cause of action that the claims in the petition are barred by documentary evidence is granted as the Trump Respondents have failed to point to any documentary evidence that conclusively disposes of petitioner's claims. Additionally, petitioner's motion to strike the Trump Respondents' twelfth affirmative defense that the petition fails to allege facts to establish injunctive relief is granted as this court has granted petitioner a summary determination on its cause of action alleging a violation of Educ. Law §§ 5001-5010 and thus, petitioner at the very least may be entitled to an injunction pursuant to Exec. Law § 63(12).

Petitioner's motion to strike the Trump Respondents' thirteenth affirmative defense that in the event of any breach found by this court as to petitioner's fifth cause of action pursuant to Educ. Law §§ 5001-5010, the amount of damages should be referred to the SED, is granted as the Trump Respondents have failed to provide a basis for such defense. This court has already found that petitioner has standing to assert a claim against respondents pursuant to Educ. Law §§ 5001-5010 and that the SED's disciplinary process does not apply to unlicenced proprietary schools such as TEI. Thus, there is no basis for referring the penalty determination to the SED. Moreover, it is the court's role to ascertain damages in a special proceeding brought pursuant to Exec. Law § 63(12).

Further, petitioner's motion to strike the Trump Respondents' fourteenth affirmative defense that petitioner's claims are barred by the enrollment forms executed by the students which contain certain disclaimers is granted. Courts have recognized the need to "carefully examine the reality of educational contracts...to guard against predatory practices calculated to take advantage of the unwary consumer." *Brown v. Hambric*, 168 Misc.2d 502, 506-07 (N.Y. Civ. Ct. 1995), *citing Joyner v. Albert Merrill School*, 97 Misc.2d 568, 574 (N.Y. Civ. Ct. 1978). Further, it is well-established that the existence of such disclaimers in such contracts is not a

defense to statutory claims of false, deceptive and fraudulent practices. *See Goshen v. Mutual Life Ins. Co.*, 98 N.Y.2d 314 (2002)(documentation including the contractual terms and product disclaimer does not establish a defense to deceptive practices as a matter of law); *see also Matter of People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 108 (3d Dept 2005)(deceptive representations not cured by limitations "embedded in the fine print.") Moreover, it has long been held that disclaimers hidden in written agreements are also not a defense to a claim for common law fraud. *See Sabo v. Delman*, 3 N.Y.2d 155 (1957) (citing *Bridger v. Goldsmith*, 143 N.Y. 424, 428 (1894))("there is no authority that we are required to follow in support of the proposition that a party who has perpetrated a fraud upon his neighbor may, nevertheless, contract with him in the very instrument by means of which it was perpetrated, for immunity against its consequences, close his mouth from complaining of it and bind him never to seek redress. Public policy and morality are both ignored if such an agreement can be given effect in a court of justice.") Indeed, the general rule in New York is that a buyer's disclaimer cannot preclude a common law fraud "claim of justifiable reliance on the seller's misrepresentations or omissions unless (1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the seller's knowledge." *BasisYield Alpha Fund v. Goldman Sachs Group, Inc.*, 115 A.D.3d 128 (1st Dept 2014). The First Department in *BasisYield* went on to explain that "only where a written contract contains a specific disclaimer of responsibility for extraneous representations, that is, a provision that the parties are not bound by or relying on representations or omissions as to the specific matter, is a plaintiff precluded from later claiming fraud on the ground of prior misrepresentations as to the specific matter." *Id. See also Joyner v. Albert Merrill School*, 97 Misc.2d at 575(the language in the contract "fails to constitute a

specific disclaimer by plaintiff of reliance upon defendants' fraudulent misrepresentation. Absent a sufficiently specific disclaimer which would negate the element of reliance, plaintiff cannot be barred from asserting his claim of fraud against defendants...Even if a specific disclaimer of reliance were contained in defendants' contract, plaintiff's cause of action for fraud would not be barred unless he also had an opportunity to discover the true facts.")

Here, the disclaimers in the enrollment forms executed by TEI's students do not provide a defense to respondents' alleged conduct. The disclaimers, which are buried in small print, provide, *inter alia*, that "[t]his training is provided for education only and no guarantees, promises, representations or warranties of any kind regarding specific or general benefits...have been or will be made by the Program...I acknowledge that none of the Principals is responsible for, and they shall have no liability for, my business success or failure...or my use of or reliance on Program Information." However, such disclaimers do not specifically disclaim the particular facts petitioner alleges were misrepresented or undisclosed, such as, *inter alia*, that the curriculum for TEI was developed by Mr. Trump, that the instructors and mentors were handpicked by Mr. Trump and that TEI's mentors and instructors would provide the students with access to hard money lenders and sources of private money. Additionally, such facts were only within the Trump Respondents' knowledge. Thus, such disclaimers fail to provide a defense to petitioner's claims of fraud.

Petitioner's motion to strike the Trump Respondents' seventeenth affirmative defense which asserts that petitioner comes to this court with unclean hands and Mr. Sexton's fourth affirmative defense which asserts the doctrine of laches is also granted. "The doctrine of unclean hands is based on the principle that 'since equity tries to enforce good faith in defendants, it no less stringently demands the same good faith from the plaintiff.'" *Dunlop-McCullen v. Local 1-S*,

149 F.3d 85, 90 (2d Cir. 1998)(quoting 11A Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, *Federal Practice and Procedure*, § 2946, at 108 (1995)). "Generally, 'the doctrine of unclean hands may not be invoked against a governmental agency which is attempting to enforce a congressional mandate in the public interest.'" *SEC v. KPMG LLP*, 2003 WL 21976733 *3 (S.D.N.Y. 2003). Indeed, "[e]quitable defenses against government agencies are strictly limited." *SEC v. Electronics Warehouse, Inc.*, 689 F.Supp. 53, 73 (D.Conn. 1988), *aff'd*, 891 F.2d 457 (2d Cir. 1989). However, the doctrine of unclean hands, like other equitable defenses, may be raised against the government where "the agency's misconduct [was] egregious and the resulting prejudice to the defendant r[o]se to a constitutional level." *Electronics Warehouse, Inc.*, 689 F.Supp. at 73. Furthermore, "courts have permitted the defense only where the alleged misconduct occurred during the investigation leading to the suit and the misconduct prejudiced the defendant in the defense of the action." *Id.* The defense of laches "is defined as such neglect or omission to assert a right as, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity. The essential element of this equitable defense is delay prejudicial to the opposing party." *Capruso v. Village of Kings Point*, 2014 WL 2608464 (N.Y. 2014). However, "[i]t is settled that the equitable doctrine of laches may not be interposed as a defense against the State when acting in a governmental capacity to enforce a public right or protect a public interest." *Matter of Cortlandt Nursing Home v. Axelrod*, 66 N.Y.2d 169, 178 (1985).

As an initial matter, the Trump Respondents' defense of unclean hands must be stricken as they have not alleged such egregious behavior that rises to a constitutional level or any specific conduct perpetrated by petitioner during its investigation that would prevent the Trump Respondents from putting forth their defenses to this proceeding. Moreover, as this court has

already found, to the extent respondents seek to assert a claim for malicious prosecution based on any alleged wrongdoing during petitioner's investigation and commencement of the instant proceeding, such claim is premature as they may only do so after the proceeding is terminated in their favor. Additionally, Mr. Sexton's defense of laches must be stricken as it may not be asserted against the petitioner in this proceeding. Here, the State is acting in its governmental capacity to protect a public interest, and thus, the defense of laches does not apply.

However, petitioner's motion to strike the Trump Respondents' and Mr. Sexton's first affirmative defenses that petitioner's first, second, third, fifth and sixth causes of action fail to state claims is denied as such affirmative defense is not subject to a motion to strike. *See Riland*, 56 A.D.2d at 353. Additionally, petitioner's motion to strike the Trump Respondents' second affirmative defense that petitioner's cause of action pursuant to Exec. Law § 63(12) fails to state a claim on the ground that it is not a standalone cause of action is denied as this court, along with the Court of Appeals and the First Department, has found that there is no independent, standalone cause of action pursuant to Exec. Law § 63(12). Further, petitioner's motion to strike Mr. Sexton's second affirmative defense which asserts that petitioner's right to maintain its first cause of action for conduct that occurred more than six years prior to May 31, 2013 is time-barred by the statute of limitations for common-law fraud is denied as this court has already determined that petitioner's common-law fraud claims may only go back six years from May 31, 2013 and no earlier. Finally, petitioner's motion to strike Mr. Sexton's third affirmative defense that petitioner's right to maintain its second, third, fifth and sixth causes of action for conduct that occurred more than three years prior to May 31, 2013 is time-barred by CPLR § 214(2) is denied as this court has already determined that such causes of action may only go back three years from May 31, 2013 and no earlier.