

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SONNY LOW, J.R. EVERETT and  
JOHN BROWN, on Behalf of Themselves  
and All Others Similarly Situated,

Plaintiffs,

v.

TRUMP UNIVERSITY, LLC, a New  
York Limited Liability Company, and  
DONALD J. TRUMP,

Defendants.

Case No.: 3:10-cv-0940-GPC-WVG

**ORDER:**

**DENYING DEFENDANTS' MOTION  
FOR LEAVE TO FILE RENEWED  
MOTION FOR DECERTIFICATION**

**DENYING PLAINTIFFS' MOTION  
TO MODIFY SCHEDULING ORDER  
TO FILE A MOTION TO CLARIFY  
OR AMEND THE COURT'S CLASS  
CERTIFICATION ORDERS**

**[ECF Nos. 482, 489]**

Before the Court is Defendants Trump University LLC and Donald J. Trump's ("Defendants") June 3, 2016 Motion for Leave to File Renewed Motion for Decertification ("Def. Mot."), ECF No. 482, as well as Plaintiffs Sonny Low, J.R. Everett, and John Brown's ("Plaintiffs") June 17, 2016 Motion to Modify Scheduling Order to File a Motion to Clarify or Amend the Court's Class Certification Orders ("Pl. Mot."), ECF No. 489. The motions have been fully briefed. See Plaintiffs' Opposition to Defendants' Motion for Leave to File Renewed Motion for Decertification ("Pl. Resp."),

ECF No. 488; Defendants' Reply in Support of Motion for Leave to File Renewed Motion for Decertification ("Def. Reply"), ECF No. 493; Defendants' Opposition to Plaintiffs' Motion to Amend the Court's Class Certification Order ("Def. Resp."), ECF No. 495; Plaintiffs' Reply in Support of Motion to Modify Scheduling Order to File a Motion to Clarify or Amend the Court's Class Certification Orders ("Pl. Reply"), ECF No. 496. A hearing was conducted on July 22, 2016. ECF No. 499.

Upon consideration of the moving papers, parties' oral arguments, and the applicable law, and for the following reasons, the Court **DENIES** both motions.

### **BACKGROUND**

On February 21, 2014, the Court granted in part and denied in part Plaintiffs' motion for class certification ("Initial Cert. Order"). ECF No. 298. The Court noted that Plaintiffs alleged that Defendants made the following "core" misrepresentations: "(1) Trump University was an accredited university; (2) students would be taught by real estate experts, professors and mentors hand-selected by Mr. Trump; and (3) students would receive one year of expert support and mentoring." *Id.* at 4.

On September 18, 2015, the Court granted in part and denied in part Defendants' motion for decertification of the class action ("Decert. Order"). ECF No. 418. The Court denied the motion to decertify on liability issues as to all causes of action, but granted the motion on damages issues as to all causes of action, and bifurcated the damages issues to follow trial on the liability phase. *Id.* at 21. The Court also granted Plaintiffs' motion to clarify the Court's class certification order, and clarified that the class definition going forward would be:

All persons who purchased a Trump University three-day live "Fulfillment" workshop and/or a "Elite" program ("Live Events") in California, New York and Florida, and have not received a full refund, divided into the following five subclasses:

(1) a California UCL/CLRA/Misleading Advertisement subclass of purchasers of the Trump University Fulfillment and Elite Seminars who purchased the program in California within the applicable statute of limitations;

(2) a California Financial Elder Abuse subclass of purchasers of the Trump University Fulfillment and Elite Seminars who were over the age of 65 years of age when they purchased the program in California within the applicable statute of limitations;

(3) a New York General Business Law § 349 subclass of purchasers of the Trump University Fulfillment and Elite Seminars who purchased the program in New York within the applicable statute of limitations;

(4) a Florida Deceptive and Unfair Trade Practices Act (FDUTPA)/Misleading Advertising Law subclass of purchasers of the Trump University Fulfillment and Elite Seminars who purchased the program in Florida within the applicable statute of limitations; and

(5) a Florida Financial Elder Abuse subclass of purchasers of the Trump University Fulfillment and Elite Seminars who were over the age of 60 years of age when they purchased the program in Florida within the applicable statute of limitations.<sup>1</sup>

*Id.* at 22.

On September 21, 2015, the Court granted in part and denied in part Plaintiffs' motion for approval of class notice and directing class notice procedures. ECF No. 419. On November 15, 2015, the opt-out period expired. *See id.* at 11.

On November 18, 2015, the Court granted in part and denied in part Defendants' motion for summary judgment. ECF No. 423. The Court granted Defendants' motion for summary judgment with respect to Plaintiffs' claims for injunctive relief under California law, and denied summary judgment as to all other claims. *Id.* at 44.

On April 20, 2016, the Court granted in part and denied in part Plaintiff Tarla Makaeff's motion to withdraw. ECF No. 475. The Court permitted Plaintiff Makaeff to withdraw, but on the condition that Defendants were entitled to depose Plaintiff Low, the other California class representative, again. *Id.* at 2.<sup>2</sup>

A pretrial conference was held on May 6, 2016. ECF No. 478. A trial is set for

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<sup>1</sup> Excluded from the class are Defendants, their officers and directors, families and legal representatives, heirs, successors, or assigns and any entity in which Defendants have a controlling interest, any Judge assigned to this case and their immediate families. Decert. Order 22.

<sup>2</sup> On April 15, 2016, the parties notified the Court telephonically that the deposition of Low was completed pursuant to the Court's order. ECF No. 475 at 2.

1 November 28, 2016. *Id.*

## 2 **LEGAL STANDARD**

3 “An order that grants or denies class certification may be altered or amended before  
4 final judgment.” Fed. R. Civ. P. 23(c)(1)(C); *Rodriguez v. West Publ’g Corp.*, 563 F.3d  
5 948, 966 (9th Cir. 2009) (“A district court may decertify a class at any time”). In deciding  
6 whether to decertify a class, a court may consider “subsequent developments in the  
7 litigation.” *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 160 (1982).

## 8 **DISCUSSION**

### 9 **I. Defendants’ Motion for Leave to File Renewed Motion for** 10 **Decertification**

11 Defendants make several arguments as to why the Court should consider a  
12 renewed decertification motion following the pretrial conference. Namely, Defendants  
13 argue that: (1) class members were not uniformly exposed to the alleged “core”  
14 misrepresentations; (2) individual issues of reliance, causation, and materiality  
15 predominate; (3) Low’s recent testimony establishes that he lacks standing; and (4) the  
16 Court’s reliance on FTC cases “violates binding Ninth Circuit law.” *See* Def. Mot. 13–25.  
17 However, none of Defendants’ arguments are persuasive.

18 First, as to Defendants’ first two arguments, both arguments were extensively  
19 considered by the Court in its previous certification orders. *See* Initial Cert. Order 14–26.  
20 Almost all of the evidence proffered by Defendants here was available to Defendants at  
21 the time of the earlier certification orders, *see* Pl. Resp., Ex. A, which is unsurprising  
22 considering that discovery closed more than a year and a half ago on December 19, 2014,  
23 *see* ECF No. 349. The Court “declines to revisit these previously resolved issues . . .  
24 especially where no intervening events have led to changed circumstances.” *See In re*  
25 *Apple iPod iTunes Antitrust Litig.*, 2014 U.S. Dist. LEXIS 165254 (N.D. Cal. Nov. 25,  
26 2014) (rejecting motion for decertification where “Apple presented many of these  
27 arguments while opposing earlier certification motions”).

28 Second, the Court finds Defendants’ third argument that Plaintiff Low’s new

1 testimony establishes that he lacks standing unpersuasive. Defendants argues that Low's  
 2 new testimony demonstrates that he did not actually rely on Defendants' representations  
 3 in purchasing TU programs. Def. Mot. 21. However, Defendants' arguments rely on a  
 4 selective interpretation of Low's new testimony.

5 First, Defendants argue that Low was not concerned with whether TU was an  
 6 accredited university. *Id.* Defendants point to deposition testimony where Low stated that  
 7 he did not recall ever seeing the word "accredited" used in TU materials, Low Dep.  
 8 109:19–21, Def. Mot., Ex. 11, and where Low stated that whether TU was an accredited  
 9 university "was not even a consideration for me. I went there because it was Trump  
 10 University, that he created." *Id.* at 116:11–15.

11 However, Low also testified:

12 Donald J. Trump, besides being a multi-billionaire in real estate, he set up  
 13 Trump University, which I would presume that he took all the steps  
 14 necessary to set up a proper institution that he could call a university, with  
 15 his name next to it. And when he sent out the special invitation, signed by  
 16 Donald J. Trump himself, "Come to one of my free seminars and learn  
 through my handpicked instructors and mentors the secrets to become rich,  
 be a success in real estate,[""] that was very important to me.

17  
 18 Low Dep. 32:7–17, Pl. Resp., Ex. F. Similarly, when Low was asked,

19 Q. [For your declaration in support of class certification,] where did  
 20 you get the words "legitimate academic institution"?

21 A. I got that - - Donald J. Trump created this institution. He went  
 22 through the process, just like any university would go through, that - - that's  
 why he called it a university. And it has certain, you know, standards and  
 qualifications, which I don't know about, which I - - he knows.

23 . . .

24 Q. . . . What do you mean by the word "legitimate"?

25 A. Donald J. Trump went to the Wharton School of the University of  
 26 Pennsylvania. I went to University of California. These are legitimate  
 27 institutions. Trump University was created by Donald J. Trump, and,  
 therefore, presumably, he went through all of the same process as those  
 schools did, to be called a legitimate university.

28 Q. Sir, is it your testimony that you believed that Trump University

1 was like the University of California at Berkley and the University of  
2 Washington?

3 . . .

4 [A.] It better be, because Donald J. Trump is a multi-millionaire, a  
5 major success in real estate, and he created this institution, and that which  
6 costs all of us a lot of money to attend. So it better be.

7 Low Dep. 101:5–12; 101:19–102:10. Low’s testimony demonstrates that, even if Low  
8 was unfamiliar with the technical term “accredited,” Low understood TU to have  
9 undergone the same “processes . . . to be called a legitimate university” involving  
10 “standards and qualifications” as other accredited universities, such as the University of  
11 Pennsylvania and the University of California. Moreover, Low’s testimony demonstrates  
12 that this understanding was an important factor to Low in purchasing in TU programs.

13 Second, Defendants argue that Low’s definition of handpicked to mean “whatever  
14 Donald J. Trump used with his determination, that he would pick the people,” Low Dep.  
15 157:7–9, is imprecise, and that Low’s testimony that he believed his TU instructors “had  
16 not spoken with Mr. Trump,” *id.* at 129:20–23, demonstrates that he did not rely on  
17 Defendants’ representation that TU instructors would be “handpicked” by Defendant  
18 Trump. Def. Mot. 21.

19 However, whether Low believed that his TU instructors had “spoken” with  
20 Defendant Trump is quite obviously a separate matter from whether Low believed that  
21 Defendant Trump had “handpicked” his TU instructors. Moreover, Low also testified,

22 Q. At that time, as you walk out of that seminar and you purchased the  
23 three-day seminar, did you believe that Donald J. Trump had personally  
24 handpicked James Harris?

25 A. Yes.

26 Q. And then you went to the three-day seminar and then you heard  
27 Steven Goff, correct?

28 A. Yes.

Q. And you heard him for three days?

A. Yes.

Q. And after hearing him for three days, did you believe that he had  
been personally selected by Donald J. Trump?

1 . . .

2 [A.] At that time, I was thinking not just the final day, all three days,  
3 that he was handpicked by Donald J. Trump.

4 Low. Dep. 144:14–145:7. In this testimony, Low demonstrates that he understood his TU  
5 instructors to have been “handpicked” by Defendant Trump, and implicitly equates the  
6 term “handpicked” with “personally selected.” Moreover, as pointed out earlier, Low also  
7 testified that “when he sent out the special invitation, signed by Donald J. Trump himself,  
8 ‘Come to one of my free seminars and learn through my handpicked instructors and  
9 mentors the secrets to become rich, be a success in real estate,[’] that was very important  
10 to me.” Low Dep. 32:12–17. Thus, Low both seems to have a commonsense  
11 understanding of what the term “handpicked” means, and to have relied upon  
12 Defendants’ representation that Defendant Trump “handpicked” TU instructors in  
13 deciding to purchase TU programs.

14 Finally, the Court finds unpersuasive Defendants’ fourth argument that “[t]he  
15 Court’s reliance on FTC cases violates binding Ninth Circuit law.” Def. Mot. 22.  
16 Defendant argues that under *Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718 (9th  
17 Cir. 2007), the Court erred in analogizing to Federal Trade Commission (FTC) Act cases  
18 where a full-refund damages theory was found appropriate, such as *FTC v. Figgie Int’l,*  
19 *Inc.*, 994 F.2d 595 (9th Cir. 1993), in order to conclude that Plaintiffs’ full-refund  
20 damages theory was consistent with their theory of liability in the instant case.

21 *Lozano*, however, found that, in a situation where the California courts had not yet  
22 determined how to define the “unfair” prong of California’s Unfair Competition Law  
23 (“UCL”), the Ninth Circuit would decline to apply the three-pronged FTC Act test “in the  
24 absence of a clear holding from the California Supreme Court.” 504 F.3d at 736. It is  
25 unclear how this 2007 case “bind[s]” the Court from analogizing to FTC Act cases in  
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27  
28

1 order to uphold the viability of a damages theory under *Comcast*.<sup>3</sup>

2 Accordingly, the Court **DENIES** Defendants' motion for leave to file a renewed  
3 motion for decertification.

4 **II. Plaintiffs' Motion to Modify Scheduling Order to File a Motion to**  
5 **Clarify or Amend the Court's Class Certification Orders**

6 The Court addressed the first component of Plaintiffs' motion at the July 22, 2016  
7 hearing, where the Court set forth a possible procedure by which Plaintiffs' counsel could  
8 retain their involvement in the case following the conclusion of the liability stage. *See*  
9 *Hr'g Tr.* 4–5, ECF No. 500.<sup>4</sup> In the second component, Plaintiffs argue that the core  
10 misrepresentation certified by the Court that “Trump University was an accredited  
11 university,” Decert. Order 2, should be “clarified” because “Defendants purport  
12 beguilement over the variety of adjectives that [P]laintiffs have used over the years to  
13 modify university . . . [including] ‘legitimate,’ ‘accredited,’ ‘elite,’ ‘actual,’ and ‘real,’”  
14 Pl. Mot. 5. Plaintiffs are not explicit on how exactly they wish the class certification  
15 Order to be “clarified,” except insofar as they suggest that “the class notice in this case  
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17 <sup>3</sup> Similarly, in *Jones v. ConAgra Foods, Inc.*, a district court simply stated that there was “no reason” to  
18 import remedies from the FTC Act into a UCL or False Advertising Law (“FAL”) case concerning  
19 natural foods, and that the Plaintiffs had pointed to “no authority that does so,” not that doing so would  
20 be impermissible. 2014 WL 2702726, at \*19 n.37 (N.D. Cal. June 13, 2014).

21 <sup>4</sup> “[The Court:] . . . In addition, within the motion, there is an issue raised which the Court believes  
22 is a legitimate issue that has to be addressed and that relates to what will happen in the event that the  
23 plaintiffs prevail at trial on the issue of liability to the extent that the Court has decertified the damages  
24 class or the class as it relates to damages.

25 This is how I see it, and to the extent that the parties have any additional views, I am happy to  
26 entertain them. In the event that the defendants prevail, then obviously it is a moot point. To the extent  
27 that the plaintiffs prevail, then what I would anticipate is that we would issue, provide notices to the  
28 class members advising them of the fact that liability has been determined in this case against the  
defendants and that they will be given a certain period of time to provide a notice to the Court of their  
intention to pursue damages in the case. And then it would be my expectation, to the extent that there's  
someone who seeks to recover damages, that they will retain counsel.

One of them could retain Robbins Geller or one of the other firms representing the plaintiffs, and  
at that point, then, Robbins Geller can return into the case. Theoretically, it's possible that none of the  
class members would, but I can't believe that that would happen given the plaintiffs' counsel's  
involvement in the case. So at that point, we won't have this question about who is going to proceed  
representing the interests of the now-successful class members.” *Hr'g Tr.* 4–5.

1 accurately conveys the ‘university’ aspect of [P]laintiffs’ class claims.” *Id.* at 6.

2 The Court rejects Plaintiffs’ effort as untimely. This Court first certified the core  
3 misrepresentations (that “(1) Trump University was an accredited university; (2) students  
4 would be taught by real estate experts, professors and mentors hand-selected by Mr.  
5 Trump; and (3) students would receive one year of expert support and mentoring”) over  
6 two and a half years ago, and neither party challenged those core misrepresentations in  
7 the ensuing period of time. *See* Initial Cert. Order 4; Decert. Order 2. Moreover, Plaintiffs  
8 offer no authority for the proposition that the scope of the certified claims in a class  
9 action should be determined in accordance with the class notice, rather than the Court’s  
10 class certification order.

11 Accordingly, Plaintiffs’ motion to modify scheduling order to file a motion to  
12 clarify or amend the Court’s class certification orders is **DENIED**.

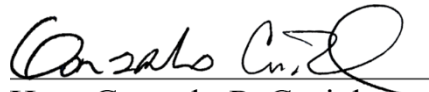
### 13 CONCLUSION

14 For the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 15 1. Defendants’ Motion for Leave to File Renewed Motion for Decertification,  
16 ECF No. 482, is **DENIED**.
- 17 2. Plaintiffs’ Motion to Modify Scheduling Order to File a Motion to Clarify or  
18 Amend the Court’s Class Certification Orders, ECF No. 489, is **DENIED**.

19 **IT IS SO ORDERED.**

20 Dated: August 29, 2016

21   
22 Hon. Gonzalo P. Curiel  
23 United States District Judge  
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