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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

DONALD J. TRUMP,

Defendant.

CASE NO. 13-cv-2519-GPC-WVG
Related Case: 10-cv-0940-GPC-WVG

**ORDER GRANTING MOTION
FOR CLASS CERTIFICATION;
APPOINTING CLASS
REPRESENTATIVE; AND
APPOINTING CLASS COUNSEL**

[Dkt. No. 39.]

Presently before the Court is Plaintiff Art Cohen’s Motion for Class Certification, Appointment of Class Representative, and Appointment of Class Counsel. (Dkt. No. 39.) Plaintiff’s proposed Class consists of:

[A]ll persons who purchased Live Events from Trump University throughout the United States from January 1, 2007 to the present. Excluded from the Class are Trump University, its affiliates, employees, officers and directors, persons or entities that distribute or sell Trump University products or programs, the Judge(s) assigned to this case, and the attorneys of record in the case.
(Dkt. No. 1, Compl. ¶ 75.)

Defendant Donald J. Trump (“Defendant”) has filed a response, (Dkt. No. 45), Plaintiff has filed a reply, (Dkt. No. 46), and Defendant has filed a supplemental declaration, (Dkt. No. 51). A hearing on Plaintiff’s motion was held on September 26, 2014. Jason A. Forge, Esq., Rachel Jensen, Esq., and Amber Eck appeared on behalf

1 of Plaintiff; Nancy Stagg, Esq., Jill Martin, Esq., and Benjamin Morris, Esq. appeared
2 on behalf of Defendant. Having considered the parties' submissions, oral arguments,
3 and the applicable law, the Court GRANTS Plaintiff's motion.

4 BACKGROUND

5 **I. Cohen's Allegations**

6 Plaintiff, a resident of California, sues on behalf of himself and all others
7 similarly situated. Defendant is a resident of the State of New York. Plaintiff's briefing
8 describes Defendant as an "iconic billionaire who portrays himself as one of the
9 world's most important people, a potential presidential candidate, and an unrivaled real
10 estate expert." (Dkt. No. 46 at 2) (citing Dkt. No. 39-3, Forge Decl. Ex. 13, Trump
11 Depo. at 36:7-8). Defendant has testified that the "Trump" brand is "very visible," and
12 that brand estimates have valued the brand at "over \$3 billion or \$3 billion." (Dkt. No.
13 39-3, Forge Decl. Ex. 13, Trump Depo. at 44:6-9, 14-17.) Relevant to the present
14 action, Defendant is also "a founder and Chairman, officer, director, managing
15 member, principal and/or controlling shareholder of Trump University." (Dkt. No. 1,
16 Compl. ¶ 5.)

17 As set forth in the Declaration of Michael Sexton, Trump University co-founder
18 and former President, Trump University began in 2004 with the concept of delivering
19 "a business education in real estate and other related accelerated self-study courses,
20 learning experiences and interactive case studies on line." (Dkt. No. 49-1, Stagg Decl.
21 Ex. 1, Sexton Decl. ¶ 3.) In 2007, Trump University introduced "live seminars," called
22 "Live Events" by the Parties. (Id. ¶ 6.) As described by Sexton,

23 By mid to late-2007, Trump University had reached the basic teaching
24 model of offering a free 90-minute preview program, which was followed
25 by an initial 3-day seminar in basic real estate investing. At the 3-day
26 program, attendees had the opportunity to purchase additional training,
27 including standard and custom programs, if they chose. Those programs
28 ranged from commercial real estate to wealth preservation to tax liens to
group mentoring to telephonic coaching to one-on-one mentoring and
dozens of other programs - on-line, live lectures, and self-study.
(Id. ¶ 9.)

Plaintiff alleges learning about Trump University from a 2009 San Jose Mercury

1 News advertisement. (Compl. ¶ 4.) Plaintiff alleges receiving a “special invitation” by
2 mail to attend a Trump University seminar. (Compl. ¶ 13.) Drawn in by Defendant’s
3 name and reputation, Plaintiff attended a free preview event. (Id.) Plaintiff then paid
4 \$1,495 to Trump University to attend a three-day real estate retreat, where he
5 subsequently purchased a “Gold Elite” program for \$34,995. (Id.)

6 Although Plaintiff initially wrote a positive review of the three-day real estate
7 retreat he attended from May 8 to May 10, 2009, (Dkt. No. 45-2, Stagg Decl. Ex. 23,
8 Cohen Evaluation), Plaintiff’s Complaint alleges Defendant and Michael Sexton
9 “devised and executed a scheme to make tens of millions of dollars” by falsely
10 marketing Trump University as an institution with which Donald Trump was integrally
11 involved as well as an actual university with a faculty of professors and adjunct
12 professors. (Compl. ¶ 19.) Plaintiff alleges the “scheme” was fueled by a “national
13 advertising campaign with an annual budget at one time of \$6 million dollars,” which
14 included YouTube, email, website, and traditional postal mail solicitations. (Compl.
15 ¶¶ 20, 21(e), 21(f), 21(g), 21(h).) Plaintiff alleges that, but for the alleged
16 misrepresentations made by Trump University, he would not have paid for Trump
17 University programs. (Compl. ¶ 14.) Specifically, Plaintiff alleges the following
18 “uniform” misrepresentations were made: that the programs would give access to
19 Donald Trump’s real estate investing secrets; that Donald Trump had a meaningful role
20 in selecting the instructors for Trump University programs; and that Trump University
21 was a “university.” (Id.)

22 On October 18, 2013, Plaintiff filed a complaint in the above-captioned matter,
23 alleging a single cause of action for mail and wire fraud in violation of the Racketeer
24 Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c). Plaintiff
25 claims that common evidence will prove that Defendant “sold real estate seminars and
26 mentorships (‘Live Events’) through ‘Trump University,’ which he marketed nationally
27 as a premier institution of higher learning rivaling Wharton Business School and with
28 which he was so integrally involved, students would effectively be learning from him.”

1 (Dkt. No. 39-1 at 3; see also Compl. ¶ 2.) Plaintiff argues Defendant insured the
2 consistency of his misrepresentations regarding Trump University by: (1) making the
3 representations himself, as in the Main Promotional Video played at free preview
4 seminars, (2) reviewing Trump University’s advertisements, (3) providing a
5 “Playbook” to Trump University instructors/speakers/mentors, and (4) providing
6 PowerPoint presentations and scripts. (Id. at 4) (citing Dkt. No. 39-3, Forge Decl. Exs.
7 15-18).

8 **II. Related Case, Makaeff v. Trump University LLC**

9 On October 18, 2013, Plaintiff filed a “notice of related case” requesting that the
10 above-captioned matter be transferred to the undersigned Judge because the present
11 action is related to Makaeff v. Trump University LLC, Case No. 10-cv-940-GPC-
12 WVG. (Dkt. No. 3.) Filed on April 30, 2010, the initial complaint in Makaeff alleged
13 ten causes of action under state consumer protection statutes and common law. (Case
14 No. 10-cv-940-GPC-WVG, Dkt. No. 1.) On October 7, 2013, the Court denied plaintiff
15 Makaeff’s motion to modify the scheduling order in that case to file a fourth amended
16 complaint to include a RICO cause of action. (Id., Dkt. No. 248.) On February 21, 2014
17 the Court granted plaintiff Makaeff’s motion for class certification, certifying a class
18 of plaintiffs defined as: “All persons who purchased a Trump University three-day live
19 ‘Fulfillment’ workshop and/or a ‘Elite’ program (‘Live Events’) in California, New
20 York and Florida, and have not received a full refund.” (Id., Dkt. No. 298 at 35.)

21 **LEGAL STANDARD**

22 “The class action is an exception to the usual rule that litigation is conducted
23 by and on behalf of individual named parties only. In order to justify a departure
24 from that rule, a class representative must be a part of the class and possess the same
25 interest and suffer the same injury as the class members.” Wal-Mart Stores, Inc. v.
26 Dukes, 131 S. Ct. 2541, 2550 (2011) (internal quotation marks and citations
27 omitted). To fit within the exception, “a party seeking to maintain a class action
28 ‘must affirmatively demonstrate his compliance’ with [Federal Rule of Civil

1 Procedure] 23.” Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432 (2013) (quoting
2 Dukes, 131 S. Ct. at 2551-52).

3 Rule 23 contains two sets of requirements. First, “Rule 23(a) ensures that the
4 named plaintiffs are appropriate representatives of the class whose claims they wish
5 to litigate. The Rule’s four requirements-numerosity, commonality, typicality, and
6 adequate representation-effectively limit the class claims to those fairly
7 encompassed by the named plaintiff’s claims.” Dukes, 131 S. Ct. at 2550 (internal
8 quotation marks and citations omitted). Second, “[w]here a putative class satisfies
9 all four requirements of 23(a), it still must meet at least one of the three additional
10 requirements outlined in 23(b).” United Steel, Paper & Forestry, Rubber, Mfg.
11 Energy, Allied Indus. & Serv. Workers Int’l Union AFL-CIO, CLC v.
12 ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

13 On a motion for class certification, the Court is required to “examine the
14 merits of the underlying claim . . . only inasmuch as it must determine whether
15 common questions exist; not to determine whether class members could actually
16 prevail on the merits of their claims.” Ellis v. Costco Wholesale Corp., 657 F.3d
17 970, 981 n. 8 (9th Cir. 2011) (citations omitted).

18 DISCUSSION

19 RICO’s civil action provision states that “[a]ny person injured in his business
20 or property by reason of a violation of section 1962 of this chapter may sue therefor
21 in any appropriate United States district court and shall recover threefold the
22 damages he sustains and the cost of the suit, including a reasonable attorney’s fee.”
23 18 U.S.C. § 1964(c). Under section 1962, a RICO plaintiff must demonstrate “(1)
24 conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.”
25 Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496 (1985). In addition, a
26 plaintiff may only recover “to the extent that, he has been injured in his business or
27 property by the conduct constituting the violation.” Id.

28 As articulated by Plaintiff, his theory of recovery under RICO is that

1 Defendant committed “fraud and racketeering” by marketing Trump University
2 “Live Events” as an institution with which he was integrally involved as well as “an
3 actual university with a faculty of professors and adjunct professors.” (Dkt. No. 39-
4 1 at 1) (citing Compl. ¶ 19). As set forth above, Plaintiff moves to certify a
5 nationwide class of “all persons who purchased Live Events from Trump University
6 throughout the United States from January 1, 2007 to the present,” with certain
7 exclusions. (See Dkt. No. 39-1 at 2) (citing Compl. ¶ 75).

8 For the following reasons, the Court GRANTS the motion to certify a single
9 nationwide class of Plaintiffs under RICO.

10 **I. Rule 23(a)**

11 The Court first examines Plaintiff’s showing on each of the requisite prongs
12 of Federal Rule of Civil Procedure 23, starting with Rule 23(a) requirements of
13 numerosity, commonality, typicality, and adequate representation.

14 **A. Numerosity and Commonality**

15 As to the first two requirements of Rule 23(a), Defendant fails to challenge
16 Plaintiff’s claim that the putative class is sufficiently numerous or that common
17 issues of law or fact are common to the class. Plaintiff states that the members of the
18 proposed nationwide class in this action “number in the thousands,” (Dkt. No. 39-1
19 at 14), and the Court agrees that this estimate meets the numerosity requirements of
20 Rule 23(a)(1). See Ikonen v. Hartz Mountain Corp., 122 F.R.D. 258, 262 (S.D. Cal.
21 1988) (“classes of 40 or more are numerous enough”).

22 With regard to commonality, Rule 23(a)(2) requires Plaintiff to demonstrate
23 that “there are questions of law or fact common to the class.” Fed. R. Civ. P.
24 23(a)(2). The commonality requirement demands only that “class members’
25 ‘situations share a common issue of law or fact, and are sufficiently parallel to
26 insure a vigorous and full presentation of all claims for relief.’ ” Wolin v. Jaguar
27 Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (quoting Cal. Rural
28 Legal Assistance, Inc. v. Legal Servs. Corp., 917 F.2d 1171, 1175 (9th Cir. 1990)).

1 Here, Plaintiff argues his RICO claim raises common questions as to “Trump’s
2 scheme and common course of conduct, which ensnared Plaintiff[] and the other
3 Class Members alike.” (Dkt. No. 39-1 at 14.) The Court agrees. Plaintiff has
4 introduced evidence that Defendant’s marketing campaign repeatedly made at least
5 the two representations that Defendant was integrally involved in Trump University
6 and that Trump University was an “actual university.” (See Dkt. No. 39-2, Eck
7 Decl. Exs. 4, 8-12.) The Court therefore finds that common questions exist as to all
8 members of the putative class regarding whether Defendant made these
9 representations and whether these representations were false and materially
10 misleading. See Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2556-57 (2011)
11 (agreeing with precedent that “even a single common question will do” under Rule
12 23(a)(2) but finding that respondents had provided “no convincing proof of a
13 companywide discriminatory pay and promotion policy”) (internal quotation marks
14 and alterations omitted). Accordingly, the Court finds that Plaintiff’s uncontroverted
15 showing has met the Rule 23(a) requirements of “numerosity” and “commonality.”

16 **B. Typicality**

17 Under the third Rule 23(a) requirement, the Court must determine whether
18 the claims or defenses of the representative parties are typical of the claims or
19 defenses of the class. Fed. R. Civ. P. 23(a)(3). “Under the rule’s permissive
20 standards, representative claims are ‘typical’ if they are reasonably co-extensive
21 with those of absent class members; they need not be substantially identical.”
22 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). “The purpose of the
23 typicality requirement is to assure that the interest of the named representative
24 aligns with the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497,
25 508 (9th Cir. 1992) (internal citation omitted). “The test of typicality is whether
26 other members have the same or similar injury, whether the action is based on
27 conduct which is not unique to the named plaintiffs, and whether other class
28 members have been injured by the same course of conduct.” Id.

1 Plaintiff claims typicality is “readily met” in this case because Plaintiff’s
2 allegations are that the same fraudulent scheme affected every member of the class.
3 (Dkt. No. 39-1 at 15-16.) Defendant makes several arguments in opposition to a
4 finding that Plaintiff’s claims are typical of the class: (1) Cohen has “failed to show
5 that [the alleged predicate act] caused his alleged injury”; (2) “Cohen has failed to
6 provide any evidence of actual harm”; (3) Cohen “admits to a number of intervening
7 circumstances that sever the ‘direct’ link between any claim of injury and the
8 alleged racketeering acts of Donald Trump; and (4) Cohen’s claim is barred by the
9 statute of limitations. (Dkt. No. 45 at 6-8, 14-16.)

10 The Court finds that Defendant’s arguments are not properly considered
11 under the “typicality” framework of Rule 23(a). See Ellis v. Costco Wholesale
12 Corp., 657 F.3d 970, 981 n. 8 (9th Cir. 2011) (the purpose of class certification is
13 not to determine whether class members could actually prevail on the merits of their
14 claims). The focus of the “typicality” requirement is on whether the named
15 Plaintiff’s claims and defenses are typical of the class; that is, whether “a putative
16 class representative is subject to unique defenses which threaten to become the
17 focus of the litigation.” Hanon, 976 F.2d at 508 (citing Gary Plastic Packaging
18 Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 176, 180 (2d Cir.
19 1990), cert. denied, 498 U.S. 1025 (1991)).

20 Here, as set forth above, Defendant’s arguments against a finding that Cohen
21 is typical of the class are that Plaintiff’s own claim is barred by the statute of
22 limitations and that Plaintiff cannot show causation. These are the very arguments
23 and defenses Defendant raises against this Court’s finding that common issues
24 predominate in this action. (See Dkt. No. 45 at 8-11; 16-22.) In essence, Defendant
25 attempts to argue that Plaintiff’s claim is atypical because his claim is subject to
26 unique defenses, yet individual inquiries into these same defenses defeat the
27 predominance of common questions in this case. Both cannot be true - either
28 Plaintiff’s claim is atypical such that it raises unique statute of limitations and

1 causation defenses, or Plaintiff’s claim is typical such that these defenses may apply
2 to various class members necessitating an individualized determination as to these
3 defenses for every member of the putative class.

4 Upon review of the evidence submitted by both Parties, the Court concludes
5 that Plaintiff is not a unique class representative. Plaintiff has submitted a
6 declaration stating that he saw an advertisement for Trump University in 2009;
7 received a “special invitation” by mail to attend a free preview seminar; attended a
8 free preview seminar; viewed the promotional video featuring Donald Trump; and
9 purchased and attended Live Events. (Dkt. No. 39-6, Forge Decl. Ex. 41, Cohen
10 Decl. ¶¶ 3-7.) Plaintiff’s description of his experience with Trump University
11 matches the allegations alleged on behalf of the putative class in his Complaint,
12 (Compl. ¶¶ 19-73(b), 79-91), regarding a common fraudulent “scheme” to which all
13 class members were allegedly exposed. While Defendant may yet raise the statute of
14 limitations and causation as defenses to the claims of the putative class, these
15 defenses are not unique to Plaintiff’s claim and do not defeat a finding that Plaintiff
16 Art Cohen’s claims are typical of the claims of the class. Accordingly, the Court
17 concludes that Plaintiff has satisfied the typicality requirement of Rule 23(a).

18 **C. Adequacy**

19 Rule 23(a)(4) requires the representative parties to fairly and adequately
20 protect the interests of the class. Fed. R. Civ. P. 23(a)(4). “Adequate representation
21 ‘depends on the qualifications of counsel for the representatives, an absence of
22 antagonism, a sharing of interests between representatives and absentees, and the
23 unlikelihood that the suit is collusive.’ ” Crawford v. Honig, 37 F.3d 485, 487 (9th
24 Cir. 1994) (quoting Brown v. Ticor Title Ins. Co., 982 F.2d 386, 390 (9th Cir.
25 1992)).

26 Relying on this Court’s finding that the named plaintiffs in Makaeff v. Trump
27 University LLC, Case No. 10-cv-541-GPC-WVG, Plaintiff argues he “does not have
28 any interests antagonistic to absent Class members and will vigorously protect the

1 interests of the Class. (Dkt. No. 39-1 at 16.) Plaintiff further claims his counsel were
2 approved as class counsel in Makaeff and should likewise be approved by the Court
3 in the present action. (Id. at 16-17.)

4 Defendant opposes, arguing proposed class counsel is inadequate because
5 they failed to bring the present RICO claim until October 18, 2013 which has
6 “created the myriad of statute of limitations defects . . . that now preclude class
7 certification.” (Dkt. No. 45 at 27 n. 29.) Defendant further argues Plaintiff’s counsel
8 is inadequate because counsel “cannot fairly and adequately represent the interests
9 of the putative class and . . . may not serve as class counsel” where “a class action is
10 already pending involving the same plaintiff’s counsel, same defendants, and
11 substantially similar claims and evidence.” (Id. at 27) (citing Lou v. Ma
12 Laboratories, Inc., No. C 12-05409 WHA, 2014 WL 68605 (N.D. Cal. Jan. 8, 2014);
13 Ortiz v. Fibreboard Corp., 527 U.S. 815, 856 (1999)) (internal quotation marks
14 omitted).

15 The Court finds that neither argument rebuts Plaintiff’s showing that he and
16 class counsel adequately represent the putative class. With respect to Defendant’s
17 argument regarding the statute of limitations, as set forth below, this Court does not
18 agree that the statute of limitations precludes class certification in this case.

19 With respect to Defendant’s conflict of interest argument, the Court finds that
20 Defendant has not identified an actual conflict of interest and has failed to explain
21 how simultaneous representation in Makaeff and the present matter might
22 undermine Cohen’s ability or counsel’s ability to adequately represent the class. See
23 Keilholtz v. Lennox Hearth Prods., 268 F.R.D. 330, 338 (N.D. Cal. 2010) (finding
24 no evidence that the plaintiffs in multiple classes had antagonistic interests and that
25 defendants appeared to be able to satisfy a judgment in both cases); see also
26 Sandoval v. Ali, No. C-13-03230(EDL), -- F. Supp. 2d --, 2014 WL 1311776 at *10
27 (N.D. Cal. 2014) (finding disqualification premature in part because defendants had
28 only raised “speculative concerns about conflicts of interest between the superior

1 court plaintiffs and the federal Plaintiffs”). Accordingly, the Court concludes that
2 Plaintiff and Plaintiff’s counsel have met the adequate representation requirement of
3 Rule 23(a).

4 **II. Rule 23(b)(3)**

5 Notwithstanding the requirements of Rule 23(a), a putative class must also
6 meet the requirements of 23(b). Plaintiff asserts that “questions of law or fact
7 common to class members predominate over any questions affecting only individual
8 members,” and that a class action is “superior to other available methods for fairly
9 and efficiently adjudicating the controversy” under Federal Rules of Civil Procedure
10 23(b)(3). (Dkt. No. 39-1 at 17.) Rule 23(b)(3) lists factors pertinent to a court’s
11 assessment of the predominance and superiority criteria: (A) the interest of members
12 of the class; (B) the extent and nature of any litigation concerning the controversy
13 already commenced by or against members of the class; (C) the desirability of
14 concentrating the litigation of the claims in the particular forum; (D) the difficulties
15 likely to be encountered in the management of a class action. Fed. R. Civ. P.
16 23(b)(3).

17 **A. Predominance**

18 Defendant argues individualized inquiries related to three issues prevent the
19 predominance of common questions of law and fact in this action: (1) whether
20 Defendant’s allegedly unlawful actions proximately caused the injuries alleged by
21 the various class members; (2) whether class members’ claims are barred by the
22 statute of limitations; and (3) whether each class member is entitled to damages, and
23 if so, the amount of damages. (Dkt. No. 45 at 8-11, 16-22, 22-26.) For the following
24 reasons, the Court disagrees that these three issues require individualized inquiries
25 that defeat predominance in this case.

26 **1. Causation**

27 Defendant argues that common issues of fact or law relating to proximate
28 cause do not predominate in this action. Defendant asserts Plaintiff may not benefit

1 from either a presumption of reliance applied in securities cases or an inference of
2 reliance from a “common sense” or “logical explanation” for putative class
3 members’ actions. (Dkt. No. 45 at 11-13) (citing Hemi Group, LLC v. City of New
4 York, 559 U.S. 1 (2010) for the proposition that “[a] direct link establishing
5 proximate cause is required” in RICO cases, and Poulos v. Caesars World, Inc., 379
6 F.3d 654 (9th Cir. 2004)). Defendant further argues Plaintiff has failed to “present
7 any evidence that the class’ injury resulted from class members’ reliance on
8 Defendant’s alleged ‘scheme.’ ” (Dkt. No. 45 at 16.) Defendant claims there is “no
9 single ‘common sense’ or ‘logical explanation’ for TU participation” as evidenced
10 by declarations submitted by various putative class members articulating differing
11 reasons for attending and expectations of Trump University programs. (Id. at 18-19)
12 (citing Dkt. No. 45-2 and 45-3, Stagg Decl. Exs. 7-11, 14, 16, 21, 22, 26, 30,
13 36-39).

14 Plaintiff disagrees, claiming his RICO claim will turn on common proof, and
15 that the causal relationship between Defendant’s alleged scheme and the putative
16 class members is the “same for everyone.” (Dkt. No. 39-1 at 20.) Plaintiff sets forth
17 a “common sense” or “logical explanation” theory of causation that does not rely on
18 individualized inquiries. (Id. at 21.)

19 As an initial matter, the Court agrees with Defendant that Plaintiff’s theory of
20 liability under RICO requires a showing that the putative class relied on the alleged
21 fraudulent misrepresentations. Although a RICO plaintiff’s reliance on alleged
22 misrepresentations is not always required in RICO cases, see, e.g., Bridge v.
23 Phoenix Bond & Indem. Co., 553 U.S. 639 (2008), Plaintiff’s theory of liability
24 under RICO is that Defendant schemed to misrepresent the Trump University Live
25 Event programs, which caused the putative class members to make Live Event
26 purchases. Reliance is, therefore, at the heart of Plaintiff’s theory of causation
27 between Defendant’s actions and the alleged injury to the putative class.

28 However, the Court finds that Plaintiff has demonstrated that the “reliance”

1 inquiry in this case does not require individualized inquiries. Courts have found that
2 reliance can be established on a class-wide basis where the behavior of plaintiffs
3 and class members cannot be explained in any way other than reliance upon the
4 defendant's conduct. See Peterson v. H & R Block Tax Services, Inc., 174 F.R.D.
5 78, 84-85 (N.D. Ill. 1997) (reliance apparent because class members paid a
6 significant fee for a service for which they were not eligible); Garner v. Healy, 184
7 F.R.D. 598, 602 (N.D. Ill. 1999) (plaintiffs "paid money for a 'wax,' but instead
8 received a worthless 'non-wax' product"); Negrete, 238 F.R.D. at 491-92 (finding
9 common sense inference that no rational class member would have purchased
10 annuities if adequate disclosure of facts had been made); Kennedy v. Jackson
11 National Life Ins. Co., No. C 07-0371 CW, 2010 WL 2524360 at *8 (N.D. Cal. June
12 23, 2010) (product offered no benefit in relation to its cost); Minter v. Wells Fargo
13 Bank, N.A., 274 F.R.D. 525, 546 (D. Md. 2011) ("[I]t is reasonable to infer that
14 plaintiff class members would not have transacted with Prosperity had they known
15 Prosperity was not a legitimate lender, especially given that the class members were
16 using Prosperity to secure mortgages and agree to very substantial personal
17 liabilities.").

18 Here, Plaintiff's theory of causation is that people who paid for "Trump
19 University" Live Events "would not have done so if informed they were getting
20 neither Trump nor a university." (Dkt. No. 46 at 12.) Plaintiff has introduced
21 evidence that the alleged misrepresentations of a "university" and of Donald Trump
22 participation in the Trump University Live Events were prominently featured in all
23 Trump University marketing materials; and that a "Playbook," Powerpoint
24 presentations, and scripts encouraged if not required Trump University
25 representatives to continue these representations. (Dkt. No. 39-3, Forge Decl. Exs.
26 15-18.) The Court finds that this evidence provides a method for Plaintiff to
27 establish proximate causation on a classwide basis without resort to individualized
28 inquiries, by relying on a common sense inference that consumers are likely to rely

1 on prominently marketed features of a product which they purchase. See, e.g., In re:
2 National Western Life Insurance Deferred Annuities, No. 3:05-cv-1018-GPC-WVG,
3 2013 WL 593414 at * 4 (S.D. Cal. Feb. 14, 2013).

4 Defendant argues this case is like In re Countrywide Financial Corp.
5 Mortgage Marketing and Sales Practices Litigation, 277 F.R.D. 586 (S.D. Cal.
6 2011), or Poulos, cases in which courts found that alleged misrepresentations were
7 not susceptible to a class-wide inference of reliance due to the multiple, highly
8 individualized, possible motivations behind putative class member decisions. (See
9 Dkt. No. 45 at 16, 20.) The Court finds these cases distinguishable.

10 In Countrywide, the court denied certification of a RICO putative class where
11 the alleged misrepresentations were “not susceptible to a sweeping, class-wide
12 inference of reliance as there are reasonable explanations for members of the class
13 taking on a POA or subprime loan despite the risks associated with such loans.” 277
14 F.R.D. at 604. In particular, the court found that the defendant had introduced
15 evidence demonstrating that “many borrowers with knowledge of essential loan
16 terms nevertheless elected to proceed given the benefits of the loan under then-
17 favorable market conditions” and that this evidence corroborated defendant’s claim
18 that the class took out loans for a variety of reasons. Id. at 605. The evidence
19 showed that the defendant’s loan officers described their loans “from start to
20 finish,” and “explained in detail the pros and cons of the [product at issue].” Here,
21 on the other hand, Defendant has not demonstrated any such transparency on the
22 part of Defendant or Trump University such that it may be inferred that putative
23 class members had knowledge of the alleged misrepresentations yet chose, for other
24 reasons, to purchase Trump University Live Event programs.

25 Likewise in Poulos, the Ninth Circuit considered allegations that defendants
26 induced people to play their video poker and electronic slot machines based on a
27 false perception that the machines were true games of chance. 379 F.3d 654. The
28 court stated there was no single logical explanation for gambling, and rejected the

1 plaintiff's position that causation could be inferred through class-wide
2 circumstantial evidence. Poulos, 379 F.3d at 668 (gambling "may be an addiction, a
3 form of escape, a casual endeavor, a hobby, a risk-taking money venture, or scores
4 of other things"). However, the Ninth Circuit expressly applied its holding to the
5 "unique nature of gambling transactions and the allegations underlying the class
6 claims," finding that Poulos was "not a case in which there is an obvious link
7 between the alleged misconduct and harm." 379 F.3d at 665.

8 Here, the Court finds that, unlike gambling, purchasing real estate seminars is
9 not the type of consumer activity that is susceptible to wide-ranging behavioral
10 rationales. Furthermore, unlike in Poulos, Plaintiff has introduced evidence that
11 Defendant marketed the Trump University Live Events with prominent pictures and
12 quotes from Defendant as well as the allegedly ubiquitous use of the name "Trump
13 University" as well as a coat of arms and educational language. (See Dkt. No. 39-3,
14 Forge Decl. Exs. 15-18.) The Court is satisfied that Plaintiff has produced evidence
15 of uniform marketing of the alleged misrepresentations such that a common sense
16 link between the misrepresentations and putative class members' reliance on those
17 representations is appropriate.

18 At the hearing on the present motion for class certification, Defendant argued
19 he is entitled to mount a defense on the issue of causation, and that his defense
20 would require individualized inquiries into whether each putative class member
21 relied on the alleged misrepresentations. The Court finds this argument
22 unpersuasive. Because the Court finds that an inference of reliance is appropriate in
23 this case, the inference may only be rebutted by evidence that can be properly
24 generalized to the class as a whole. See Plascencia v. Lending 1st Mortg., No. C 07-
25 4485 CW, 2011 WL 5914278 at *2 (N.D. Cal. Nov. 28, 2011) ("The presumption
26 [of reliance] could be rebutted on a class-wide basis only if there is evidence that
27 can be properly generalized to the class as a whole.") (citing Iorio v. Allianz Life
28 Ins. Co. of N. Am., 2008 U.S. Dist. LEXIS 118344 at *93-94) (Wilken, J.); In re

1 National Western Life Ins. Deferred Annuities Litig., No. 3:05-cv-1018-GPC-WVG,
2 2013 WL 593414 at *5 (S.D. Cal. Feb. 14, 2013) (“The Plascencia court’s
3 conclusion that a classwide presumption of reliance can only be rebutted by
4 evidence that can be properly generalized to the whole class is well taken.”).
5 Accordingly, the Court finds that Plaintiff has made a sufficient showing that
6 common issues predominate on the element of causation for Plaintiff’s RICO claim.

7 **2. Statute of Limitations**

8 Defendant argues that individual issues of proof predominate with regard to
9 the statute of limitations affirmative defense. Civil RICO claims are subject to a
10 four-year statute of limitations. Agency Holding Corp. v. Malley-Duff & Assoc’s,
11 Inc., 483 U.S. 143, 156 (1987). A plaintiff seeking to recover under RICO must file
12 suit within four years of the date when he knew or should have known of his injury.
13 Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 365 (9th Cir.
14 2005) (“The limitations period for civil RICO actions begins to run when a plaintiff
15 knows or should know of the injury which is the basis for the action.”).

16 On October 18, 2012, Plaintiff filed this RICO case. Defendant argues that
17 “anyone’s claim that accrued prior to October 18, 2009 is . . . time-barred.” (Dkt.
18 No. 45 at 8.) According to Defendant, individualized inquiries as to “(1) when [each
19 class member had] actual knowledge of the alleged injury; or (2) when [each class
20 member had] enough information to put him/her on constructive notice - and could
21 investigation have led to discovery of the alleged injury” defeats the predominance
22 of common questions in this case. (Id. at 9) (relying on Henson v. Fidelity Nat’l
23 Financial Inc., 300 F.R.D. 413 (C.D. Cal. 2014) (by its very nature the application
24 of the discovery rule requires fact-intensive and highly individualized inquiry)).

25 Plaintiff Cohen responds by characterizing his RICO claim as involving a
26 scheme by Defendant to market his enterprise as a “university” in which students
27 would effectively learn from him, while Defendant in fact concealed the unqualified
28 nature of his “university” and lack of participation in shaping the curricula or

1 instructors for Live Events. (Dkt. No. 46 at 7.) Cohen claims that he did not
2 discover the alleged fraud until June 2011 when he learned of Makaeff’s lawsuit.
3 Cohen argues that Defendant has failed to show how his statute of limitations
4 defense is likely to raise any individual issues and that this is a “prototypical case
5 where [a statute of limitations] defense does not undermine class certification
6 because all of the facts that Trump claims satisfy the discovery rule are the same as
7 to all Class members.” (Id. at 6.)

8 Defendant disputes this contention and points to the individual circumstances
9 involving Cohen and others which illustrate the need for individualized
10 determinations on the statute of limitations defense. Defendant asserts that all the
11 facts as to whether Trump University was a “university” were available to or known
12 by Cohen as of July 2009. According to Defendant, these available facts were that
13 Cohen was a college graduate who was not looking for a diploma; Cohen knew that
14 the Trump seminars were taking place in a hotel; and Cohen had not made any
15 inquiry into the accreditation status of TU. As to the lack of Trump’s involvement,
16 Defendant argues that Cohen knew, while he was in the programs, whether he was
17 receiving useful information or not so that if Trump’s alleged lack of involvement
18 resulted in teachings of no value, Cohen should have been aware of it by the time he
19 completed the program. (Dkt. No. 45 at 16.)

20 The above facts do not prove that Cohen uniquely discovered the injury
21 resulting from the concealed fraud as of October 2009. Instead, they appear to be
22 facts that apply to nearly all of the putative class members and constitute common
23 proof which Defendant may offer to support their position that class members
24 should have discovered the alleged injury prior to October 18, 2009.

25 Defendant also argues that Cohen’s claim that he did not discover the alleged
26 fraud until June 2011 is belied by the actions of another potential class member who
27 criticized Trump University. Defendant points to a Los Angeles Times reporter’s
28 article published in December 2007 describing his experience at a Trump seminar

1 that was described as a two-hour sales pitch for a three-day workshop that would
2 cost \$1,495. However, the fact that a public article criticized the alleged practice of
3 upselling does not establish inquiry notice for the alleged false claims regarding
4 Trump University.

5 In addition, Defendant's argument relies heavily on the exemplar of Tarla
6 Makaeff, a named plaintiff in the Makaeff v. Trump University LLC related action.
7 According to evidence unearthed in discovery in that case, Makaeff participated in
8 Trump University programs between June 2008 and June 2009; received a letter
9 from the Orange County District Attorney's Office which caused her to "realize
10 what had happened to her" in mid-June, 2009; and wrote a letter to Bank of
11 America accusing Trump University of "deceptive business practices," "fraud,"
12 "grand larceny," and "identity theft," among a number of allegations on September
13 10, 2009. (Dkt. No. 45 at 10) (citing Dkt. Nos. 45-3, 48-7, 48-8, 48-9, Stagg Decl.
14 Exs. 32-34). Defendant argues that Makaeff's had "actual knowledge of the alleged
15 injury or, at a minimum, sufficient facts to put her on constructive notice of the
16 alleged injury at least as early as September 10, 2009, if not much earlier," which
17 "illustrates the detailed inquiry necessary to determine if each class member's claim
18 is time barred." (Id. at 10.)

19 Plaintiff responds by pointing out that the September 2009 letter to Bank of
20 America confirms that Makaeff did not claim that Trump knowingly and unlawfully
21 marketed a "university" or that he lacked any meaningful involvement. According
22 to Plaintiff, these facts show that Makaeff had not discovered the RICO claim as of
23 September 2009 and lacked inquiry notice to learn of the alleged injury.

24 However, even assuming that Makaeff had constructive notice of the alleged
25 injury on September 10, 2009, the existence of a statute of limitations issue as to her
26 does not by itself compel a finding that individual issues predominate over common
27 ones. Cameron v. E.M. Adams & Co., 547 F.2d 473 (9th Cir. 1976) ("presence of
28 individual issues of compliance with the statute of limitations here does not defeat

1 the predominance of the common questions.”) Plaintiff in this case alleges a single
2 cause of action for mail fraud and wire fraud in violation of RICO. As articulated by
3 Plaintiff, the alleged fraudulent scheme in this case focuses on two
4 misrepresentations repeated in various mail and wire communications. The Court
5 has found a nucleus of common issues and is not convinced at this point that the
6 inquiry into whether the individual class members in this case knew or should have
7 known about the fraudulent scheme as alleged in the present action will require
8 individualized determinations or may depend on facts peculiar to each class
9 member’s case. Although Defendant may yet show that Plaintiff and the putative
10 class members knew or should have known that Defendant had devised a scheme to
11 falsely market Trump University via mail or wire prior to October 2009, the Court is
12 satisfied that determination of Defendant’s statute of limitations defense in this case
13 will not defeat the predominance of common issues in this case.¹ See Baker v.
14 Castle & Cooke Homes Hawaii, Inc., No. 11-00616 SOM-RLP, 2014 WL 1669158
15 at *14 (D. Haw. Apr. 28, 2014) (“When there is no reason to suspect that potential
16 class members have or will discover product defects at significantly different times,
17 the presence of a statute of limitations provision, by itself, is insufficient reason to
18 compel all potential class members to pursue their claims individually.”).

19 3. Damages

20 Plaintiff argues Trump University’s records will be used to calculate each
21 class member’s damages based upon trebled refunds. (Dkt. No. 39-1 at 22.)
22 Analogizing to a Seventh Circuit case involving fraudulent artwork, Plaintiff argues
23 the “actual loss” attributable to Defendant’s alleged misrepresentations is the “entire
24 amount paid” by the putative class members. (Id. at 23) (citing United States v.
25 Kennedy, 726 F.3d 968, 974 (7th Cir. 2013)).

26 Defendant argues individual inquiries into entitlement and amount of

27
28 ¹In the event that defendant demonstrates in the future that individualized statute-of-limitations problems actually shift the balance and undercut the predominance of common issues, the district court may modify its class certification order or even decertify the class. See Fed.R.Civ.P. 23(c)(1).

1 damages precludes predominance. Taking issue with Plaintiff’s “full refund” model,
2 Defendant argues a full refund damages model improperly assumes that the putative
3 class members received nothing and does not account for the “actual value received
4 by the purchaser.” (Dkt. No. 45 at 23) (citing Comcast Corp. v. Behrend, 133 S. Ct.
5 1426, 1433 (2013)). Defendant offers evidence of evaluations showing different
6 amounts of approval for Trump University programs, claiming that this evidence
7 “believes any claim that the TU programs were worthless when class members remain
8 happy and satisfied with their experience at TU . . . and are now successful in real
9 estate and have made profitable investments using the tools and strategies taught by
10 TU.” (Dkt. No. 45 at 24-25) (citing participant evaluations).

11 As an initial matter, as this Court found in the Makaeff v. Trump University
12 LLC related case, individual questions as to damages cannot, by themselves, defeat
13 class certification. No. 10-cv-541-GPC-WVG, Dkt. No. 298 at 27 (citing Leyva v.
14 Medline Indus. Inc., 716 F.3d 510, 513-14 (9th Cir. 2013) (reiterating, after
15 Comcast, that “[i]n this circuit . . . damage calculations alone cannot defeat
16 certification.”); see also Jimenez v. Allstate Ins. Co., 765 F.3d 1161, 1167 (9th Cir.
17 2014) (“In this circuit, Leyva is the controlling case.”) (citation omitted). The Ninth
18 Circuit has specifically approved the reservation of individual questions regarding
19 damages after class action resolution of the common questions of liability. Jimenez,
20 Id. at 1168 (citing In re Whirlpool Corp. Front-Loading Washer Prods. Liability
21 Litigation, 722 F.3d 838, 850-61 (6th Cir. 2013)). Here, Defendant’s due process
22 right to present individualized defenses as to damages claims may be addressed
23 after the common liability questions of whether Defendant’s Trump University
24 violated the federal civil RICO statute. Id. These individualized questions do not
25 defeat class certification.

26 Furthermore, the Court finds that Comcast does not dictate a contrary result
27 in this case. 133 S. Ct. 1426. In Comcast, the Supreme Court held that a plaintiff’s
28 proposed damages model must “measure only those damages attributable to [the

1 plaintiff's] theory [of liability]." 133 S. Ct. at 1433. The court reiterated that
2 "[c]alculations need not be exact," but found that "at the class-certification stage (as
3 at trial), any model supporting 'a plaintiff's damages case must be consistent with
4 its liability case.'" Id. (citing Story Parchment Co. v. Paterson Parchment Paper Co.,
5 282 U.S. 555, 563 (1931); ABA Section of Antitrust Law, Proving Antitrust
6 Damages: Legal and Economic Issues 57, 62 (2d ed. 2010)).

7 Here, the Court finds that Plaintiff's damages model matches Plaintiff's
8 theory of liability. Although some courts have found a "full refund" model of
9 damages inappropriate where the plaintiff's theory of liability seeks restitutionary
10 damages, see Werdebaugh v. Blue Diamond Growers, No. 12-cv-02724-LHK, 2014
11 WL 2191901 at *22 (N.D. Cal. Oct. 2, 2013), Plaintiff brings this claim under
12 RICO, which provides for statutory trebled damages, attorney's fees, and cost of
13 suit, 18 U.S.C. § 1964(c). "[D]amages under RICO do not depend on subjective
14 valuations, but rather on objective losses." Negrete v. Allianz Life Ins. Co. of N.
15 Am., Nos. CV 05-6838 CAS (MANx), CV 05-8908 CAS (MANx), 2013 WL
16 6535164 at *4 (C.D. Cal. Dec. 9, 2013). The Court therefore finds that while
17 Plaintiff must still prove its damages case, his theory of damage recovery does not
18 conflict with his theory of liability under Comcast. Accordingly, the Court finds that
19 individualized questions as to damages do not defeat predominance in this case.

20 **B. Superiority**

21 Rule 23(b)(3) requires that class resolution must be "superior to other
22 available methods for the fair and efficient adjudication of the controversy." Fed. R.
23 Civ. P. 23(b)(3). "The superiority inquiry under Rule 23(b)(3) requires
24 determination of whether the objectives of the particular class action procedure will
25 be achieved in the particular case." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1023
26 (9th Cir. 1998) (internal citation omitted). Two of the key factors to determining
27 superiority are the "extent and nature of any litigation concerning the controversy
28 already commenced by or against members of the class," and "the likely difficulties

1 in managing a class action.” Fed. R. Civ. P. 23(b)(3)(B), (D).

2 Defendant argues that class resolution is not superior in this case because of
3 the “mini-trials required” to resolve the “substantial individual inquir[ies] at least
4 related to the statute of limitations, reliance/causation, and damages for each class
5 member.” (Dkt. No. 45 at 28.) As discussed in detail above, however, the Court
6 finds that common issues predominate on these issues, making class resolution of
7 these issues more efficient as a whole.

8 In addition, Defendant argues that “management difficulties and related
9 litigation weigh against class treatment” due to the related Makaeff action and a
10 pending action brought by the New York Attorney General against Trump
11 University, The People of the State of New York v. Trump Entrepreneur Initiative
12 LLC et al., Index No. 451463/2013. (Dkt. No. 45 at 29.) However, as this Court has
13 previously recognized, courts “often certify class actions arising from similar facts.”
14 Makaeff v. Trump University LLC, No. 10-cv-541-GPC-WVG, Dkt. No. 298 at 34
15 (citing Cartwright v. Viking Indus., Inc., 2009 WL 2982887, *15 (E.D. Cal. 2009)
16 (certifying a class for CLRA, UCL, fraudulent concealment, unjust enrichment, and
17 warranty claims despite a concurrent state court class action certified for warranty
18 claims), and In re Wells Fargo Home Mortgage Overtime Pay Litig., 527 F. Supp.
19 2d 1053, 1069 (N.D. Cal. 2007) (concurrent FLSA and UCL class actions)). As this
20 Court found in the Makaeff action, this Court finds that class-wide litigation of
21 Plaintiff’s claims here will reduce litigation costs and promote greater efficiency in
22 a single nation-wide class alleging one cause of action. The Court finds the
23 superiority requirement of Rule 23(b) is satisfied for Plaintiff’s RICO claim.

24 CONCLUSION

25 Based on the foregoing, Plaintiff’s motion for class certification is
26 GRANTED. The Court hereby GRANTS Plaintiff’s motion for class certification
27 for the following class:


28 All persons who purchased Live Events from Trump University
throughout the United States from January 1, 2007 to the present.

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Excluded from the Class are Trump University, its affiliates, employees, officers and directors, persons or entities that distribute or sell Trump University products or programs, the Judge(s) assigned to this case, and the attorneys of record in the case. Additionally, the Court appoints Art Cohen as class representative. The Court appoints Robbins Geller Rudman & Dowd LLP and Zeldes Haeggquist & Eck, as class counsel.

IT IS SO ORDERED.

DATED: October 24, 2014


HON. GONZALO P. CURIEL
United States District Judge