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13 **Attorneys for Plaintiffs,**

14 *O'Brien v. Trump, LASC No. BC 409651 (Lead Case)*
15 *Chapchian v. Trump, LASC Case No. BC 439950*
16 *Ruggiero v. Trump, LASC Case No. BC 443134*
17 *Breslin v. Trump, LASC Case No. BC 437908*
18 *Shin v. Trump, LASC Case No. BC 452657*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **FOR THE COUNTY OF LOS ANGELES- CENTRAL CIVIL WEST**

21 Coordination Proceeding)
22 Special Title (Rule 3.550))

23 THE TRUMP ORGANIZATION "BAJA)
24 PROJECT" CASES)
25 _____)

26 **JUDICIAL COUNCIL COORDINATION**
27 **PROCEEDING NO. 4642**
28 [*Case assigned Hon. Judge Lee Smalley Edmon,*
Judge Presiding in Department 322]

THE O'BRIEN PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR SUMMARY
ADJUDICATION OF THE SEVENTH AND
EIGHTH CAUSES OF ACTION AGAINST
DEFENDANTS DONALD J. TRUMP,
IVANKA TRUMP, DONALD TRUMP, JR.,
TRUMP ORGANIZATION, INC. AND
TRUMP ORGANIZATION, LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES

[Filed concurrently with Plaintiffs' Separate
Statement of Undisputed Material Facts;
Declaration of Daniel J. King; Appendix of
Exhibits to Declaration of Daniel J. King and
Deborah Najm; Compendium of Plaintiffs'
Declarations, and Request for Judicial Notice]

Date of Hearing: September 24, 2013
Time: 9:00 a.m.
Dept.: 322

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2
3 NOTICE IS HEREBY GIVEN that on September 24, 2013 at 9:00 a.m. in Department
4 322 of the Los Angeles Superior Court, 600 S. Commonwealth Ave., Los Angeles, CA,
5 Plaintiffs in the pending action entitled *O'Brien v. Trump*, LASC Lead Case, No. BC409651,
6 will and hereby do move the Court for Summary Adjudication as follows:
7

- 8 1. Issue No. 1: The Tower 1 Plaintiffs as identified in the Fourth Amended
9 Complaint (with the exception of Plaintiffs Eshragi, C. Nguyen and L. Nguyen) are
10 entitled to judgment as against Defendant Donald J. Trump on the Seventh Cause
11 of Action because there are no triable issues of fact that Donald J. Trump violated
12 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);
13
- 14 2. Issue No. 2: The Tower 1 Plaintiffs as identified in the Fourth Amended
15 Complaint (with the exception of Plaintiffs Eshragi, C. Nguyen and L. Nguyen) are
16 entitled to judgment as against Defendant Ivanka Trump on the Seventh Cause of
17 Action because there are no triable issues of fact that Ivanka Trump violated 15
18 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);
19
- 20 3. Issue No. 3: The Tower 1 Plaintiffs as identified in the Fourth Amended
21 Complaint (with the exception of Plaintiffs Eshragi, C. Nguyen and L. Nguyen) are
22 entitled to judgment as against Defendant Donald Trump, Jr. on the Seventh Cause
23 of Action because there are no triable issues of fact that Donald Trump, Jr.
24 violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);
25
- 26 4. Issue No. 4: The Tower 1 Plaintiffs as identified in the Fourth Amended
27 Complaint (with the exception of Plaintiffs Eshragi, C. Nguyen and L. Nguyen) are
28 entitled to judgment as against Defendant Trump Organization, Inc. on the Seventh

1 Cause of Action because there are no triable issues of fact that the Trump
2 Organization, Inc. violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);

3
4 5. Issue No. 5: The Tower 1 Plaintiffs as identified in the Fourth Amended
5 Complaint (with the exception of Plaintiffs Eshragi, C. Nguyen and L. Nguyen) are
6 entitled to judgment as against Defendant Trump Organization, LLC on the
7 Seventh Cause of Action because there are no triable issues of fact that the Trump
8 Organization, LLC violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-
9 81);

10
11 6. Issue No. 6: The Tower 2 Plaintiffs as identified in the Fourth Amended
12 Complaint are entitled to judgment as against Defendant Donald J. Trump on the
13 Eighth Cause of Action because there are no triable issues of fact that Donald J.
14 Trump violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);

15
16 7. Issue No. 7: The Tower 2 Plaintiffs as identified in the Fourth Amended
17 Complaint are entitled to judgment as against Defendant Ivanka Trump on the
18 Eighth Cause of Action because there are no triable issues of fact that Ivanka
19 Trump violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);

20
21 8. Issue No. 8: The Tower 2 Plaintiffs as identified in the Fourth Amended
22 Complaint are entitled to judgment as against Defendants Donald Trump, Jr. on the
23 Eighth Cause of Action because there are no triable issues of fact that Donald
24 Trump, Jr. violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact Nos. 1-81);

25
26 9. Issue No. 9: The Tower 2 Plaintiffs as identified in the Fourth Amended
27 Complaint are entitled to judgment as against Defendant The Trump Organization,
28 Inc. on the Eighth Cause of Action because there are no triable issues of fact that

1 The Trump Organization, Inc. violated 15 U.S.C. §1703(a)(1)(D)(Undisputed Fact
2 Nos. 1-81);

3
4 10. Issue No. 10: The Tower 2 Plaintiffs as identified in the Fourth Amended
5 Complaint are entitled to judgment as against Defendant The Trump Organization,
6 LLC on their Eighth Cause of Action because there are no triable issues of fact that
7 The Trump Organization, LLC violated 15 U.S.C. §1703(a)(1)(D)(Undisputed
8 Fact Nos. 1-81);

9
10 Said Plaintiffs therefore seek an Order that the final judgment in this action shall, in
11 addition to any matter determined at the trial, award judgment as established by said
12 adjudication.

13
14 This Motion for Summary Adjudication will be based upon this Notice, the
15 accompanying Memorandum of Points and Authorities, the Separate Statement of Undisputed
16 Facts submitted concurrently herewith, the Declaration of Daniel J. King and the Declarations of
17 each of the *O'Brien* Plaintiffs (with the exception of Plaintiffs Eshragi, C. Nguyen and L.
18 Nguyen) as contained in the Appendix of Declarations submitted concurrently herewith, and the
19 Request for Judicial Notice in support thereof, as well as the Exhibits attached thereto, the
20 Court's own records in connection with this action, matters of which this Court must and/or may
21 take judicial notice, and upon such further evidence, oral or documentary, as may be presented in
22 support of this motion and the hearing hereof.

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24 ///
25 ///
26 ///
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28 ///

1 **LAW OFFICES OF BART I. RING**

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4 Dated: June 28, 2013

By _____
Bart I. Ring, Attorney for Plaintiffs
O'Brien v. Trump, LASC No. BC 409651 (Lead Case)
Chapchian v. Trump, LASC Case No. BC 439950
Ruggiero v. Trump, LASC Case No. BC 443134
Breslin v. Trump, LASC Case No. BC 437908
Shin v. Trump, LASC Case No. BC 452657

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10 **LAW OFFICES OF DANIEL J. KING**

11
12
13 Dated: June 28, 2013

By _____
Daniel J. King, Attorney for Plaintiffs
O'Brien v. Trump, LASC No. BC 409651 (Lead Case)
Chapchian v. Trump, LASC Case No. BC 439950
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The Interstate Land Sales Full Disclosure Act (“ILSA” or the “Act”) governs certain
5 activities of those acting in what the Act defines as a “developer” or developer “agent” in connection
6 with the sale or advertisement for sale of Units in a subdivision.

7
8 The straightforward issues raised by the instant Motion revolve around certain indisputable
9 requirements under the statute and the statutory scheme. Under ILSA, subdivision developments
10 (which do not fall under an exemption from the statute) must be registered with the Department of
11 Housing and Urban Development (“HUD”). Further, as a prerequisite to any sale, the current and
12 operative Property Report must be delivered to prospective purchasers before the sale. Among the
13 information required to be disclosed in the Property Report is the name of the developer of the
14 subdivision.

15
16 ILSA is designed to protect consumers by requiring the disclosure of honest and accurate
17 facts in connection with sales in a subdivision, all in order to allow consumers to assess potential
18 purchases. In order to effectuate this purpose, ILSA makes it unlawful for a developer or agent to
19 display or deliver to any prospective purchasers advertising or promotional material which is
20 inconsistent with information required to be disclosed in the Property Report. 15 U.S.C.
21 §1703(a)(1)(D). In their Seventh and Eighth Causes of Action, Plaintiffs¹ have alleged, among other
22 things, that Defendants violated 15 U.S.C. §1703(a)(1)(D).²

23
24 ¹The Seventh Cause of Action is asserted by all Tower 1 Plaintiffs as identified in the
25 Fourth Amended Complaint, except Plaintiffs Eshragi, C. Nguyen and L. Nguyen. The Eighth
Cause of action is asserted by all Tower 2 Plaintiffs.

26 ²The provisions of §1703(a)(1) are distinct and separate from the provisions relating to
27 the claims under ILSA based on fraud, and in that regard, there is no requirement that the
28 aggrieved party under §1703(a)(1) prove scienter, reliance, intent or any other element that
might be associated with proving a cause of action based on fraud. *Burns v. Duplin Land
Development* (E.D.N.C. 2009) 621 F.Supp. 292.

1 The purpose of this Motion for Summary Adjudication is to adjudicate that each of
2 Defendants Donald J. Trump, Ivanka Trump, Donald Trump, Jr., The Trump Organization LLC, and
3 The Trump Organization, Inc., (collectively, the “Trump Defendants”) who under the Act were
4 acting either as "developers" and/or "developer agents" and are liable as same pursuant to ILSA
5 under 15 U.S.C. §1703(a)(1)(D).

6
7 As is easily gleaned, the Defendants against whom this Motion is brought fall within the
8 simple and concise definitions of “Developer” and/or “Agent” set forth in ILSA. Under 15 U.S.C.
9 §1701(5) of ILSA, the term "developer" is:

10 “any person who, directly or indirectly, sells, or offers to sell, or advertises for
11 sale any lots in a subdivision.”

12
13 An "agent" is defined under 15 U.S.C. §1701(6) as:

14 “any person who represents, or acts for or on behalf of, a developer in selling
15 or offering to sell or lease, any lot or lots in a subdivision.”

16
17 In turn, §1701(11), defines the term "offer" broadly by stating it includes:

18 “any inducement, solicitation, or attempt to encourage a person to acquire a lot
19 in a subdivision.”

20
21 In the unlikely event that the Trump Defendants are somehow not found to be “Developers”
22 under ILSA, they have acted as agents for the developers, as “agent” is defined under the Act.

23
24 As set forth below, the advertising and promotional materials identified “Trump” and
25 “Irongate” as the developers of the Trump Ocean Resort Baja, and in connection with the sales and
26 marketing of the Units, each of the Trump Defendants participated as “developers,” “agents,” or
27 both as defined under ILSA. Such materials include and contain statements made directly by
28 Donald J. Trump and Ivanka Trump, representing not only themselves, but the Trump Organization

1 Defendants.

2
3 The Trump Defendants further participated in the sale and promotion of Units at the Project
4 by Ivanka Trump and Donald Trump, Jr. both appearing at sales events for the Project where they
5 each spoke and acted on their own behalf, as well as on behalf of the Trump Organization
6 Defendants. These materials, appearances and statements readily and undeniably establish that the
7 Trump Defendants were “developers” or “agents” under ILSA.

8
9 The Developers and Developer Agents, however, have violated ILSA in that all of the
10 statements which identify the “Trump” parties as a developer of the Project are inconsistent with the
11 information disclosed in the HUD Property Reports for the Project which identify “P.B. Impulsores,
12 S. De R.L. de C.V” as the developer. This inconsistency is an unequivocal violation of 15 U.S.C.
13 §1703(a)(1)(D).

14
15 In the face of the irrefutable evidence, there is no triable issue of fact that Defendants, Donald
16 J. Trump, Ivanka Trump, Donald Trump, Jr., The Trump Organization LLC, and The Trump
17 Organization, Inc. are developers and/or agents under ILSA. Since these Defendants acted as
18 “developers” and/or “agents” under ILSA, they are charged with the statutory responsibilities of the
19 developer. In that regard, and simply stated, there is no triable issue of fact that each of the Trump
20 Defendants are liable under ILSA for displaying and/or delivering to prospective purchasers
21 advertising or promotional material which is inconsistent with information required to be disclosed
22 in the HUD Property Report.

23
24 **A. Statement of Facts**

25 The Plaintiffs purchased Units in the planned ultra-luxury development known as the
26 Trump Ocean Resort Baja in 2006 and 2007. Collectively the O’Brien Plaintiffs (in the five
27 consolidated actions) paid approximately \$22 million in (now lost) deposits for the Units. Plaintiffs
28 agreed to purchase the Units because they were repeatedly and unceasingly told that Donald Trump

1 and the “Trump Organization” were developers of the Project and were involved in every aspect of
2 the development of the Project. Hand in hand with the advertised Trump role in the Project, the
3 buyers, including the Plaintiffs, were promised the development would bear the “Trump” name and
4 live up to the Trump standard of luxury. The buyers were repeatedly told and sold upon the concept
5 that the Trump Ocean Resort Baja had the backing and investment of Donald J. Trump, Ivanka
6 Trump, Donald Trump, Jr., and “the strength of the entire Trump Organization.” Speaking for the
7 amorphous “Trump Organization,” these statements were made by Donald J. Trump, Ivanka Trump,
8 and Donald Trump, Jr., both directly and through press-releases, marketing materials,
9 advertisements and other writings (which the Trump Defendants, either explicitly or tacitly,
10 approved as a means of advertising and/or promoting the sale of Units at the Project). However, and
11 notwithstanding the multitude of newspaper articles, press releases, marketing materials, and the
12 like, that not only identified and touted the Trump Defendants as a developer of the Project, there
13 is no evidence that there was ever a single call for a retraction or correction by any of the Trump
14 Defendants.³

15
16 Only after the miserable and total failure of the Project did the Trump Defendants make any
17 effort to disavow their role as a Developer of the Project⁴ which, up until that point, they so
18 stridently and effectively espoused as the primary selling point during the marketing and sale of the
19 Units.

20
21 The tension between their actual role as a developer and their desire to distance themselves
22 from the liability resulting from the failure of the Project has lead the Trump Defendants to be
23 inconsistent in this litigation as to their role in the Project. In numerous pleadings filed with this
24

25
26 ³Of course, the Trump Defendants were highly motivated to promote the sale of units in
27 the Project, as their fees under the terms of the License Agreement (which terms were not
disclosed to any of the buyers) were tied to certain benchmark sales milestones. The Trumps
and the Trump Organization stood to make a great deal of money from the Project.

28 ⁴In partnership with their development partner, the Irongate Defendants.

1 Court, the Trump Defendants have taken the position that they were “*only* a licensor of the ‘Trump’
2 name.” However, during their depositions, both Ivanka Trump and Donald Trump, Jr. insisted that
3 they were much more than a mere “licensor” and defined their role in the Project much more
4 broadly. For instance, as set forth in detail *infra*, Donald Trump, Jr. described the Trump role in
5 the Project as a “developer” – ‘with a lower case “d”’ – as opposed to a “Developer” – with a capital
6 “D.” The legal import of this distinction is not recognized by ILSA or the Courts, and in any event,
7 was admittedly never disclosed to any of the buyers who relied upon the representation that Trump
8 was, as represented, a developer of the Project. This is just one other aspect reflecting on the Trump
9 Defendants’ involvement in the Project and their role as a developer under ILSA.

10
11 In addition, contrary to the hopes of the Trump Defendants, the License Agreement signed
12 on behalf of the entity called Trump Marks, LLC does not define the either Donald J. Trump or the
13 Trump Defendants’ sole or exclusive role in the Project as *only* licensing the Trump name. Nor
14 does the license agreement preclude Trump from acting as a developer in addition to licensing the
15 Trump name for use in promoting or operating the Project – a role which Ivanka Trump and Donald
16 Trump, Jr. admit in their depositions. In fact, Ivanka Trump admitted that being a licensor on a
17 project would not preclude Trump from also being the developer of any particular project.

18
19 It was not until Trump’s development partners had fully drained the Plaintiffs’ funds received
20 as deposits under the Purchase Agreements did the Trump Defendants attempt to completely
21 distance themselves from any responsibility on the Project. Plaintiffs were then told that Trump
22 removed his name therefrom, and that the only recourse any buyers would have was against the now
23 purported “sole developer,” which Defendants assert is PB Impulsores, S. De R.L. de C.V
24 (sometimes referred to herein as “PB Impulsores”). Simultaneously, Plaintiffs were told that PB
25 Impulsores had no assets; ‘Good luck, and goodbye.’ The simple truth is the Defendants would
26 never have sold a single Unit at the Project unless the Defendants unabashedly and unceasingly
27 declared that the Trump defendants were developers of the Project.

1 This “bait and switch” by the Trump Defendants is actionable under a number of legal
2 theories, including claims under ILSA, (only some of which are at issue in the Motion). Simply
3 stated, the Trump Defendants cannot be given license to say one thing to potential purchasers as to
4 who is developing the Project as a means to increase sales, and say the complete opposite in HUD
5 disclosures. This is a violation of ILSA and subjects the Trump Defendants to liability under ILSA
6 as developers of the Project.

7
8 **B. Undisputed Facts**⁵

9 **1. The Trump Defendants fall within the definition of “Developers” and/or**
10 **“Agents” Under ILSA**

11 There is no escaping the obvious in this case. Each of the Trump Defendants readily fall
12 within the simple and concise definitions of “Developer” and/or “Agent” set forth in ILSA under
13 15 U.S.C. §1701(5) and 15 U.S.C. §1701(6). The Trump Baja Resort was aggressively marketed
14 as the second development project between Trump and Irongate. (UMF 19, 30.) The Trumps made
15 personal appearances at sales and promotional events. (UMF 53-57.) The Trumps and the Trump
16 Organizations were represented to be Developers of the Project. Press releases and marketing
17 materials boldly proclaimed the Trumps were building and developing the Resort. Perhaps the most
18 dramatic representation was made by Donald Trump, himself, in a video used to promote the
19 Project, wherein Donald Trump states:

20 *“I’m very very proud of the fact that when **I build**, I have investors that*
21 *follow me all over. They invest in me. They invest in what **I build**, and*
22 *that’s why I’m so excited about **Trump Ocean Resort**. This is going to*
23 *be something very very special.”* (UMF 40.)

24
25 On the same promotional video defendant Ivanka Trump says:

26 *“The Trump Organization likes to be ahead of the curve, and we’re always ahead of*

27
28

⁵References to the Statement of Undisputed Material Facts shall be designated by numbers as “UMF ___.”

1 *the curve, and this would be another example. We're really creating Northern Baja*
2 *as the new Cabo; as the new resort destination. This was, (umm), a deal that in*
3 *conjunction with my brother, and of course, my father, and the whole strength of*
4 *the Trump Organization, we are extraordinarily bullish on....*

5
6 *Not only is the land incredibly gorgeous, but the proximity to San Diego makes this*
7 *a tremendous investment*

8
9 *At a resort destination, it's very important to create the experience, and that's what*
10 *we've done a great job in doing here. . . .*

11
12 *We are developing a world-class resort befitting of the Trump Brand, and I*
13 *personally am very excited about it. I actually chose to purchase a unit, (umm), in the*
14 *First Tower.*”[Emphasis added]. (UMF 41.)

15
16 Significantly, neither Donald nor Ivanka Trump said in any of the marketing materials or sale
17 documents “when I *license* my name,” or “we are *licensing* a world-class resort.” (UMF 45.) The
18 Trump Defendants marketed the Trump Baja Resort as their project with Irongate – they were the
19 self-avowed developers and cannot now try to escape the liability that attaches to their position as
20 the developers.

21
22 **2. The Trump Defendants, as “Developers” and/or “Agents” Under ILSA,**
23 **Advertised and Promoted the Sale of Units at the Trump Ocean Resort**
24 **Baja⁶**

25
26 ⁶ There is an overwhelming amount of promotional and marketing material that was
27 disseminated which identifies “Trump” as one of the developers of the Project. As with the
28 Trump-Irongate Waikiki project, most of that promotional material was disseminated by the
S&P Defendants and by the Irongate Defendants, who had the authority to speak on behalf of the
Trump Defendants. However, in the interest of streamlining this Motion, Plaintiffs are only

1 The Trump Defendants, and Donald J. Trump, the head of The Trump Organizations, are
2 self-described as “the pre-eminent developer of quality real estate known around the world.” (UMF
3 5.) Ivanka Trump and Donald Trump, Jr. are both officers in the Trump Organizations. (UMF 6-8)
4 In connection with their use of the “Trump” name, Donald J. Trump, Ivanka Trump and Donald
5 Trump, Jr. use the name “Trump,” whether they are referring to Donald J. Trump, himself, or to one
6 of the Trump Organizations. (UMF 3).

7
8 Donald J. Trump is internationally recognized as a real estate mogul and celebrity. (UMF
9 17, 18.) He is also famous for developing real estate projects around the world through the
10 corporate defendants known as The Trump Organization. (UMF 17, 18.)

11
12 In fact, the marketing materials refer to the “Trump Organization,” and such materials make
13 no distinction between the Trump Organization, LLC and Trump Organization, Inc. (UMF 4.) This
14 is consistent with the deposition testimony of both Ivanka Trump and Donald Trump, Jr., who both
15 testified that even they do not make any such distinction between and among the entities. (UMF 3.)

16
17 The Trump Ocean Resort Baja was sold as a to-be-built condominium and resort
18 condominium- hotel development located along the coast in Northern Baja-California (the “Resort”
19 or “Project”). (UMF 1.) It was anticipated that the Project would consist of three (3) towers. As
20 set forth below, Defendants sold units in Towers 1 and 2, through a very comprehensive marketing
21 and promotional campaign. (UMF 1.)⁷

22
23 In connection with the promotion of sales of units in Tower 1 at the Project, and on or about
24 September 15, 2006, the Trump Defendants approved a press release to media outlets in North

25
26 _____
relying on those materials for which there can be **no plausible dispute** as to the Trump
Defendants’ approval and involvement in the dissemination of same.

27 ⁷The promotional and marketing materials were disseminated to prospective purchasers
28 using the internet and mails. (UMF 2.)

1 America and throughout the world, touting a new “Trump” Project in Baja California, which was
2 a continuation of the success of co-developers “Irongate and Trump,” who had also acted as co-
3 developers of the Trump International Hotel Waikiki. (UMF 19-21.)⁸

4
5 The press release stated:

6 The Trump Organization CEO Donald J. Trump and Irongate principals
7 Adam Fisher and Jason Grosfeld have announced plans for Trump
8 Ocean Resort Baja, a luxury condominium-hotel resort located in North
9 Baja, Mexico, just 30 minutes from downtown San Diego. (UMF 20.)

10
11 The press release went on to state:

12
13 Developed as a partnership between the Trump Organization and
14 Irongate . . . Trump Ocean Resort Baja will bring a new level of
15 excellence and design to the North Baja Peninsula.” (UMF 21.)⁹

16
17 ⁸Approval of Press Releases:

18 Starting in 2006 and continuing through 2008, there were a number of press releases
19 approved and disseminated for the promotion of the Trump Ocean Resort Baja. Those press
20 releases were part of the marketing plan that was implemented through S&P Destination
21 Properties (“S&P”). (UMF 13.) In particular, the procedure was that Christopher Lyman, at
Lyman Public Relations, prepared a press release, who then sent the press release to various
people at S&P, including Ricardo Medina. (UMF 14.) Mr. Medina was the marketing manager
at S&P for the Project and, as such, was authorized to review and edit press releases. (UMF 14.)

22 All press releases had to be approved by both Irongate and The Trump Organization
23 before they could be sent out. (UMF 15.) Mr. Medina would review and edit the press release,
24 and then would send the press release to Irongate for their review, edits and approval. (UMF
25 15.) After receiving back comments from Irongate, S&P would send the press release to Ivanka
26 Trump and/or Jill Cremer, a vice president at The Trump Organization, for their review, edits
and approval. (UMF 9-10, 15.) Ms. Cremer was authorized to review, edit and approve press
releases for The Trump Organization. (UMF 9-11.) Once a press release was approved by both
Irongate and The Trump Organization, Lyman sent out the press release over a news service.
(UMF 16.)

27 ⁹ In responses to Requests for Admissions, the Trump Defendants admit that Ivanka
28 Trump sent an email, which email stated that she approved the press release. (UMF19-21.) In
addition, Ivanka Trump, in her deposition, admitted that she approved the September 15, 2006

1 In and around the same period, and prior to the initial sales at the Project, Donald J. Trump
2 and Donald Trump, Jr, gave an interview to Lori A. Weisberg, a reporter for the San Diego Union
3 Tribune in order to promote the Project. Based on that interview, Ms. Weisberg wrote an article
4 which ran on October 22, 2006 in the San Diego Union Tribune and *SignOn San Diego*, in which
5 Donald Trump is reported to be “teaming with a Los Angeles-based developer to build a trio of
6 condo-hotel towers just north of Rosarito Beach that his team is touting as the tallest and most
7 luxurious in the area.” (UMF 22-24.)

8
9 In fact, in the interview, as reported in the San Diego Union Tribune, Mr. Trump was quoted
10 as saying that not only is Trump a developer, but that, “The Trump Organization will be a
11 ‘significant’ equity investor in the \$200 million project.”¹⁰ (UMF 24.) None of the Trump
12 Defendants ever asked for any retraction or correction of any of the statements contained in the
13 Weisberg article. (UMF 27.)

14
15 In addition to stating that Trump was going to be a significant equity investor, in the role of
16 “developer,” the Trump Defendants exerted control over the development. For instance, on October
17 9, 2006, Donald Trump, Jr. approved a marketing brochure, which was known as the “Trump Baja
18 Preview Kit.” (UMF 37.) In connection with that approval he expressed his concern that the
19 amenity list be accurate, since, as Donald Trump, Jr. expressed it:

20 _____
21 press release. (UMF 19-21.) The September 15, 2006 Press Release was disseminated to the
22 public. (UMF19-21.)

23 ¹⁰ In their depositions both Ivanka Trump and Donald Trump, Jr. questioned whether
24 their father actually used the specific words “significant equity investor” – even though Ivanka
25 Trump was not at the interview, and Donald Trump, Jr. does not remember the interview.
26 Significantly, both Ivanka Trump and Donald Trump, Jr. testified that the use of the term
27 “equity” was not, necessarily inaccurate in describing the Trump Defendants’ role in the Project.

28 Ivanka Trump defined “equity” to mean “sweat equity “ – that the Trump Organization
contributed “tremendous amounts of sweat equity in terms of time, the resources of our
organization, the use of our internal teams for design review, our legal teams – everything was
done in-house.” (UMF 25.) Similarly, in trying to explain his father’s choice of words, Donald
Trump, Jr. testified that “we had a significant vested interest in the success of the project”.
(UMF 26.)

1 “I don’t want to promise x, and deliver below expectations so we need
2 to sort this out asap some of the amenities as we understand them . . .”
3 (UMF 37.)
4

5 This conduct, and the expressed concerns of Donald Trump, Jr. typified the Trump
6 Defendants’ involvement in the Project as a developer – and not merely in some passive role where
7 the control of the development was in someone’s else’s hands.
8

9 Further, Donald J. Trump sent a letter on The Trump Organization letterhead dated July 9,
10 2007 to Senator Diane Feinstein in which he referred to the Trump Ocean Resort Baja as “our
11 ongoing development.” (UMF 28.) In the letter, Donald J. Trump asked for Senator Feinstein’s
12 support for an upgrade to a sewage treatment plant near the Project so as to improve the water
13 quality in the area around the Project. (UMF 28.)
14

15 The Trump Baja Preview Kit, which Donald Trump, Jr. approved, contains a “Trump” crest
16 on the cover, (which crest appears on virtually all of the marketing and promotional materials for
17 the Project), thereby making the Trump name front and center for all potential purchasers. (UMF
18 39.) In the Trump Baja Preview Kit, the Trump Defendants state that “Trump redefines luxury in
19 North Baja.” (UMF 39.) The Trump Defendants also state that Donald J. Trump “sets new
20 standard of excellence while expanding his interests in luxury real estate, world-class hotels, office
21 buildings, championship golf clubs gaming and entertainment. Mr. Trump is personally involved
22 in everything that his name represents.” (UMF 39.)
23

24 In pleadings in this Action, the Trump Defendants attempt to limit their role in this Project
25 as merely being a “licensor” of the “Trump Name” by pointing to the License Agreement. However,
26 the role of a “licensor” is not mutually exclusive with being a developer under ILSA. (UMF 76.)
27 Further, the terms of the License Agreement that the Trump Defendants insisted upon in the License
28 Agreement between Trump Marks, LLC and P.B. Impulsores provides the Trump Defendants with

1 immense powers over almost all aspects of the Project, consistent with their role as a developer.
2 (UMF 46-50.)

3
4 Under the License Agreement, the Trump Defendants are granted control over the following
5 aspects of the Project:

- 6 1. The Trump Defendants have sole control over how the “Trump” mark is used in
7 connection with the promotion of the Project. (UMF 47.)
- 8
9 2. All press releases concerning the “Trump” mark, the Project, itself, or any member
10 of the Trump family were subject to the Trump Defendants’ prior written approval.
11 (UMF 47, 48.)
- 12
13 3. The quality and luxury of the designs, furnishings and amenities at the Project were
14 subject to the Trump Defendants provide prior written approval. (UMF 49.)
- 15
16 4. The plans and specifications for the Project, including the interior and exterior
17 schematic designs, landscaping, facade, signage, access methods and illumination
18 must comply with the Trump Defendants’ Operating Standards and Development
19 Standards, and are subject to the Trump Defendants’ approval. (UMF 50.)¹¹
- 20

21
22 ¹¹ Although under the License Agreement, the Trump Defendants had control over the
23 content of *all* press releases, promotional and advertising materials regarding the Project, the
24 Trump Defendants have been very coy about admitting which specific materials they
25 affirmatively approved. In that regard, even if the Trump Defendants did not affirmatively
26 approve all of the materials, they were, no doubt, aware of said press releases, promotional and
27 advertising materials – all of which consistently touted the Trump Defendants as the co-
28 developer and partner of Irongate in the Project. Such awareness is consistent with the fact that
the Trump Defendants’ stood to substantially benefit by sales of the units at the Project.
Significantly, the Trump Defendants have not produced any evidence in this litigation wherein
they purported to correct, withdraw or retract any statements that were made about their
involvement as one of the developers in numerous marketing materials, press releases and, of
course, from the very mouths of Donald J. Trump and Ivanka Trump. (See Trump Video
attached as Exhibit S to declaration of Daniel J. King.)

1 In short, not only were the Trump Defendants represented and marketed as the developers
2 of the Project, but also had control over numerous integral part of the promotion and construction
3 of the *development* of the Project – which is consistent with their advertised role as one of the
4 developers along with Irongate. This is also consistent with the deposition testimony of Ivanka
5 Trump and Donald Trump, Jr. Both Ivanka Trump and Donald Trump, Jr. were emphatic that the
6 Trump Defendants were “much more than licensors.” (UMF 44, 51, 52.)

7
8 In candid testimony, Donald Trump, Jr. repeatedly testified that he viewed the Trump role
9 in the Project as a “developer.” However, Donald Trump, Jr. made the coy (and illusive) distinction
10 between a “Developer” – spelling it with a “big D” – and a “developer” – spelling with it small “d.”
11 (UMF 63-67.) For this reason, Donald Trump, Jr. stated that all of the marketing materials which
12 identified the Trump Organization as the “developer” were accurate. (UMF 63-67.)

13
14 Donald Trump, Jr. conceded that, to his knowledge, this distinction was not explained to any
15 of the potential purchasers or to recipients of the marketing materials that identified the Trump
16 Organization as a developer, nor is there any evidence that this occurred. (UMF 64.) However,
17 without any basis, Donald Trump, Jr. testified that a buyer should just assume that Trump’s role was
18 as a “little d.” (UMF 63-65.)

19
20 According to Donald Trump, Jr., the role of a “developer” (spelled with a small “d”), differs
21 from the role of a “Developer” (spelled with a capital “D”). (UMF 63-65.) However, Donald
22 Trump, Jr. admitted that although he characterizes the Trump role in the Project as a “little d,” they
23 did act as the “big D.” For instance, when talking about the role the Trump Defendants played in
24 the Project with overseeing the plans and design elements, to make the Project “sexier,” those
25 actions,

26 “would put [Donald Trump] in line with things he has built as big D.

27 It doesn’t make him – it doesn’t make him, de facto, big D, in my
28 opinion, no.” (UMF 65.)

1 The foregoing testimony is consistent with the marketing and other materials that were
2 disseminated with the Trump Defendants' approval and which all touted "Trump" as being a
3 developer of the Project with "Irongate." Moreover, the law does not recognize the distinction
4 between acting as a "developer" (little "d") and acting as a "Developer" (capital "D"). However,
5 Donald Trump, Jr.'s admission that his father was acting as a "Developer" in the Project is an
6 admission that the Trumps are liable under ILSA as a "developer."

7
8 With the successful launch sales of Tower 1 Units, which took place on December 8, 2006,
9 the Defendants wanted to advertise that success to boost future sales both of Tower 1 and of units
10 in Tower 2. Accordingly, the Trump Defendants approved a press release dated December 11,
11 2006. (UMF 29.)¹² The press release continued to emphasize the Trump Defendants' continued role
12 as a development partner with Irongate. In particular, the press release stated:

13 "On Friday December 8th, buyers purchased more than \$122
14 million of Trump Ocean Resort Baja. . . .

15 The Trump-Baja results came just one month after the one-day,
16 world record \$700 million sell-out of Trump International Hotel &
17 Tower Waikiki Beach Walk.™ . . .

18 *Partners in both projects include The Trump Organization with*
19 *Los Angeles-based development partner Irongate and sales &*
20 *marketing firm S&P Destination Properties.*

21 'The success of Trump Ocean Resort Baja has capped off an
22 extraordinary month for our luxury real estate offerings,' said Donald
23 J. Trump. *'We're looking forward to starting construction and creating*

24
25 ¹² In response to Requests for Admissions, the Trump Defendants admit that Jill Cremer, a
26 Vice President at the Trump Organization who reviewed press releases, sent an email, which was
27 copied to Ivanka Trump and Donald Trump, Jr., which stated that she added a couple of
28 comments to the press release. (UMF 31.) This position is supported by Ivanka Trump, who
testified that Ms. Cremer had the authority to review, change, correct and approve press releases
related to the Project. (UMF 10.) The December 11, 2006 press release was disseminated to the
public. (UMF 31.)

1 *one of the finest resorts in all of Mexico.*” (Emphasis added). (UMF
2 30.)

3
4 As the launch of sales of units in Tower 2 (the Spa Tower) approached, the Trump
5 Defendants approved another press release dated April 25, 2007, which continued to promote the
6 Project as being developed by the Trump Defendants and Irongate.¹³ (UMF 32.) The press release
7 stated:

8
9 “Following the success of the Lobby Tower at Trump Ocean
10 Resort, Trump Organization *CEO Donald J. Trump and Irongate*
11 *principals Jason Grosfeld and Adam Fisher have announced their next*
12 *real estate release: Spa Tower at Trump Ocean Resort. . . .*

13 ‘After setting a one-day real estate sales record for Mexico at
14 \$122 million in December 2006, *we have created the second tower at*
15 *Trump Ocean Resort,*’ said Donald Trump. ‘The Spa Tower will bring
16 an unprecedented spa experience to the West Coast of Mexico and
17 exceed all expectations of luxury real estate ownership.’ (Emphasis
18 added). (UMF 32.)

19
20 The Trump Defendants approved another press release on or about July 10, 2007. (UMF 34.)
21 In approving this press release, Jill Cremer, a Vice President in the Trump Organization, provided
22 specific comments and changes to the contents to this release. In particular, Ms. Cremer changed
23

24
25
26 ¹³ In response to Requests for Admissions, the Trump Defendants admit that Jill Cremer,
27 a Vice President at the Trump Organization who reviewed press releases, sent an email, which
28 had some minor comments and stated that the release was very well written. (UMF 33.) In
addition, Ivanka Trump has testified that Ms. Cremer had the authority to review, edit and
approve press releases. (UMF 10.) The April Press Release was disseminated to the public.
(UMF 33.)

1 the word “built” to “**developed.**” (UMF 34.) As corrected by the Trump Organization V.P., the
2 press release read as follows:

3 “Sales of the Trump Ocean Resort Baja exceeded \$165 million. The
4 buyers have become part of an elite crowd of vacation homeowners
5 *who own property **developed by one of the most respected names in the***
6 *real estate, Donald J. Trump, in partnership with Irongate.” (Emphasis*
7 *added).* (UMF 34-35.)

8
9 None of the press releases – the September Press Release, the December Press Release, the
10 April Press Release, and the July Press Release – were ever retracted. (UMF 36.)

11
12 In connection with promoting the sale of units at the Trump Ocean Resort Baja, Defendants
13 and principals of the Trump Organization, Ivanka Trump and Donald Trump, Jr. both appeared at
14 sales events to promote sales at the Project. In particular, on June 8, 2007, Ivanka Trump appeared
15 at a sales event for Tower 2 at the L’Auberge Del Mar where she promoted the Project. (UMF 53.)

16 While at the sales event:

- 17
- 18 1. Ivanka Trump addressed the attendees from the podium, promoted the sale of units
19 at the Project, said that Trump was the developer of the Project and said that Donald
20 Trump was involved in all aspects of the Project. (UMF 54.); and
 - 21
22 2. Ivanka Trump spoke with individuals who attended the event, including some of the
23 Plaintiffs in this action. (UMF 55.) In fact, Deborah Najm, one of the Plaintiffs
24 specifically asked Ivanka Trump whether “Trump” was just putting his name on the
25 Project, or was he “really involved.” (UMF 56.) In response, Ivanka Trump told Ms.
26 Najm that Trump was involved in all aspects of the Project, “down to the faucets.”
27 (UMF 56.)
- 28

1 Similarly, Donald Trump, Jr. appeared at a sales event, where he promoted the sale of units
2 in Tower 2. (UMF 57.) Donald Trump, Jr. also appeared in a full-page advertisement in the San
3 Diego Union Tribune on June 27, 2007 to promote the Project. (UMF 58.)
4

5 As set forth earlier, Donald Trump and Ivanka Trump appeared in the Trump Video pushing
6 the Project. This video was played at the sales events and posted on the Trump-Baja Website
7 (TrumpBaja.com) and could be accessed through the Trump Website (Trump.com). (UMF 59.)
8

9 The Trump.com website contained a section entitled “Real Estate Portfolio.” In the “Real
10 Estate Portfolio” section, there was a page dedicated to the Trump Ocean Resort Baja and which
11 contained a link to the Trump-Baja website and a link to the map of the Project. (UMF 59.)
12

13 Accordingly, by visiting the Trump.com website, one was then directed by link to the Trump-
14 Baja website which contained several pages of pictures and information promoting the Project, each
15 of which pages contained the Trump crest. (UMF 60.) In fact, the Trump-Baja website included
16 links to contact S&P Destinations Properties for the specific purpose of allowing one to inquire
17 about purchasing a unit at Trump Baja. (UMF 61.) The Trump-Baja website, which was accessible
18 from the Trump.com website, also contained articles and promotional materials, some of which are
19 described hereinabove, which highlight the fact that the Project was being built and/or developed
20 as a partnership between “Trump” and “Irongate.” (UMF 62.)
21

22 Significantly, none of the ads, press releases, or other marketing materials ever attempted to
23 disclaim, in any form or fashion, or otherwise notify any readers or potential buyers that any of the
24 Trump Defendants were *not really* the co-developers of Trump Ocean Resort Baja, or that the
25 Irongate created entity, PB Impulsores, was the purported sole developer of the Project, (UMF 70-
26 75), notwithstanding that the Trumps employ such disclaimers presently on their website.¹⁴
27

28 ¹⁴The Trump Defendants are familiar with, and have, in fact, used such disclaimers in
connection with other projects. For instance, the following disclaimer appears on the Trump

1 Presumably, had the marketing materials for Trump Ocean Resort Baja contained such a disclaimer
2 or touted “PB Impulsores” as the developer, the Project would not have had the marketing success
3 and resultant sales that Defendants enjoyed. Even though Irongate and its principals had prior real
4 estate experience, they did not enjoy even a fraction of the name recognition or caché of the Trump
5 Defendants. In fact, PB Impulsores had no track record whatsoever. (UMF 80-81.) “Trump” as
6 a developer was the one with the power to and inspire and garner sales. (UMF17-18.) And with
7 the Trump Defendants as a co-developer of the Project, the Plaintiffs signed purchase agreements
8 for specific Units and paid deposits totaling over \$22 million (of the over \$32 million paid by all
9 buyers as deposits).

10 Not a single unit of the Trump Ocean Resort Baja was ever built, and the millions of dollars
11 in deposits paid by the Plaintiffs were never returned. (UMF 77-78.)

12
13 **3. The HUD Property Reports Identify the Developer of the Project as “PB**
14 **Impulsores, S. De R.L. de C.V.” Which is Inconsistent with the Marketing**
15 **and Promotional Material. This is a Violation of ILSA.**

16 As discussed in more detail below, the Project was ultimately registered with HUD as a
17 subdivision. (UMF 79-81.)¹⁵ As part of the registration process, two Property Reports were
18 prepared. The first relates to Tower 1, and is dated effective as of May 21, 2007 (the “Tower 1
19

20
21 _____
22 Website to clarify the “Trump” role with respect to the other Trump-Irongate project, Trump
International Hotel & Tower in Waikiki:

23 “Trump International Hotel & Tower® Waikiki Beach Walk® is not owned,
24 developed or sold by Donald J. Trump, The Trump Organization or any of their
25 affiliates. Irongate AZREP BW LLC, the owner and developer of the property,
uses the “Trump” name and mark under license from Trump Marks Waikiki LLC’s
which license may be terminated or revoked according to its terms.”

26 (UMF 74.) No such disclaimer ever appeared on any of the marketing materials, including the
27 Trump Website, with respect to the Trump Ocean Baja Resort. (UMF 74.)

28 ¹⁵ Donald J. Trump represented that he was involved in the registration process. UMF,
79.)

1 Property Report”). (UMF 80, 81.) The second relates to both Towers 1 and 2 and is dated effective
2 June 25, 2007 (the Tower 2 Property Report”). (UMF 81.)¹⁶

3
4 On the Cover Sheet of the Tower 1 Property Report, the developer is identified as “PB
5 Impulsores, S. De R.L. de C.V.” (UMF 81.) This information is repeated on page 3 under “General
6 Information.” (UMF 81.) The Tower 2 Property Report contains the same exact information
7 identifying the developer as “PB Impulsores, S. De R.L. de C.V.” (UMF 81.)

8
9 Directly contradictory of the statements made in the Property Reports, all of marketing and
10 promotional material identified “Trump” and “Irongate” as the developers of the Project.
11 Accordingly, the information in the Property Reports is inconsistent with all of the marketing and
12 promotional material. (UMF 19-43, 46-52, 54-57, 68-72.) This is an unequivocal violation of 15
13 U.S.C. §1703(a)(1)(D).

14
15 **II.**

16 **PLAINTIFFS ARE ENTITLED TO JUDGMENT**

17 **ON THE SEVENTH AND EIGHTH CAUSES OF ACTION**

18 **A. The Trump Defendants Have Violated 15 U.S.C. §1703(a)(1)(D)**

19 ILSA, codified at 15 U.S.C. §§1701-1720, is a federal consumer protection and anti-fraud
20 statute that uses disclosure as its primary tool. *Winter v. Hollingsworth Props., Inc.*, (11th Cir.
21 1985) 777 F. 2d 1444, 1447. ILSA applies to the sale of condominium units in the Trump Ocean
22 Resort Baja because the Units were sold using interstate commerce. 15 U.S.C. §1703(a); *Winter*,
23 *supra*, 777 at 1446-49.

24
25
26
27 ¹⁶Although not part of this Motion, buyers in Tower 2 were not given the Tower 2
28 Property Report. Rather, such buyers, to the extent they received *any* property report, received
the Tower 1 Property Report, which was neither current nor operative. This is a separate
violation of ILSA and HUD Regulations. 15 U.S.C. §1703(a)(2) and 24 C.F.R. §1710.22(d).

1 ILSA's purpose is to insure that "prior to purchasing certain kinds of real estate," a buyer "is
2 informed of facts which will enable him to make an informed decision about purchasing the
3 property." *Law v. Royal Palm Beach Colony, Inc.* (5th Cir. 1978) 578 F. 2d 98, 99.¹⁷ To accomplish
4 this purpose, ILSA requires developers to furnish prospective buyers with specific disclosures. It
5 also makes it illegal for developers or agents, as defined in the statute, to obtain money or property
6 for a development by means of a material false statement, or by any omission of a material fact
7 necessary to make the statements made to be not misleading. 15 U.S.C. §§ 1703, 1705, 1707.

8
9 A developer or agent under ILSA who violates these provisions is liable to purchasers for
10 damages, certain costs, and attorneys' fees. 15 U.S.C. §1709.

11
12 In connection with the implementation of ILSA, 15 U.S.C. §1718 provides that the Secretary
13 of HUD shall have the authority to issue, amend and rescind such rules and regulations as are
14 necessary or appropriate. In that regard, the regulations set forth at 24 C.F.R. §1710, et seq., detail
15 the requirements for complying with ILSA.

16
17 With that backdrop, in the Seventh and Eight Causes of Action, Plaintiffs allege that the
18 Defendants violated 15 U.S.C. §1703(a)(1) of ILSA. Under certain subsections of that provision,
19 it is unlawful for a developer or agent to use any means of interstate commerce:

20
21 (C) to sell or lease any lot where any part of the statement of record or the
22 property report contained an untrue statement of a material fact or omitted to
23 state a material fact required to be stated therein pursuant to sections 1704
24 through 1707 of this title or any regulations thereunder; or

25
26
27
28

¹⁷ See also, *Goldberg v. 401 N. Wabash Venture LLC* (N.D. Ill. Apr. 22, 2010) No. 09-C-6455, 2010 WL 1655089,

1 **(D) to display or deliver to prospective purchasers or lessees advertising and**
2 **promotional material which is inconsistent with information required to be**
3 **disclosed in the property report.**
4

5 The foregoing provisions of ILSA are distinct from and in addition to the anti-fraud
6 provisions of ILSA, which are set forth at 15 U.S.C. §1703(a)(2). The court in *Burns, supra*, 621
7 F.Supp.2d 292, noted the distinction between a claim brought under §1703(a)(1) and a claim for
8 fraud, and held that a plaintiff under §1703(a)(1) need not prove reliance or scienter.¹⁸ See also,
9 *Gibbes v. Rose Hill Plantation Development* (D.S.C. 1992) 794 F.Supp. 1327, 1334; *Dongelwicz*
10 *v. First Eastern Bank* (M.D. Pa. 1999) 80 F.Supp.2d 339, 348. An examination of *Burns, supra*,
11 is instructive as it relates to the analysis of §1703(a)(1)(D) to the facts in this case.
12

13 At issue in *Burns*, was a claim under 15 U.S.C. §1703(a)(1)(C), which prohibits a developer
14 from setting forth an untrue statement of material fact, or omitting to set forth a material fact, in the
15 statement of record or property report. *Id.* at 302. The plaintiffs in *Burns* claimed that the
16 defendant omitted a material fact from the property report, to wit, that the property was located in
17 a flood plain. *Id.* The defendant argued that even though they failed to disclose this fact in the
18 property report, it was not actionable because the plaintiff knew that the property was located in the
19 flood plain. Accordingly, the defendant in *Burns*, argued that 15 U.S.C. §1703(a)(1)(C) should be
20 interpreted to require that the plaintiffs essentially prove fraud, including reliance and scienter. *Id.*
21 at 303.
22

23 The *Burns* Court rejected defendant’s arguments and in so doing, reviewed the rules for
24 statutory construction. The court noted that the “cardinal canon” [of construction] before all others:
25

26 ¹⁸ Although not an issue to be determined in this Motion, Defendants have argued that a
27 plaintiff is required to show reliance even on a claim for fraud under ILSA. However, the law in
28 California is that reliance is *not* an element of a claim for fraud under 15 U.S.C. §1703(a)(2).
Kenneally v. Bank of Nova Scotia (N.D.Cal. 2010) 711 F.Supp.2d 1174.

1 is the plain meaning rule.’ [citations] A court must ‘presume that Congress says in a statute what
2 it means and means in a statute what it says.’” *Id.* The only exceptions to this cardinal canon are
3 where the outcome would be “absurd” or where the outcome is clearly at odds with the expressed
4 congressional intent. *Id.*

5
6 With the foregoing cardinal canon of statutory construction in mind, the *Burns* Court held
7 that §1703(a)(1)(C) did not require that the plaintiff actually rely on the untrue statement or
8 omission. The court looked at the text of the statute and the plain language. ““The language of the
9 statute is to the effect that simply making a material misrepresentation or omission in a document
10 required to be prepared and/or provided under the Act is actionable under §§1709, 1703(a)(1) and
11 does not require proof of reliance.”” *Id.* at 304.

12
13 Similarly, the *Burns* court rejected the defendant’s argument that the plaintiff must establish
14 that they lacked actual knowledge of the omitted facts. *Id.* at 305. In fact, the *Burns* Court refused
15 “to judicially imply an ignorance requirement. The plain text of section 1703(a)(1)(C) does not
16 support [defendant’s] argument.” *Id.* at 306.

17
18 The defendant in *Burns* also unsuccessfully argued that a simple “mistake or inadvertence”
19 in a property report should not be actionable, and in so arguing, the defendant was asking the court
20 to imply a scienter element and thereby require a buyer to show that the developer had the intent to
21 deceive or defraud. *Id.* However, the *Burns* Court again looked at the text of §1703(a)(1)(C) and
22 held that there was no such requirement. Further, the court held that “the remedial intent of
23 Congress counsels against judicially implying scienter.” *Id.*

24
25 Although *Burns* dealt with subdivision (C) of §1703(a)(1), it is instructive in interpreting the
26 language of subdivision (D). In particular, the clear text of subdivision (D) makes it a violation to
27 display or deliver to prospective purchasers advertising and promotional material which is
28 inconsistent with information required to be disclosed in the Property Report. Like subdivision (C),

1 the text of subdivision (D) contains **no** requirement that the buyer demonstrate reliance, ignorance
2 or scienter, and it would be inconsistent with the “remedial intent of Congress” in enacting ILSA,
3 to judicially imply any such requirements.
4

5 Therefore, in order to prevail on the Seventh and Eighth Causes of Action against any the
6 defendants,¹⁹ Plaintiffs need only establish two things:

7 (1) That defendants fall within the definition of either a "developer" or "agent"
8 as defined by ILSA and the case law interpreting same; and
9

10 (2) That the defendants displayed and delivered to prospective purchasers
11 advertising and promotional material which is inconsistent with information required
12 to be disclosed in the Property Report.
13

14 **B. The Trump Defendants are "Developers" or "Agents" Under ILSA as a Matter of Law**
15 **Because They Actively Participated in the Marketing and Development of the Trump**
16 **Ocean Resort Baja.**
17

18 **1. Trump and Trump Org. Are by Definition "Developers" or "Agents" Under**
19 **ILSA Since it is Undisputed that the Trump Defendants Actively Advertised,**
20 **Induced, Solicited and/or Encouraged Persons to Buy Units at the Trump Ocean**
21 **Baja Resort.**

22 ILSA governs activities by a "developer" or "agent." 15 U.S.C. § 1703. The term "developer"
23 is defined in 15 U.S.C. section 1701(5) as "any person who, directly or indirectly, sells or leases, or
24 offers to sell or lease, or advertises for sale or lease any lots in a subdivision." Hypothetically, if the
25 Court does not determine that the Trump defendants fall within the definition of Developer, said
26

27 ¹⁹In the Seventh and Eighth Causes of Action, Plaintiffs allege numerous violation of
28 ILSA and the HUD Regulations, any one of which exposes the Trump Defendants to liability.
However, this Motion focuses solely on the violation of 15 U.S.C. §1703(a)(1)(D).

1 Defendants are then equally liable if found to have been acting as “agents” for any of the developers
2 of Trump Ocean Resort Baja. An "agent" is defined in section 1701(6) as "any person who
3 represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease,
4 any lot or lots in a subdivision" (except an attorney solely rendering legal services).

5
6 In either instance, the Trump Defendants unequivocally acted in a manner to “offer to sell”
7 the Units. Section 1701(11), defines the term "offer" broadly by stating it "includes any inducement,
8 solicitation, or attempt to encourage a person to acquire a lot in a subdivision." Clearly, the actions
9 of the Trump Defendants fall within this definition.

10
11 Significantly, in order to qualify as a developer or agent under ILSA, a defendant does **not**
12 have to be the person who actually makes the “sale” to the plaintiff. In fact, as set forth below, it
13 is anticipated that the Trump Defendants will argue that they are not “developers” or “agents” under
14 ILSA because they did not actually *sell* any units.²⁰ This argument is contrary not only to the
15 express language of ILSA, but also to the leading cases.

16
17 As set forth above, in interpreting a statute, the courts must rely on "the plain wording of the
18 Act, persuasive authority, and common sense" to interpret the Act and apply it to the facts of each
19 case. *Hammar v. Cost Control Mktg. & Sales Mgmt. of Va., Inc.* (W.D. Va. 1990) 757 F. Supp. 698,
20 701 . Under the plain wording of ILSA, a developer or agent is one who participates directly or
21 *indirectly in the advertising or sales process.* ILSA's rules thus apply when a person or entity
22 actively participates in advertising *or* sales either directly through contact with potential purchasers,
23 or indirectly by means other than face-to-face contact with buyers. *Gibbes, supra*, 794 F. Supp. at
24 1333 n.9.

25
26
27
28

²⁰See Section II.B.3.(A), *infra*.

1 In *Olsen v. Lake County Incorporated* (4th Cir. 1992) 955 F.2d 203, (cert. denied 112 S.Ct.
2 1587), the appellate court rejected a defendant's argument that it was not a "developer" and affirmed
3 a summary judgment in favor of the plaintiff on an ILSA claim. The defendant had actively
4 marketed lots to the general public. The defendant argued it was not a "developer" because it did
5 not participate in the initial subdividing, platting, and planning of the development and never
6 improved the land. *Id.* at 206. The Court disagreed and held that because the defendant (like the
7 Trump Defendants in this Project) was "actively involved in the planning and promotion of the
8 development" and was "not merely an incidental player in the [land] sales scheme," it was liable for
9 any violation of the Act. *Id.* In holding that the defendant was a developer, the *Olsen* Court stated:

10
11 The language of the Act is meant to be read broadly to effectuate this goal. See
12 *McCown v. Heidler*, 527 F.2d 204 (10th Cir.1975). To exclude all but the original
13 developer from the purview of the Act ***would clearly circumvent its intent by***
14 ***permitting developers to simply transfer land to separate entities*** before being sold
15 to the public. [emphasis added]. 955 F.2d at 205.

16
17 The case at bar presents the Court with a much simpler fact pattern than most of the cases
18 where there is a question as to whether one falls within the definition of "Developer" under ILSA.
19 In the majority of the reported cases, the plaintiffs are suing persons and/or entities and seeking to
20 hold them liable as "developers" under ILSA where those defendants never advertised or otherwise
21 stated they were, in fact, developers. In this case, we have defendants who actually promoted
22 themselves as "developers" in multiple instances, who stated they were "developing," and who
23 never, until the project failed, attempted to dissuade any of the buyers from that notion. In addition,
24 as demonstrated herein, The Trump Defendants, like the defendant in *Olsen*, were not mere
25 "incidental players" in the marketing and sales of Trump Ocean Resort Baja. Rather, the Trump
26 Defendants were deeply and "actively involved in the planning and promotion" of Trump Ocean
27 Resort Baja.

1 The conclusion that the Trump Defendants in this case are "developers" under ILSA is also
2 supported by *Merritt v. Lyons Heritage Pasco, LLC* (M.D. Fla. Sept. 15, 2010) No. 8:09-cv-1201,
3 2010 WL 3666763. In *Merritt*, the plaintiffs' allegation that the defendants advertised lots for sale
4 in a development was "sufficient to render the Defendants 'developers' within the meaning of the
5 statute" and to permit a claim for violations of section 1703(a)(2) to go forward. *Id.* at *3. The
6 Trump Defendants undeniably advertised and promoted sales of Trump Ocean Resort Baja. They
7 appeared at promotional and sales events, they appeared and spoke on promotional videos, and they
8 approved and issued press releases to sell the condominiums. (UMF 19-22, 29-36, 40-43, 54-57.)
9 Like the defendants in *Merritt*, the Defendants in this case are developers or agents under ILSA.

10
11 **2. The Trump Defendants Have Been Found to be "Developers" or "Agents"**
12 **Under ILSA in a Mirror Image Case.**

13 Perhaps the most compelling authority to finding that the Trump Defendants are developers
14 or agents under ILSA is the decision by the court in *Aaron v. Trump Organization, Inc.* (2011 M.D.
15 Fla). 8:09-cv-2493-T-23AEP. In that case, and under facts almost identical to the facts at bar, the
16 Florida District Court summarily adjudicated that the Defendants, Donald J. Trump and The Trump
17 Organization, Inc., were “developers’ or “agents” under ILSA. The *Aaron* decision involved the
18 marketing and sales activities by the Trump Defendants that mirror those activities undertaken by
19 the Trump Defendants in the instant case.²¹

20
21 In *Aaron*, in early 2005, the Trump defendants and a developer, SimDag-Ro-BEL, LLC
22 (“SimDag”) announced a plan to build the “Trump Tower Tampa,” “an ultra-luxury residential
23 condominium” in downtown Tampa, Florida. As in the instant case, in *Aaron*, there were press
24 releases which stated that the Trump Tower Tampa would be developed “in a partnership” with
25 SimDag and statements by Trump that it was the “developer” or “partner” in the Trump Tower

26
27 ²¹ The relevant pleadings from *Aaron v. Trump Organization, Inc.* (2011 M.D. Fla).
28 8:09-cv-2493-T-23AEP are attached collectively as Exh. 3 to the accompanying Request for
Judicial Notice.

1 Tampa, which statements were used to advertise and market the property. These statements were
2 made with the review and approval of Trump. *Aaron* at 9.²²

3
4 The plaintiffs in *Aaron* sought partial summary judgment under Rule 56 of the Federal Rules
5 of Civil Procedure. Among the issues that the plaintiffs sought to be adjudicated²³ was that the
6 defendants were developers or agents under ILSA. *Aaron* at 5.²⁴ In holding that the Trump
7 defendants were developers or agents under ILSA, the *Aaron* Court reviewed the evidence, which
8 is directly reminiscent of the issues presented in the instant case, stating:

9 “Under the language of [ILSA], the defendants undoubtedly qualify for either a
10 ‘developer’ or ‘agent.’ The defendants not only acted on behalf of SimDag in
11 promoting the sale of the Units, but the defendants distributed marketing material that
12 portrayed the Trump Tower Tampa as an ‘exclusive,’ Trump Development, i.e., one
13 of ‘the finest properties from the biggest name in real estate.’ Alongside the Mar-A-
14 Lago Club, Villa Trump, and Trump National Golf Club, the defendants advertised
15 the Trump Tower Tampa. In the defendants’ marketing material and other public
16 statements, defendants espoused the quality and prestige of the Tampa development,
17 “A Donald J. Trump Signature Property.’ In addition to intimating ownership of the
18 Trump Tower Tampa, the defendants became personally and actively involved in
19

20 ²²If one were to read the Court’s ruling in *Aaron*, and substitute the project name of
21 “Trump Tampa” with “Trump Ocean Baja Resort” and substitute the name “SimDagRoBel”
22 with “PB Impulsores,” the facts in *Aaron* are virtually interchangeable with the facts at bar.

23 ²³Rule 56 of the Rules of Federal Procedure permit a court to adjudicate issues that do not
24 dispose of an entire claim or cause of action.

25 ²⁴ The plaintiffs in *Aaron*, *supra*, also sought an adjudication that the defendants failed,
26 (as in this case), to disclose the existence of a “secret license agreement” between SimDag and
27 the Trump defendants that permitted the Trump defendants to withdraw their name from the
28 development. The plaintiffs argued that this was a material fact, and that it should have been
disclosed. However, the *Aaron* Court held that there was insufficient evidence on summary
judgment to determine whether the existence of the license agreement was “material.” This
holding by the *Aaron* Court does not apply at bar since the issues that Plaintiffs seek to
adjudicate do not involve any determination of whether the defendants omitted a material fact
from the property report or statement of record.

1 planning and promotion. The defendants possessed final authority over several key
2 aspects of the design and development of the building as well as the promotional
3 material drafted by SimDag and adorned by the Trump mark. Therefore, at a
4 minimum, the defendants indirectly advertised for sale or personally participated in
5 the sale of the Units in the Trump Tower Tampa.” *Aaron* at 9.

6
7 The Trump involvement in the Baja Project far eclipses the extent of the Trump involvement
8 in *Aaron*. The Trump Defendants actively advertised and promoted the Baja Project in the
9 numerous ways described *supra*, they had the right to control and approve advertising and marketing
10 materials, and in fact did so, and they had the right to control and approve essential design and
11 amenity elements relating to the Resort. Additionally, over and above the Trump involvement in
12 the failed Trump Tampa development, in connection with the Trump Ocean Baja Resort, Ivanka and
13 Donald, Jr. appeared at events and in various advertisements promoting the sales of the Project.
14 Further, Donald J. Trump and Ivanka Trump recorded a promotional video promoting sales of the
15 Baja Project.

16
17 Under the foregoing authorities, and given the Trump Defendants’ multi-faceted role in the
18 Trump Baja Resort, it is clear that in the instant case the Trump Defendants are developers under
19 ILSA. All of the Trump Defendants were undeniably involved in the advertising and sales of units
20 in the Trump Ocean Resort Baja. As explained hereinbelow, the Defendants’ role as a developer or
21 agent is established by undisputed facts that they:

- 22
23 a) actively marketed the Units;
24 b) held themselves out a co-partner and co-developer of the Project along with
25 Irongate; and
26 c) took actions to not only develop the Project, but also to sell the Units
27 to prospective purchasers.

28 (UMF 19-27, 40-43, 29-36, 40-43, 54-58, 68-72)

1 **(A) The Trump Defendants Actively Marketed Units in the Trump Ocean**
2 **Resort Baja.**

3 The following undisputed facts show that The Trump Defendants were actively involved in
4 marketing the Units in the Trump Ocean Resort Baja:

- 5 • Ivanka Trump and Donald Trump, Jr. each appeared at separate sales and promotional
6 events to market units at the Project. (UMF 54-57.)
- 7 • Donald J. Trump and Ivanka Trump recorded videos which were posted on the Trump
8 website, on the website for the Project and were played at sales events for the Project.
9 (UMF 40-43.)
- 10 • Donald J. Trump and Donald Trump, Jr. gave an interview to the San Diego Union
11 Tribune to promote the Project and their involvement in the Project. (UMF 22-27.)
- 12 • The Trump Defendants approved numerous press releases that marketed the Project
13 which press releases touted the Trump role as a developer or co-developer of the
14 Project. (UMF 19-21, 29-36.)
- 15 • The Licensing Agreement granted the Trump Defendants control over all marketing
16 and promotional materials for the Project, and the Trump Defendants exercised that
17 control. (UMF 19-21, 29-36, 37-39, 46-52.)

18
19 **(B) The Trump Defendants Held Themselves out as Partners with Irongate**
20 **in Developing the Trump Ocean Resort Baja.**

21 In addition to marketing the Units, the Trump Defendants held themselves out as partners
22 with Irongate and joint developers of the Project. The following undisputed facts show the numerous
23 representations the Defendants made that they were developing the Trump Ocean Resort Baja in a
24 partnership with Irongate:

- 25 • The Trump Defendants approved numerous press releases, all of which identified the
26 Trump Defendants as co-developers and/or partners with Irongate in connection with
27 the Project. (UMF 19-21, 29-36, 68-72.)

- 1 • Donald J. Trump and Donald Trump, Jr. gave an interview, as set forth in the San
2 Diego Union Tribune, in which they stated that teaming with Irongate on the Project.
3 (UMF 22-27.)
4

5 In summary, the Trump Defendants actively marketed and sold Trump Ocean Resort Baja
6 as a Trump development. Under ILSA, they are developers or agents because they "directly or
7 indirectly . . . offer[ed] to sell or lease, or advertise[d] for sale or lease" the Trump Ocean Resort
8 Baja units. See 15 U.S.C. § 1701(5). And it is beyond dispute that their "offers" and
9 "advertisements" for sale included various forms of "inducement, solicitation, or attempt[s] to
10 encourage a person to acquire" a unit in the project. See 15 U.S.C. § 1701(11).
11

12 **(C) The Trump Defendants Took Action to Both Develop and Sell the Units**

13 The Trump Defendants, as a “developer” had control over numerous aspects of the Project,
14 including:

- 15 • Control over all promotional and marketing materials regarding not only the
16 “Trump” mark, but the Project, as well. (UMF 47, 48.)
17 • Control over the quality and luxury of the designs, furnishings and amenities
18 at the Project. (UMF 49.)
19 • Control over the plans, specifications, landscaping, facade, signage and access
20 methods for the Project. (UMF 50.)
21 • Took steps to improve the water quality at the Project. (UMF 28.)

22 Notwithstanding the presence of these aspects within the License Agreement, such extensive
23 control over all aspects of the Project further establishes the Trump Defendants as a developer of
24 the Project for purposes of ILSA.
25

26 ///

27 ///

28 ///

1 **(D) The Trump Defendants Held Themselves Out as the Developer of the**
2 **Trump Ocean Resort Baja.**

3
4 Finally, perhaps the most compelling evidence that the Trump Defendants were the
5 developers of the Trump Ocean Baja Resort comes from the words used by Donald J. Trump, Ivanka
6 Trump, Donald Trump, Jr. and authorized representatives of The Trump Organization. Those words
7 include:

- 8 • Ivanka Trump stating that in a promotional video that the “whole strength of the
9 Trump Organization” is behind the Project, which they are “developing as a world-
10 class resort.” (UMF 41.)
- 11 • Donald J. Trump representing to Senator Diane Feinstein that he is developing the
12 Trump Ocean Baja Resort. (UMF 28.)
- 13 • Approved press releases that identify the Trumps are the “developer” or ‘Co-
14 developer” of the Project. (UMF 19-21, 29-36.)
- 15 • The Trump website that includes the Trump Ocean Baja Resort property in the
16 “Trump Portfolio.” (UMF 59-22.)

17
18 **3. The Trump Defendants Cannot Credibly Argue That They Were Not Developers**
19 **or Agents Under ILSA**

20 **(A) It Is Irrelevant That the Trump Defendants Did Not Actually Sell**
21 **Any Units**

22 The Trump Defendants have taken the position that since none of them actually “sold” a unit
23 directly to a buyer, they cannot be considered a “developer” or “agent” under ILSA. As set forth
24 above, the provisions of ILSA are read extremely broadly, and neither the statute nor case law have
25 ever read such a requirement into the definitions of “developer” or “agent”.

1 Fundamentally, this argument can be disposed of easily. Under the argument proffered by
2 the Trump Defendants, any party could readily skirt any compliance issues under ILSA by the
3 simple act of establishing an LLC or corporation under which they could funnel all “sales.”
4

5 This very situation was discussed in the leading case of *McCown v. Heidler* (10th Cir. 1975)
6 527 F.2d 204. In *McCown*, the corporate “developer” had filed for bankruptcy and the plaintiffs
7 sought to hold liable the individual officers, directors and persons who planned the development.
8 The Tenth Circuit reversed the trial court which had granted summary judgment in favor of the
9 defendants on the grounds that they were not developers or agents under ILSA. The Court held that
10 the trial court incorrectly concluded that the Act created a “limited target” since there was no express
11 “controlling persons” clause in the Act. Rather, the *McCown* Court stated that such a holding would
12 be inconsistent with the purpose of the Act and stated:

13
14 “The “developer” of a land sale plan is usually a corporate entity which, in a
15 fraudulent scheme as here alleged, ends up defunct and offers no reserve for recovery
16 to those persons defrauded; so, too, the end selling agent, when the development
17 collapses financially, is often long gone or cannot respond pecuniarily. Indeed the
18 actual selling agent may well be a creditor of the developer and an indirect victim of
19 the fraud himself. The basic protection of the Act, to be meaningful, must be leveled
20 against the fraudulent planners and profit makers for otherwise the Act would be
21 pragmatically barren. No legislative enactment should be rendered ineffective to attain
22 its purpose if such a construction can be avoided. *SEC v. C. M. Joiner Leasing Corp.*,
23 321 U.S. 344, 350--51, 64 S.Ct. 120, 88 L.Ed. 88.

24
25 The fact that Congress rejected a proposed amendment which would have added a
26 controlling persons clause is not dispositive evidence that the legislature intended to
27 restrict liability to ‘selling agents.’ It should be noted that *directors and officers are*
28

1 *routinely held liable* under the Securities Act apart from the controlling person
2 clause.”

3

4 We hold, therefore, that plaintiffs' alleged cause of action may properly be leveled
5 against the individual defendants in this case be they officers, directors, or
6 participating planners. Such a construction of the Act, although not specifically so
7 stated, seems to have been taken for granted by other courts, for numerous courts have
8 entertained action under the Act leveled at 'controlling stockholders, officers and
9 directors.' [multiple citations].” 527 F.2d 206-208.

10
11 At bar, the Defendants used PB Impulsores as the “seller” of Units at the Project. Therefore,
12 just as the defendants in *McCown, supra*, tried to hide behind a bankrupt entity, the Trump
13 Defendants are similarly trying to hide behind a penniless PB Impulsores. The *McCown* Court
14 made it clear that it was this exact scenario ILSA was designed to address and protect against.

15
16 Notwithstanding the foregoing, the Trump Defendants have either misconstrued ILSA and
17 case law, or are intentionally manipulating language taken out of context from certain case law, in
18 order to claim that they cannot be developers since they did not “sell” the units.

19
20 In that regard, it is significant that ILSA was amended in 1979. *Prior to* that amendment, 15
21 U.S.C. §1709 (previously 15 U.S.C. §1410) provided that,

22 “(b) Any developer or agent, *who sells or leases a lot in a subdivision*

23
24 (1) in violation of section 1404 [now re-numbered section
25 1703], or

26
27 (2) by means of a property report which contained an untrue
28 statement of material fact or omitted to state a material fact

1 required to be stated therein, may be sued by the purchaser of
2 such lot.””

3 See *Paquin v. Four Seasons of Tennessee, Inc.* (5th Cir. 1975) 519 F. 2d 1105.
4

5 In fact, in *Paquin, supra*,, relying on the foregoing (now outdated) provision, the court held
6 that a developer or agent is not liable for violations under 15 U.S.C. §1703 if the developer or agent
7 did not sell the unit to the plaintiff.
8

9 However, and significantly, in 1979, Congress amended the foregoing provision and *removed*
10 the requirement that the “developer or agent” be the seller or lessor of a lot in order to be subject to
11 liability for certain violations. See 15 U.S.C. §1709, “Historical and Statutory Notes” which state:
12 “1979 Amendments . . . Subsec. (b) Pub,L. 96-153 substituted provisions relating to enforcement
13 of rights by the purchaser or lessee against the seller or lessor, for provisions relating to suit by the
14 purchaser against the developer or agent.” Therefore, any cases that rely on the holding in *Paquin*,
15 *supra*, are neither relevant nor applicable. See also, *Santidrian v. Landmark Custom Ranches, Inc.*
16 (11 Cir. 2010) 405 Fed.Appx 383 (discussing the amendment to 15 U.S.C. §1709 and that the
17 holding in *Paquin* based on that provision prior to the amendment is no longer applicable.)²⁵
18

19 It is anticipated that the Trump Defendants will attempt to rely upon *Santidrian, supra*, for
20 another purpose. However, such reliance is misplaced. In *Santidrian, supra*, plaintiff sought to
21 impose ILSA liability on Caprio, a real estate agent “who showed the property and acted as a go-
22 between for other defendants.” He also prepared and distributed marketing materials to represent
23 the property, but did not have the authority to make a sale. The court determined that Caprio was
24 not liable under ILSA; however, that determination was not based on the fact that Caprio was not
25 authorized to make a sale. Rather, the court noted the limited role that Caprio had in connection
26 with the project and ILSA. In contrast, at bar, the Trump Defendants:
27

28 ²⁵ *Santidrian* is not a published opinion.

- 1 1. Represented themselves to be a developer of the Project (UMF 19-27, 40-43,
2 28-36, 40-43, 54-58, 68-72);
- 3 2. Exercised control over the marketing and promotional materials for the Project
4 19-21, 29-36, 37-39, 46-52);
- 5 3. Exercised control over elements of the construction of the Project (UMF 28,
6 37, 49-51) ; and
- 7 4. Participated in the registration of the Project with HUD. (UMF 79.)

8
9 The court in *Santidrian, supra*, stated in dicta that it did not believe that ILSA imposed “strict
10 liability” for failure to meet ILSA reporting requirements. However, as set forth above, Caprio, the
11 sales agent, played only a very limited role in the project, and therefore, the court appeared reluctant
12 to hold Caprio, a minor player in the project, liable for violations over which he had no control.
13 Further, in holding that Caprio was not liable for violations of ILSA reporting requirements, the
14 *Santidrian* Court noted that Caprio did not act in a fraudulent or misleading manner. However, as
15 noted above, violations of 15 U.S.C. §1709(a)(1)(C) and (D) are not based on fraud. *Burns, supra*,
16 621 F.Supp.2d at 303-307. Therefore, the *Santidrian* Court’s comments about the scope of liability
17 for reporting violations under ILSA are also not consistent with other authorities. This is especially
18 significant since *Santidrian* is neither a published opinion nor has it been relied upon by other
19 courts.

20
21 The operative version of 15 U.S.C. §1709, itself, makes a distinction between “developers”
22 or “agents” and “sellers.” In particular, 15 U.S.C. § 1709(a) provides that a purchaser can bring an
23 action against a “developer” or “agent” for violations of 15 U.S.C. 1703(a).²⁶ There is no
24 requirement in section 1709(a) that the developer or seller, also be a seller or lessor.

25
26
27 ²⁶ As set forth above, under 15 U.S.C. §1703(a)(1), it is unlawful for a developer or agent
28 to make untrue statements in connection with the disclosures required under ILSA or to fail to
to make certain disclosures. Under 15 U.S.C. §1703(a)(1), it is unlawful for a developer or agent
to defraud purchasers in connection with a transaction under ILSA.

1 In contrast, 15 U.S.C. § 1709(b) provides a right of action for violations of 15 U.S.C.
2 §1703(b) - (e). Those subsections of section 1703 provide a purchaser or lessor with a right of
3 revocation of the underlying contract under certain circumstances. Under 15 U.S.C. §1709(b), a
4 purchaser can only pursue the right of revocation under 15 U.S.C. §1703(b)-(e) against the “seller”
5 or “lessor.” Significantly, 15 U.S.C. §1709(b) does not reference the “developer” or “agent.”
6

7 Accordingly, there is no requirement that for a developer or agent to be liable, they must also
8 be the “seller.” If that were the requirement, then the specification of “seller” in 15 U.S.C. §1709(b)
9 would make no sense and would be unnecessary. As such, a “developer” or “agent” is liable under
10 ILSA for violations of section 1703(a) even if they were not the seller or lessee of the lot in
11 question.
12

13 Likewise, in the event that the Trump Defendants misinterpret cases in order to support their
14 novel theory that for a “developer” or “agent” must also be the “seller, ” such an interpretation
15 would also be erroneous. There are several ILSA cases in which the court analyzed whether a
16 plaintiff had standing to assert a claim under ILSA. In connection with that analysis, the court has
17 looked to whether the plaintiff purchased a unit directly from a “developer” as opposed to a third
18 person or middleman. For instance, in *Gibbes v. Rose Hill Plantation Development* (D.S.C. 1992)
19 794 F.Supp. 1327, the court made the statement:. “Private causes of action under ILSA are limited
20 to persons who directly purchase their property from a developer or a developer’s agent.” *Id.* at
21 1334. It is anticipated that the Trump Defendants will claim that this statement means that under
22 ILSA, the developer or agent must also be the seller of the property. However, an analysis of the
23 facts of *Gibbes, supra*, shows that not to be the case.
24

25 In *Gibbes, supra*, a number of plaintiffs brought an action under ILSA against Rose Hill
26 Development Company, from whom they purchased a lot, as well as against Burke, Fox & Co., a
27 real estate sales and development partnership hired by Rose Hill, the principals of Burke, Fox & Co.,
28 and the officers and former officers of Rose Hill. One of the plaintiffs, Gibbes, however, had not

1 purchased his lot from Rose Hill; rather, he purchased a unit from Raymond and Mary Bizzari.²⁷
2 *Id.* at 1330-31.

3
4 The Court in *Gibbes* quickly concluded that defendants Rose Hill, Burke Fox & Co. and the
5 individual officers and principals were developers or developer agents under ILSA. Accordingly,
6 the court held that all of the plaintiffs, other than Gibbes, could state causes of action under ILSA
7 against said defendants. However, since Gibbes had purchased his lot from the Bizzaris (neither a
8 Developer or Agent as defined by ILSA) and not from said defendants, he “had no cause of action
9 under ILSA.” *Id.* at 1334.

10
11 Therefore, when the *Gibbes* Court stated that “[p]rivate causes of action under ILSA are
12 limited to persons who directly purchase their property from a developer of a developer’s agent,”
13 the *Gibbes* Court was setting forth a ***standing requirement for a plaintiff*** under ILSA and **not**
14 reaching the conclusion that a developer or developer agent under ILSA must be the actual person
15 or entity from whom the plaintiff purchased their property.

16
17 There are numerous other cases which address this “standing” issue – and none of them stand
18 for the proposition that a developer or developer agent under ILSA must be the actual person from
19 whom the plaintiff purchased their property. Such a conclusion is inconsistent with the statutory
20 definition of “developer” or “agent” under ILSA (15 U.S.C. §1701(5) and (6)) and the numerous
21 authorities that further expand of the definition of “developer” and “agent” under ILSA.

22 ///

23 ///

24 ///

25 ///

26 _____

27 ²⁷ Although it is unclear in the decision, it appears that the Bizzaris were the original
28 purchasers of the lot, and they resold it to Gibbes. The Bizzaris were not parties to the lawsuit
and were not alleged to associated with Rose Hill or Burke, Fox & Co.

1 **(B) The Trump Defendants Represented To the Public That They Were a**
2 **Developer of the Project**

3 In earlier briefs the Trump Defendants have attempted to rely on *Nahigian v. Juno-Loudon,*
4 *LLC* (E.D. Va. 2010) U.S. Dist. LEXIS 86401 (no. 1:09CV725 (JCC)) as support for their argument
5 that a company that merely licenses its name cannot be held liable as a “developer” or “agent”
6 under ILSA. However, not only was their reliance misguided, an analysis of the facts and holding
7 in *Nahigian* actually supports a determination that the Trump Defendants are, in fact, liable as
8 “developers” or “agents” under ILSA.

9
10 In *Nahigian*, the plaintiff sought to hold Ritz-Carlton liable under ILSA as a developer. The
11 project was marketed as a “Ritz -Carlton Managed Community.” The advertising materials received
12 by the plaintiffs or published by the developer expressly stated that **the development “was [not]**
13 **owned, developed or sold by the Ritz-Carlton Hotel Company, LLC.”** In contrast to the
14 marketing methods and extensive advertising associated with the Trump Ocean Resort Baja, the
15 marketing materials in *Nahigian* further specified the limited and specific role being played by the
16 Ritz-Carlton. For instance, the name of the development expressly identified that the development
17 was merely to be managed by the Ritz Carlton. Further, the same marketing materials that expressly
18 advised potential buyers that the development was “not owned, developed or sold by the Ritz
19 Carlton Hotel Company” also advised potential buyers that the Ritz Carlton name was being used
20 pursuant to a license and that the developer “will enter” into an agreement with the Ritz-Carlton for
21 the management of the development.

22
23 In contrast, none of the hundreds of pages of marketing materials or advertisements regarding
24 the Trump Baja Resort ever advised potential buyers that the Project was not owed, developed or
25 sold by the Trump Defendants. To be sure, the *Nahigian* Case reads more like a roadmap that the
26
27
28

1 Trump Defendants *should* have followed had they wanted to avoid exposure to themselves as a
2 “developer” or “agent” under ILSA.²⁸

3
4 The evidence presented in *Nahigian, supra*, stands in stark contrast to the facts established
5 herein. In *Nahigian*, the Ritz-Carlton did not conduct any marketing or sales activities and did not,
6 itself, promote the sale or lease of lots. To the contrary, as set forth above, the Trump Defendants,
7 including Donald Trump, Ivanka Trump and Donald Trump, Jr., personally marketed the Trump
8 Baja Resort individually and, in the words of Ivanka Trump, under “the whole strength of the Trump
9 Organization.”

10
11 Based on the case law and the plain language of ILSA, the undisputed facts show that
12 the Trump Defendants are developers or agents as defined by the Act.

13
14 **4. All of The Trump Defendants Are Liable under ILSA as Developers or Agents**
15 **Because All Participated in the Marketing and Sale of Units.**

16 Each of the Trump Defendants are liable under ILSA for their marketing, development,
17 and sales activities. With respect to the performance of those functions, there was no meaningful
18 distinction between the Trump Defendants' roles. The Project was marketed as a “Trump”
19 development, a partnership between “Trump” and “Irongate,” a partnership between the “Trump
20 Organization” and “Irongate,” a development by “Donald J. Trump,” and other variations. Further,
21 the marketing was done interchangeably by Donald J. Trump, Ivanka Trump and Donald Trump,
22 Jr., (all principals in the Trump Organization, LLC and Trump Organization, Inc) and actively
23 marketed by the “Trump Organization” on behalf of all of the Trump Defendants.

24
25
26
27 ²⁸As set forth at fn. 13, *supra*, the Trump Defendants have used similar disclaimers in
28 connection with the Waikiki project. However, no such disclaimers were ever used in
connection with the Trump Ocean Baja Resort. (UMF 74.)

1 Because the Defendants themselves drew no distinctions between the activities of the various
2 Trump Defendants and because of universal participation by said Defendants in such activities, all
3 are liable for the ILSA violations. This conclusion is supported by the courts which have
4 consistently held that ILSA imposes developer or agent liability on corporate developers, like The
5 Trump Organization, LLC and The Trump Organization, Inc., and on individuals acting with or
6 through those corporations, (like Donald, Ivanka and Trump Jr)., where both the individual and the
7 corporation participate in the wrong. See *Kemp v. Peterson* (4th Cir. 1991) 940 F.2d 110, 113. As
8 the Court explained in *Kemp*, "officers, directors, and participating planners may be held
9 individually liable for violations of the Act" because "[t]o hold otherwise would defeat the purpose
10 of the Act, since it is the officers of the corporation who are behind the alleged fraud." *Id.* at 113.

11
12 Under ILSA, liability of the officers and the corporate entities on whose behalf they act go
13 hand in hand. See, *McCown, supra*, 527 F.2d 206-208. As set forth above in §III.B.3(A), *supra*,
14 the *McCown* Court held that even the individual officers and directors of an insolvent corporation
15 can be held liable as “developers” or “agents” under ILSA. This is true, even though ILSA has no
16 provision expressly holding “controlling persons” liable. *Id.*

17
18 In sum, the Trump Defendants are developers or agents under ILSA. They actively marketed
19 units and were by no means "incidental players" in the development and sales of Trump Ocean
20 Resort Baja. See *Olsen, supra*; *Merritt, supra*; see also *Palmer v. Ocean Club at Biloxi, Ltd.* (S.D.
21 Miss. Oct. 21, 2008) No. 1:08cv236HSO-JMR, 2008 WL 4934045 (defendants could be considered
22 developers based on allegations they directly or indirectly developed, marketed, advertised, offered
23 to sell, and participated in offering for sale condominium units; held a beneficial interest in the
24 project; and/or realized financial gain from the sale of units). There are no disputed issues of
25 material fact on this point.

26 ///

27 ///

28 ///

1 **III.**

2 **THE TRUMP DEFENDANTS ARE LIABLE FOR**
3 **VIOLATIONS OF 15 U.S.C. §1703(a)(1)(D)**
4 **SINCE THE IDENTITY OF THE DEVELOPER**
5 **IN THE PROPERTY REPORT IS INCONSISTENT**
6 **WITH THE ADVERTISING AND PROMOTIONAL MATERIALS**

7 Though Defendants seek to escape and evade all liability based on their naming of PB
8 Impulsores as the Developer of the Project in the Property Reports, this argument is deficient in that
9 this fact is only half of the equation. The defendants cannot evade liability by naming PB
10 Impulsores in the HUD documents while inconsistently advertising and promoting the identity of
11 the Developers as “Trump” and “Irongate.” To do so is a violation of 15 U.S.C. §1703(a)(1)(D).
12

13 **A. ILSA Requires That The Property Report Disclose The Name of the Developer**

14 In the sale and marketing of units, there are several technical matters which require
15 compliance in any project falling under the auspices of ILSA. As to the Trump Ocean Resort Baja,
16 this Project is a “subdivision” and was part of a “common promotional plan” as same is defined in
17 the Act at 15 U.S.C. §1701, and in particular, §§1701 (3) and (4).
18

19 The Act does not apply and the subdivision is deemed “exempt” from the registration
20 requirements with the United States Department of Housing and Urban Development (“HUD”) if
21 a contract obligates the seller or lessor to erect such a building within a period of two (2) years, (the
22 “2-year Exemption”). See, 15 U.S.C. §1702(a)(2) and 24 C.F.R. 1710.5.²⁹ The Contracts at issue
23 at bar do not fall into that, or any, exemption.
24

25
26
27 ²⁹Though not necessary for adjudication under the instant Motion, Plaintiffs contend that
28 Defendants knew from the inception that the Project could not be completed within 2 years in
order to qualify for the exemption, and that therefore, the purported exemption was an attempt to
evade compliance with the Act, all in violation of 24 CFR §1710.4(a).

1 At the time of the initial sales of Tower 1, the Project was not registered with HUD. Instead,
2 the Defendants purported to sell units in the Project under the “2 year exemption” of the Act. In and
3 around March, 2007, the Defendants took steps to have the Project registered with HUD in a belated
4 attempt to comply with the Act.³⁰

5
6 Under the Act, for all subdivisions that do not come under an exemption for registration, the
7 developer is to submit to HUD a Statement of Record which “describes the subdivision and must
8 make various disclosures, including persons having an interest in the subdivision, a legal description
9 of the subdivision” *Burns, supra*, 621 F.Supp.2d at 301; 15 U.S.C. §1705. In conjunction with
10 submitting a Statement of Record, the developer is to also submit to HUD a Property Report which
11 contains the same information set forth in the Statement of Record, with some exclusions, and shall
12 also contain “such other information as the Secretary may by rules of regulations require as being
13 necessary or appropriate in the public interest or for the protection of purchasers.” 15 U.S.C.
14 §1707(a). In accordance with the requirements of §1703(a) of the Act, and of the HUD Regulations,
15 Title XIV §1408, a “Property Report” meeting the requirements of §1707 of the Act must be
16 furnished to the purchaser in advance of the signing of any contract by such purchaser.

17
18 Among the regulations promulgated by the Secretary under HUD regarding the information
19 that must be included in the property report is 24 C.F.R. §1710.105. That provision mandates the
20 information that must be set forth on the Cover Page of the Property Report. Section 1710.105(c)
21 specifies that the Cover Page shall state, among other things,

22
23 “Name of Developer: _____”
24
25

26
27 ³⁰The scheme by which Defendants undertook to register the Project included fraudulently
28 inducing the Tower 1 Plaintiffs into executing a Second Tower 1 Sales Contract. (Plaintiffs,
Eshragi, C. Nguyen and L. Nguyen did not execute the Second Contracts). Such conduct is the
subject of Plaintiffs’ Sixth Cause of Action and will not be discussed in this Motion.

1 Similarly, 24 C.F.R. 1710.110 sets out the information required to be contained in the
2 “General Information” portion of the Property Report. In particular, the General Information is to
3 contain the following information:

4
5 “The developer of this Subdivision is:

6 _____
7 (Developer’s Name)”

8
9 Accordingly, under ILSA, the identity of the “developer” is required to be disclosed in the
10 Property Report.

11
12 **B. The Property Report Identifies “PB Impulsores, S. De R.L. de C.V.” As the**
13 **Developer; This is Inconsistent with the Promotional and Marketing Material**
14 **Which Repeatedly and Consistently Identify “Trump” and “Irongate” as the**
15 **Developers**

16
17 On or about May 21, 2007 a “Property Report” was submitted to HUD by Defendants, and
18 was deemed filed with an effective date of May 21, 2007. This “Property Report” pertained and
19 related to Tower 1 only (the “Tower 1 Property Report”). (UMF 80.)

20
21 On the Cover Sheet of the Tower 1 Property Report, the developer is identified as “PB
22 Impulsores, S. De R.L. de C.V.” This information is repeated on page 3 under “General
23 Information.” (UMF 80.)

24
25 The launch of the sales of Tower 2 was scheduled to take place on June 27, 2007. In
26 connection with that launch submitted to HUD another “Property Report” relating to Tower 1. That

1 “Property Report” was deemed filed with an effective date of June 25, 2007 (the “Tower 2 Property
2 Report”).³¹ (UMF 81.)

3
4 Once again, as was the case with the Tower 1 Property Report, the Cover Page on the Tower
5 2 Property Report identifies the developer as “PB Impulsores, S. De R.L. de C.V.” Once again, in
6 the “General Information” section of the Tower 2 Property Report, the developer is identified as “PB
7 Impulsores, S. De R.L. de C.V.” (UMF 81.)

8
9 The disclosures in both the Tower 1 and Tower 2 Property Reports that the developer of the
10 Project is “PB Impulsores, S. De R.L. de C.V.” conflicts with the advertising and promotional
11 material identifying the Trump Defendants, along with Irongate, as the developers of the Project.
12 As set forth above, the advertising and promotional material all identified “Trump” and “Irongate”
13 as the developers. In fact, the name “PB Impulsores, S. De R.L. de C.V.” does not appear in any
14 of those materials. Accordingly, the promotional and marketing materials are inconsistent with
15 disclosures in the Property Reports. This is a clear violation of 15 U.S.C. §1703(a)(1)(D).

16
17 **IV.**

18 **PLAINTIFFS ARE ENTITLED TO DAMAGES**
19 **AS AGAINST THE TRUMP DEFENDANTS**

20 15 U.S.C. §1709 provides as follows:

21 (a) Violations; relief recoverable

22 A purchaser or lessee may bring an action at law or equity against a developer
23 or agent if the sale or lease was made in violation of section 1703(a) of this
24 title. In a suit authorized by this subsection, the court may order damages,
25 specific performance, or such other relief as the court deems fair, just, and
26 equitable. In determining such relief the court may take into account, but not

27
28 ³¹As set forth in fn. 16, *supra*, Tower 2 buyers were not given the Tower 2 Property Report. To the extent they received a Property Report, it was for Tower 1.

1 be limited to, the following factors: the contract price of the lot or leasehold;
2 the amount the purchaser or lessee actual paid; the cost of any improvements
3 to the lot; the fair market value of the lot or leasehold at the time relief is
4 determined; and the fair market value of the lot or leasehold at the time such
5 lot was purchased or leased.

6 . . .

7 (c) Amounts recoverable

8 The amount recoverable in a suit authorized by this section may include, in
9 addition to matters specified in subsections (a) and (b) of this section, interest,
10 court costs, and reasonable amounts for attorneys' fees, independent
11 appraisers' fees and travel to and from the lot.

12
13 Since there is no dispute that the Trump Defendants violated 15 U.S.C. §1703(a)(1)(D),
14 Plaintiffs are entitled to damages under §1709. However, as the Court is aware, there are
15 approximately 198 individual *O'Brien* Plaintiffs as purchasers of 132 Units involved in this matter,
16 and therefore, Plaintiffs request that the Court set a procedure by which the damages awardable to
17 each Plaintiff can be determined. (UMF 78.)

18
19 **V.**

20 **CONCLUSION**

21 Based on the undisputed facts and controlling law, Plaintiffs are entitled to summary
22 adjudication on their Seventh and Eight Causes of Action. The Court should make the following
23 rulings:

24 A. That the Trump Defendants are either developers and/or agents of the Trump Ocean
25 Resort Baja as follows:

26
27 (1) Donald J. Trump is a “developer” of Trump Ocean Resort Baja as
28 defined by ILSA, 15 U.S.C. §1701(5) consistent with his

1 representations and those of his agents, or if not found to be a
2 “developer,” in the alternative as an “agent” as defined by ILSA, 15
3 U.S.C. §1701(6);
4

5 (2) Ivanka Trump is a “developer” of Trump Ocean Resort Baja as defined
6 by ILSA, 15 U.S.C. §1701(5), consistent with her representations and
7 those of her agents, or if not found to be a “developer,” in the
8 alternative as an “agent” as defined by ILSA, 15 U.S.C. §1701(6);
9

10 (3) Donald Trump, Jr. is a “developer” of Trump Ocean Resort Baja as
11 defined by ILSA, 15 U.S.C. §1701(5), consistent with his
12 representations and those of his agents, or if not found to be a
13 “developer,” in the alternative as an “agent” as defined by ILSA, 15
14 U.S.C. §1701(6);
15

16 (4) The Trump Organization, LLC and The Trump Organization,
17 Inc., (as they have been held out interchangeably) are
18 “developers” of Trump Ocean Resort Baja as defined by ILSA,
19 15 U.S.C. §1701(5), consistent with the representations of
20 Donald J. Trump, Ivanka Trump and Donald Trump, Jr., the
21 principals of said entities, or if not found to be “developers,” in
22 the alternative as an “agents” as defined by ILSA, 15 U.S.C.
23 §1701(6);
24

25 B. The advertising and promotional materials delivered and displayed to prospective
26 purchasers identified “Trump” and “Irongate” as the developers of the Trump Ocean
27 Resort Baja, is inconsistent with the Property Reports which identified the developer
28

1 as “PB Impulsores, S. De R.L. de C.V.” and in violation of 15 U.S.C. §1703(a)(1)(D);
2 and

3
4 C. Plaintiffs (with the exception of Eshragi, C. Nguyen and L. Nguyen) are entitled to
5 judgment and damages pursuant to 15 U.S.C. §1709(a) and (c), subject to proof in a
6 procedure to be determined by the Court.

7
8 **LAW OFFICES OF BART I. RING**

9
10
11
12 Dated: June 28, 2013

By _____
Bart I. Ring, Attorney for Plaintiffs
O’Brien v. Trump, LASC No. BC 409651 (Lead Case)
Chapchian v. Trump, LASC Case No. BC 439950
Ruggiero v. Trump, LASC Case No. BC 443134
Breslin v. Trump, LASC Case No. BC 437908
Shin v. Trump, LASC Case No. BC 452657

13
14
15
16
17
18 **LAW OFFICES OF DANIEL J. KING**

19
20
21
22 Dated: June 28, 2013

By _____
Daniel J. King, Attorney for Plaintiffs
O’Brien v. Trump, LASC No. BC 409651 (Lead Case)
Chapchian v. Trump, LASC Case No. BC 439950
Ruggiero v. Trump, LASC Case No. BC 443134
Breslin v. Trump, LASC Case No. BC 437908
Shin v. Trump, LASC Case No. BC 452657