014) (same); *Hamilton v. Rodriguez*, 2013 U.S. Dist. LEXIS
 13 107733, at *2 (N.D. Cal. July 31, 2013).

14 Lastly, entry of final judgment under Rule 54(b) would be highly disruptive
 15 to Defendants in the impending trial in *Makaeff* and upcoming deadline for filing
 16 dispositive motions in *Cohen*. Plaintiffs entirely fail to justify why the Defendants
 17 should be forced to litigate both cases while balancing piecemeal entry of judgment
 18 in this significant case. See *Impact Fin. Servs., LLC v. Six400 Check Solutions,*
 19 *LLC*, 2011 U.S. Dist. LEXIS 39738, at *3–4 (D. Ariz. Apr. 1, 2011) (“Moreover,
 20 the individual defendants are members of Six400 and trial is scheduled to occur in
 21 about five months. . . . Any hardship to the individual defendants caused by their
 22 having to wait is outweighed by the burden of piecemeal appeals and motions for
 23 attorneys’ fees. We, therefore, exercise our discretion and deny the motion for
 24 entry of judgment under Rule 54(b).”).

1 **IV. CONCLUSION**

2 Makaeff's motion to withdraw should be denied in its entirety.

3 Dated: February 26, 2016

4 O'MELVENY & MYERS LLP
5 DANIEL M. PETROCELLI
6 DAVID L. KIRMAN

7 By: /s/Daniel M. Petrocelli
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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 TARLA MAKAEFF et al., on
Behalf of Themselves and All Others
17 Similarly Situated,

18 Plaintiffs,

19 v.

20 TRUMP UNIVERSITY, LLC et al.,
21 Defendants.
22

Case No. 10-CV-0940-GPC(WVG)

**DECLARATION OF DAVID L.
KIRMAN IN SUPPORT OF
DEFENDANTS DONALD J.
TRUMP'S AND TRUMP
UNIVERSITY'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO PLAINTIFF
TARLA MAKAEFF'S MOTION TO
WITHDRAW**

DECLARATION OF DAVID L. KIRMAN

I, David L. Kirman, declare as follows:

1. I am a partner at the firm of O'Melveny & Myers, LLP, and counsel of record for defendants Donald J. Trump and Trump University (collectively, "Defendants") in the above-captioned action. I have personal knowledge of the facts set forth below and, if called to testify to them, could and would do so competently.

2. I submit this declaration in support of Defendants' Memorandum of Points and Authorities in Opposition to Plaintiff Tarla Makaeff's Motion to Withdraw.

3. Attached to this Declaration are true and correct copies of the following deposition excerpts and documents:

Exhibit	Description	Page
1	Back cover to book "Trump 101: The Way to Success," by Donald Trump	3 - 5
2	Excerpts from the transcript of the deposition of Paul Canup, taken on November 10, 2014	6 - 11
3	Excerpts from the transcripts of the depositions of Tarla Makaeff	12 - 29
4	Excerpts from the transcripts of the depositions of Tarla Makaeff marked "Confidential" by plaintiffs (filed under seal)	30 - 62
5	Email from Mike Kasper to Tarla Makaeff, dated November 5, 2008	63 - 65
6	Excerpt from the transcript of the deposition of Troy Peterson, taken on October 17, 2014	66 - 69
7	Email from Tarla Makaeff to Eventide Partners, dated April 20, 2010	70
8	Email from Tarla Makaeff to the law firm of Zeldes & Haeggquist, LLP, dated February 5, 2010	71
9	Email from Eventide Partners to Tarla Makaeff, dated April 28, 2011 (filed under seal)	72 - 75
10	Email from James Harris to Michael Sexton concerning anonymous student review, dated December 16, 2009 (filed under seal)	76 - 79

1 I declare under penalty of perjury under the laws of the United States and
2 California that the foregoing is true and correct and that this declaration is executed
3 this 26th day of February 2016, at Los Angeles, California.

4
5 Dated: February 26, 2016

Respectfully submitted,

6 O'MELVENY & MYERS LLP
7 DANIEL M. PETROCELLI
8 DAVID L. KIRMAN



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EXHIBIT 1



Trump 101

The Way to Success

Donald J. Trump

with Meredith McIver

To my
Mary and

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“Don’t Waste Your Life on Work You Don’t Love; Passion Will Help You Do Better.”

“I’ve known people who had fantastic ideas, but couldn’t get them off the ground because they approached everything weakly. They thought that their ideas would somehow take off by themselves, or that just coming up with an idea was enough. Let me tell you something—it’s not enough. It will never be enough. You have to put the idea into action. If you don’t have the motivation, and enthusiasm, your great idea will simply sit on top of your desk or inside your head and go nowhere. Lack of passion is often the difference between failure and success.”

—From *Trump 101*



EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TARLA MAKAEFF, SONNY LOW, J.R. EVERETT)	
AND JOHN BROWN, on behalf of themselves)	
and all others similarly situated, ED)	
OBERKROM, and BRANDON KELLER,)	Case No.
individually,)	10-cv-00940 GPC
	(WVG)
Plaintiffs,)	
)
-vs-)	
)
TRUMP UNIVERSITY, LLC (aka TRUMP)	
Entrepreneur Initiative), a New York)	
Limited Liability Company, DONALD J.)	
TRUMP, and DOES 1 through 50, inclusive,)	
)
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF PAUL CANUP

NOVEMBER 10, 2014

Reported by: Tricia Rosate, RDR, CRR, CSR No. 10891

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11:45:20 1 seminars with an expectation that Mr. Trump would be
11:45:23 2 personally present?

11:45:23 3 A No.

11:45:25 4 Q Did you ever have an expectation that
11:45:26 5 Mr. Trump would be presenting any information
11:45:30 6 personally at any of these seminars?

11:45:32 7 A No. And I believe it was clear to me even in
11:45:41 8 the early CDs that -- that his process and his
11:45:45 9 approach was to select other people to make those
11:45:48 10 presentations.

11:46:02 11 Q Based on your experiences at
11:45:59 12 Trump University, what is or what are Mr. Trump's
11:46:04 13 approaches to real estate investing?

11:46:08 14 MS. ECK: Objection. Calls for speculation.

11:46:12 15 THE WITNESS: One of the primary tenets of
11:46:15 16 his approach is education and to -- to learn about the
11:46:20 17 specific area that you have interest and to be sure
11:46:24 18 that you're in the area that is of your interest and
11:46:28 19 your passion so that you will have the impetus to
11:46:39 20 continue with it and the interest in it to learn about
11:46:43 21 it.

11:46:45 22 And there were many different areas, and you
11:46:47 23 tried to look at -- the Trump University tried many
11:46:55 24 different approaches so that they could present
11:46:57 25 something to each student that would be in an area

11:46:59 1 that hopefully would be of their interest. He covered
11:47:04 2 basically everything. So --

11:47:05 3 BY MR. MORRIS:

11:47:13 4 Q Did Trump University represent that one of
11:47:15 5 Donald Trump's approaches to real estate investing was
11:47:21 6 hard work?

11:47:22 7 A Absolutely. That was repeated many times,
11:47:24 8 that -- that you never were successful without lots of
11:47:29 9 hard work. And it was real clear that when you went
11:47:34 10 through the -- the seminars and the retreats that the
11:47:38 11 information came at such a pace that it was mental
11:47:43 12 overload, and it's not just mental overload during
11:47:47 13 that time. If you exercise those approaches, you will
11:47:53 14 have to work very hard and put a good bit of time in
11:47:57 15 in order to achieve it. Otherwise, it doesn't --
11:48:02 16 doesn't go anywhere.

11:48:04 17 Q Did Trump University represent during the
11:48:08 18 programs that you participated in that one of
11:48:12 19 Mr. Trump's approaches to real estate investing was to
11:48:15 20 get out of your comfort zone?

11:48:17 21 MS. ECK: Objection. Calls for speculation.
11:48:20 22 And foundation.

11:48:26 23 THE WITNESS: Absolutely. One of the things
11:48:27 24 that was brought out in basically every seminar -- I
11:48:34 25 believe it was every seminar that we had -- is that

11:48:36 1 not only did you need to present the ideas to the --
11:48:40 2 the instructor needed to present the ideas, but that
11:48:43 3 the individuals needed to actually act. So the word
11:48:47 4 "act" was used many times. Now you've learned. Now
11:48:50 5 you need to act. You need to take action. You need
11:48:53 6 to take the next step to learn. The next step to
11:48:57 7 learn is you have to actually do it yourself. Just
11:48:59 8 hearing about it is one thing, but you have to be able
11:49:02 9 to act to learn the rest.

11:49:04 10 And there's no way that you can learn
11:49:06 11 everything that you need to learn by sitting in a
11:49:08 12 class. You can get the beginnings of it, but you
11:49:12 13 actually have to go do it so that you not only
11:49:16 14 understand how it all fits together, but you learn the
11:49:19 15 other things that they don't have time to teach you in
11:49:22 16 that three-day seminar.

11:49:24 17 BY MR. MORRIS:

11:49:24 18 Q Were there any other -- when you attended the
11:49:29 19 Trump University seminars, were there any other
11:49:32 20 Donald Trump approaches or beliefs about real estate
11:49:36 21 investing that were taught by Trump University?

11:49:39 22 MS. ECK: Objection. Calls for speculation.
11:49:41 23 Object as to form.

11:49:45 24 THE WITNESS: Could you repeat the question?

11:49:50 25 ///

11:49:50 1 BY MR. MORRIS:

11:49:50 2 Q During your time at Trump University, are you
11:49:53 3 aware of any other of Donald Trump's approaches or
11:49:58 4 techniques for investing in real estate that were
11:50:02 5 taught?

11:50:02 6 MS. ECK: Same objections.

11:50:04 7 THE WITNESS: You used the word
11:50:06 8 "Donald Trump" there, so it didn't fit. That's the
11:50:08 9 reason I asked for the clarification. He always
11:50:10 10 presented that he was going to -- to vet the experts
11:50:16 11 in the fields and he was going to have them present
11:50:20 12 their ideas of how they did the work. So you never
11:50:23 13 got a statement that said, "This is what Donald Trump
11:50:30 14 does. This is not Donald" -- I never got the
11:50:33 15 statement that said, "This is Donald Trump's
11:50:35 16 approach." That never occurred. The only thing that
11:50:38 17 occurred was, I'm going to -- from Donald Trump was,
11:50:44 18 I'm going to find the expert in the field that fits
11:50:48 19 the students that he expected to have, and he was
11:50:51 20 going to provide the experts to help those students.

11:50:55 21 I never got a course on how to buy a \$250
11:50:59 22 million building. I mean, maybe -- maybe it was
11:51:04 23 buried in there somewhere, but I had a little
11:51:07 24 difficulty on the 250 million. So he tailored
11:51:11 25 everything to the people that were expected to be in

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TARLA MAKAEFF, BRANDON KELLER,
ED OBERKROM, and PATRICIA
MURPHY, on Behalf of Themselves
and All Others Similarly
Situated,

Plaintiffs,

vs.

No. 10 CV 0940 IEG (WVG)

TRUMP UNIVERSITY, LLC, (aka
Trump Entrepreneur Initiative) a
New York Limited Liability
Company, DONALD J. TRUMP, and
DOES 1 through 50, inclusive,
Defendants.

CONTINUED VIDEOTAPED DEPOSITION of TARLA MAKAEFF
San Diego, California
Tuesday, January 31, 2012
Volume II

Reported by:

Kae F. Gernandt

RPR, CSR No. 5342

Job No. 133737

PAGES 283 - 591

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Jill A. Martin, Trump National Golf Club (morning session)
Videographer: Scott Tanaka, Veritext

1 A. With a one-year -- well, it was actually 12:20:19
2 one year; that you had three days in person and one
3 year to stay in contact with your mentors.

4 Q. So, what you're saying is what you would
5 like is you'd like a seven-day mentorship, correct? 12:20:29

6 A. I asked for that because -- well, I
7 didn't ask them for it. I mentioned this because I
8 felt the three days, they did not nearly cover what
9 I thought they would, including contracts and
10 numbers. 12:20:42

11 Q. Okay. But you thought you were buying a
12 three-day mentorship plus the one year of support.
13 And you got a three-day mentorship. And you're only
14 into about 60 days into your first year, correct?

15 A. That's correct on what I bought. But 12:20:54
16 they did not cover what they nearly needed to in
17 three days.

18 Q. Okay. For you, there was more
19 information that you personally needed to be able to
20 do these transactions, correct? 12:21:02

21 A. That's correct, but it was also for
22 other students who told me the same thing.

23 MR. SCHNEIDER: Okay. So, what you wanted --

24 I'll move to strike after the word "correct."

25	/	/	/
----	---	---	---

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1 BY MR. SCHNEIDER: 12:21:13

2 Q. What you're stating is, to meet your
3 goals, you would like a seven-day mentorship, right?

4 A. Yes.

5 Q. All right. But my question was a little 12:21:19
6 bit different: That as of November 2, you thought
7 that the two three-day weekend classes that you had
8 gone to were great, correct?

9 A. I thought that they were taking me down
10 a good path. 12:21:33

11 Q. You thought they were "great," to use
12 your own words, correct?

13 A. That's the word I used here, yes.

14 Q. How many phone conversations did you
15 have with Tim Gorsline? 12:22:20

16 A. We -- I called him. He called me. I
17 don't believe we ever spoke on the phone. I believe
18 we missed each other.

19 Q. What did you call him for?

20 A. After the creative financing seminar, I 12:22:37
21 told him that I needed more help because I had not
22 received it through my mentorship, and I didn't feel
23 I was getting it anywhere else.

24 And he sat down with me after the
25 three-day mentorship -- in the lobby of the hotel -- 12:22:53

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1 and told me that -- he talked with me for 12:22:55
2 maybe 20, 30 minutes before he left and told me that
3 he was -- don't worry, he was going to be there for
4 me and help answer any of my questions and stay in
5 contact with me after the class. 12:23:07

6 Q. When did you have your coaching sessions
7 with Steve Gilpin?

8 A. I don't know. I'd have to refer to the
9 e-mails. It could have been early November of 2008.
10 I'm not certain. 12:23:19

11 Q. And what kind of things did you discuss
12 with Steve Gilpin?

13 A. Steve Gilpin sent me an onslaught of
14 papers with very little direction. However, I felt
15 that he was one of the better of the instructors 12:23:35
16 because he sent me some detailed forms.

17 Q. You talked to him on several occasions
18 by phone, correct?

19 A. I believe I briefly spoke with him by
20 phone. I'm not 100 percent certain on that. 12:23:51

21 Q. Didn't he provide some mentoring,
22 coaching sessions with you by phone?

23 A. I recall him sending me quite a few
24 documents, one after the other in a row. I don't
25 really recall conversations with him that much. We 12:24:09

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1 purchase real estate too complicated for you, these 01:40:58
2 two pages?

3 MS. ECK: Objection. Asked and answered.

4 BY MR. SCHNEIDER:

5 Q. If this is what you had to fill out, 01:41:02
6 would this be too complicated for you?

7 A. I would not know -- I would not know how
8 much earnest money they're supposed to deposit. I
9 would not know how to select the title company.
10 There were things on here that I would not know how 01:41:16
11 to do.

12 Of course I know how to fill out
13 someone's name and address. I don't know how to do
14 some of these other things on here.

15 Q. Is that difficult to look in the phone 01:41:25
16 book and find a title company and call them up and
17 see if they want to be the title company for the
18 sale?

19 A. No. But how would you know how much
20 earnest money to deposit? You're trying to make 01:41:33
21 this sound as though this is purchasing a dress.
22 This is hundreds of thousands of dollars you're
23 dealing with. I was not about to put myself in
24 another position of losing more money than I already
25 felt I was basically out at this point. 01:41:50

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1 Q. Okay. The one transaction that you 01:41:53
2 actually entered into with Robert Vargas, you
3 invested \$30,000, correct?

4 A. That was my mother's money, correct.

5 Q. Okay. It wasn't a 01:42:02
6 hundreds-of-thousands-of-dollars transaction. Would
7 you agree with that?

8 A. No. When I referred to hundreds of
9 thousands of dollars, I'm speaking of the value of
10 the property. 01:42:11

11 Q. Okay. And that particular property, you
12 and Mr. Vargas purchased for about \$56,000, right?

13 A. Somewhere around that ballpark.

14 Q. And the concept was that you were going
15 to do some rehab to it. Robert was going to take 01:42:22
16 care of that side of it. And then you were going to
17 sell it, and you were going to spilt the profits
18 based on some agreed proportion, right?

19 A. That's correct.

20 Q. All right. We'll get back to that in 01:42:33
21 just a few minutes.

22 If you'll look at 3645. This is an
23 e-mail from Stephen Gilpin to you, also dated 11/10,
24 with some attached documents.

25 Did you receive this at about that same 01:43:07

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1 time? 01:43:09

2 A. I most likely received this. He sent me
3 a lot of documents. I'm not sure these are the
4 specific ones, but it appears to be the case, yes.

5 Q. Let me ask you just more broadly -- 01:43:18
6 maybe we can get through this quickly -- I show that
7 he sent you documents on the 10th of November,
8 probably about an inch stack, Bates-stamped 3374
9 through 3523, 3645 through 3674, 3626 through 3644,
10 3558 through 3589. Let's just start with those. 01:44:03

11 Any reason to believe that you produced
12 these in this case with your Bates numbers on them
13 from him to you on that date -- is it your belief
14 that he probably sent those to you around that time?

15 A. He -- he sent me maybe a dozen e-mails 01:44:27
16 with attachments on them.

17 Q. All right. Did you look at any of the
18 information that he included in here?

19 A. Yes, I did.

20 Q. Did you read it all? 01:44:36

21 A. I don't know that I read every single
22 page of it.

23 But I signed up, not to have a book, but
24 to have a mentor. This is like purchasing a book at
25 Barnes & Noble. 01:44:48

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1 properties in Vegas that were in a similar category. 03:30:23

2 Q. All right. So, you invested in the
3 Florrie property without ever seeing it, correct?

4 A. I saw pictures of it, but I had not
5 physically been there, I don't believe. 03:30:31

6 Q. Your understanding was that Robert
7 Vargas was going to be responsible for doing the
8 rehab on the property?

9 A. Yes. That's what he told me.

10 Q. And he was going to spend his money on 03:30:47
11 that, correct?

12 A. No. We were going to split that.

13 Q. So, he was going to tell you what the
14 rehab cost -- and then you were going to split any
15 profits that were made? 03:30:56

16 A. That's my recollection, yes.

17 Q. And during this process, at some point,
18 you received word from a realtor that the property
19 may not sell for as much as you all had anticipated,
20 correct? 03:31:08

21 A. Yes.

22 Q. And at that point, would it be accurate
23 to say that you wanted out of the deal?

24 A. Yes.

25 Q. And the reason you wanted out is 'cause 03:31:15

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1 you thought you might lose money on it, correct? 03:31:17

2 A. Yes.

3 Q. And Robert Vargas advised you to hang in
4 there; that he thought that you all would make a
5 profit on the property, correct? 03:31:23

6 A. I don't remember what Robert Vargas
7 advised me.

8 Q. Do you remember at any time him
9 suggesting that you just hang in there and be
10 patient; that he thought you would make money on the 03:31:35
11 property?

12 A. I don't really recall what he was saying
13 to me. If you have e-mails that you'd like me to
14 look at.

15 Q. Right. At some point, did you have 03:31:46
16 somebody representing themselves as a lawyer leave
17 messages on Robert Vargas's voice mail stating that
18 they represented you and that they were demanding
19 that you -- that they buy your interest back out?

20 A. That they buy my -- demanding that he 03:32:01
21 buy my interest back out?

22 Q. Robert Vargas.

23 A. I had somebody call, yes.

24 Q. Was it a lawyer?

25 A. It was not an attorney. They never 03:32:09

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1 referred to themselves as an attorney. 03:32:11

2 Q. Who was it that called for you?

3 A. That was my boyfriend.

4 Q. And what's his name?

5 A. Walter Grieves. 03:32:19

6 Q. And it's your belief that he did not

7 represent himself as an attorney?

8 A. I don't believe he did.

9 Q. All right. Did you hear the message

10 that he left for Mr. Vargas? 03:32:29

11 A. A portion of it. I think I was walking

12 in and out of the room.

13 Q. And why did you have Mr. Grieves call?

14 A. I don't remember at what point he

15 called, but Robert was sending me very contentious 03:32:41

16 e-mails and was really sending me demeaning e-mails

17 when I was trying to exit the deal. And so, my

18 boyfriend felt protective of me.

19 Q. You contacted Robert and told him that

20 you thought that he had committed fraud, didn't you? 03:32:58

21 A. I don't know that I contacted him and

22 told him that. I know that I told that to the --

23 the -- I'm sorry, title company.

24 Q. And what is it that you thought Robert

25 Vargas did that was fraudulent? 03:33:17

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1 A. I signed one version of paperwork with 03:33:20
2 the 50/50 percent that we had agreed upon, and he
3 did not sign the same version of paperwork. The
4 version of paperwork I signed said that we were
5 agreeing to a 50/50 percent, which is what he had 03:33:31
6 told me all long.

7 And he also switched on there that the
8 paperwork should be sent to him in Las Vegas,
9 whereas I had put "please send paperwork to each of
10 us." He signed a completely different copy that I 03:33:44
11 never looked at and I never reviewed.

12 Q. Did his version have different terms
13 than your version?

14 A. What -- his writing, the terms were
15 different in his writing. He was saying that the 03:33:59
16 percentages would be different on our split. He was
17 saying that to send him the paperwork and not send
18 it to me when I was supposed to be considered an
19 equal partner and be kept in the loop.

20 Q. Now, in your complaint, you allege that 03:34:14
21 the realtor "misquoted comps" to you.

22 What does that mean?

23 A. Noah Herrera, I don't know the exact
24 numbers without looking at the e-mails, but I
25 believe he quoted these properties as being worth 03:34:28

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
TARLA MAKAEFF, BRANDON KELLER,
ED OBERKROM, and PATRICIA
MURPHY, on Behalf of Themselves
and All Others Similarly
Situated,
Plaintiffs, No. 10 CV 0940 IEG (WVG)
vs.
TRUMP UNIVERSITY, LLC, (aka
Trump Entrepreneur Initiative) a
New York Limited Liability
Company, DONALD J. TRUMP, and
DOES 1 through 50, inclusive,
Defendants.

VIDEOTAPED DEPOSITION of TARLA MAKAEFF
San Diego, California
Friday, April 13, 2012
Volume III

Reported by:
Kae F. Gernandt
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PAGES 592 - 734

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21 Videographer:

22 Alex Payan, Veritext

23

24

25

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1 MS. ECK: Please answer this question, and 02:26:06
2 then we're going to take a break.
3 BY MR. SCHNEIDER:
4 Q. Okay. Ms. Makaeff, how much did
5 Mr. Kasper tell you that he was worth? 02:26:11
6 A. Over 125 million.
7 Q. Is that the amount of money that he used
8 when he told you?
9 A. Yes. I didn't just pull it out of
10 nowhere. 02:26:22
11 MR. SCHNEIDER: All right.
12 MS. ECK: All right. Let's take a break.
13 THE VIDEOGRAPHER: Okay, Counsel?
14 MR. SCHNEIDER: Sure.
15 THE VIDEOGRAPHER: Going off the record. The 02:26:31
16 time is 2:26 p.m.
17 (A brief recess was taken.)
18 THE VIDEOGRAPHER: Back on the record. The
19 time is 2:36 p.m.
20 BY MR. SCHNEIDER: 02:36:20
21 Q. Ms. Makaeff, we're looking at page 3093
22 of your letter. And on that same paragraph --
23 A. Oh, sorry.
24 Q. That's all right. So, it's the first
25 paragraph on this page at the bottom. The sentence 02:36:31

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1 states, "After the mentorship." Top paragraph. 02:36:34

2 A. I think it's in this copy. Hold on.

3 Q. Are you on page 3093?

4 A. Yeah, after the -- where are you at?

5 Q. On the top paragraph. 02:36:45

6 A. Okay.

7 Q. The last -- the second to last sentence

8 that begins "After the mentorship," do you see that?

9 A. Yes.

10 Q. Okay. It says, "After the mentorship, 02:36:50

11 Mr. McNally and Mr. Kasper disappeared, other than a

12 couple of short two-minute phone calls while they

13 were on other mentorships." Do you see that

14 sentence?

15 A. Yes. 02:36:59

16 Q. That's not a true sentence, is it?

17 MS. ECK: Objection. Assumes facts not in

18 evidence, misstates the witness' testimony.

19 THE WITNESS: When I wrote this, I believed

20 that was the case, but you brought up a steak 02:37:07

21 dinner.

22 BY MR. SCHNEIDER:

23 Q. Okay. In addition to a steak dinner,

24 didn't you communicate with those mentors at least a

25 month after your mentorship in which they were 02:37:14

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1 discussing possible deals, the Fountainview deal, 02:37:16
2 Chief, Mr. McNally or Mr. Kasper offered to partner
3 with you on some other transactions?

4 MS. ECK: Objection. Vague and ambiguous and
5 compound. 02:37:29

6 BY MR. SCHNEIDER:

7 Q. Do you remember those communications
8 over the next course of a month after your
9 mentorship?

10 A. We communicated a few times by e-mail, 02:37:35
11 with general responses. I don't know what you're
12 referring to on partnering -- with which deals? If
13 I could see that document.

14 MR. SCHNEIDER: Sure. I'll mark it as
15 Exhibit 8. 02:37:47

16 (Deposition Exhibit 8 marked for
17 identification.)

18 BY MR. SCHNEIDER:

19 Q. This is an e-mail exchange between Mike
20 Kasper and you, dated October 24, 2008, in which 02:38:00
21 Mr. Kasper says, "I'm looking for someone to partner
22 up with and thought of you." Do you see that
23 sentence?

24 A. Yes. This is regarding MonaVie.

25 Q. Right. So, you were still in 02:38:12

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1 communication with him a month after your 02:38:13
2 mentorship, correct?

3 MS. ECK: Objection. Misstates the witness'
4 testimony, assumes facts not in evidence. This
5 isn't in relation to real estate. 02:38:22

6 THE WITNESS: This doesn't have anything to
7 do with Trump University.

8 MR. SCHNEIDER: All right. I'll mark as
9 Exhibit 9 -- 8 is Bates-stamped Makaeff 4900 through
10 4902. Exhibit 9 is 4899 and 4900. It's dated 02:38:48
11 November 5, 2008, and it's between you and Mike
12 Kasper.

13 (Deposition Exhibit 9 marked for
14 identification.)

15 BY MR. SCHNEIDER: 02:39:04

16 Q. And here you're discussing the
17 Fountainview project, correct, in both of these
18 e-mails?

19 A. Yes, it appears so.

20 Q. And he is -- you're telling him about 02:39:13
21 whether or not you're going to go forward with
22 Fountainview, and he's telling you that he's going
23 to be talking with Chief tonight and see if there's
24 some other projects that might be suitable for you,
25 correct? 02:39:26

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EXHIBIT 4

[FILED UNDER SEAL]

EXHIBIT 5

To: tarla [Redacted] [tarla [Redacted]]
From: Mike Kasper
Sent: Wed 11/5/2008 3:03:51 PM
Subject: Re: Fountainview
.AVG certification .txt

When you live your life in feat it is not worth living at all.

You got into Real Estate to create wealth not to make a living.

Jump in and do not look back:)

Mike Kasper
Cell: 760-707-6119
Fax: 253-799-6119

On Nov 4, 2008, at 7:05 PM, tarla [Redacted] wrote:

Thanks, luv. And thank you thank you thank you for even involving me in this deal and making the introductions to begin with. You are an angel :)

I appreciate you understanding. I'm sure I'll get past this hump..it just seems now like there is no light at the end of the tunnel and I have to get out of that mindframe. I think it's b/c I hear different opinions and it confuses me..then my hope is crushed when I have no idea what path to take and I end up feeling more discouraged. I'd like to do the assignments and wholesaling then flips etc and do baby steps. But of course I am all ears in hearing Chief's plan (how kind of him) and any of your wisdom.

It's nice to know you can relate even if it was long ago, Monsieur Argent! :) Sometimes I just feel so alone in the whole thing because I think I need handholding or even shadowing to know what you all do. It all seems like Chinese..even more so when the instructions are simple because I need the details that I have no clue about to actually get out there and execute and avoid this fear paralysis!

Anyway I'm honored to know you and have you on my side. I'm just a 'lil scared kitty cat now and I know with actual experience I'll get past that. Bear with me...I'm still in the making :)

Talk soon,
T

Sent via BlackBerry by AT&T

From: Mike Kasper <seminarspeaker@yahoo.com>
Date: Tue, 4 Nov 2008 18:35:56 -0800 (PST)
To: <[tarla](#) **Redacted**>
Subject: Re: Fountainview

T,

No worries.

I talked with Chief tonight and he said you might me backing out of FV. He has a plan for you to help put money in your pocket on small cookie cutter deals that will give you the confidence and down the road you can buy something like FV. I understand and I once felt that way before. Realize we are here to help you through this.

Realize in our market is more expensive than FV. you need to have more confidence in what you want to and I think the small High cashflow or you can fip a few of the small 17-21k deals make 5-10k quickly.

Mike Kasper
Cell:760-707-6119
Fax:253-799-6119

From: "<[tarla](#) **Redacted**>" <<[tarla](#) **Redacted**>>
To: Mike Kasper - cell - Trump mentor <mike@mikekasper.com>
Sent: Tuesday, November 4, 2008 6:24:41 PM
Subject: Fountainview

Hi sweetie pie,

I hope your conference last week went wonderful! :)

On a more serious note, I wanted to let you know that I decided to bow out from Fountainview :(I know, I know... It is a great opp and you are all such lovely people. I just started to get a bad gut feeling last week for myself personally and where I'm at. I've been really really stressed, hun. I'm sure you can't tell but I've thought that I might lose my house and literally cried myself to sleep some nights. I just never saw

myself in this financial position.

Anyways, I realized I need to go back to my original goal in joining Trump in the first place...making money now. Adding the stress of possible lost rent above and beyond the subsidy and unexpected repairs on the unrehabbed sides..well, that's just kinda crazy. If I had the income I used to, I wouldn't think twice but I don't. So my plan is to work with all you guys on buy and holds like these when I have a few wholesales and flips under my belt and some cash coming in...a cushion...

Speaking of which I spoke to Rick earlier re a lease option or corporate lease on my house. I am seriously thinking about looking into that now to release myself from the situation without losing my home :(I'm also interested in doing assignments/wholesaling for immediate income. Chief didn't seem to think it was doable other than flipping REO's but I wanted your opinion since you're local and probably more in tune with the CA market.

Hope you understand all this. I'll call you in the next day or so to talk more to you.

Miss you guys.

T

Sent via BlackBerry by AT&T

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TARLA MAKAEFF, SONNY LOW, J.R. EVERETT,)	
AND JOHN BROWN, on behalf of themselves)	
and all others similarly situated, ED)	
OBERKROM, and BRANDON KELLER,)	
individually,)	
)	
Plaintiffs,)	
)	Case No.:
vs.)	10-cv-00940 GPC (WVG)
)	
TRUMP UNIVERSITY, LLC (aka Trump)	
Entrepreneur Initiative), a New York)	
Limited Liability Company, DONALD J.)	
TRUMP, and DOES 1 through 50, inclusive,)	
)	
Defendants.)	
)	

Videotaped Deposition of TROY L. PETERSON

Friday, October 17, 2014

Reported by Lindy DeBoer, RPR, CSR No. 5405

10:38:51 1 that on?

10:38:51 2 A A lot of her desires were typical, but the
10:38:54 3 follow-through was not.

10:38:56 4 Q What were her desires, as you recall?

10:38:58 5 A She wanted to earn money. Those were typical
10:39:02 6 desires we would have -- everybody always had their
10:39:05 7 motivations. They wanted to do it for one reason. It
10:39:08 8 was usually a monetary gain.

10:39:10 9 Q Did she have any specific goals that you were
10:39:13 10 going to coach her with?

10:39:15 11 A I don't recall any specifics.

10:39:18 12 Q When you spoke to the personnel at Trump
10:39:20 13 University about doing the additional coaching sessions
10:39:25 14 with her, did you have an understanding of what her
10:39:28 15 experience had been with Trump University at that point
10:39:31 16 in time?

10:39:32 17 A I know she had other coaching, but I don't know
10:39:35 18 to what level.

10:39:38 19 Q Do you remember in your conversations with her
10:39:40 20 on phone coaching, had she ever complained to you about
10:39:43 21 her experience with Trump University?

10:39:48 22 A No direct complaints, no.

10:39:50 23 Q Indirect complaints?

10:39:53 24 A There was -- I can't really even call it a
10:39:58 25 complaint. There was kind of a typical whine of, "I

10:40:04 1 don't know what I'm doing. How can I be successful at
10:40:07 2 this?"

10:40:07 3 But no direct complaints, no.

10:40:10 4 Q When you say "typical whine," do you mean her or
10:40:13 5 students in general?

10:40:14 6 A I would say students in general.

10:40:16 7 Q Okay. And were you -- in your experience with
10:40:20 8 other students, were you able to overcome their -- what
10:40:24 9 you call the typical whine?

10:40:26 10 A Yes. It was more of a frustration based on
10:40:28 11 really not knowing what to do. And so we'd get to the
10:40:33 12 root of the frustration and then give some specific steps
10:40:36 13 to take to accomplish that.

10:40:38 14 Q And did you attempt to do that with Ms. Makaeff?

10:40:41 15 A Yes, I did.

10:40:41 16 Q All right. And from your perspective, were you
10:40:45 17 able to accomplish that?

10:40:47 18 A No.

10:40:47 19 Q Why not?

10:40:48 20 A She did not put forth the steps to complete the
10:40:51 21 tasks that were put out there and she did not follow
10:40:54 22 through and maintain her appointments and actually put
10:40:57 23 the effort forth to do what was put in front of her.

10:41:00 24 Q Can you give us an example of what you were
10:41:03 25 requesting that she do.

10:41:06 1 A A typical example would be, "I want you to --"
10:41:10 2 if she's looking at properties, okay, "I want you to
10:41:13 3 develop this relationship with a realtor who can bring
10:41:19 4 you this. Here's how you're going to go about finding
10:41:20 5 the right real estate agent to bring you this particular
10:41:21 6 type of property."

10:41:22 7 Q And to your knowledge, did she ever do that when
10:41:24 8 you were doing the phone coaching?

10:41:27 9 A No. She got distracted in another training that
10:41:29 10 she started doing with another company during the time
10:41:51 11 that we were --

10:41:55 12 Q All right. And so you said you had a total of
10:41:58 13 maybe three telephone sessions with her?

10:42:00 14 A Two or three. Yes.

10:42:04 15 Q Okay. And then do you know what happened -- you
10:42:05 16 thought you were going to have more sessions with her,
10:42:06 17 correct?

10:42:07 18 A I expected to have more sessions with her, yes.

10:42:09 19 Q All right. And then how did it end?

10:42:10 20 A The last conversation that I recall having with
10:42:13 21 Tarla, I actually met her at an event that Trump did in
10:42:17 22 Marina Del Rey, California.

10:42:19 23 Q And what was the event?

10:42:21 24 A It was some kind of a wealth retreat. There was
10:42:23 25 a myriad of different speakers presenting different

EXHIBIT 7

Attorney Client Privilege

From: **Walter Grieves** <epartnersinc@Redacted>
Date: Tue, Apr 20, 2010 at 10:14 AM
Subject: Re: Robert
To: Tarla Makaeff <tmakaeff@Redacted>

It looks a bit suspect. Vegas is dead as ever.

-----Original Message-----

From: Tarla Makaeff
To: epartnersinc@Redacted
Subject: Re: Robert
Sent: Apr 20, 2010 10:12 AM

I don't think so. It was a Hispanic guy prob from that poor area in Vegas. I was wrong though-more than 20-25k profit...still...could it be the market rebounded that fast...WTF?

On 4/20/10, Walter Grieves <epartnersinc@Redacted> wrote:

> Well he probably rolled it to another trump student on a phony appraisal so
> unless you want a big felony hanging over your head.

> -----Original Message-----

> From: Tarla Makaeff <tmakaeff@Redacted>
> Date: Tue, 20 Apr 2010 01:59:48
> To: Eventide Partners<epartnersinc@Redacted>
> Subject: Robert

>

> Btw, I found out two months after I signed off the house in Vegas that we
> bought he made a 35k profit....it's public record. Guess I could have banked
> 15k so probably should have held on to it....

>

>

EXHIBIT 8



Helen I. Zeldes, Partner

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tel: 619/342-8000 fax: 619/342-7878

www.zhlaw.com

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From: Tarla Makaeff [mailto:tmakaeff@Redacted]
Sent: Friday, February 05, 2010 4:30 PM

To: Aaron Olsen
Cc: Helen Zeldes
Subject: Re: Web site message from www.zhlaw.com : Contact

Hi Aaron,

I just wanted to check in with you and see if you had any other questions to decide if this is a class action your firm would like to pursue.

Thank you,

Tarla

EXHIBIT 9


[FILED UNDER SEAL]

EXHIBIT 10

[FILED UNDER SEAL]

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I caused the foregoing to be electronically filed 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 electronic Mail Notice List. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Ian V. Yanniello