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DONALD J. TRUMP,)	SUPERIOR COURT OF NEW JERSEY
)	APPELLATE DIVISION
Plaintiff/Appellant,)	DOCKET NO.: A-6141-08T3
)	
v.)	ON APPEAL FROM THE
)	SUPERIOR COURT OF NEW JERSEY
TIMOTHY L. O'BRIEN; TIME)	LAW DIVISION - CAMDEN COUNTY
WARNER BOOK GROUP, INC.; and)	
WARNER BOOKS, INC.,)	SAT BELOW
)	HONORABLE MICHELE M. FOX, J.S.C.
Defendants/Respondents.)	

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APPENDIX TO BRIEF OF PLAINTIFF/APPELLANT DONALD J. TRUMP
Volume V
Pa1448-Pa1799

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Exhibit BH-Omitted, duplicate of 900a-919a Plaintiff's First Set of Interrogatories to Defendant Timothy L. O'Brien,	***
Omitted, duplicate of 920a-935a Plaintiff's First Request to Defendant Timothy L. O'Brien for the Production of Documents	***
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Omitted, duplicate of 920a-935a Plaintiff's First Request to Defendant Timothy L. O'Brien for the Production of Documents	***
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Exhibit CC-Omitted, duplicate of 978a-984a
 News article from The Washington Post entitled "He's
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Exhibit CD-Omitted, duplicate of 700a-740a
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 Omitted, duplicate of 2735a-3126a
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Omitted, duplicate of 2879a-3126a
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that Riverwalk was actually controlled by the Pennsylvania Partnership Group which was comprised of the individual Philadelphia owners which was the impression that was being conveyed with the 51% ownership interest.

CONCLUSION

As stated, the decision to award the Category 2 license in Philadelphia was a difficult one. The decision was complicated by the fact that five applicants presented five solid proposals for licensure under the Act. The Board commends each applicant for presenting a proposal for consideration in a thorough and professional manner. Each applicant was found to be eligible and suitable under the guidelines of the Act. This meant that the Board was required to, and did, consider a multitude of factors related to the applicants and had to arrive at a decision in the exercise of its discretion as to which two of the five suitable applicants should receive the license.

Upon reviewing all of the factors in the act, the Board finds in its opinion that the HSP/Sugarhouse project possesses a superior location, site and design to build a first-class casino along the Delaware River-front. The Board further finds, in its opinion, that this proposal will best promote and serve the objectives of the Act. As stated above, the Board does not believe that the North Delaware Avenue area can currently support two casinos because of the attendant traffic which would occur with two casinos in that area. Therefore, although the Board also believes the Pinnacle Entertainment/PNK proposal also possessed many fine attributes, having selected the HSP/Sugarhouse project for license approval, the Board does not believe licensing any other sites in that North Delaware Avenue area to be in the best interests of the Commonwealth.

Between the two remaining sites, the Board believes, based upon its review of the evidence, that the Philadelphia Entertainment/Foxwoods proposal will also serve the objectives of the Act and should be granted a Category 2 license. The location of South Philadelphia, near the sports complexes and sufficiently separated from the North Delaware Avenue area, provides a location conducive to economic development and gaming without overburdening local services. Moreover, the Board finds that the history and successful management of Foxwoods Connecticut, which will be imported to the South Philadelphia project, will provide a tremendous boost to this project for the betterment of the Commonwealth.

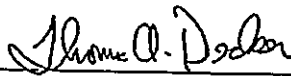
Based upon the findings of fact, conclusions of law and discussions set forth above, which are supported by the evidentiary record, the PGCB finds that HSP/Sugarhouse and Philadelphia Entertainment and Development Partners/Foxwoods have satisfied the requirements of 4 Pa.C.S. § Category 2 license, are eligible and suitable to receive a license and that it is in the best interest of the public and the Commonwealth that these two entities be granted the two available Category 2 slot machine licenses allocated by the General Assembly to Philadelphia, Pennsylvania, a city of the First Class, subject to the terms and conditions placed on the license by the PGCB.

The grant and issuance of this Category 2 license does not give either HSP/Sugarhouse or Philadelphia Entertainment and Development Partners/Foxwoods a property right and the PGCB may, at its discretion, revoke or suspend the license of HSP/Sugarhouse or Philadelphia Entertainment and Development Partners/Foxwoods if the PGCB finds that HSP/Sugarhouse or

Philadelphia Entertainment and Development Partners/Foxwoods, and their officers, employees or agents have not complied with the conditions of the license, the provisions in the Act, or the PGCB's regulations, and that it would be in the best interest of the public to revoke or suspend the slots license.

In light of the PGCB's decision to grant HSP/Sugarhouse and Philadelphia Entertainment and Development Partners/Foxwoods the two (2) Category 2 licenses allocated to Philadelphia, Pennsylvania, a City of the First Class, the applications for a Category 2 slot machine license by Keystone Redevelopment Partners, also known as TrumpStreet; PNK, Pinnacle Entertainment and Riverwalk Casino are hereby DENIED.

BY AND ON BEHALF OF THE PENNSYLVANIA
GAMING CONTROL BOARD:



THOMAS A. DECKER
CHAIRMAN

COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD

IN RE:	:	
APPLICATION OF HSP GAMING LP	:	DOCKET NO. 1356
APPLICATION OF KEYSTONE REDEVELOPMENT PARTNERS, LLC	:	DOCKET NO. 1364
APPLICATION OF PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, LP	:	DOCKET NO. 1367
APPLICATION OF PINNACLE ENTERTAINMENT, INC. AND PNK (PA), LLC	:	DOCKET NO. 1751
APPLICATION OF RIVERWALK CASINO, LP	:	DOCKET NO. 1362
Applications for Category 2 Slot Machine Licenses in Philadelphia, PA a City of the First Class	:	

ORDER

AND NOW this 1st day of February, 2007, based upon the full and careful consideration of the record evidence before it, the provisions of the Pennsylvania Race Horse Development and Gaming Act ("Act") (4 Pa.C.S. §§ 1101 – 1904, as amended) and the Act's accompanying regulations, the Pennsylvania Gaming Control Board (PGCB) issues the following:

IT IS ORDERED THAT, the applications for licensure as Category 2 licensees in the City of Philadelphia of HSP Gaming, LP and Philadelphia Entertainment & Development Partners, LP, are **GRANTED** and the licenses are approved for the reasons set forth in the Gaming Control Board's Adjudication of the Applications for Category 2 Slot Machine Licenses

in Philadelphia, PA, a City of the First Class, issued this date, and subject to satisfaction of the following conditions prior to the issuance of the Category 2 licenses:

1. The expiration of the thirty (30) day appeal period permitted by the Pennsylvania Rules of Appellate Procedure;
2. The payment of any outstanding fees, other than the \$50 million licensing fee, as determined by the PGCB pursuant to 4 Pa.C.S. § 1208;
3. The agreement to the Statement of Conditions of licensure to be imposed and issued by the Gaming Control Board, as evidenced by the signing of the agreements by HSP Gaming, LP's and Philadelphia Entertainment & Developments Partners, LP's executive officers or designees within five business days of the receipt of the Statement of Conditions from the PGCB; and
4. The payment of the one time \$50,000,000 slot machine license fee required pursuant to 4 Pa.C.S. § 1209, made by the latter of four months from the date of this Order or ten (10) calendar days following the conclusions of any appeals to the grant of this license pursuant to 4 Pa.C.S. §1204 (if any), and no less than ten (10) business days prior to the beginning of the test period necessary to commence slot machine operations under 58 Pa. Code § 467.2(a)(9).

IT IS ORDERED THAT the applications for licensure as a Category 2 licensee in the City of Philadelphia of **Keystone Redevelopment Partners, LLC; PNK (PA), LLC and Riverwalk Casino, LP**, are **DENIED** for the reasons set forth in the Gaming Control Board's Adjudication of the Applications for Category 2 Slot Machine Licenses in Philadelphia, PA, a City of the First Class issued this date.

IT IS FURTHER ORDERED THAT the PGCB delegates to a designated Board member, in consultation with the Executive Director, authorization to permit HSP Gaming, LP

and Philadelphia Entertainment & Development Partners, LP to commence a test period pursuant to 58 Pa. Code § 467.2(a)(9), which test period shall commence on such date and time and shall continue for such duration as shall be determined by a designated Board member, in consultation with the Executive Director. A designated Board member, in consultation with the Executive Director, shall be authorized to establish, terminate, restrict, limit, extend or otherwise modify the test period or the hours thereof. The authority delegated shall include the right to order HSP Gaming, LP and Philadelphia Entertainment & Development Partners, LP to take whatever actions are necessary to preserve the policies of the Act, the regulations and any technical standards adopted by the PGCB and/or to assure an effective evaluation during the test period including permitting, limiting, restricting or prohibiting HSP Gaming, LP and Philadelphia Entertainment & Development Partners, LP from conducting slot operations.

IT IS FURTHER ORDERED THAT the PGCB delegates to a designated Board member, in consultation with the Executive Director, the ability to determine the successful completion of the test period and to authorize the effective date and time at which slot operations may commence pursuant to 58 Pa. Code § 467.2(b), such authorization to include a specific number of slot machines and gaming floor square footage. The authority delegated shall include the right to restrict, limit, condition or abrogate any authority to conduct slot operations and the authority to subsequently amend, modify or remove any restriction, limitation, condition or prohibition imposed pursuant to any authority granted hereunder;

that the delegation of authority to a designated Board member shall expire as determined by the PGCB; and

that in the event that a designated Board member cannot perform the delegated duties, the Chairman shall have the authority to select an alternate PGCB member to fulfill these duties.

Thomas A. Decker

Thomas A. Decker, Chairman
Pennsylvania Gaming Control Board

In accordance with 4 Pa.C.S. § 1204, the Supreme Court has been vested with exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of all licensed entity applications. Pa.R.A.P. provides for any Petition for Review to a PGCB decision to be filed within thirty (30) days after the entry of the order.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

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MARK P. RESSLER
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ATLANTA
HOUSTON
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SAN FRANCISCO

April 26, 2007

BY U.S. MAIL AND E-MAIL

Andrew Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

We are writing pursuant to the Court's instructions at the March 27, 2007 hearing in this matter concerning the business opportunities that Mr. Trump believes were either lost, or were affected, impaired or interfered with, as a result of defendants' publication of defamatory statements about him contained in the book *TrumpNation: The Art of Being the Donald* (the "Book") and in related materials, including but not limited to an excerpt from that book published in the *The New York Times*. We previously set forth such lost or impaired business opportunities in our letter to you dated January 10, 2007.

With respect to the lost business opportunities identified in our January 10 letter, we are enclosing documents designated TR000040695-TR000040740 concerning Trump International Hotel and Condominiums in Phoenix, Arizona. The other projects set forth in that letter did not reach the documentation stage, and did not generate deal documentation, based in part on the impact that defendants' defamatory statements had on certain parties to those projects. (See Certification of Maria Gorecki.)

Mr. Trump believes that additional business opportunities also were either lost, or were affected, impaired or interfered with, as a result of defendants' publication of defamatory statements about him in the Book and in the related materials. Such additional business opportunities include the following:

1. Trump International Hotel and Tower, Kiev, Ukraine;
2. Trump Resort, Yalta, Ukraine; and
3. Trump International Hotel and Tower, Warsaw, Poland.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

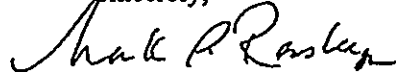
Andrew Ceresney, Esq.
April 26, 2007
Page 2

Once again, these projects did not reach the documentation stage, and did not generate deal documentation, based in part on the impact that defendants' defamatory statements had on certain parties to those projects. (See Certification of Maria Gorecki.)

Mr. Trump reserves the right to supplement this information with additional information about these, and other business opportunities that were lost, or were impaired or interfered with, as a result of defendants' publication of defamatory statements about him in the Book and in the related materials.

If you have any questions about the foregoing, please feel free to contact me.

Sincerely,



Mark P. Ressler

Enclosures

cc: Mark Melodia (by e-mail)
Andrew Levine (by e-mail)
James F. Dial (by e-mail)

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December 18, 2007

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
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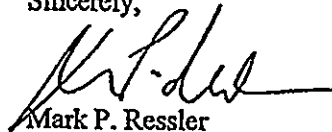
Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Plaintiff Donald J. Trump hereby supplements his response to Interrogatory No. 21 by stating that, in addition to the projects previously identified, Trump believes that defendants' publication of the defamatory statements identified in response to Interrogatory No. 1 also interfered with a transaction involving the opportunity to obtain an ownership interest in Prudential Douglas Elliman.

As always, please feel free to contact me with any questions.

Sincerely,



Mark P. Ressler

cc: Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

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January 7, 2008

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Plaintiff Donald J. Trump hereby supplements his responses to the following of defendants' interrogatories: No. 20 from defendants' first set of interrogatories, and Nos. 1, 3-9, 11, 12, 14 and 15 from defendants' second set of interrogatories.

INTERROGATORY NO. 20 (FROM FIRST SET OF INTERROGATORIES)

To the present, set forth the nature and amount of, and facts and data supporting each and every claim of damages in this action, including a description of: (a) the method used to calculate the total amount of such damages; (b) the source of all facts and data supporting such damages; (c) all persons involved in making such calculations of damages; and (d) all persons with knowledge of such damages or any data used to calculate such damages. Identify and attach hereto copies of all documents on which you relied in calculating such damages.

RESPONSE TO INTERROGATORY NO. 20

Trump objects to this interrogatory on the ground that it is premature, as Trump's damages, in part, will be the subject of expert testimony at trial, and the expert phase of discovery has neither begun nor been scheduled. Subject to and without waiving any of the foregoing, Trump responds as follows:

The nature of Trump's damages include, but are not limited to, the following:

(1) Trump's loss of business opportunities as a result of defendants' defamatory statements about Trump in October 2005. Trump has already identified these lost business opportunities to defendants, provided additional information relating to these lost business opportunities in response to Defendants' Second Set of Interrogatories Directed to Plaintiff and testified about these lost business opportunities during his deposition.

Andrew J. Ceresney, Esq.

January 7, 2008

Page 2

(2) The injury to Trump's reputation sustained as a result of defendants' defamatory statements. Trump is not required to present evidence that assigns an actual dollar value to the injury to his reputation, as such damages are deemed to follow naturally and necessarily from the defamatory conduct itself, and the law of defamation recognizes that a victim of defamation is often unable to identify specific business opportunities that were lost as a result of injury to reputation. The witnesses on whose testimony Trump intends to rely at trial to support this claim for damages include, but are not limited to: (a) witnesses offered to establish defendants' liability; (b) witnesses who will testify to the injury to Trump's reputation caused by defendants' publication of defamatory statements about Trump; and (c) witnesses offered in support of plaintiff's other claims for damages, which include, without limitation, lost business opportunities.

(3) The mitigation damages incurred by plaintiff as a result of defendants' defamatory statements. The basis for this claim of damages relates to the time and effort expended by plaintiff, his employees and/or his agents in an attempt to ameliorate the damage to Trump's reputation caused by defendants' publication of defamatory statements about Trump. The witnesses on whose testimony Trump intends to rely at trial to support this claim for damages include, but are not limited to:

(a) Those present at the meeting with employees of *Forbes* magazine that occurred after publication of the Book and the excerpt in *The New York Times*, in connection with which Trump, his employees and/or agents, including Michelle Scarbrough, Allen Weisselberg, Donald Bender, Gerald Rosenblum, Donald Trump, Jr., Ivanka Trump and others were forced to divert considerable time and effort responding to and establishing the falsity of defendants' defamatory statements about Trump.

(b) Those involved in the drafting of letters to *The New York Times* following the publication of the Book and the excerpt in *The New York Times*, including, without limitation, plaintiff, Allen Weisselberg, Michelle Scarbrough, David McCraw and Michael J. Bowe.

(c) Those with knowledge of Trump's efforts to ameliorate through advertising the damage to his reputation caused by defendants' publication of defamatory statements about him.

(d) Those with knowledge of attorney fees and costs incurred in demanding a retraction of the excerpt of the Book published in *The New York Times*, including, without limitation, plaintiff, Allen Weisselberg, Michelle Scarbrough, David McCraw and Michael J. Bowe.

INTERROGATORY NO. 1 (FROM SECOND SET OF INTERROGATORIES)

With respect to the Trump International Hotel and Condominiums in Phoenix, Arizona, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction

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"prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe the involvement of any governmental entity or official in the transaction, including but not limited to the involvement of the State of Arizona or any local governmental entity or official;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that the opponents of the Trump International Hotel and Condominiums in Phoenix, Arizona "relied, in part, on Defendants' Defamatory Statements," including but not limited to identifying the opponents who so relied, explaining the nature of their reliance, and setting forth the specific defamatory statements that they relied upon and the instances in which they relied upon them;
- j. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;

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k. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;

l. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;

m. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 1

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Tevfik Arif and Jody Kriss of Bayrock Group engaged in negotiations for, and secured an ordinance to proceed with, a project to develop a Trump International Hotel and Tower in Phoenix, Arizona.

(b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Donald Trump, Jr. and/or Tevfik Arif of Bayrock Group may have that information.

(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he believes that the deal would have resulted in profits of hundreds of millions of dollars, and he will offer the testimony of an expert witness at trial to estimate his damages. In addition, when the project was cancelled, Bayrock Group defaulted on the exclusive agreement it had with Trump concerning the project. Bayrock Group owes Trump approximately \$700,000 under that agreement.

(e) See response to part (a) above.

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(f) Government officials and entities, including the city council, were involved with the ordinance and zoning for the project. Trump does not recall specifically which officials were involved.

(g) See response to part (a) above. In addition, Bayrock Group attempted to secure zoning approval for the project.

(h) The "current status of the transaction" is that Bayrock Group is attempting to resuscitate the project, but even if it does go forward, it will be a shorter building than planned and will be built in a real estate market that is less favorable to sellers than the market at the time defendants derailed the project by publishing their false and defamatory statements about Trump.

(i) Trump has been advised by Bayrock Group that opponents of the project expressed concern about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book. The opponents of the project successfully challenged the ordinance through, among other things, a referendum before the city council. Trump also has been advised that people at the hearing on the referendum held up and waved a copy of the Book and, in substance, voiced their opinion that the project should not go forward. As a result of defendants' defamatory statements, the project was cancelled.

(j) See response to part (i) above. In addition, Trump spoke to several members of the governmental body or board that voted against the project during the referendum process, and at least one of those individuals told Trump that the Book hurt Trump's chances of getting approval. Trump does not recall the names of the individuals with whom he spoke.

(k) See response to parts (i) and (j) above.

(l) Trump believes that the height of the proposed building also was a factor in the project not being completed.

(m) See response to parts (a), (i) and (j) above.

INTERROGATORY NO. 3 (FROM SECOND SET OF INTERROGATORIES)

With respect to 400 Fifth Avenue in New York, New York, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

a. Identify the person from whom Plaintiff or any Trump-related entity attempted to acquire development and branding rights in connection with the property;

b. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity,

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and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Explain the current status of the transaction;
- g. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements were a factor in preventing Donald Trump from acquiring development and branding rights in connection with the property, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- h. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- i. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;
- j. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 3

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

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(a) Howard Lorber of Prudential Douglas Elliman engaged in negotiations with David Bizzi of Bi & Di Real Estate SpA concerning a possible project to develop a Trump hotel and condominium at 400 Fifth Avenue, New York, New York. Trump spoke with several Italian investors, whose names Trump does not recall, about the project.

(b) Trump, Howard Lorber, Dolly Lenz of Prudential Douglas Elliman and certain Italian investors, whose names Trump does not recall, were involved in the negotiations relating to the project.

(c) The "nature of [Trump's] participation or interest" in the project was: (i) to obtain a 25% carry-free ownership interest; (ii) to develop the project and obtain development fees; (iii) to obtain a licensing agreement and licensing fees; and (iv) to obtain sales fees.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he believes that the deal would have resulted in profits of hundreds of millions of dollars, and he will offer the testimony of an expert witness at trial to estimate his damages.

(e) When Trump was considering purchasing the Lord & Taylor site in New York, Lorber called Trump and told Trump that he represented owners of a better site. Lorber arranged a meeting between Lorber, Trump, and several Italian investors at Trump's office in Trump Tower, at which they discussed and reached agreement on the project and its terms, including Trump's interest in the project, which is described in part (c) above. In addition, Trump discussed the project with Lorber several times.

(f) The Italian investors cancelled the deal.

(g) Trump has been advised by Lorber that it was Lorber's impression that the Italian investors did not proceed with Trump for the project because they had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book. In addition, after Lorber advised Trump that the Italian investors decided not to go forward with the project, Trump called the Italian investors to attempt to save the project, but he could not persuade them to go forward. They mentioned the excerpt from the Book that was published in *The New York Times* during that conversation.

(h) See response to part (g) above.

(i) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(j) See response to parts (a), (e) and (g) above.

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INTERROGATORY NO. 4 (FROM SECOND SET OF INTERROGATORIES)

With respect to the **Moscow Trump International development in Moscow, Russia**, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Russian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;

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k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;

l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 4

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Tevfik Arif and Constantine Yudin of Bayrock Group engaged in negotiations on behalf of Trump with certain developers, investors and related persons, including Ilya Haykin, concerning a project to develop a Trump International Hotel and Tower in Moscow, Russia. In addition, Trump met with two men from Russia and Arif to discuss the project. In addition, Donald Trump, Jr. may have been involved with the negotiations.

(b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Tevfik Arif of Bayrock Group may have that information.

(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he will offer the testimony of an expert witness at trial to estimate his damages.

(e) See response to part (a) above.

(f) Trump has no personal knowledge of "any involvement or influence of any Russian governmental entity or official, whether national or local, in the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(g) Trump has no personal knowledge of "any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(h) As a result of defendants' defamatory statements, the project was cancelled.

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(i) Trump has been advised by Bayrock Group that the developers, investors and related persons in Moscow did not proceed with Trump for the project because they had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that were excerpted from the Book in a *New York Times* article on October 23, 2005.

(j) See response to part (i) above.

(k) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(l) See response to parts (a) and (i) above.

INTERROGATORY NO. 5 (FROM SECOND SET OF INTERROGATORIES)

With respect to the Trump Tower in Istanbul, Turkey, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

b. Set forth the specific location of the proposed building or project;

c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;

d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;

e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;

f. Describe any involvement or influence of any Turkish governmental entity or official, whether national or local, in the transaction;

g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;

h. Explain the current status of the transaction;

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i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;

j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;

k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;

l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 5

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with certain developers, investors and related persons concerning a project to develop a Trump International Hotel and Tower in Istanbul, Turkey.

(b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Tevfik Arif of Bayrock Group may have that information.

(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he will offer the testimony of an expert witness at trial to estimate his damages.

(e) See response to part (a) above.

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(f) Trump has no personal knowledge of "any involvement or influence of any Turkish governmental entity or official, whether national or local, in the transaction." Trump believes that Tefvik Arif of Bayrock Group may have that information.

(g) Trump has no personal knowledge of "any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction." Trump believes that Tefvik Arif of Bayrock Group may have that information.

(h) As a result of defendants' defamatory statements, the project was cancelled.

(i) Trump has been advised by Bayrock Group that the investors decided not to pursue the project, in part, because they had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book.

(j) See response to part (i) above.

(k) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(l) See response to parts (a) and (i) above.

INTERROGATORY NO. 6 (FROM SECOND SET OF INTERROGATORIES)

With respect to the **Trump International Hotel and Tower in Kiev, Ukraine**, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

b. Set forth the specific location of the proposed building or project;

c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;

d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;

e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;

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- f. Describe any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 6

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

- (a) Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with Igor Voskoboynikov, who represented the interests of certain Russian and Ukrainian investors, concerning a project to develop a Trump International Hotel and Tower in Kiev, Ukraine. Donald Trump, Jr. may have been involved with the negotiations.
- (b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Tevfik Arif of Bayrock Group may have that information.

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(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he will offer the testimony of an expert witness at trial to estimate his damages.

(e) See response to part (a) above.

(f) Trump has no personal knowledge of "any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(g) Trump has no personal knowledge of "any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(h) As a result of defendants' defamatory statements, the project was cancelled.

(i) Trump has been advised by Bayrock Group that certain of the investors indicated that they were familiar with defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that, based at least in part on those statements, they questioned Trump's financial stability and demanded that Trump either contribute additional capital to, or have his name removed from, the project.

(j) See response to part (i) above.

(k) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(l) See response to parts (a) and (i) above.

INTERROGATORY NO. 7 (FROM SECOND SET OF INTERROGATORIES)

With respect to the Trump Resort in Yalta, Ukraine, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

b. Set forth the specific location of the proposed building or project;

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- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 7

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks

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information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with Igor Voskoboynikov, who represented the interests of certain Russian and Ukrainian investors, concerning a project to develop a Trump International Hotel and Tower in Yalta, Ukraine. Donald Trump, Jr. may have been involved with the negotiations.

(b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Tevfik Arif of Bayrock Group may have that information.

(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he will offer the testimony of an expert witness at trial to estimate his damages.

(e) See response to part (a) above.

(f) Trump has no personal knowledge of "any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(g) Trump has no personal knowledge of "any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(h) As a result of defendants' defamatory statements, the project was cancelled.

(i) Trump has been advised by Bayrock Group that certain of the investors indicated that they were familiar with defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that, based at least in part on those statements, they questioned Trump's financial stability and demanded that Trump either contribute additional capital to, or have his name removed from, the project.

(j) See response to part (i) above.

(k) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(l) See response to parts (a) and (i) above.

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INTERROGATORY NO. 8 (FROM SECOND SET OF INTERROGATORIES)

With respect to the **Trump International Hotel and Tower in Warsaw, Poland**, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Polish governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;

Andrew J. Ceresney, Esq.
January 7, 2008
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k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;

l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

RESPONSE TO INTERROGATORY NO. 8

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Trump, Tevfik Arif of Bayrock Group and Janosk Kulczyk engaged in negotiations for a project to develop a Trump International Hotel and Tower in Warsaw, Poland.

(b) Trump has no personal knowledge of the specific location of the proposed project. Trump believes that Tevfik Arif of Bayrock Group may have that information.

(c) The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property.

(d) Plaintiff has not calculated the damages he sustained because the project was cancelled, but he will offer the testimony of an expert witness at trial to estimate his damages.

(e) See response to part (a) above.

(f) Trump has no personal knowledge of "any involvement or influence of any Polish governmental entity or official, whether national or local, in the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(g) Trump has no personal knowledge of "any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction." Trump believes that Tevfik Arif of Bayrock Group may have that information.

(h) As a result of defendants' defamatory statements, the project was cancelled.

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Page 19

(i) Trump has been advised by Bayrock Group that Kulczyk expressed concern about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book.

(j) See response to part (i) above.

(k) Plaintiff is not aware of any factor other than defendants' defamatory statements that interfered with the deal.

(l) See response to parts (a) and (i) above.

INTERROGATORY NO. 9 (FROM SECOND SET OF INTERROGATORIES)

From January 1, 2002 to the present, for all offers or proposals to license the Trump name for any purpose:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the licensing offered or proposed and the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as the person making the offer or proposal;
- c. Specify the role of each person identified in Response 9(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. For each offer or proposal specified in Response 9(a), set forth whether the offer or proposal resulted in a licensing agreement;
- f. For each offer or proposal that did not result in a licensing agreement, set forth all factors as to which Plaintiff is aware as to why not;
- g. For each offer or proposal that did result in a licensing agreement, set forth the date and specific terms of each such agreement;
- h. Explain the current status of all projects planned or currently in development pursuant to a licensing agreement identified in Response 9(e);
- i. For each licensee of the Trump name, specify the date and sum of each payment from the licensee to Plaintiff or any Trump-related entity, as well as the date and sum of each payment by Plaintiff or any Trump-related entity to the licensee;

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- j. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 9

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, and pursuant to the Court's directive at a hearing on December 7, 2007, Trump responds as follows concerning written offers or proposals to license the Trump name:

Trump receives thousands of written offers or proposals to license the Trump name. Many of the written offers or proposals to license the Trump name are discarded and are not maintained within the Trump Organization's files. At a mutually convenient time, Trump will make available to defendants all written offers or proposals to license the Trump name from January 1, 2002 to the present that are maintained within the Trump Organization's files, and Trump refers defendants to those documents for the details about the offers and proposals.

INTERROGATORY NO. 11 (FROM SECOND SET OF INTERROGATORIES)

With respect to Bayrock Group or any related entity:

- a. Describe the nature of the relationship between Plaintiff or any Trump-related entity and Bayrock Group or any related entity;
- b. Set forth all licensing or other agreements between Plaintiff or any Trump-related entity and Bayrock Group or any related entity;
- c. Explain the current status of all projects planned or currently in development pursuant to agreements identified in Response 11(b), including but not limited to the Trump Soho Hotel Condominiums in New York, the Trump International Hotel and Tower in Fort Lauderdale, the Trump Las Olas Beach Resort in Fort Lauderdale, and a planned development in or near Denver;
- d. Set forth the specific locations of all projects described in Response 11(c);
- e. Explain the nature of Plaintiff's participation or interest in all projects identified in Response 11(c), including but not limited to whether Plaintiff has or would have had an ownership stake, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- f. Specify all payments that Plaintiff or any Trump-related entity has made to or received from Bayrock Group or any related entity;

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January 7, 2008
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g. For each transaction described in Interrogatory Nos. 1 through 8, state whether Bayrock Group or any related entity was involved, and -- if so -- set forth the nature of the involvement;

h. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 11

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

(a) Bayrock Group is an international real estate investment and development firm specializing in luxury hospitality, residential, commercial and mixed-use projects. Over the years, Trump has worked with Bayrock Group on real estate projects and potential projects.

(b) Trump will produce a list of all licensing agreements between Trump or any Trump-related entity and Bayrock Group, including identification of the location of each project for which such licensing agreements are in effect, a description of the current status of all projects for which such licensing agreements are in effect, a description of the nature of Trump's participation or interest, and a summary of payments that Trump or any Trump-related entity has made to or received from Bayrock Group in connection with such projects.

(c) See response to part (b) above.

(d) See response to part (b) above.

(e) See response to part (b) above.

(f) See response to part (b) above.

(g) Bayrock Group was involved in the projects to develop a Trump International Hotel and Tower in Phoenix, Arizona; Moscow, Russia; Istanbul, Turkey; Kiev, Ukraine; Yalta, Ukraine; and Warsaw, Poland. See responses to Interrogatory Nos. 1, 4, 5, 6, 7 and 8 from Defendants' Second Set of Interrogatories for information about the nature of Bayrock's involvement in these projects.

(h) Trump is not aware of any documents relating to the transactions described in Interrogatory Nos. 1, 4, 5, 6, 7 and 8 from Defendants' Second Set of Interrogatories that have not been produced already in this litigation.

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January 7, 2008
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INTERROGATORY NO. 12 (FROM SECOND SET OF INTERROGATORIES)

With respect to any offer or proposal by Vornado Realty Trust or any related entity to buy from or sell to Plaintiff or any Trump-related entity any share of the partnership that owns or controls 555 California Street in San Francisco and 1290 Avenue of the Americas in New York, or any offer or proposal by Plaintiff or any Trump-related entity to buy from or sell to Vornado Realty Trust or a related entity any share of that partnership:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as employees or agents of Vornado Realty Trust or any related entity;
- c. Specify the role of each person identified in Response 12(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 12

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

- (a) Vornado Realty Trust, through its Chief Executive Officer, Steven Roth, offered to buy from Trump his share of the partnership that owns 555 California Street in San Francisco and 1290 Avenue of the Americas in New York for approximately \$500,000,000. Trump rejected the offer because it was too low.
- (b) Trump, Allen Weisselberg and Steve Roth were involved in the communication of Roth's offer.
- (c) The role of the individuals identified in part (b) above was as follows: Roth made the offer; Trump and Weisselberg received the offer; and Trump rejected the offer.
- (d) See response to parts (a) and (b) above.

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(e) Trump is not aware of any documents relevant to Roth's offer to buy Trump's share of the partnership that owns 555 California Street in San Francisco and 1290 Avenue of the Americas in New York.

INTERROGATORY NO. 15 (FROM SECOND SET OF INTERROGATORIES)

With respect to any offer or proposal -- from January 1, 2002 to the present -- to purchase from Plaintiff or any Trump-related entity 40 Wall Street in New York, New York:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as the person making the offer or proposal;
- c. Specify the role of each person identified in Response 15(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 15

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

- (a) In 2005, Trump received an offer from Starwood to buy 40 Wall Street for \$370,000,000. In addition, Trump received an offer through Yoron Cohen to purchase 40 Wall Street for \$530,000,000.
- (b) Starwood communicated the \$370,000,000 offer to Trump. Yoron Cohen communicated the \$530,000,000 offer to Trump.
- (c) See response to part (b) above.
- (d) See the document Bates-stamped CBRE/TRUMP 04455, which relates to the offer from Starwood. See the October 18, 2007 letter from Yoron Cohen to Allen Weisselberg, which will be produced, which relates to the offer communicated by Mr. Cohen.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

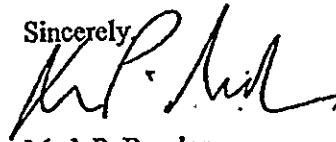
Andrew J. Ceresney, Esq.
January 7, 2008
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(e) See response to part (d) above.

Trump is compiling the information necessary to answer Interrogatory No. 14 from the Second Set of Interrogatories and will provide that information to defendants shortly. Trump reserves the right to supplement these interrogatory responses.

As always, please feel free to contact me with any questions.

Sincerely,



Mark P. Ressler

cc: Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Marc E. Kasowitz, Esquire
Daniel R. Benson, Esquire
Mark P. Ressler, Esquire
Maria Gorecki, Esquire
1633 Broadway
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(212) 506-1700

BROWN & CONNERY LLP

William M. Tambussi, Esquire
William F. Cook, Esquire
360 Haddon Avenue
Westmont, New Jersey 08108
(856) 854-8900

DONALD J. TRUMP,

Plaintiff,

vs.

**TIMOTHY O'BRIEN, TIME WARNER
BOOK GROUP INC., AND WARNER
BOOKS INC.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY

Docket No. L-545-06

**CERTIFICATION OF
MARIA GORECKI, ESQ.**

Maria Gorecki, being of full age, certifies as follows:

1. I am a member of Kasowitz, Benson, Torres & Friedman LLP ("KBT&F"), counsel for plaintiff Donald Trump in this action. I make this certification concerning documentation for the business opportunities that Mr. Trump alleges he believes were either lost, or were affected, impaired or interfered with, as a result of defendants' publication of defamatory statements about him contained in the book *TrumpNation: The Art of Being the Donald* and in related materials, including but not

limited to an excerpt from that book published in the *The New York Times*. I have personal knowledge of the facts contained in this certification.

2. As detailed in the letter of Mark Ressler to Andrew Ceresney dated April 26, 2007, with respect to the lost business opportunities, Mr. Trump produced to defendants documents concerning Trump International Hotel and Condominiums in Phoenix, Arizona.

3. We have been advised that the other lost business opportunities identified in our letter dated January 10, 2007 and in our letter of April 26, 2007 did not reach the documentation stage, and did not generate deal documentation, based in part on the impact that defendants' defamatory statements had on certain parties to those projects.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Maria Gorecki

DATED: April 26, 2007

ReedSmith

Kellie A. Lavery
Direct Phone: 609.524.2071
Email: klavery@reedsmith.com

Reed Smith LLP
Princeton Forrestal Village
136 Main Street - Suite 250
Princeton, NJ 08540-7839
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May 8, 2007

Via Email and Regular Mail

William M. Tambussi, Esq.
Brown & Connery, LLP
360 Haddon Avenue
P.O. Box 539
Westmont, New Jersey 08108

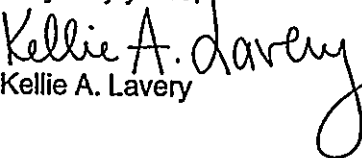
Re: Trump v. O'Brien, et al.
Docket No. CAM-L-545-06

Dear Mr. Tambussi:

Enclosed please find a Notice of Deposition of a representative of Plaintiff Donald J. Trump and/or The Trump Organization on June 13, 2007.

Thank you for your time and attention to this matter.

Very truly yours,


Kellie A. Lavery

Enclosure

cc: Mark P. Ressler, Esq. (Via Email and Regular Mail)
Maria Gorecki, Esq. (Via Email and Regular Mail)
Andrew J. Ceresney, Esq. (Via Email and Regular Mail)
Andrew M. Levine, Esq. (Via Email and Regular Mail)
Mark S. Melodia, Esq. (Via Email and Regular Mail)
James F. Dial, Esq. (Via Email and Regular Mail)

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New York, New York 10022
(212) 909-6000

Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v. .

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY
DOCKET NO. CAM-L-545-06

Civil Action

NOTICE OF DEPOSITION OF A
REPRESENTATIVE OF PLAINTIFF
DONALD J. TRUMP AND/OR THE
TRUMP ORGANIZATION

TO:

William M. Tambussi, Esq.
Brown & Connery, LLP
360 Haddon Avenue
Westmont, New Jersey 08108

Marc E. Kasowitz, Esq.
Mark P. Ressler, Esq. .
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019

Attorneys for Plaintiff, Donald J. Trump

PLEASE TAKE NOTICE that, pursuant to R. 4:14 of the New
Jersey Rules of Court, Defendants Timothy L. O'Brien, Time
Warner Book Group Inc., and Warner Books Inc., through their

counsel, shall take testimony by deposition upon oral examination before a person duly authorized to administer oaths on Wednesday, June 13, 2007 at 9:30 a.m. at the law offices of Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York, or on any adjourned date thereof, at which time and place you will please produce a representative to testify on behalf of Plaintiff Donald J. Trump and/or The Trump Organization regarding:

All deals and business opportunities that Plaintiff contends were lost, affected, impaired, prevented or interfered with because of the allegedly defamatory statements about Plaintiff contained in the book *TrumpNation: The Art of Being the Donald*, referenced in Plaintiff's Complaint, and specifically the deals and business opportunities identified by Plaintiff in letters dated January 10, 2007 and April 26, 2007, which supplemented Plaintiff's Answers to Interrogatories:

1. Trump International Hotel and Condominiums in Phoenix, Arizona;
2. TrumpStreet Casino and Entertainment Complex in Philadelphia, Pennsylvania;
3. 400 Fifth Avenue in New York, New York;
4. Moscow Trump International development;
5. Trump Tower in Istanbul, Turkey;
6. Trump International Hotel and Tower in Kiev, Ukraine;
7. Trump Resort in Yalta, Ukraine; and
8. Trump International Hotel and Tower in Warsaw, Poland.

PLEASE TAKE FURTHER NOTICE that the deposition will continue from day to day thereafter until completed. You are invited to attend and participate.

PLEASE TAKE FURTHER NOTICE that the testimony of the designated representative will be recorded by videotape and by stenographic means.

PLEASE TAKE FURTHER NOTICE that the designated representative is requested to have and bring with him/her and produce at the same time and place all non-privileged documents which he/she consulted, reviewed or relied upon in preparing for his/her deposition.

PLEASE TAKE FURTHER NOTICE that Defendants reserve the right to further depose a representative of Plaintiff Donald J. Trump and/or The Trump Organization at a future date in the event Plaintiff supplements his responses to Defendants' discovery demands with additional information about the above-referenced and/or other business opportunities he contends were lost, impaired or interfered with as a result of the allegedly defamatory statements about Plaintiff contained in the book *TrumpNation: The Art of Being the Donald*, referenced in Plaintiff's Complaint.

REED SMITH LLP

By: Mark S. Melodia/KAL
Mark S. Melodia

DEBEVOISE & PLIMPTON LLP

By: /s/ Andrew J. Ceresney
Andrew J. Ceresney

Attorneys for Defendants Timothy L. O'Brien,
Time Warner Book Group Inc., and Warner
Books Inc.

Dated: May 8, 2007

**BROWN & CONNERY
LLP**

WARREN W. FAULK*
STEVEN G. WOLSCHINA
PAUL MAINARDI
MICHAEL J. VASSALOTTI*
WILLIAM M. TAMBUSSIV
MARK P. ASSELTA*
STEPHEN J. D'ARCO*
JOSEPH M. NARDI, III*
CHRISTINE P. O'HEARN*
JOSEPH T. CARNEY*²
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WOODBURY, NJ 08096 CAMDEN, NJ 08102 PHILADELPHIA, PA 19102
(856) 812-8900 (856) 363-3100 (215) 592-4332

July 13, 2007

THOMAS F. CONNERY, JR. (1915-2004)
HORACE G. BROWN (1802-1898)
HOWARD G. KULP, JR. (1868-1887)
* CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

* ALSO ADMITTED IN PENNSYLVANIA
2 ALSO ADMITTED IN NEW YORK
X ALSO ADMITTED IN DELAWARE

FILE NO. 06-0041

BY ELECTRONIC MAIL AND REGULAR MAIL

Kellie A. Lavery, Esq.
Reed Smith LLP
Princeton Forrestal Village
136 Main Street - Suite 250
Princeton, NJ 08540-7839

Re: Trump v. O'Brien, et al.
Superior Court of New Jersey, Law Division
Docket No. L-545-06

Dear Ms. Lavery:

We write in reference to various outstanding discovery matters.

First, we agree that depositions need to be scheduled. On June 25, 2007, we advised that, of the dates you stated defense counsel are available for depositions, we are available on July 17, July 24, July 30, and August 1.¹ We also asked you to tell us about your availability in

¹ Your correspondence of July 2, 2007 seems to suggest that our June 25th response was unreasonable. During our conference call on June 22, 2007, the parties agreed that on or before June 29, 2007 we would exchange dates we are available for deposition. On June 25, 2007, you provided a list of only eleven days over the course of two months when defense counsel are available. By June 29, 2007, we identified which of the eleven days overlapped with our availability, which totaled four days. We note that we had availability on other dates during that

**BROWN & CONNERY
LLP**

JULY 13, 2007
PAGE 2

late August, September and October. On July 2, 2007, you provided a list of dates in late August and September. Of those dates, we are available on September 6, 7, 10, 11, 19, 20, 25, 26, and 27. Thus, there are fifteen days through the end of September during which all counsel are available.

We must now agree on how to use the available dates. On July 2, 2007, you proposed that defendants use two days selected from July 17, 24, 30, and August 1, 2007 to depose Ms. Scarbrough and Mr. Trump's lost deals representative(s). We propose that, subject to witness availability, the order of depositions should generally follow the order in which the prospective deponents were noticed. In this case, we submitted deposition notices on March 26, 2007 for Mr. Plambeck (setting a deposition for May 8, 2007), Mr. Blauner (May 9, 2007), Mr. O'Brien (May 15, 2007), and Mr. Niessen (May 22, 2007). We submitted these notices before you submitted a deposition notice for Ms. Scarbrough (served on April 11, 2007) or Mr. Trump's lost deals representative(s) (served on May 13, 2007). Accordingly, we suggest the following schedule:

July 17, 2007	Joseph Plambeck
July 24, 2007	Joseph Plambeck
July 30, 2007	Andrew Blauner
August 1, 2007	Andrew Blauner
September 6, 2007	Michelle Scarbrough
September 7, 2007	Michelle Scarbrough
September 10, 2007	Rob Nissen
September 11, 2007	Lost Deals/Weiser
September 19, 2007	Lost Deals/Weiser
September 20, 2007	Lost Deals/Weiser
September 25, 2007	Timothy O'Brien
September 26, 2007	Timothy O'Brien
September 27, 2007	Timothy O'Brien

Please advise by the close of business on July 13, 2007 as to whether you are amenable to this schedule.

Second, in response to your request that we identify the representative(s) who will testify about the transactions that defendants' publication of defamatory statements prevented Trump from closing, or interfered with, we advise that: Howard Lorber, Chairman of Prudential Douglas Elliman Real Estate, will testify about 400 Fifth Avenue in New York, New York; and Tevfik Arif, Chairman of The Bayrock Group, will testify about the other transactions.

two-month period, but because you indicated you were not available, there was no point in identifying those dates.

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JULY 13, 2007
PAGE 3

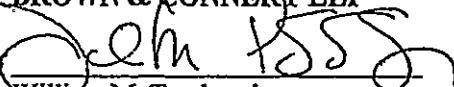
Third, with respect to the deposition of Ms. Scarbrough, it is our understanding that she is willing to accept a subpoena for her deposition from a Texas attorney. We are unable to accept such a subpoena on her behalf.

Thank you for your generous attention and consideration.

Very truly yours,

~~BROWN & CONNERY LLP~~

By:


William M. Tambussi

KASOWITZ, BENSON, TORRES &
FRIEDMAN LLP

By:

/s/ Mark P. Ressler
Mark P. Ressler

Attorneys for Plaintiff
Donald J. Trump

WMT/mmb

cc: Andrew J. Ceresney, Esq. (by regular mail)
Andrew M. Levine, Esq. (by regular mail)
Mark S. Melodia, Esq. (by regular mail)
James F. Dial, Esq. (by regular mail)



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January 23, 2008

BY E-MAIL and U.S. MAIL

Mark P. Ressler, Esq.
Maria Gorecki, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019

Andrew J. Ceresney, Esq.
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Re: Donald J. Trump v. Timothy L. O'Brien, et al.
Superior Court of New Jersey, Law Division, Civil Part, Camden County
Case No. L 545 06

Dear Counsel:

I am writing on behalf of our clients, Bayrock Group LLC and Bayrock Merrimac LLLP (jointly "Bayrock") and Bayrock's Chairman, Tefvik Arif. As you know, we are representing Bayrock in connection with the Subpoena Duces Tecum for Deposition, dated May 8, 2007, that was issued and served on Merrimac in Florida (the "Subpoena"). We are also advising Mr. Arif in connection with efforts by either or both of your firms to obtain Mr. Arif's deposition testimony in the above-referenced action. This letter concerns only the latter issue.

The purpose of this letter is to inform you that Mr. Arif will not testify voluntarily in this action, either at deposition or trial, and if any valid deposition subpoena were properly served on him, he would seek a court order relieving him of any obligation to testify.

Mr. Arif strongly believes that he has no knowledge or information relevant to the dispute between the parties, and therefore that there is no legitimate reason to compel his testimony. Mr. Arif just as strongly believes that his involuntary involvement in this case already has caused great harm, and has potential for causing additional harm, to himself, his company, or both. The highly negative article about Bayrock that appeared recently in *The New York Times* is one example.

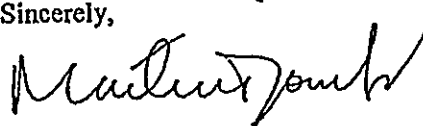
(NY025848;1)

Mark P. Ressler, Esq.
Maria Gorecki, Esq.
Andrew J. Ceresney, Esq.
Andrew Levine, Esq.
January 23, 2008
Page 2

Mr. Arif has no information or opinions regarding the dispute between the parties. He vehemently objects to the efforts of either or both parties to drag him into this case for their own purposes, without apparent regard to the burdens and harm that such involvement already has caused and would continue to impose on him, and without any legitimate need or basis that he can perceive for their doing so.

We understand that there is a pending motion before the Court, currently being briefed, that concerns the question of whether Mr. Arif's deposition should be taken. We believe it would be appropriate for the Court to be aware of Mr. Arif's position as stated herein, and therefore we request that the parties submit this letter to the Court with their briefings. Thank you.

Sincerely,



Martin Domb

{NY025848:1}

1493a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY
DOCKET NO. CAM-L-000545-06
APP. DIV. NO. _____

DONALD TRUMP, :
 :
 Plaintiff, : TRANSCRIPT
 :
 v. : OF
 :
 TIMOTHY O'BRIEN, et als., : MOTIONS
 :
 Defendant. :

Place: Camden County Hall of Justice
101 South 5th Street
Camden, NJ 08103

Date: February 1, 2008

B E F O R E:

HONORABLE MICHAEL KASSEL, J.S.C.

TRANSCRIPT ORDERED BY:

LEIGH GAGLIARDI, PARALEGAL, (Reed Smith)

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Court Decision

1 (Proceedings begin at 1:45 p.m.)
2 THE COURT: All right. We're on the record
3 in Trump v O'Brien.
4 Appearances please.
5 MR. TAMBUSI: Your Honor, William Tambussi,
6 William Cook of Brown & Connery. Mark Ressler and
7 Maria Gorecki of Kasowitz, Benson for plaintiff Trump.
8 MR. MELODIA: Good afternoon, Your Honor.
9 Mark Melodia from Reed Smith. I'm here with Andrew
10 Ceresney and Andrew Levine from the Debevoise firm.
11 THE COURT: All right. There are three or
12 four motions. The first two are innocuous. Not in
13 chronological order of filing, there's a motion to
14 extend discovery to May 9th that's unopposed. That
15 will be granted.
16 There's also a motion for a commission to
17 take Mr. Bagli's --
18 MR. TAMBUSI: That's moot, Judge.
19 THE COURT: That's moot. All right.
20 MR. TAMBUSI: Mr. Bagli lives in New Jersey.
21 THE COURT: All right. That will be
22 withdrawn.
23 Which brings us to the nub of the matter,
24 issues concerning Mr. Arif, A-r-i-f. All right.
25 Who is going to be arguing, Mr. Ceresney or

1 Mr. Melodia.

2 MR. CERESNEY: It will be, Your Honor.

3 THE COURT: All right. Mr. Ceresney.

4 MR. CERESNEY: Thank you, Your Honor.

5 I know you've read our papers carefully, so I
6 just thought I'd highlight a few points here at the
7 beginning.

8 Your Honor, it's, obviously, Mr. Trump whose
9 brought this lawsuit in which he's claiming hundreds of
10 millions of dollars. And, principally, these claims of
11 damages fall upon or relate to eight of these allegedly
12 lost corporate opportunities.

13 We've, obviously, over time, as we detailed
14 in our motion papers, tried to get discovery, basic
15 discovery on these claims, and each time we've had to
16 come and seek the Court's assistance. Today, we're
17 here with regard to Mr. Arif. Mr. Arif is the linchpin
18 pin of plaintiff's proof of damages on six of these
19 eight alleged lost corporate opportunities in places
20 like Poland, Ukraine, Russia, and the like.

21 Your Honor, Mr. Trump claims that Mr. Arif
22 was negotiating these six deals on his behalf and that
23 Mr. Arif told him that these deals were lost,
24 allegedly, as a result of the statements, allegedly
25 defamatory statements in this case. And Mr. Trump has

1 made this clear that he is the linchpin in three
2 separate ways.

3 First, in July of 2007 Mr. Trump designated
4 Mr. Arif as his quote, "representative."

5 THE COURT: Mr. Ceresney, you don't have to
6 sell me on the notion that Mr. Arif is a very important
7 witness, he is. I don't need to categorize him,
8 either, as a 414(2) representative. It's not a
9 conventional representative of a corporation
10 organization, but the disposition of the application or
11 the resolution of the problem is not going to depend
12 upon which category Arif falls in. He's an important
13 witness. He's technically not the employee of the
14 plaintiff, but he is a fact witness and --

15 You don't have to remain standing for this,
16 if you don't want, if you're more comfortable seated.

17 This problem arises whenever you have the
18 situation where a fact witness has relevant knowledge
19 and either justifiably or not justifiably, either
20 refuses to be deposed or wants limitations on the areas
21 that they're willing to be deposed about. It's no
22 different than a red light/green light case. Somebody
23 that observes the light was red probably doesn't want
24 to be asked about their divorce proceedings ten years
25 ago. Everybody understands that's okay, but that's the

1 problem.

2 MR. CERESNEY: Your Honor, I think this is
3 distinguishable in a few ways, actually. And,
4 certainly, obviously, you -- you know, I agree with you
5 completely, he's a critical witness, but he's also
6 somebody who has been designated as a representative.
7 And, actually, we think that that's actually critical
8 here because for six months we've been operating under
9 the understanding that this person was going to be the
10 witness on this issue. We kept being told, you know,
11 in October, when we had that phone conference. We were
12 told he's going to be made available in three months.
13 That was -- now it's been six months since the
14 designation. And the designation is critical because
15 it's that designation that means that this witness will
16 bind Mr. Trump.

17 And then when Mr. Trump testified at his
18 deposition, and Your Honor has that deposition in the --
19 -- I think it's Exhibit C to our motion papers. It's
20 obviously filed under seal because of the
21 confidentiality designation, but you do have those --
22 that deposition and he specifically said it was Arif
23 who had all the contacts, it was Arif who was acting on
24 my behalf, it was Arif who told me that there was this
25 connection. So --

1 THE COURT: Yeah. But the reason why I
2 quibble with you about whether or not there was a
3 classic 404(2) designation, if IBM is a party
4 defendant, they could only talk through a human
5 representative, so somebody is designated to be
6 deposed, that type of that thing. That's the more
7 classical use of that particular rule.

8 I know there was a bit of a back and forth
9 between the two sides as to whether or not there was
10 that type of classification in regards to Arif. I'm
11 just simply noting that whatever is the appropriate
12 thing to do to deal with the problem is not going to
13 require disposition of that sub issue.

14 I'll let you spread on the record all you
15 want about that, but it just seems to me as though it's
16 not -- the problem is not a difficult one. What do we
17 do when a witness, he's not a party, either refuses to
18 be deposed or says I'll only be deposed under the
19 following frame work?

20 MR. CERESNEY: That's right. You know, and I
21 think, Your Honor, here what we're dealing with -- I
22 mean, just to be clear, is -- is a witness that they
23 have made the indispensable witness in this case for
24 these -- for these six deals. And I think under those
25 circumstances, the only appropriate thing particularly,

1 and you don't have to decide this issue, but it
2 certainly is probative, particularly when they were the
3 ones who brought him into this case, they were the ones
4 who designated him, and they were the ones who made him
5 the critical witness, not us, them. Under those
6 circumstances, they should be the ones to have to
7 produce him. And if they can't produce him --

8 THE COURT: There's a functional difference,
9 and it may not matter, but he is, as I understand it, a
10 fact witness in the sense that he has information
11 concerning alleged deals that went south because of the
12 book, and that makes him no different in that sense
13 than any other fact witness in contra distinction to a
14 situation where a party says, A, is my expert witness,
15 either on quantifying damages or on the medical
16 condition, that type of thing. To some extent, when
17 you name somebody as your expert witness, you don't --
18 you don't vouch for them in the old common law sense,
19 but you're responsible for producing them and if
20 problems were to develop in regard to that witness, to
21 some extent you end up buying those problems.

22 I'm not sure that Arif, when all is said and
23 done, isn't much more of the former and not the latter.

24 MR. CERESNEY: Well, he's --

25 THE COURT: He's a fact witness. When all

1 is said and done, he's a fact witness. He's not an
2 expert.

3 MR. CERESNEY: Although, designated --
4 designated by them under a rule that they didn't
5 challenge when they designated him and which allows one
6 to be designated, if they're managing agents, which is
7 broader than just an employee, and other persons who
8 consent to testify on his behalf, which at the time
9 these -- we were told by the plaintiff he would.

10 Now six months later, if he's not consenting
11 to testify, they can't -- they're equitably estopped
12 from withdrawing that designation, Your Honor. And if
13 they've designated him and they can't make him appear,
14 then 4:23 kicks in, which specifically says that if a
15 party that's been designated can't -- if the party
16 that's designated somebody as one of these types of
17 witnesses can't make them appear, then they're subject
18 to certain sanctions, one of which is preclusion.

19 And that's, I think -- and, Your Honor, you
20 can slice it this way, which I think is a perfectly
21 appropriate and, actually, the right way to analyze
22 these rules; or, I think the same result would apply,
23 actually, under the way you're looking at it, which is
24 you have a fact witness who doesn't want to testify,
25 who is critical and indispensable.

1 And the other factor, I guess, I'd put on the
2 record here, Your Honor, and point out, is this is --
3 this is actually a very unusual circumstance, where you
4 have a witness who we've been told is the key person,
5 has this knowledge, and then that person's lawyer comes
6 in and what does that person's lawyer say?

7 And it's in, I think, the plaintiff's -- it's
8 attached to the plaintiff's opposition brief at Exhibit
9 3 to their opposition brief, but the letter of the
10 plaintiff's counsel -- of Mr. Arif's counsel says, and
11 I quote:

12 "Mr. Arif strongly believes that he has no
13 knowledge or information relevant to the dispute
14 between the parties; and, therefore, that there is
15 no legitimate reason to compel his testimony."

16 So what you have is not only a situation
17 where a fact witness -- where you have somebody who,
18 you know, is clearly at the light and watching the
19 accident happen. Here, what you have is somebody who
20 the plaintiff has brought into this as a
21 representative, who under deposition, under oath, says
22 that he's the only one who can make this case, in
23 interrogatory says the same thing; and then that
24 person, through his attorney -- and I'm sure that the
25 plaintiffs wouldn't claim that this -- that the

1 attorney is not being fully forthcoming and -- and
2 honest here, says that he has no knowledge or
3 information on the only issue in the case in which he's
4 been designated as -- as the representative to testify
5 about it.

6 THE COURT: But let's work backwards. Let's
7 go from the simple to the more complicated.

8 And, again, if you don't want to remain -- if
9 anybody wants to remain seated, you don't have to stand
10 on my account.

11 MR. CERESNEY: It's just a matter of habit,
12 Your Honor.

13 THE COURT: That's fine.

14 In any situation, if you have the classic
15 case of the corporate representative that just decides
16 to become noncooperative, there are a number of things
17 a corporation can do to replace the person and there
18 are a number of remedies that are available. I don't
19 think this case falls into that classic pattern, but it
20 doesn't matter because in any situation where a fact
21 witness decides either for valid reasons or for invalid
22 reasons -- and one of the sub-issues presented in this
23 motion is the allegation that a non-party to this
24 lawsuit did something that provoked this response. And
25 there are certain collateral issues that I'm certainly

1 not going to disentangle today and, hopefully, I'll
2 never need to disentangle because I don't think it
3 needs disentanglement to reach the appropriate result.

4 One sub-issue is whether or not there was
5 some designation that Mr. Arif is this or is that. Now
6 as I say, it probably doesn't matter. Was this article
7 about Sater -- is it pronounced? S-a-t-e-r. How do
8 you pronounce his name?

9 MR. CERESNEY: I believe it's Sater, Your
10 Honor.

11 THE COURT: Sater?

12 MR. CERESNEY: I believe it's Sater.

13 MR. TAMBUSI: Sater.

14 THE COURT: Sater. All right.

15 All about that, that type of thing.

16 You have a witness that at least at this
17 point in time says, one of -- either I refuse to
18 subject myself to a deposition in this lawsuit; or, I
19 want a court order with some protections before I sit
20 down for a deposition. And the analytical frame work
21 is no different in that scenario than any scenario
22 where a fact witness says, either I won't participate
23 or won't cooperate, or I'll only cooperate if there are
24 certain safeguards. That's true for any fact witness.
25 Working backwards, we know that almost

1 certainly the plaintiff can't spring Arif at trial if
2 Arif is not being deposed pretrial. That's common
3 knowledge.

4 The question is, will Arif subject himself to
5 a deposition. It's in New York. All I can basically
6 do is impose some type of -- I don't want to say
7 sanction, that's too strong a word, but some type of
8 relief in New Jersey litigation if a New York witness
9 refuses to do something. I don't have any
10 jurisdiction, presumably, over Arif at this point,
11 correct?

12 I can't order him to do anything.

13 MR. CERESNEY: I think that's right, Your
14 Honor, except through the plaintiff.

15 THE COURT: Right. But that's where it gets
16 murky because he's not the plaintiff and he's not,
17 technically speaking, at least, affiliated with the
18 plaintiff. There is a difference in that sense. If a
19 corporation's employee, who happens to live in New
20 York, refuses to cooperate, then we do hold the
21 corporation responsible and there can be some -- again,
22 sanction is too strong a word, but there can be some
23 type of sanction imposed on the corporation.

24 This is somebody that has a business
25 relationship with the plaintiff, but he's not, strictly

1 speaking, controlled by the plaintiff. How much
2 anybody controls anybody else in the real world, who
3 knows. But legally speaking, Arif does not work for
4 Trump. He's not on Trump's payroll. He's on Bayrock's
5 payroll.

6 If Bayrock was a party plaintiff or a party
7 defendant in a lawsuit, it might be a little bit
8 different, but here's where we get to the rub. If Mr.
9 Arif refuses to allow himself to be deposed, then he
10 can't be a witness at trial. It's really that simple.

11 The difficult -- the more difficult issue is
12 what limitations are reasonably imposed pre-deposition,
13 since I don't want a situation where either side feels
14 compelled to make phone calls during the middle of a
15 deposition to hash this out at three o'clock in the
16 afternoon while I'm on trial on something else. And
17 that's what -- that triggered the cross-motion to
18 reopen Judge Snyder's July '07 order, which imposed
19 certain limitations on the deposition taken of Mr.
20 O'Brien. That type of thing.

21 What's reasonable?

22 I read the article. The Sater -- the article
23 about Sater by Bagli that triggered this most recent
24 round, and it appeared fairly innocuous, did not
25 certainly allege any wrongdoing on the part of Arif.

1 Is Mr. Arif's attorney in court? Probably
2 not.

3 MR. TAMBUSSI: I don't think he's --

4 THE COURT: All right.

5 MR. TAMBUSSI: -- coming anywhere near this
6 court.

7 THE COURT: All right. All right. I don't
8 know.

9 The only thing I could do in regards to the
10 Trump v O'Brien litigation, is basically say, under
11 4:10-3, the following are legitimate -- as to any
12 witness, by the way. Because there has to be a certain
13 amount of symmetry in this. What's good for one is
14 good for the other, and vice-versa. There are a lot of
15 witnesses in this case.

16 I don't want these what I think are probably
17 collateral issues to get a life of their own because
18 that's what will happen. And we can all think of the
19 easiest situation where somebody is a witness to a red
20 light/green light accident who doesn't want to be
21 deposed about anything that might either -- either --
22 either cast them in a negative light or may be
23 perceived by others as casting them in their negative
24 light.

25 So I think where this all comes to is whether

1 or not I can say, look, if Arif is to be deposed and if
2 after I make this ruling Mr. Arif refuses to be
3 deposed, then it's an easy call. He stops being a
4 witness.

5 Whether the plaintiff can get somebody to
6 replace him is a different story, but if he will not
7 voluntarily submit himself to a deposition, or at least
8 won't comply with a New Jersey order that permits his
9 deposition, then I don't see how I can permit him to be
10 a witness at the time of trial.

11 But that brings us to the more difficult
12 question, what other reasonable safeguards in an order
13 that would preclude a lot of questions being asked of
14 him that probably aren't going to reveal anything
15 that's going to be admissible at trial. That type of
16 thing and that language will be in regard to every
17 witness.

18 MR. CERESNEY: I understand, Your Honor.

19 Before we get to the issue of the
20 limitations, because I think that's, as you indicated,
21 a separate issue, which I do want to address
22 separately, but just on the issue of -- you know, I'm
23 not sure it -- it sufficiently addresses our issue. I
24 understand the point about, obviously, if he's not
25 appearing for deposition, he can't appearing at trial.

1 No question about that. I think we all would agree on
2 that -- that point.

3 But, obviously, there's -- there's two other
4 scenarios here. One is, we move for summary judgment.
5 They can't -- which I -- which we're planning to do on
6 damages, Your Honor, because I think our view is,
7 that's a discrete issue that can be dealt with by this
8 Court, which I think Judge Snyder from the beginning
9 was saying he's wondering what the damages are here,
10 and our -- you know, we think that's an issue that can
11 be cited separate and apart from all the other nub, you
12 know, difficult issues in this case.

13 THE COURT: Yeah, but other than a couple of
14 footnotes that were dropped in the brief, that's not
15 before me.

16 MR. CERESNEY: That's not before you.

17 THE COURT: The sufficiency of the evidence
18 in regards to damages or proximate cause of damages
19 will be another full day's oral argument.

20 MR. CERESNEY: That's right, Your Honor.

21 And that's not -- but here's the thing. We
22 want to get to that point.

23 THE COURT: Right.

24 MR. CERESNEY: You know, and you can't get to
25 that point if it's just out there that this guy may

1 some day show up where -- you know, we -- you know, we
2 don't know, yes, no, maybe, if he's going to show up.
3 You know, they designated him as the rep, they should
4 have to make him available, that's one.

5 Two, let's say that they find somebody to
6 replace Mr. Arif as a witness on this particular -- in
7 these particular six of the eight --

8 THE COURT: That's not before me now, and I'm
9 -- and I know where you're going. That may be next
10 week's motion. What I have now, strictly speaking, is
11 a 1:10-3 motion and a 4:10-3. I have oppositions to
12 that and the 4:10-3 motion. So what I'm trying to do
13 is knock down those motions and have almost -- the
14 other motions for another day. And the chess pieces
15 out there, they're always moving and there's always
16 some response to it, but the difficulty is, is when we
17 anticipate what -- sometimes it's fair enough to
18 anticipate a problem and head it off at the pass.

19 In a case like this, every problem that I or
20 you or Mr. Tambussi might anticipate and throw up, if I
21 try to peremptorily knock it down, it runs the risk of
22 creating undue confusion and maybe those problems won't
23 occur.

24 I'd like to deal with some type of resolution
25 of the Arif issue.

1 MR. CERESNEY: Right.

2 THE COURT: The easy point is, if he just
3 refuses to be deposed, he can't be a witness. A
4 certification by Mr. Arif, or an affidavit in
5 opposition to a summary judgment motion is going to be
6 worthless because he -- that's the easy thing.

7 MR. CERESNEY: That's the easy thing.

8 THE COURT: The question is, what to do if,
9 as apparently is the position, he's not rejecting out
10 of hand a discovery deposition, but he or his attorney
11 wants some type of order that says these are the
12 following limitations.

13 MR. CERESNEY: He hasn't said to me -- Your
14 Honor, I don't think he said that. If you read -- and
15 I know you've read his letter, he says, he will not
16 appear, period. He has no desire to testify
17 voluntarily under any -- any circumstances, is what
18 he's saying, Your Honor. He has no information, is
19 what he's saying.

20 So, I mean, in some respects, this protective
21 order application --

22 THE COURT: Well, let's deal with -- and I
23 don't want anybody to feel rushed, but as you all know,
24 I have to run up to the sixth floor for a ceremony in
25 50 minutes.

1 Let's assume -- we'll take it one piece at a
2 time, Mr. Arif, despite whatever it is I do here in
3 Camden County, just simply refuses to be deposed. All
4 right. Let me hear then from the plaintiff as to
5 whether or not there's any other form of appropriate
6 relief, other than, essentially, striking them as a
7 witness.

8 All right. Mr. Tambussi.

9 MR. TAMBUSI: Judge, if he fails to appear,
10 as he has, at our request, we will not be able to use
11 him at trial or by way of certification or affidavit in
12 support or in opposition of any motion. That's what
13 the rules are, plain and simple.

14 THE COURT: Now, Mr. Ceresney, that's the --
15 if Mr. Arif refuses to be deposed, he will be stricken
16 as a witness in the case.

17 MR. CERESNEY: Okay. And that's -- and that
18 -- obviously, we agree with that.

19 I guess the one piece, and maybe this is for
20 another day, but I want to make sure we're talking
21 about the same thing that's for another day, just to
22 make sure, is if there is something identified as a
23 substitute witness, then we're put in a box, Your
24 Honor, because they've been saying --

25 THE COURT: That's for another day, but I

1 know where you're heading.

2 MR. CERESNEY: You know where I'm heading.

3 THE COURT: You know what, that's -- yeah.

4 MR. CERESNEY: I just don't want to preclude
5 that, Your Honor, because --

6 THE COURT: I'm not precluding it. I'm not
7 okaying it. I'm not precluding it. That's another
8 day's argument.

9 MR. CERESNEY: Okay.

10 THE COURT: All right. It's not a no-
11 brainer, but that will -- all the equities and
12 inequities that flow from that are another day's
13 argument.

14 MR. CERESNEY: Okay. All right. And I
15 understand.

16 THE COURT: Right. So it's very simply,
17 either Arif voluntarily, or as voluntarily as it gets
18 in our system, permits himself to be deposed, or he's
19 stricken as a witness in the case.

20 All right. Then let's go on to the slightly
21 more difficult issue -- and remember, the language that
22 would be applied to Mr. Arif will be universally
23 applied.

24 To my way of thinking, criminal convictions,
25 because they're admissible to impeach, are -- have to

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1 be fair game. The more difficult point is to what
2 extent we allow witnesses to be deposed about alleged
3 bad acts, that type of thing that didn't result in a
4 criminal conviction, they're probably, we can't say
5 certainly, but probably are going to lead nowhere in
6 regards to what's going to be admissible at trial.

7 The cleanest thing to do is to say, unless it
8 actually relates to business between the plaintiff and
9 the properties, that type of thing, that everything at
10 least for now is off the table. And that applies not
11 just to witnesses that the plaintiff -- strike that,
12 that the defense wants to depose from the plaintiff,
13 but witnesses that the plaintiff wants to depose I
14 won't say of the defendant, but are more closely
15 associated with the defense than the plaintiff in this
16 case. The New York Times officials are a good example
17 of that. There are certain high-ranking employees of
18 The New York Times that I don't think they've been
19 deposed yet, that's coming up. Right?

20 MR. CERESNEY: Yes.

21 THE COURT: All right. The same language
22 will apply to them. They won't be able to ask whether
23 or not -- and I'm not saying this is what occurred in
24 the case. I'm just using it by way of example. You
25 can envision a situation where people in some cases

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24

1 they are asked about everything that's happened in
2 their life from the day they were born. In some of the
3 -- the mass tort type cases, there were five or six,
4 seven-day depositions. The whole medical history from
5 the day of birth, you know, was in and out, that type
6 of thing. But it's got to strictly relate to the facts
7 at issue, unless it -- unless it resulted in a criminal
8 conviction.

9 Otherwise, I don't know of any mechanical way
10 to put something in an order that satisfies every
11 witness's legitimate concern that they're not going to
12 open up their entire life for questioning, while at the
13 same time permits both sides a fair opportunity to
14 explore evidence that might relate to the witness's
15 credibility. So even though the language would
16 necessarily implicate certain weasel words, that's
17 probably the best I can do. And to the extent that
18 disputes arise as to certain witnesses as to whether or
19 not the questioning was to the left or the right side
20 of the line, they'll be -- they'll be resolved like any
21 other discovery dispute.

22 MR. CERESNEY: Your Honor, I think,
23 generally, that's fine, but let me just ask for a
24 couple of clarifications because, I mean, the real
25 world examples that, at least, we were concerned about,

1 I want to make sure that we're covering.

2 Obviously, it sounds like other types of real
3 estate transactions, for example, Bayrock has engaged
4 in, how those have turned out, what their experience is
5 in real estate, that sounds like --

6 THE COURT: That has to be out. And I'll
7 tell you it has to be out.

8 I don't know how long Bayrock's been in -- I
9 don't know how long Bayrock has been in business, I
10 don't know how big the company is, I don't know how
11 many deals they've been involved in, but assume the
12 worst and it's big, long, and a lot. All right? It
13 could be weeks and everything that is said in response
14 to follow as to whether that was true, that type of
15 thing, in order to make this litigation manageable, it
16 must very seriously actually relate to something in
17 dispute in this case.

18 I take your point that to some extent you can
19 make an argument that the plausibility of the scenario
20 painted by the plaintiff in regards to lost real estate
21 deals that type of thing, may -- the credibility of
22 those type of claims may, to some extent, hinge on what
23 Bayrock has done in the past, and all those things.

24 MR. CERESNEY: So we should have some sense
25 of it, Your Honor.

1 THE COURT: Yeah. Because, otherwise, you're
2 pulling that string and there's no mechanism to stop
3 the pulling until the sweater is gone. And sometimes
4 these demarcation points are placed in the sand, if for
5 no other reason, not because they represent the fairest
6 in some -- in some -- some sense, but it's easiest to
7 understand -- or at least it's easiest to put in --
8 it's not always easy to understand, but it's easiest
9 and clearest to put in English language in a written
10 order.

11 MR. TAMBUSI: Judge, just so I'm clear.
12 You're saying that the other deals, the other Bayrock
13 deals --

14 THE COURT: Are off the table.

15 MR. TAMBUSI: -- are off the table?

16 THE COURT: For now.

17 MR. CERESNEY: Non-Trump deals, I assume
18 you're talking about it.

19 THE COURT: The only deals on the table now,
20 and we'll see where this takes us, all right, are the
21 deals at issue in this case because for all I know,
22 Bayrock may have been involved in 150 other deals.

23 MR. CERESNEY: It's not, Your Honor. They
24 answered interrogatories, we're told there are three or
25 four others.

1 And I think it's critical to ask about those
2 because, obviously, their relationship with Mr. Trump,
3 what they expect in terms of the money from him, what
4 they expect in terms of income from him, they owe him,
5 according to the interrogatories, almost a million
6 dollars. These kinds of relationships are critical for
7 bias.

8 THE COURT: Without trying to -- I don't have
9 any problems with questions that relate in deposing
10 Arif or a Bayrock representative as to what their
11 relationship is with the plaintiff and what financial
12 incentives they have.

13 What I'm trying to prevent are detours about
14 where questions are asked about this business that are
15 not related to the plaintiff, are not related, excuse
16 me, to any business deals between Bayrock and the
17 plaintiff, that type of thing.

18 MR. CERESNEY: Okay.

19 THE COURT: So if Bayrock does business with
20 other people, I assume they do, but I don't know, other
21 than the plaintiff --

22 MR. CERESNEY: Well, maybe I should be able
23 to ask that, Your Honor. I mean, that's what the
24 problem is. I have no idea.

25 Listen, I don't want to spend five days on

1 each of the deals they've done for -- I mean, that's
2 not in anybody's interest, but I do think we have a
3 right to ask generally what kinds of deals that they've
4 been engaged in in the past, what kinds of buildings
5 have they -- have they built.

6 THE COURT: As a general principle, you do,
7 but the problem is, where do you go from there?

8 MR. CERESNEY: Well, that's --

9 THE COURT: It's one thing to say how many
10 deals have you been involved in, what do you do you,
11 that's three pages on a deposition transcript. Why
12 should we go into the nuances and facts of each deal,
13 that's what will take you into the second, third,
14 fourth, and fifth days. That will trigger motions for
15 a protective order, since some of this stuff may be
16 trade secrets, business secrets, confidentialities, and
17 that will take us to an area that -- that I really
18 don't want to go.

19 So when the purpose of -- for the purposes of
20 clarity, I'm tempted to put simply in the order that it
21 has to very concretely and explicitly and directly,
22 directly, relate to one of the -- to either financial
23 relationship or if it's a personal relationship between
24 the plaintiff and the witness, which will necessarily
25 include business deals.

1 MR. CERESNEY: Right.
2 THE COURT: That's a part of the financial
3 relationship.
4 MR. CERESNEY: Right.
5 THE COURT: Right. Anything beyond that will
6 have to await another day. Hopefully, that day won't
7 come, but it will have to await another day, and we'll
8 see where we are at that point in time. And that will
9 apply to all witnesses in the case.
10 MR. TAMBUSI: Thank you, Judge. That will
11 actually, probably allow us to try this case sometime
12 this year.
13 MR. CERESNEY: Your Honor, I guess the only
14 thing I would ask is the following, a couple things.
15 First, I would -- and then I want to talk
16 about The Times article, because I think under the
17 scenario you've just painted, I do think we're -- that
18 actually the stuff that's in The Times article,
19 actually, I think falls within that bounds, but let me
20 just, on this one issue, Your Honor, I take it we will
21 be able, though, to ask some background questions about
22 these gentlemen's business background, general business
23 dealings in general, at least with some leeway so we
24 understand.
25 You know, for example, in an auto accident,

1 you want to know what's the person's vision. I mean,
2 you know, that's obviously a key fact, you can't
3 ignore. And whether the person has known some of the
4 people involved, and whether they've been witnesses in
5 five other auto accidents that result. I mean, so
6 there is some relay here, I think, that we should at
7 least be able to --
8 THE COURT: I'm not handcuffing anybody, but
9 -- and it's one of those deals where you kind of know
10 when you see it, an innocuous question about asking a
11 witness where did you go to college, that type of
12 thing; whether or not they have any professional
13 training in construction, that's all fairly innocuous.
14 What I'm concerned about is that -- is that it really
15 not go beyond that. And, again, I'm thinking -- what
16 I'm hearing you argue, I'm thinking what I'm going to
17 put in an order that's going to be of sufficient
18 clarity that at least there's some sense that people
19 know what's in and what's out.
20 Let's take The Times article.
21 MR. CERESNEY: Yes.
22 THE COURT: Here's one of the problems. You
23 have an article, you have somebody, it's at least
24 stated that the publication of the article made them
25 concerned about being deposed, then you have the

1 response that the timing of the article being quickly
2 on the heels of an earlier discovery order is what
3 triggered the retaliatory article. None of which, I
4 think everybody understands, I'm going to be even
5 remotely resolving today and probably -- and probably
6 never. I read the article. All right?

7 What type of question -- whatever the
8 problems or -- or not that Mr. Sater has -- Mr. Sater
9 has, how does that relate to Arif and the plaintiff?

10 MR. CERESNEY: Okay. And, Your Honor, I
11 think this is the area in which -- I don't want you to
12 necessarily tell us -- suppose I'm Arif, what are the
13 questions you want to ask me?

14 He apparently knows who Sater is, do you want
15 to say the article says that he did A, B, and C? One
16 thing that was said in the article that looks fairly
17 innocuous, he was involved in some bar fight.

18 MR. CERESNEY: I don't want to ask about the
19 bar fight.

20 THE COURT: But that's an example.

21 MR. CERESNEY: I want to ask about the boiler
22 room operation he ran where there was mafia connections
23 to; and, therefore --

24 THE COURT: That's off the table. That --

25 MR. CERESNEY: But --

1 THE COURT: I know you want to get into that,
2 but that's --

3 MR. CERESNEY: No, no. But, Your Honor, let
4 me explain to you why. Let me explain to you why.

5 It has already been testified to by the
6 plaintiff in his deposition that there were three
7 people at Bayrock that he knew and dealt with, Mr.
8 Arif, somebody named Julius, and Mr. Sater. Three
9 people, that's it.

10 It's also -- he also indicated that Mr. Sater
11 has been involved in some of his deals. I don't know
12 whether Mr. Sater has been involved in these lost --
13 alleged lost corporate opportunities. If he was, then
14 let me pose a hypothetical to you.

15 Your Honor, if you find out that one of your
16 partners has been convicted of securities fraud a few
17 years ago, doesn't that make you question the
18 credibility of representations that person has made to
19 you? That's one question.

20 And the second question is, if you find out
21 that the person who hired the person who was convicted
22 of securities fraud didn't tell you that the -- one of
23 the main people on the deal has been convicted and has
24 been out there doing things on your behalf, doesn't
25 that raise questions about the credibility of the

1 person you're dealing with?
2 Those are the two.
3 THE COURT: The answer is -- the answers are,
4 yes. On the other hand, in trying to think of some
5 fairly clean demarcation point, other than the fact
6 that if the -- if the bad act activity may have
7 resulted in a criminal conviction, which does make it a
8 bit more black and white, how is that distinguishable
9 from any situation where the witness is asked about
10 somebody else's, not even necessarily theirs, but
11 somebody else's alleged prior bad acts; they beat their
12 wife, they lied on income tax returns, they exaggerate
13 their millage when they fill in the forms; and, gee, if
14 you're willing to go into business and do business with
15 this person, how does that reflect on you. Those type
16 of arguments.
17 MR. CERESNEY: It's a matter of degree. Here
18 it's a securities fraud conviction, it's a boiler room
19 operation, Your Honor.
20 I mean, let me ask you this. If you knew,
21 for example, that somebody was coming in and -- and
22 wanted to manage your money, Your Honor --
23 THE COURT: So you want to ask Arif whether
24 he knew about the --
25 MR. CERESNEY: Yes.

1 THE COURT: -- conviction? All right.
2 MR. CERESNEY: And did he tell Mr. Trump
3 about that and what was the role of Mr. Sater in these
4 opportunities. I think it's perfectly relevant.
5 THE COURT: Yeah. But what the role -- what
6 the role --
7 MR. CERESNEY: The role -- because here's the
8 thing.
9 THE COURT: Every --
10 MR. CERESNEY: He's --
11 THE COURT: It's murky.
12 My point is this, is that -- I'm not saying
13 what role is off the table, but I'm trying to think of
14 some clean way of handling it.
15 MR. CERESNEY: Yes.
16 THE COURT: But here's what I think is off
17 the table: Were you aware that Mr. Sater was convicted
18 of this particular crime; and what did you know about
19 what he did, all these types of things. Then all of
20 the sudden, we have Sater on trial in this matter.
21 MR. CERESNEY: No, that's not my goal.
22 THE COURT: That may not be the goal, but
23 that's what's going to happen.
24 MR. CERESNEY: No. Here's the thing. We're
25 just dealing with a conviction. And you've already

1 said, and I think this is correct, obviously, that the
2 rules of evidence, obviously --

3 THE COURT: But as to Arif, this is Sater's
4 conviction, not Arif's.

5 MR. CERESNEY: I understand.

6 But if Sater is -- let's just say Sater is
7 the guy on the ground in Moscow and in the Ukraine
8 dealing with the investors, and Arif doesn't deal with
9 them directly, but he's hearing from Sater about what
10 these people are saying, and he's a convicted felon of
11 securities fraud, and, you know, he has all kinds of
12 reasons to question the representations that Mr. Sater
13 is making to him. And then, if I'm trump -- and Mr.
14 Trump testified to this at his deposition, I asked him,
15 did it matter to you that this guy was a -- is,
16 potentially, an alleged convicted felon. And he said,
17 yes. In fact, it bothers me very much, and I'm looking
18 to see what Bayrock will do because I don't know if I'm
19 going to keep doing business with them, I want to see
20 what they'll do about this.

21 So to Mr. Trump it matters. I think it's
22 relevant to us to ask at least some questions to find
23 out what his role was and whether Mr. Arif knew about
24 this. And if he did, what did he do about it. And
25 what kind of responsibility did he give him on these --

1 on these projects.

2 I think that's -- I'm not looking for a mini-
3 trial. I'm not looking to put Mr. Sater on trial. I'm
4 just trying to establish what his role was in these and
5 what Mr. Arif knew about his prior history. That's it.
6 I think it's probably 20 minutes questioning. I don't
7 think this is a day worth of questioning. For Mr.
8 Trump, it actually took ten minutes and we were off of
9 this issue.

10 So, you know, this is not -- you know, the
11 notion that this is going to be a mini-trial, that's
12 not what we're trying to do.

13 THE COURT: Yeah. But --

14 MR. CERESNEY: And the demarcation is the --

15 THE COURT: I'm concerned about what is the --
16 - yes, but it's one thing to say that criminal
17 convictions which are quasi-public records, witnesses
18 can be asked about -- either about their own criminal
19 convictions or about their awareness of somebody else's
20 criminal convictions.

21 MR. CERESNEY: That's all we want.

22 THE COURT: Once you start going into
23 underlying conduct that may have undergirded the
24 conviction, I think you do open up a hornets nest, that
25 type of thing.

1 MR. CERESNEY: Okay. So that's all we want,
2 Your Honor. I think that's fine. I mean, the nature -
3 - a fraud conviction is obviously different from a bar
4 fight, as you indicated. And I agree with that
5 completely. To me, the fact that it's a fraud
6 conviction is relevant; but, otherwise, I'm not looking
7 to get into, you know, the details of mafia involvement
8 or whatever. It's just you have a fraudster on your
9 payroll, what role is he playing in this and what did
10 you know about it; as well, and what did you tell your
11 partner. That's the line of questioning.

12 THE COURT: All right.

13 Mr. Tambussi.

14 MR. TAMBUSSEI: Judge, I don't recall the
15 article saying that he was actually convicted.

16 THE COURT: I don't recall, either.

17 MR. CERESNEY: Your Honor, it said that -- it
18 said that there was a witness who said that he was
19 convicted, and then it said you couldn't find anything
20 on the public record and his attorney challenged the
21 reporter to find out whether he was convicted or not.

22 And, Your Honor, if he's cooperating, and I
23 was in the U.S. Attorney's Office, so I can tell you
24 that often these sorts of convictions would be sealed
25 if someone is cooperating. And, so I think the clear

1 implication of the article, particularly with some
2 individuals confirming it, but I can ask Mr. Arif that.
3 Maybe Mr. Arif doesn't know that. But if he does, then
4 that's relevant.

5 MR. TAMBUSSEI: That's great, Judge. We're
6 dealing with clear implications, secondhand
7 information, and rumors that he's involved in the
8 Mafia. If that's not witness intimidation, I don't
9 know what is.

10 THE COURT: No, but not -- there's not going
11 to be any questions about the Mafia that stuff, that
12 type of thing. The issue regards to whether or not
13 Sater has a criminal conviction, since Sater is not the
14 witness, it will be to Mr. Arif, are you aware as to
15 whether or not Mr. Sater has been convicted of a crime;
16 yes or no. And then if the answer is yes, what the
17 crime is.

18 I take your point that at this point there's
19 nothing in the record to indicate with any certainty
20 whether there's been a conviction, but to ask the
21 question, all the question needs is a good faith basis.

22 MR. CERESNEY: Exactly, Judge.

23 THE COURT: So the article maybe that good
24 faith basis and since I'm more concerned at juncture
25 with Arif's privacy concerns, since he's the one to be

1 deposed, rather than Sater, and it doesn't relate to
2 Arif, it relates to Sater, I'm inclined to permit it.
3 Although, as I said, with limitations. It's a yes or
4 no -- it's a yes or no response, does he know anything
5 about whether or not Sater has been convicted of a
6 crime. If the answer is yes, there can be some very
7 short follow up.

8 But here's the type of follow up that won't
9 be permitted, just by way of example. Well, exactly
10 what do you know about the underlying offense, what do
11 you think -- all those type of things. All right?

12 Because I really think that goes down a
13 detour and, you know, despite the fact that there are
14 previous orders sealing all this stuff, or some of this
15 stuff, or that type of thing, well, we're in open court
16 now, you know. I mean, I haven't imposed -- barricaded
17 the courtroom. And there is a concern that people
18 don't want their names involved in a lawsuit in which
19 they're not a party to where this type of thing is
20 going on. And that shouldn't be minimized by any
21 court.

22 Mr. Tambussi.

23 MR. TAMBOSSI: We agree, Judge. And we also
24 believe that the ruling that you make today will lead
25 us to getting this case ready for trial in 2008, as

1 opposed to 2010, because every deposition goes off on a
2 tangent. We're trying to make the rules clear and
3 we're also trying to avoid the situation. And I know
4 this Court can't control what The New York Times
5 decides to write, either implicitly or explicitly with
6 regard to the defense of one of its reporters, but we
7 have a situation here that we can't ignore. There was
8 a discovery order entered by this Court. Within 72
9 hours there's a call from a reporter from The New York
10 Times to Mr. Trump relating to this witness. Shortly
11 thereafter, there's an article that -- based on
12 innuendo, implication, otherwise, indicates certain bad
13 things about this potential witness and tends to scare
14 off other witnesses.

15 By ordering and carefully narrowing --
16 carefully tailoring the language in your order to limit
17 the discovery to specific facts related to the issue
18 between this -- these two parties, we can avoid witness
19 intimidation, the tactics of witness intimidation. And
20 we can also get this case ready for trial in 2008,
21 which is what our goal is.

22 THE COURT: Okay. Well, that's my goal.
23 And, again, what I'm probably going to do is I'm
24 probably not going to dictate the language now. I want
25 to think about it over the weekend. My guess is I'm

1 going to enter some type of order that understanding
2 there will be words used in it that will always be
3 subject to interpretation and whether or not any
4 particular area or question runs afoul of it, you know,
5 unless I'm sitting at the depositions and making
6 rulings on every single question, everybody will have
7 to conduct themselves, obviously, in good faith, and
8 attempt to conform with the language, but there's no
9 way to avoid some ambiguity.

10 I want to impress that it's to all witnesses
11 in the case, the nonparty witnesses, the people that
12 don't work for one of the parties, that type of thing,
13 I have to view them as being unwilling participants
14 dragged into a lawsuit. Now they may not be, but I
15 have to make the assumption that they are and they
16 don't want to be asked a lot of questions on the record
17 about everything that the attorneys may feel may relate
18 to the credibility.

19 Whether it's a trial or in a discovery
20 deposition, it always appears to be -- and it should
21 not be taken as a knock against anybody, but the
22 response to any line of questioning that appears to be
23 a little afield is, well, it might relate to the
24 credibility. And that frequently is plausible, but
25 there needs to be a cut off point or this will go on

1 for a long period of time.

2 And I recognize that there may be a certain
3 amount of unfairness in the sense that the language may
4 block certain questioning that a plausible argument
5 could be made that it may relate to credibility, but
6 other than saying that every witness is open season for
7 everything they've done because anything that they say
8 in response to any question about their background,
9 their business dealings, what they knew about A, what
10 they knew about B, may relate to their credibility is
11 just too open ended.

12 So what I'm going to be doing, and I'll issue
13 the order next week; in all likelihood, it shouldn't
14 take me longer than that, is come up with an order in
15 regard to all fact witnesses in the case that I think
16 will stringently focus their discovery depositions on
17 the -- on the facts at issue and any criminal
18 convictions, because that is admissible under 608,
19 particularly if its theirs.

20 I mean, even that, I hate -- you know, we can
21 all envision a situation -- I mean, for all we know --
22 I mean, you know, people sometimes have criminal
23 convictions that go back 30 years and it's been long
24 buried and dead and when you ask them at a deposition,
25 sealed or not, have you ever been convicted of a crime

1 -- I mean, I'm not all that sympathetic to people
2 convicted of crimes, but to some extent, they're not
3 parties to the lawsuit, but it is admissible under 608,
4 so I'm reluctant to carve that out.

5 All right. Mr. Ceresney.

6 MR. CERESNEY: Yes, Your Honor. Thank you.
7 I understand on this issue, I think we've --
8 I think Your Honor has ruled and I think we have a
9 good --

10 THE COURT: I've kind of -- yeah. You know,
11 the -- we'll see what the -- we'll see what kind of
12 language I generate. Hopefully, it won't create -- let
13 me put it this way. I don't know that it's going to
14 cure any problems. I just hope it doesn't create more
15 problems than already exists. You know, it's like the
16 old story, sometimes the cure is worse than the
17 illness.

18 MR. CERESNEY: Well --

19 THE COURT: And I'm not going to try to draft
20 an order that ends and people -- having people scratch
21 their heads and wondering, what does this mean, that
22 type of thing.

23 MR. CERESNEY: Well, I think that's right,
24 Your Honor. I mean, the typical, you know, scenario is
25 we come to you if there's an issue. And, I guess, one

1 thing I would point out is, Mr. Tambussi talked about
2 delays, tangents. We've only deposed, really, either
3 parties or people related to the parties in this case
4 so far. There have been no real third-party non-
5 completely related to the facts of this book witnesses
6 yet. So I don't know what we're talking about in terms
7 of a delay, in terms of tangents.

8 I also think that the delay here, mostly, is
9 the six months it took us to schedule the deposition of
10 Mr. Arif that didn't happen. And so, you know, we're
11 not here to point fingers, we're not here -- but I
12 think that that --

13 THE COURT: Well, I'm not -- yeah. I'm not --
14 -- I'm not pointing fingers at anybody. But I think
15 this is the type of case -- I'm not asking any --
16 anybody to concede this, unless I really issue some
17 very concrete parameters as to what's in and what's
18 not, understanding there's a certain amount of
19 arbitrariness whenever you draw these dividing lines in
20 the sand, but just to keep the thing moving and moving
21 if not briskly, at least -- at least moving down the
22 tracks.

23 It's always two steps forward and one step
24 back, but better that than, you know, one step forward
25 and two steps back.

1 Just by way of an example of an issue of the
2 plaintiff's. I mentioned before, their theory of the
3 article is that it was relation for the order that
4 permitted the deposition of Mr. Sultzberger (phonetic).
5 Now if the disposition of this particular issue
6 required me to make a factual determination as to
7 whether or not that was true, you could imagine the
8 type of hearing that that would generate. That's a
9 pretty serious charge, right?

10 I'm not going to entertain that because I
11 think there's a way for me to resolve this dispute
12 without going into that, but both sides have their
13 issues in regard to that. You have the issues
14 concerning Mr. Sater and the article and what that
15 might implicate in regards to Bayrock and Arif. They
16 have the issue about The New York Times and everything
17 else, but those are two pretty good examples of where --
18 - at least at this point, I'm drawing the line, is
19 their out.

20 MR. CERESNEY: I understand, Your Honor. All
21 I'm saying is, in crafting the order, I -- and I know
22 Your Honor will be conscious of this, you know, the -- it
23 has to be broad enough so that -- and I think we will,
24 obviously, in good faith, try to accommodate this
25 concern, but I think we need at least a little leeway

1 to question some of these areas, just to get the
2 broader picture on these.

3 THE COURT: Yeah. To me, the best -- and
4 this is a worthless word, concretely, but it's still
5 the best word, what's reasonable. It's reasonable to
6 ask any witness their age, married, what their
7 educational background is, what they do for a living,
8 what's their relationship to -- that's all standard
9 fair.

10 When you start -- and the article was a
11 pretty good example of, I think, that unless the Court
12 says no, you get into issues concerning additional
13 nonparties. And that article made allegations
14 concerning the witness and organized crime, right?
15 That opens up a whole hornets nest of stuff that really
16 is -- at least not directly, and probably not
17 indirectly, implicated even remotely in this case.

18 And suppose the witness said something about
19 Mr. Sater that you then wanted to, because they said it
20 to show that they were lying about that, you now have
21 to knock it down. So we get further down that tangent
22 because a claim was made in somebody's discovery
23 deposition and now you want to be in a position to show
24 the jury how the jury should discredit the entire
25 testimony because they're making up stuff about that.

1 MR. CERESNEY: I hear you, Your Honor.

2 THE COURT: There needs to be some finality,
3 some end point to all of this. And, again, I
4 understand that it -- it means that both sides, in all
5 likelihood, are not going to get everything they want
6 in terms of ammunition, but at least there will be an
7 end point.

8 So I'm going to -- in regard to Mr. Arif, the
9 language that will be contained in that order will be
10 omnibus language in regard to all fact witnesses. I
11 can't say in regards to Mr. Arif, I'm not going to say
12 it in regards to anybody. And, hopefully, we'll
13 provide some level of protection for all fact witnesses
14 in the case.

15 I don't want to just do it on the stump, so
16 to speak.

17 MR. CERESNEY: Okay.

18 THE COURT: Let me think about it over the
19 weekend and I'll generate something.

20 And then when issues come up to interpret it,
21 like any other discovery dispute, they'll be dealt
22 with, you know, one at a time after that.

23 MR. CERESNEY: Well, Your Honor, that then
24 leaves, I think, two issues, which is separate and
25 apart from the protective order.

1 One is, Mr. Lorber, who is the other witness
2 on the other of the eight alleged lost corporate
3 opportunities who, you know, was cancelled. It was
4 supposed to be on January 9th, was traveling, as we
5 understood it. Rescheduled for the 24th, then
6 cancelled because for some reason relating to this
7 motion. Obviously, we'd like a drop-dead date for
8 that.

9 And we'd also like a drop-dead date for the
10 Arif appearance, so that we know whether or not he's
11 appearing because then we'd like to tee up these
12 issues. So that's -- I mean, that's the -- you know,
13 the issue for us is really one of timing. I know
14 that --

15 THE COURT: I wasn't sure. Does Mr. Lorber
16 present a similar issue or is it just a question of
17 solidifying a date?

18 MR. TAMBUSSI: It's just a date, Your Honor.

19 THE COURT: All right. All right. Any
20 reason why Mr. Lorber can't be deposed in the next 45
21 days?

22 MR. TAMBUSSI: I can't think so -- I can't
23 think of any, Your Honor. If I know of one before --
24 between now and Monday, I'll let the Court know.

25 THE COURT: All right.

1 MR. TAMBUSSI: I mean, he may be out of the
2 country on an extended vacation or -- prearranged, or
3 otherwise, but we believe that we should be able to
4 produce him within that time.

5 THE COURT: All right. Mr. Ceresney, if
6 you're going to -- I'm not sure that this was actually
7 specifically covered in your proposed order, all
8 reasonable efforts shall be made for the plaintiffs to
9 produce Mr. Lorber within the next 45 days.

10 MR. CERESNEY: Okay.

11 THE COURT: Probably there won't be a
12 problem. If there is, you know, deal with it.

13 MR. CERESNEY: Okay.

14 THE COURT: Arif represents -- I think the
15 same language should be in regards to Arif and the next
16 move, really, is on Arif. Either Mr. Arif presents
17 himself or he doesn't or there will be some other issue
18 with regards to Mr. Arif. I see the two as being
19 different, at least for now.

20 MR. CERESNEY: Well, I guess, Your Honor, I
21 would -- I'm not sure why -- I mean, at the end of the
22 day, he's either going to appear or not. And, I guess,
23 our view --

24 THE COURT: But I think -- I think you're
25 going to talk to Mr. Tambussi about a date for Arif's

1 depositions and then, obviously, if Mr. Tambussi is
2 advised in advance that Mr. Arif still refuses to be
3 deposed, nobody has to go through the charade of
4 showing up to see, he'll make a motion and we'll be
5 back here on that issue.

6 Maybe he will show up.

7 MR. CERESNEY: Right. And I think, Your
8 Honor, the --

9 THE COURT: But you have to agree on a date
10 and place so that we can see whether or not -- because,
11 frankly, even if you get a letter from Mr. Arif's
12 personal counsel saying, now that he's seen the order,
13 now that he -- he's feels comfortable in appearing,
14 suppose he changes his mind, but any potential fact
15 witness, you always run into those types of potential
16 problems. And the only thing that I can tell you is
17 that the dates should be scheduled, reasonable efforts
18 should be made within 45 days to take the deposition.
19 And if it turns out that another problem occurs in
20 regard to scheduling, my guess is I have to hold a very
21 quick conference call to get a date down to solidify
22 that.

23 MR. CERESNEY: Okay. So it would 45 days.
24 That's fine.

25 THE COURT: Right. Within 45 days.

1 MR. CERESNEY: That' fine.

2 THE COURT: Okay.

3 MR. CERESNEY: I agree.

4 MR. TAMBUSI: Thank you.

5 THE COURT: Any other issues that need to be
6 resolved?

7 MR. TAMBUSI: Not at the moment, Your Honor.
8 Thank you.

9 THE COURT: All right. Very good. All
10 right, gentlemen.

11 MR. CERESNEY: Thank you, Your Honor.
12 (Proceedings concluded at 2:31 p.m.)
13

14 CERTIFICATION

15 I, Lisa A. Mullen, the assigned transcriber,
16 do hereby certify the foregoing transcript of
17 proceedings at the Camden County Superior Court, on
18 February 1, 2008, 1:45 p.m. to 2:31 p.m. is prepared in
19 full compliance with the current Transcript Format for
20 Judicial Proceedings and is a true and accurate
21 compressed transcript to the best of my knowledge and
22 ability.

23 Dated: 02/07/08

24 Lisa A. Mullen (Kse)
25 Lisa A. Mullen, AD/T 413
KLJ Transcription Service

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February 14, 2008

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

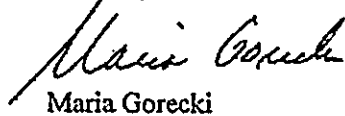
Re: *Trump v. O'Brien, et al.*

Dear Andrew:

We are writing to schedule the depositions of witnesses who will testify about Mr. Trump's lost deals. First, Howard Lorber is available for deposition on Tuesday, March 11, 2008, and, fortunately, plaintiff's counsel has been able to reschedule the previous commitment that prevented us from identifying March 11th in the list of available dates that we previously distributed. Please advise whether you are available on March 11th.

Second, Felix Sater of Bayrock Group will testify if subpoenaed and is available for deposition on March 14, 2008, a date that all counsel have indicated they are available. We understand that Mr. Sater's counsel, Judd Burstein, Esq., will accept a subpoena on Mr. Sater's behalf and will not require that you first obtain a commission. Please advise us of how much time you expect to spend asking questions of Mr. Sater, as we also intend to ask questions of Mr. Sater.

Sincerely,


Maria Gorecki

cc: Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

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* * * C O N F I D E N T I A L * * *
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DONALD J. TRUMP,)
)
Plaintiff,)
)
vs.)
)
TIMOTHY L. O'BRIEN, TIME)
WARNER BOOK GROUP INC.,)
and WARNER BOOKS INC.,)
)
Defendants.)
-----)

No. CAM-L-545-06

April 1, 2008
8:41 a.m.

Examination before trial of FELIX H. SATER, held at the offices of Kasowitz, Benson, Torres & Friedman, 1633 Broadway, New York, New York, pursuant to subpoena, before Laurie A. Collins, a Registered Professional Reporter and Notary Public of the State of New York.

2	4
<p>1 2 APPEARANCES: 3 4 BROWN & CONNERY LLP 5 Attorneys for Plaintiff 6 360 Haddon Avenue 7 Westmont, New Jersey 08108 8 BY: WILLIAM M. TAMBUSI, ESQ. 9 WILLIAM F. COOK, ESQ. 10 - and - 11 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP 12 1633 Broadway 13 New York, New York 10019-6799 14 BY: MARK P. RESSLER, ESQ. 15 RACHEL E. LUBERT, ESQ. 16 17 DEBEVOISE & PLIMPTON LLP 18 Attorneys for Defendants 19 919 Third Avenue 20 New York, New York 10022 21 BY: ANDREW M. LEVINE, ESQ. 22 - and - 23 24 25</p>	<p>1 2 THE VIDEOGRAPHER: Good morning. We're 3 on the record. Today's date is April 1st, 4 2008. The time on the video monitor is 10:41 5 a.m. This is the beginning of Tape Number 1 6 in the videotaped deposition of Felix Sater in 7 the case of Donald J. Trump versus Timothy L. 8 O'Brien, et al., Case Number CAM-L-545-06. 9 This case is filed in the Superior Court of 10 the State of New Jersey, Law Division: Camden 11 county. 12 We're here at the offices of Kasowitz, 13 Benson, Torres & Friedman LLP, located at 1633 14 Broadway, New York, New York. 15 My name is Deverell Write, and I 16 represent Veritext Court Reporting Company. 17 At this time will the counsel introduce 18 themselves. 19 MR. BURSTEIN: For the witness, Judd, 20 J-U-D-D, Burstein, Judd Burstein P.C., 1790 21 Broadway, New York, New York. 22 MR. RESSLER: For Plaintiff Donald 23 Trump, from the Kasowitz firm, Mark Ressler 24 and Rachel Lubert. 25 MR. TAMBUSI: For Plaintiff Donald</p>
3	5
<p>1 2 APPEARANCES (continued): 3 4 REED SMITH LLP 5 Princeton Forrestal Village 6 136 Main Street, Suite 250 7 P.O. Box 7839 8 Princeton, New Jersey 08543-7839 9 BY: MARK S. MELODIA, ESQ. 10 11 JUDD BURSTEIN, P.C. 12 Attorneys for Witness 13 1790 Broadway, Suite 1501 14 New York, New York 10019 15 BY: JUDD BURSTEIN, ESQ. 16 17 ALSO PRESENT: 18 DEVERELL WRITE, Videographer 19 20 21 22 23 24 25</p>	<p>1 Sater - Confidential 2 Trump, from Brown & Connery, William Tambussi 3 and William Cook. 4 MR. MELODIA: For the defendants, Mark 5 Melodia from Reed Smith. I'm here with Andrew 6 Levine from the Debevoise firm. 7 THE VIDEOGRAPHER: Will the court 8 reporter please swear in the witness. 9 FELIX H. SATER, 10 called as a witness, having been duly sworn 11 by the notary public, was examined and 12 testified as follows: 13 EXAMINATION BY 14 MR. MELODIA: 15 Q. Good morning, Mr. Sater. 16 A. Good morning. 17 Q. My name is Mark Melodia. I'm with the 18 law firm of Reed Smith, and I represent an author 19 and reporter, Timothy O'Brien, along with a 20 publisher, Time Warner Book Group and Warner 21 Books. They're involved in a lawsuit in New 22 Jersey state court brought by Donald Trump 23 concerning a book. 24 Are you aware of the lawsuit? 25 A. Yes, I am.</p>

2 (Pages 2 to 5)

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<p>1 Sater - Confidential</p> <p>2 MR. BURSTEIN: Mr. Melodia, I just</p> <p>3 wanted to add one thing for the record.</p> <p>4 Mr. Sater is here as an individual. Be clear</p> <p>5 he is not here representing Bayrock Group. I</p> <p>6 wanted that to be clear.</p> <p>7 MR. MELODIA: I'm sure that will become</p> <p>8 clear during his the testimony, and I will ask</p> <p>9 him about that.</p> <p>10 MR. BURSTEIN: Thank you. Sure.</p> <p>11 Q. You are aware of the lawsuit?</p> <p>12 A. Yes, I am.</p> <p>13 Q. You are, as your attorney just said,</p> <p>14 appearing individually to give us your testimony?</p> <p>15 A. Yes, sir, I am.</p> <p>16 Q. Could you please state and spell your</p> <p>17 full name for the record?</p> <p>18 A. Felix Sater, F-E-L-I-X, S-A-T-E-R.</p> <p>19 Q. Do you use a middle initial, Mr. Sater?</p> <p>20 A. H.</p> <p>21 Q. And what does that stand for?</p> <p>22 A. Henry.</p> <p>23 Q. Have you spelled your name differently</p> <p>24 at any time in your life?</p> <p>25 A. Yes, I have.</p>	<p>6</p>	<p>1 Sater - Confidential</p> <p>2 your current job?</p> <p>3 A. Well, that's interesting. It's not --</p> <p>4 I am currently at Bayrock Group, but that's</p> <p>5 temporarily, because we are currently going</p> <p>6 through -- the attorneys are going through</p> <p>7 separation agreements for me to leave Bayrock.</p> <p>8 Q. How long have you been with Bayrock</p> <p>9 Group?</p> <p>10 A. About five, six years.</p> <p>11 Q. Just to cover some preliminaries before</p> <p>12 we get into more of your background, have you ever</p> <p>13 been deposed or testified before today?</p> <p>14 A. Yes.</p> <p>15 Q. On how many occasions?</p> <p>16 A. One or two. I don't remember exactly.</p> <p>17 But I have been in depositions before.</p> <p>18 Q. In a setting like this with a court</p> <p>19 reporter in a conference room?</p> <p>20 A. Yes.</p> <p>21 Q. And were those depositions in</p> <p>22 connection with your professional life or your</p> <p>23 personal life?</p> <p>24 A. Professional.</p> <p>25 Q. When was the first time you remember</p>	<p>8</p>
<p>1 Sater - Confidential</p> <p>2 Q. And how was that?</p> <p>3 A. I was born and my Jewish name is Haim.</p> <p>4 And as of the past five or six years, I have added</p> <p>5 a T to my last name. On my business card and in</p> <p>6 business dealings, I spell it with two T's now.</p> <p>7 Q. Is your legal name still as you gave it</p> <p>8 to us earlier, S-A-T-E-R?</p> <p>9 A. Felix Henry Sater is my legal name,</p> <p>10 with one T.</p> <p>11 Q. Is that, for example, what would be on</p> <p>12 the deed of your house?</p> <p>13 A. My passport, my driver's license, yes.</p> <p>14 Q. And why do you use two T's on your</p> <p>15 business card or in business dealings?</p> <p>16 A. I've had some negative things in my</p> <p>17 past, and I did not want to drag those things into</p> <p>18 current business dealings. These are very old</p> <p>19 things from the past that I just -- in the</p> <p>20 Internet age where everyone Googles as soon as you</p> <p>21 walk out of the office, I just did not want to</p> <p>22 have to explain 15-year-old issues to people that</p> <p>23 have nothing to do with what I'm doing to do</p> <p>24 today.</p> <p>25 Q. And what are you doing today? What is</p>	<p>7</p>	<p>1 Sater - Confidential</p> <p>2 being deposed?</p> <p>3 A. I don't remember the various</p> <p>4 depositions I've been through.</p> <p>5 Q. You mentioned there would only be one</p> <p>6 or two. Do you think there were more than that?</p> <p>7 A. There could have been three, but that</p> <p>8 would be the extent of it. But I don't</p> <p>9 remember -- I would have to think, try to remember</p> <p>10 from which cases. But they were mostly</p> <p>11 professional-related situations.</p> <p>12 Q. Were they cases involving you as a</p> <p>13 party to the case or were you a witness as you are</p> <p>14 here today, third-party witness?</p> <p>15 A. I don't remember. I would guess both.</p> <p>16 Q. Do you remember whether the prior</p> <p>17 testimony you've given was in connection with a</p> <p>18 civil court proceeding or a criminal proceeding?</p> <p>19 A. Civil. They were civil related.</p> <p>20 Q. Related to the brokerage business?</p> <p>21 A. Which brokerage business?</p> <p>22 Q. If you can tell me if you have a</p> <p>23 memory, was it related to any of your prior work</p> <p>24 in the brokerage industry?</p> <p>25 A. When you say "brokerage industry,"</p>	<p>9</p>

10	<p>1 Sater - Confidential</p> <p>2 which industry are you speaking of?</p> <p>3 Q. We can cover it as we cover your</p> <p>4 employment history.</p> <p>5 A. Okay.</p> <p>6 Q. What do you recollect today? I'm just</p> <p>7 trying to get your best recollection of prior</p> <p>8 testimony.</p> <p>9 MR. BURSTEIN: I know that there's an</p> <p>10 order in place. Do we have a copy of the</p> <p>11 court's order about what can be inquired into?</p> <p>12 MR. RESSLER: If we don't have it in</p> <p>13 the room, we can get it. It's down the hall.</p> <p>14 MR. BURSTEIN: I would like to see a</p> <p>15 copy of the order before we go forward with</p> <p>16 questioning.</p> <p>17 If did you want to start questioning</p> <p>18 about other things while I look at the order,</p> <p>19 I'm happy for that to be done.</p> <p>20 MR. MELODIA: Well, I'm not sure which</p> <p>21 things are causing you to ask now to look at</p> <p>22 the order.</p> <p>23 MR. BURSTEIN: If you want to ask him</p> <p>24 about his work with Bayrock Group, I'm happy</p> <p>25 to do that.</p>	12	<p>1 Sater - Confidential</p> <p>2 answer. And let me make the record clear.</p> <p>3 The witness, as I understand -- and</p> <p>4 Mr. Ressler can correct me -- the witness is</p> <p>5 here to testify about his work with Bayrock</p> <p>6 Group and -- I'm not going to say the</p> <p>7 impact -- the facts with respect to projects</p> <p>8 or potential projects that the Bayrock Group</p> <p>9 was or may have been involved with with</p> <p>10 Mr. Trump following the publication of the</p> <p>11 book at issue in this case.</p> <p>12 I think those are the issues that</p> <p>13 are -- those are the facts that are directly</p> <p>14 placed at issue in the case. And I think</p> <p>15 that's what this deposition is limited to.</p> <p>16 So, you know, it says subject to</p> <p>17 further modification by the court. That's how</p> <p>18 I read the issue. Obviously if the court were</p> <p>19 to rule differently, Mr. Sater is subject to</p> <p>20 the same subpoena and he will come back. But</p> <p>21 since we want to move forward, I'm -- and I</p> <p>22 want to make this easy. I'm going to direct</p> <p>23 him not to answer any questions that fall</p> <p>24 outside the parameters of what he's here for.</p> <p>25 That's what's directly at issue here.</p>
11	<p>1 Sater - Confidential</p> <p>2 MR. MELODIA: I have a copy of the</p> <p>3 order here.</p> <p>4 MR. RESSLER: Oh, great. Thanks, Mark.</p> <p>5 MR. MELODIA: This is the February 1st</p> <p>6 order of the judge overseeing this litigation.</p> <p>7 MR. BURSTEIN: Okay. Great. Thanks.</p> <p>8 Sure.</p> <p>9 A. Okay. I'm sorry, what was your</p> <p>10 question?</p> <p>11 MR. BURSTEIN: Okay, here's -- as I</p> <p>12 read this, it says as to the discovery</p> <p>13 depositions of fact witnesses in this case</p> <p>14 subject to future modification of the court</p> <p>15 the questions shall be strictly -- shall</p> <p>16 strictly be limited to facts directly placed</p> <p>17 in issue in the case.</p> <p>18 Now, this is a witness who I can't see</p> <p>19 why questions about whether or not this</p> <p>20 witness has been deposed or whether or not he</p> <p>21 was involved in the brokerage business is --</p> <p>22 falls within whether or not this is an issue</p> <p>23 that is something that's an issue -- is a fact</p> <p>24 directly placed in issue in the case.</p> <p>25 I'm going to direct the witness not to</p>	13	<p>1 Sater - Confidential</p> <p>2 So if you want to make your record and</p> <p>3 ask him questions, I'm going to say same</p> <p>4 direction and he's -- I'm not going to have</p> <p>5 him answer.</p> <p>6 MR. MELODIA: Okay. If you can read</p> <p>7 the rest of the order, the judge also</p> <p>8 permitted questioning about any criminal</p> <p>9 convictions --</p> <p>10 MR. BURSTEIN: Yes.</p> <p>11 MR. MELODIA: -- under Rule 608.</p> <p>12 MR. BURSTEIN: Yeah.</p> <p>13 MR. MELODIA: And the reason for that</p> <p>14 is that the judge understood and we all</p> <p>15 discussed with the judge that obviously to</p> <p>16 some extent the background of the witness</p> <p>17 bears upon any witness's credibility and</p> <p>18 ability to be an honest reporter.</p> <p>19 MR. BURSTEIN: I'm not disputing that.</p> <p>20 There's no conviction. I will represent to</p> <p>21 you as an officer of the court, not of New</p> <p>22 Jersey but of New York, there is no conviction</p> <p>23 relating to the brokerage industry that this</p> <p>24 witness has, zero conviction.</p> <p>25 If you want to ask him, I think the --</p>

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 2 I don't want to tell you how to do the job,
 3 and I'm not suggesting that. But if you want
 4 to ask him does he have a criminal conviction
 5 and what are the facts related to that, he
 6 will be happy to answer. I will represent to
 7 you he does have a criminal conviction, and he
 8 will be happy to answer that question.
 9 MR. MELODIA: Under New Jersey rules --
 10 and I understand we're sitting in New York,
 11 but we're operating under a New Jersey
 12 subpoena and New Jersey case -- there are --
 13 there's a limited role for the attorney
 14 representing the witness. I understand you
 15 have to do what you have to do.
 16 MR. BURSTEIN: I will disagree -- I
 17 hate to be -- I will tell you, I severely
 18 disagree with that. I have accepted the
 19 subpoena. But had I -- as a matter of
 20 courtesy. But had I wanted to put you through
 21 the hoops, you would have had to get a
 22 commission from the courts, a subpoena would
 23 have had to be issued from New York, and it
 24 would have been a New York subpoena governed
 25 by New York rules.

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 2 I don't have a limited -- I have a
 3 limited role in the sense that I'm
 4 representing a third-party witness. I'm not
 5 doing anything other than making a record, and
 6 I'm not doing -- I'm certainly not telling him
 7 how to answer, which I wouldn't do. I'm not
 8 making speaking objections. I'm telling you
 9 what I will --
 10 MR. MELODIA: Okay. That's what I want
 11 to be clear. Whether it's New York or New
 12 Jersey isn't an issue.
 13 MR. BURSTEIN: I'm not making speaking
 14 objections.
 15 MR. MELODIA: I don't want speaking
 16 objections.
 17 MR. BURSTEIN: I'm not doing that.
 18 MR. MELODIA: Frankly, we have already
 19 taken more time already than I would have
 20 taken to cover the background, which is all I
 21 want to get.
 22 MR. BURSTEIN: Yeah, sure.
 23 Q. What I was really asking about prior
 24 depositions for was to understand whether you knew
 25 how this worked.

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 2 A. Yes, I do.
 3 Q. And I wanted to make sure that the
 4 record is clear, before we get into the focus of
 5 the deposition, that you understand that this is
 6 being taken down under oath.
 7 A. Yes, I do.
 8 Q. That we will each have our turn to
 9 speak and try to give each other a chance to
 10 finish in order so that the court reporter can
 11 take down what each of us has to say. Is that
 12 okay?
 13 A. That is fine.
 14 Q. If you don't understand any of my
 15 questions as we go along, I'd like you to tell me
 16 that you don't understand it, because if you
 17 answer the question, I'm going to assume that you
 18 understood it. Is that okay?
 19 A. That's fine. I understand.
 20 Q. Is there anything here today in terms
 21 of your health or anything else that would prevent
 22 you from recollecting and testifying clearly and
 23 truthfully?
 24 A. No.
 25 Q. Do you understand that both the

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 2 videotape and the transcript of your testimony
 3 could be used in a conference room in front of a
 4 judge or a jury in this case down the road?
 5 A. Yes, I do understand.
 6 Q. I'm not sure whether your lawyer is
 7 going to object and instruct me not to answer --
 8 ask these questions. I would like to know, if you
 9 could, in a few sentences your educational history
 10 and your job history leading up to Bayrock.
 11 DI MR. BURSTEIN: I will object and direct
 12 the witness not to answer.
 13 MR. MELODIA: And the basis for that is
 14 the order we've already discussed?
 15 MR. BURSTEIN: Yes.
 16 Q. Prior to joining Bayrock, did you get
 17 any certifications or licenses of any kind from
 18 any state or federal agency?
 19 A. Yes.
 20 Q. What licenses or certifications were
 21 those?
 22 MR. BURSTEIN: Wait. Could I have the
 23 prior question read. I apologize.
 24 (Record read.)
 25 MR. BURSTEIN: You can answer that

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1 Sater - Confidential
 2 question.
 3 A. I was licensed previously as a
 4 registered representative by the NASD. I also
 5 previously held an insurance license and I guess a
 6 variety of related licenses related to the
 7 securities industry. I don't at this point
 8 recollect what each and every one of them was, but
 9 various licenses related to the securities
 10 industry.
 11 Q. Do you have any such licenses today?
 12 A. No, I do not.
 13 Q. Why is that?
 14 DI MR. BURSTEIN: I direct the witness not
 15 to answer. And just so the record is clear,
 16 when I direct him not to answer, unless I
 17 state some other ground, it's on the basis of
 18 the court's order.
 19 MR. MELODIA: Understood.
 20 Q. Was there a particular year in which
 21 you lost or ceased to have each of the licenses
 22 you referenced?
 23 DI MR. BURSTEIN: Direct the witness not
 24 to answer.
 25 Q. Do you speak any language other than

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1 Sater - Confidential
 2 English?
 3 A. Yes.
 4 Q. What language or languages other than
 5 English?
 6 A. I speak Russian, I speak Yiddish, and I
 7 have a passing understanding of German.
 8 Q. If your work for Bayrock over the past
 9 five or six years, have you used any of those
 10 language skills?
 11 A. Yes.
 12 Q. Which?
 13 A. All.
 14 Q. Have you traveled for the Bayrock Group
 15 over the past five to six years?
 16 A. Yes, I have.
 17 Q. To what countries have you traveled in
 18 connection with potential projects or actual
 19 projects?
 20 A. Many countries. I do extensive travel
 21 on a constant basis as it relates to potential
 22 real estate projects worldwide.
 23 Q. I want to show you the book that is at
 24 issue in this case, a book written by Tim O'Brien
 25 called TrumpNation, The Art of Being the Donald.

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 2 It was marked as Plaintiff's Exhibit 1 in this
 3 case.
 4 Have you ever read that book?
 5 A. Yes.
 6 Q. Did you buy it or how did you --
 7 A. I bought it.
 8 Q. -- come to have it?
 9 Where did you buy it?
 10 A. I believe at a bookstore. It may have
 11 been at either a Borders or Barnes & Nobles.
 12 Q. Here in the city or somewhere else; do
 13 you know?
 14 A. It was either in the city or Long
 15 Island or at one of the airports or one of the
 16 airport bookstores when I travel.
 17 Q. Do you recollect when you read that?
 18 A. Sometime around the time that it came
 19 out or shortly thereafter.
 20 Q. I will represent to you it came out in
 21 the fall of 2005.
 22 A. What month was it?
 23 Q. Late October.
 24 A. Sometime before the end of October --
 25 before the end of 2005 would have been when I read

21

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 2 it.
 3 Q. You said that you're aware of the
 4 lawsuit that brings us here today.
 5 A. Yes.
 6 Q. When did you first hear about the
 7 lawsuit that brings us here today?
 8 A. A while back, quite some time ago. I
 9 don't exactly remember the date, but I've known
 10 about the lawsuit for quite -- quite a long period
 11 of time.
 12 Q. Say more than a year?
 13 A. I would guess so, yes.
 14 Q. Do you remember how you first heard
 15 about this lawsuit?
 16 A. If I'm not mistaken, I heard about it
 17 from Donald Trump.
 18 Q. How did you first hear about this book
 19 coming out?
 20 A. I'm sorry, I don't remember. Somebody
 21 may have told it to me or I could have read about
 22 it. At or around the time that it came out, there
 23 were some conversations about this book in some
 24 professional circles.
 25 But to specifically remember whether I

22

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 2 saw it in -- advertised in the window of a
 3 bookstore and picked it up or -- and then heard
 4 about it or, you know, what came first, the
 5 chicken or the egg, whether somebody told me to
 6 buy the book or whether I saw it and bought it and
 7 then heard something about it, I couldn't tell you
 8 at this point.
 9 Q. Have you ever met the author,
 10 Mr. O'Brien?
 11 A. No, I have not.
 12 Q. Have you ever heard him speak, either
 13 live or on the radio or TV?
 14 A. No, I have not.
 15 Q. When did you first become aware of the
 16 fact that Mr. Trump is claiming in this lawsuit
 17 that certain things written in the book caused him
 18 and the Trump Organization to lose certain
 19 specific real estate opportunities?
 20 A. I'm sorry, you're going to have to
 21 rephrase that question.
 22 Q. Sure. Let me ask it first as to
 23 whether. Are you aware that in this lawsuit
 24 Mr. Trump and the Trump Organization are claiming
 25 that this book and certain statements in it caused

23

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 2 him and the Trump Organization to lose certain
 3 specific real estate opportunities?
 4 A. Specifically, no, I can't answer that I
 5 know specifically that I know of where specific
 6 claims loss of something.
 7 Q. Have you ever seen --
 8 A. I'm not sure of the details of the
 9 lawsuit.
 10 Q. Have you ever seen the complaint in the
 11 lawsuit?
 12 A. No, I have not.
 13 Q. Have you read anything about the
 14 lawsuit in the media?
 15 A. No, I have not.
 16 Q. Other than your attorney, Mr. Burstein,
 17 have you talked to anybody else about the lawsuit?
 18 A. Yes.
 19 Q. Who have you talked to the lawsuit
 20 about -- talked with?
 21 A. I have spoken to Donald Trump's
 22 attorneys. Trump has mentioned the lawsuit. And
 23 just some basic conversation around the office
 24 about the lawsuit, but nothing very specific.
 25 Q. Have you talked to Mr. Arif about the

24

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 2 lawsuit?
 3 A. Yes.
 4 Q. What about anybody else involved with
 5 the Trump Organization, like Mr. Weisselberg?
 6 A. No, I have not spoken to
 7 Mr. Weisselberg about this lawsuit.
 8 Q. How about Mr. McConney?
 9 A. I may or may not have, but nothing that
 10 I recollect as -- and I don't believe so, but
 11 again, I see these people quite often, because
 12 we're in the same building. A passing reference
 13 may have been made, but actual conversations about
 14 the specific case, the answer would be no.
 15 Q. How about a former lawyer for the Trump
 16 Organization, Michelle Scarborough Lokey? I don't
 17 know if you knew her.
 18 A. I don't know.
 19 Q. What about accountants for the Trump
 20 Organization, such as Donald Bender or Gerald
 21 Rosenblum?
 22 A. No, I have not spoken to them about
 23 this case at all.
 24 Q. When you say you've spoken with
 25 Mr. Trump's attorneys, any of the people in this

25

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 2 room: Mr. Ressler?
 3 A. Yes.
 4 Q. Mr. Tambussi?
 5 A. No, I've never -- I -- I don't think I
 6 ever spoke to Mr. Tambussi. I did speak to
 7 Mr. Ressler and I believe to other attorneys that
 8 were with Mr. Ressler at the time.
 9 Q. Was one of those a woman, Maria
 10 Gorecki?
 11 A. I believe so. If I'm not mistaken, I
 12 believe so.
 13 Q. Was that an in-person meeting?
 14 A. Yes.
 15 Q. How long did that meeting last?
 16 A. 10, 15 minutes, 20 minutes maybe.
 17 Q. When was that?
 18 A. Once we had a meeting in our office,
 19 and one time very recently we had a meeting in my
 20 attorney's office.
 21 Q. And the meeting in -- when you say your
 22 office, the Bayrock offices?
 23 A. Yes.
 24 Q. And Bayrock is located in Trump Tower;
 25 yes?

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2 A. Yes.

3 Q. That meeting, is that the one that

4 lasted 15 to 20 minutes?

5 A. I believe they all lasted approximately

6 that long. They weren't very long meetings. But,

7 I mean, they could have been half an hour. But --

8 if it's the difference between whether it was 15

9 to 30 minutes or whether it was two hours, it was

10 closer to 15 to 30 minutes than a longer meeting.

11 Q. Did you discuss specific topics at

12 those meetings?

13 A. Yes.

14 Q. What do you recollect about the topics

15 that were covered in those two different meetings?

16 A. I recollect conversation about this

17 case. Donald Trump's attorneys explained to me

18 that he's suing the author of this book and were

19 asking me questions about various transactions.

20 that I and/or the company were involved with.

21 Q. Were those transactions or proposed

22 transactions both U.S. and non-U.S.?

23 A. Yes.

24 Q. Did Mr. Trump's attorneys say anything

25 about the role that those transactions play in

27

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2 this case?

3 MR. RESSLER: Objection to the form of

4 the question.

5 A. I'm not sure I understand the question.

6 Q. Did Mr. Trump's attorneys say whether

7 or not any of the transactions you discussed in

8 your meetings are at issue or contested in this

9 case?

10 MR. RESSLER: Objection to the form of

11 the question.

12 A. No, actually the conversations were

13 more of asking which deals, if any, were affected

14 by this book.

15 Q. Did you look at any documents or paper

16 to refresh your recollection during those

17 meetings?

18 A. No.

19 Q. Have you, prior to being here today,

20 looked at any papers or files to refresh your

21 recollection as to those transactions?

22 A. Yes.

23 Q. What papers or files have you looked at

24 to refresh your recollection?

25 A. I am not sure who requested document

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2 request list from the firm.

3 Q. From Bayrock?

4 A. From Bayrock. And I was asked if I had

5 any files related to that. And I looked in my

6 file folder -- my files and saw the exclusive that

7 Donald Trump had given Bayrock for Russia. And I

8 believe I made a copy and gave it -- gave it

9 either to an assistant or whoever -- I don't

10 remember who at the office was asking for those

11 documents.

12 And at that point I saw the document

13 for one more time, because I have seen it in the

14 past. And that was pretty much the only

15 interaction I had with documents relating to I

16 guess the question you asked.

17 Q. So you had some involvement in locating

18 the documents that Bayrock produced in this

19 litigation or was looking for to produce in this

20 litigation?

21 A. My involvement was finding that one

22 file that I had and handing it over to whichever

23 one of the people in the firm was collecting

24 documents at the request of some of the attorneys

25 in this case. I don't know which ones.

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2 Q. That file that you're talking about was

3 related to Russia?

4 A. It was -- yes.

5 Q. Was it related to any other country or

6 project?

7 A. I don't remember, I'm sorry, I don't

8 think so. I saw the one pager. It was a one-page

9 exclusive. I saw it, looked at it. I have seen

10 it in the past, obviously, when it was given to

11 us. And I just handed it over.

12 Q. Other than finding that file in the

13 context of looking for Bayrock documents, have you

14 looked at any other documents to prepare for

15 today's deposition?

16 A. No, I have not.

17 Q. Did you look at any of the transcripts

18 of prior depositions that were taken of other

19 witnesses in the case?

20 A. No, I have not.

21 Q. Did you bring any documents with you

22 today in response to the subpoena?

23 A. No, I did not.

24 Q. When did you become aware that you were

25 going to be a witness called to testify in this

30

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 2 case?
 3 A. Once --
 4 MR. RESSLER: Objection, objection to
 5 the form of the question. You -- objection to
 6 the form of the question.
 7 A. A few months ago, I believe I was
 8 informed, if I'm not mistaken, by Mr. Ressler.
 9 MR. BURSTEIN: Wait, wait, wait, wait.
 10 If the answer to that question calls for
 11 information communicated by me, I direct the
 12 witness not to answer. If the information
 13 calls -- if the answer calls for information
 14 provided by someone else, you can answer.
 15 A. If I'm not mistaken, I believe a few
 16 months ago Mr. Ressler indicated that I might be
 17 called as a witness.
 18 Q. And was that in one of these two
 19 meetings you've referenced or was there a
 20 telephone call?
 21 A. There may have been a telephone call,
 22 but I don't remember.
 23 Q. Were you aware at any point of the
 24 possibility that Mr. Arif would testify in this
 25 case?

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 2 A. Yes.
 3 Q. You mentioned earlier that you had some
 4 discussions with Mr. Arif concerning the
 5 litigation. Were any of those discussions about
 6 the possibility that he would testify in the
 7 litigation?
 8 A. Yes.
 9 Q. When do you recollect having a first
 10 discussion with Mr. Arif about the possibility he
 11 might testify in this case?
 12 A. I'm sorry, I don't remember. It was
 13 within the last, I would say, six months, but I
 14 don't remember specifically when.
 15 Q. Fourth quarter of last year?
 16 A. Fourth quarter of last year, first
 17 quarter of this year. I don't know. I speak with
 18 Mr. Arif quite often on a variety of subjects. I
 19 can't be specific -- I can't remember specifically
 20 when we had that discussion.
 21 Q. Was the first time you talked to
 22 Mr. Arif about this lawsuit the same conversation
 23 in which you talked to him about being a witness
 24 in this case?
 25 A. No.

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 2 Q. So you and he had talked about the fact
 3 that there was a lawsuit prior to Mr. Arif
 4 being -- discussing being a possible witness in
 5 the lawsuit?
 6 A. I'm not sure. I think it was actually
 7 in connection with him being a possible witness in
 8 the lawsuit.
 9 Q. What do you recollect about what he
 10 told you about the possibility that he might be a
 11 witness in the case?
 12 A. He was very surprised.
 13 Q. Why?
 14 A. That he might be called as a witness.
 15 Q. Did you come to understand why he was
 16 surprised?
 17 A. A variety of reasons: lack of language
 18 skills -- he does not speak English very well --
 19 and his concerns about being dragged into a
 20 lawsuit between two parties that he couldn't
 21 understand why he was being dragged into this.
 22 Q. Did you come to know from Mr. Arif that
 23 he had been designated as a representative of
 24 Mr. Trump to testify?
 25 A. I'm not aware of the details.

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 2 MR. RESSLER: I'll object to the form
 3 of the question.
 4 A. I'm not aware of the specific details,
 5 nor do I think Mr. Arif understood the specific
 6 details when we had the conversation. So to
 7 answer, the answer is no.
 8 Q. Did you ever participate in any
 9 discussion with Mr. Arif and Mr. Trump about
 10 either Mr. Arif or you testifying in this lawsuit?
 11 A. I don't believe so.
 12 Q. You mentioned earlier that you believe
 13 you have had one or more discussions with
 14 Mr. Trump about the lawsuit. Have any of those
 15 concerned Mr. Arif's possible testimony in the
 16 lawsuit?
 17 A. May have been, but I don't remember.
 18 It's possible.
 19 Q. Have you spoken to Mr. Trump prior to
 20 today about the possibility of you testifying in
 21 the lawsuit?
 22 A. Yes.
 23 Q. When was that?
 24 A. A few months ago when Mr. Ressler
 25 suggested that I might be called as a witness.

34	<p>1 Sater - Confidential</p> <p>2 Q. And was that in 2007 or 2008?</p> <p>3 A. Again, either the beginning of 2008 or</p> <p>4 sometime last quarter of 2007.</p> <p>5 Q. What about the two meetings you</p> <p>6 referenced, the one in your lawyer's office and</p> <p>7 the one in the Bayrock offices with Mr. Trump's</p> <p>8 attorneys, did those come after your conversation</p> <p>9 with Mr. Trump about the possibility of being a</p> <p>10 witness in the lawsuit?</p> <p>11 MR. RESSLER: I'll object to the form.</p> <p>12 A. In between.</p> <p>13 Q. Okay. So you had a meeting with</p> <p>14 Mr. Trump's lawyers, then a conversation with</p> <p>15 Mr. Trump, and then another meeting with</p> <p>16 Mr. Trump's lawyers about being a witness in the</p> <p>17 suit; correct?</p> <p>18 A. Yes. There may have been additional</p> <p>19 conversations by phone, so on and so forth, but</p> <p>20 that's pretty much my recollection as, to</p> <p>21 specifically related to this case, my meetings</p> <p>22 with Mr. Trump's attorneys, how and where I met</p> <p>23 them. Like I said, it's quite possible that I may</p> <p>24 have -- may have seen them more than once at my</p> <p>25 office, but I don't specifically remember.</p>	36	<p>1 Sater - Confidential</p> <p>2 the meeting or did Mr. Trump call you?</p> <p>3 A. I set up the meeting. I didn't set up</p> <p>4 a meeting; I just walked up to his office.</p> <p>5 Q. Was he in when you stopped by?</p> <p>6 A. Yes.</p> <p>7 Q. How long did you spend together?</p> <p>8 A. Five minutes.</p> <p>9 Q. In his office?</p> <p>10 A. In his office.</p> <p>11 Q. How well did you know Mr. Trump prior</p> <p>12 to that?</p> <p>13 MR. RESSLER: Objection to the form of</p> <p>14 the question.</p> <p>15 A. I don't know what you mean, "well."</p> <p>16 Q. How often had you been in his office</p> <p>17 prior to that?</p> <p>18 A. Many times.</p> <p>19 Q. For that meeting that you have</p> <p>20 referenced concerning your testimony in this case,</p> <p>21 was it just you and him in the room or was there</p> <p>22 anybody else?</p> <p>23 A. Just me and him.</p> <p>24 Q. How many times prior to that had you</p> <p>25 been in his office with him alone?</p>
35	<p>1 Sater - Confidential</p> <p>2 (Pause.)</p> <p>3 Q. From the first phone call with</p> <p>4 Mr. Ressler and the next meeting with Mr. Trump's</p> <p>5 lawyers, the meeting with Mr. Trump, and then the</p> <p>6 next meeting with Mr. Trump's lawyers, that</p> <p>7 sequence of events -- and the other phone calls</p> <p>8 that you've referenced -- over what period of time</p> <p>9 does that happen? A matter of days? weeks?</p> <p>10 months?</p> <p>11 A. Months.</p> <p>12 Q. Months?</p> <p>13 A. Months.</p> <p>14 Q. Was your conversation with Mr. Trump</p> <p>15 about testifying in the case in person or by</p> <p>16 phone?</p> <p>17 A. In person.</p> <p>18 Q. Was it in the Bayrock offices or the</p> <p>19 Trump offices or somewhere else?</p> <p>20 A. Trump offices.</p> <p>21 Q. Were you there for some other purpose</p> <p>22 or for the purpose of talking to him about that?</p> <p>23 A. The purpose of talking to him about</p> <p>24 this.</p> <p>25 Q. And who initiated that? Did you set up</p>	37	<p>1 Sater - Confidential</p> <p>2 A. Numerous times.</p> <p>3 Q. For what reason would you have been in</p> <p>4 his office prior to that? What would you have</p> <p>5 been discussing? What topics?</p> <p>6 A. Real estate.</p> <p>7 Q. In connection with Bayrock projects?</p> <p>8 A. In connection with Bayrock projects, in</p> <p>9 connection with Trump projects.</p> <p>10 Q. You had had conversations with</p> <p>11 Mr. Trump about Trump projects that Bayrock was</p> <p>12 not involved in?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever worked with Mr. Trump or</p> <p>15 the Trump Organization in connection with any</p> <p>16 potential real estate transaction that was not a</p> <p>17 Bayrock transaction?</p> <p>18 A. I -- you're going to have to rephrase</p> <p>19 that, because the answer is yes, no, and maybe to</p> <p>20 that answer, so you're going to have to rephrase</p> <p>21 it.</p> <p>22 Q. Fair enough. That wouldn't -- it must</p> <p>23 be a bad question if that's the answer. Let me</p> <p>24 try again.</p> <p>25 You mentioned that you have had</p>

10 (Pages 34 to 37)

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 2 conversations in Mr. Trump's office with him alone
 3 about real estate other than Bayrock projects;
 4 correct?
 5 A. Yes.
 6 Q. Why did you have such conversations?
 7 A. A variety of reasons.
 8 Q. To discuss the general real estate
 9 market? Is that one of them?
 10 A. Yes.
 11 Q. To discuss Trump Organization real
 12 estate projects that did not involve Bayrock?
 13 A. Yes.
 14 Q. Were you ever presenting Mr. Trump with
 15 opportunities, real estate opportunities,
 16 development opportunities, that were not Bayrock
 17 opportunities?
 18 A. Yes.
 19 Q. On behalf of who or what organizations?
 20 A. We've introduced various people to
 21 Mr. Trump, various developers. He's introduced us
 22 to various developers. We've discussed various
 23 markets. We've discussed various Trump
 24 transactions that Bayrock did not have involvement
 25 in, for a variety of reasons, such as gathering

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 2 intelligence, gathering know-how, general market
 3 discussions, general building discussions, general
 4 marketing discussions, window walls, bathrooms,
 5 real estate conversations, real estate
 6 conversations that could have been related to his
 7 project in Chicago and how that's coming along or
 8 what are his plans for that, down through
 9 something along the lines of, you know, what kind
 10 of marble did you guys use in the Whitestone -- in
 11 the Westchester project.
 12 So just a variety of real estate
 13 conversations, as you said, both about
 14 Bayrock-related projects and about non-Bayrock-
 15 related projects.
 16 Q. And some of those conversations in
 17 Mr. Trump's office would be just you and him; yes?
 18 A. Sometimes it would be just me and him;
 19 sometimes it would be with other members of not
 20 Trump Organization, other organizations, yeah.
 21 Q. Who else within the Trump Organization
 22 did you have such conversations other than
 23 Mr. Trump?
 24 A. A variety of people in the Trump
 25 Organization, on a constant basis.

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 2 Q. Don, Jr.?
 3 A. Yes.
 4 Q. Ivanka?
 5 A. Yes.
 6 Q. Eric?
 7 A. Yes.
 8 Q. Mr. Weisselberg?
 9 A. Rarer, but yes.
 10 Q. Mr. McConney?
 11 A. Yes.
 12 Q. Who else?
 13 A. There's a lot of people in the
 14 organization, and I've spoken to many of them.
 15 Q. They're in the same building?
 16 A. Two floors up -- well, one floor up,
 17 actually. Like I said, I'd see them in the
 18 elevator, you'd see them if you walk into their
 19 office. There's a lot of interaction between the
 20 two firms.
 21 Q. Does Mr. Trump know your name? Does he
 22 know who you are?
 23 A. Yes.
 24 Q. And who other than you had access to
 25 Mr. Trump in this way to be able to walk into his

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 2 office, sit down, and talk?
 3 MR. RESSLER: Objection to the form of
 4 the question.
 5 A. You'd have to ask them, but --
 6 Q. Well, in your experience, just from
 7 what you've seen?
 8 MR. RESSLER: Objection to the form of
 9 the question.
 10 A. People who want to do business with
 11 him.
 12 Q. Within Bayrock who else had that sort
 13 of relationship with Mr. Trump? Did Mr. Ari?
 14 A. Yes.
 15 Q. Who else can you think of?
 16 A. Pretty much everyone that worked at
 17 Bayrock.
 18 Q. Did you ever travel with Mr. Trump to
 19 other cities or other countries?
 20 A. Yes, I did.
 21 Q. To which cities and countries?
 22 A. We traveled to Colorado together, and I
 23 traveled with the Trump kids to Moscow. There may
 24 have been something else, but I don't remember.
 25 Those are the two that I remember more than

<p style="text-align: right;">42</p> <p>1 Sater - Confidential</p> <p>2 potentially others.</p> <p>3 Q. When did you go to Moscow with the</p> <p>4 Trump kids?</p> <p>5 A. I'm guessing '95, but I am guessing.</p> <p>6 Q. '95?</p> <p>7 A. No, I'm sorry, 2005.</p> <p>8 Q. Have you ever discussed this lawsuit or</p> <p>9 your testimony with any of the Trump children?</p> <p>10 A. No - well, yes.</p> <p>11 Q. Can you explain?</p> <p>12 A. Yes. I saw Don, Jr., at a benefit last</p> <p>13 night. And when we shook hands, he said, Oh, I</p> <p>14 can't talk to you because you're getting deposed</p> <p>15 about this case. I said, Let's not talk about the</p> <p>16 case. And we laughed and said hello to a couple</p> <p>17 of other people and parted ways. So yes, but the</p> <p>18 answer is no. We didn't discuss it other than</p> <p>19 mentioning it.</p> <p>20 Q. When you met with Mr. Trump for the</p> <p>21 purpose of discussing your possible testimony in</p> <p>22 the case -</p> <p>23 A. Yes.</p> <p>24 Q. - why did you want to talk to him?</p> <p>25 A. Because I was upset.</p>	<p style="text-align: right;">44</p> <p>1 Sater - Confidential</p> <p>2 meeting with Mr. Trump, though --</p> <p>3 A. Yes.</p> <p>4 Q. -- about being a witness; correct?</p> <p>5 A. About the case, then, yes, about him</p> <p>6 being a witness.</p> <p>7 Q. Was --</p> <p>8 A. I mean, I have spoken to Mr. Arif after</p> <p>9 finding out that I was going to be a witness.</p> <p>10 Q. Did you tell Mr. Arif you're going to</p> <p>11 see Mr. Trump?</p> <p>12 A. I don't think so.</p> <p>13 Q. Did you go to see Mr. Trump after the</p> <p>14 December 17th New York Times article that came out</p> <p>15 that mentioned you?</p> <p>16 A. I'm sorry, in this specific situation</p> <p>17 or generally?</p> <p>18 Q. The meeting you went to Mr. Trump's</p> <p>19 office to have about being a witness in the</p> <p>20 case -</p> <p>21 A. Yes.</p> <p>22 Q. - did that occur before or after the</p> <p>23 December 17th New York Times article came out?</p> <p>24 A. If I'm not mistaken, I believe after.</p> <p>25 Q. Did Mr. Trump tell you he had already</p>
<p style="text-align: right;">43</p> <p>1 Sater - Confidential</p> <p>2 Q. Why were you upset?</p> <p>3 A. That I was being called as a witness in</p> <p>4 this case.</p> <p>5 Q. Why did that upset you?</p> <p>6 A. Basically because I believe that I'm</p> <p>7 going to have some significant fallout to me</p> <p>8 personally on being a witness in this case.</p> <p>9 Q. What fallout do you anticipate from</p> <p>10 being a witness in this case?</p> <p>11 A. I anticipate being the subject of</p> <p>12 additional hatchet jobs by friends and colleagues</p> <p>13 of Mr. O'Brien.</p> <p>14 Q. Are you talking about press -- press</p> <p>15 attention?</p> <p>16 A. Yes.</p> <p>17 Q. Other than possible press attention,</p> <p>18 was there anything else that upset you about being</p> <p>19 called as a potential witness in the case?</p> <p>20 A. No, that's pretty much it. I think</p> <p>21 that's enough.</p> <p>22 Q. When you went to see Mr. Trump, was</p> <p>23 Mr. Arif still going to be a witness in this case?</p> <p>24 A. I don't remember.</p> <p>25 Q. You had talked to Mr. Arif prior to the</p>	<p style="text-align: right;">45</p> <p>1 Sater - Confidential</p> <p>2 been a witness in the case?</p> <p>3 A. I don't think we discussed that.</p> <p>4 Q. What did you discuss?</p> <p>5 A. I was pretty enraged about being called</p> <p>6 as a witness, and I went there to share those</p> <p>7 feelings and opinions with him and ask him to try</p> <p>8 to influence his attorneys not to call me as a</p> <p>9 witness.</p> <p>10 Q. What did he say to you?</p> <p>11 A. He said, I don't know if that's</p> <p>12 possible. There's nothing I can do about the</p> <p>13 situation. You know that they'd, you know, muddy</p> <p>14 you just to get even with me, and all you have to</p> <p>15 do is tell the truth.</p> <p>16 Q. Who did you understand "they" to be in</p> <p>17 that sentence?</p> <p>18 A. Whoever, press related. We didn't</p> <p>19 discuss who they were.</p> <p>20 Q. What, if anything, did he say he would</p> <p>21 or could do?</p> <p>22 A. I just told you.</p> <p>23 Q. That's it?</p> <p>24 A. That's pretty much the extent of the</p> <p>25 conversation.</p>

. 12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 Sater - Confidential</p> <p>2 Q. Did you discuss at all any specific</p> <p>3 real estate project during that conversation?</p> <p>4 A. No. It wasn't a business conversation.</p> <p>5 I didn't want to be a witness here, nor do I want</p> <p>6 to be a witness here now. I'm not happy about it.</p> <p>7 And that is what the conversation was about.</p> <p>8 Q. Have you spoken to Mr. Trump since that</p> <p>9 conversation about being a witness?</p> <p>10 A. No.</p> <p>11 Q. Other than the brief encounter at a</p> <p>12 benefit last night with Don, Jr., have you spoken</p> <p>13 to any Trump Organization employee about being a</p> <p>14 witness in the case since your conversation with</p> <p>15 Mr. Trump?</p> <p>16 A. No, I have not.</p> <p>17 Q. Your attorney covered this before, but</p> <p>18 I want to hear it from you. You are not appearing</p> <p>19 today as a representative of the Trump</p> <p>20 Organization; correct?</p> <p>21 A. Correct.</p> <p>22 MR. BURSTEIN: Trump Organization?</p> <p>23 MR. RESSLER: That's not --</p> <p>24 MR. BURSTEIN: Or you mean Bayrock?</p> <p>25 MR. MELODIA: The Trump Organization.</p>	<p style="text-align: right;">48</p> <p>1 Sater - Confidential</p> <p>2 the witness.</p> <p>3 MR. MELODIA: To the extent we need</p> <p>4 breaks, we will take them.</p> <p>5 MR. BURSTEIN: Personally speaking.</p> <p>6 Q. Do you understand my question? I'm</p> <p>7 just asking if there's anybody as or more</p> <p>8 knowledgeable than you personally about the</p> <p>9 potential projects that Trump and Bayrock have</p> <p>10 done together over the past several years.</p> <p>11 MR. RESSLER: Objection to the form of</p> <p>12 the question.</p> <p>13 A. Yes, no, and maybe.</p> <p>14 Q. Okay. Who has more knowledge and</p> <p>15 information concerning the Trump Organization-</p> <p>16 Bayrock relationship than you do?</p> <p>17 MR. RESSLER: Objection to the form of</p> <p>18 the question.</p> <p>19 A. The people that work at the firm. I</p> <p>20 don't understand the question. There are -- there</p> <p>21 are people at both firms that interact on deals.</p> <p>22 There are people at both firms that have access to</p> <p>23 each other. There's collaboration on a variety of</p> <p>24 deals. And I'm not sure how to judge more or less</p> <p>25 information as a question.</p>
<p style="text-align: right;">47</p> <p>1 Sater - Confidential</p> <p>2 MR. BURSTEIN: Oh, yeah, okay.</p> <p>3 MR. MELODIA: That's what I meant.</p> <p>4 A. No, I'm not a representative of the</p> <p>5 Trump Organization.</p> <p>6 Q. And neither are you a representative of</p> <p>7 Bayrock as an entity; you're here testifying</p> <p>8 personally; correct?</p> <p>9 A. Yes, I am. Yes, I am personally.</p> <p>10 Q. Do you believe that there is -- based</p> <p>11 upon your business experience at Bayrock for the</p> <p>12 past five or six years, that there is anybody else</p> <p>13 at Bayrock who has as much or more information</p> <p>14 about the projects in which Bayrock and the Trump</p> <p>15 Organization have collaborated?</p> <p>16 MR. RESSLER: Objection to the form of</p> <p>17 the question.</p> <p>18 A. The whole firm. I don't understand.</p> <p>19 MR. BURSTEIN: After this -- this line</p> <p>20 of questioning, I'd just like to take a</p> <p>21 five-minute break, only because I need it.</p> <p>22 MR. MELODIA: Sure. Absolutely.</p> <p>23 That's one of the instructions I didn't give</p> <p>24 you at the beginning but --</p> <p>25 MR. BURSTEIN: This is not to talk to</p>	<p style="text-align: right;">49</p> <p>1 Sater - Confidential</p> <p>2 I'm involved in the deals, I</p> <p>3 collaborate with the Trump Organization on the</p> <p>4 deals, as do others within the firm. And there</p> <p>5 are certain deals that one person at the Trump</p> <p>6 Organization has more involvement with and another</p> <p>7 has less; and there are other deals that they have</p> <p>8 more involvement with and the other person has</p> <p>9 less.</p> <p>10 It's a very difficult question to --</p> <p>11 I'm trying to answer it. I'm not trying to avoid</p> <p>12 answering it. But there's a lot of deals, a lot</p> <p>13 of interaction, between a lot of different people.</p> <p>14 Who has more or less, you know...</p> <p>15 Q. Fair enough. We're going to, after the</p> <p>16 break, go through the specific deals. So as we do</p> <p>17 that, I'm sure you'll identify who was more or</p> <p>18 less involved, and we'll do it that way, deal by</p> <p>19 deal. Okay?</p> <p>20 A. Okay.</p> <p>21 MR. RESSLER: Objection to the form of</p> <p>22 the direction.</p> <p>23 MR. MELODIA: Okay. Let's take our</p> <p>24 break.</p> <p>25 MR. BURSTEIN: Thank you.</p>

13 (Pages 46 to 49)

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 2 THE VIDEOGRAPHER: The time on the
 3 video monitor is 11:37 a.m. We're off the
 4 record. This ends Tape Number 1.
 5 (Recess taken from 11:37 to 11:55.)
 6 THE VIDEOGRAPHER: We're back on the
 7 record. The time on the video monitor is
 8 11:55 a.m. This starts Tape Number 2.
 9 MR. MELODIA: Okay. Thank you.
 10 Q. Before the break, Mr. Sater, you
 11 referenced The New York Times article from
 12 December 17th, and I think you called it a hatchet
 13 job.
 14 A. Yes.
 15 Q. Is there anything in that article
 16 that's not true?
 17 A. Everything.
 18 MR. BURSTEIN: This is sort of a funny
 19 area. He's expressed an opinion as to things
 20 being in the article that are not true, but
 21 I'm not going to let him testify as to items
 22 that do not apply to matters that fall outside
 23 the issues that are connected to this lawsuit.
 24 It's a somewhat complicated issue.
 25 MR. MELODIA: Well, it might be --

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 2 other than the fact that the witness has
 3 expressed now twice a view about the contents
 4 of that article and he's also expressed that
 5 it was, you know, a -- he was upset by it and
 6 that he went to see the plaintiff in this
 7 lawsuit as a result about his testimony.
 8 MR. BURSTEIN: I understand.
 9 MR. MELODIA: That's a pretty direct
 10 connection.
 11 DI MR. BURSTEIN: Well, I disagree, and
 12 certainly you have every right to take it up
 13 with the court. But I'm not going to let him
 14 answer.
 15 Q. I'm going to ask another question your
 16 attorney may object to. Let me ask it. Did you
 17 write a letter to the editor or otherwise complain
 18 to The New York Times about the article?
 19 A. We had conversations with the reporter
 20 with my attorney on the phone to challenge some of
 21 the things that he was writing there that were
 22 erroneous and untrue.
 23 Q. Has the New York Times, to your
 24 knowledge, issued any retraction or clarification?
 25 A. No.

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 2 Q. Do you expect them to?
 3 A. I'm waiting to see what happens with
 4 the McCain issue first.
 5 Q. When I asked you earlier what your
 6 position at Bayrock was, you mentioned that you're
 7 leaving Bayrock.
 8 A. Yes, I am.
 9 Q. When do you expect to be your last day
 10 at Bayrock?
 11 A. The attorneys are working on it as we
 12 speak. It could be a matter of days.
 13 Q. You mentioned there's going to be some
 14 sort of a severance agreement.
 15 A. No, it's going to be a separation
 16 agreement.
 17 Q. Separation agreement.
 18 A. Yes.
 19 Q. Are you leaving for another
 20 opportunity? Why are you leaving?
 21 A. Because of The New York Times article.
 22 Q. Have you been asked to leave Bayrock
 23 because of The New York Times article?
 24 A. Yes.
 25 Q. Have you told anybody at Bayrock that

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1 Sater - Confidential
 2 you believe that the information in The New York
 3 Times article is untrue?
 4 A. Yes.
 5 Q. Do they believe you? Have you
 6 convinced them?
 7 A. I believe they believe me.
 8 Q. But you're being asked to leave?
 9 A. I think "asked to leave" -- I think
 10 it's a mutual -- I think it's a mutual
 11 understanding that I will now be causing more harm
 12 than good to the company.
 13 MR. BURSTEIN: You know, here's my
 14 issue. I guess I sort of want a proffer. I'm
 15 not saying no. Whether or not this witness is
 16 still at Bayrock, leaving Bayrock, it seems to
 17 me that that's not really germane to this
 18 lawsuit.
 19 I mean, the issue as I understand in
 20 this lawsuit -- and correct me if I'm wrong --
 21 the issue is whether or not the book caused
 22 Mr. Trump any damages. I mean, that's -- I
 23 can't say that's the only issue. I assume
 24 that the issue is whether or not there's
 25 anything false in the book, whether or not it

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2 was made with knowledge of falsity or reckless
3 disregard for the truth.
4 But assuming that there's proof of that
5 and whatever the burden of proof is in New
6 Jersey, then the other issue is whether or not
7 Mr. Trump was damaged by it.
8 MR. MELODIA: Correct.
9 MR. BURSTEIN: Whether or not Mr. Sater
10 is at Bayrock, whether he's not at Bayrock,
11 whether or not he's at Bayrock or not at
12 Bayrock because of whether or not the article
13 was written, whether he's there because the
14 article was true or not true just doesn't seem
15 to me to fall within the issues in this
16 lawsuit.
17 If you can go back to the judge and
18 argue at some point that it's important
19 because it goes to credibility or something
20 like that, you know, then I understand. And
21 if the judge agrees and I have an opportunity
22 to intervene and make my arguments that you
23 shouldn't be allowed to do it, of course we
24 are going to honor whatever a judge says on
25 that.

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2 I just don't see -- it seems in the end
3 to be a back door into what the judge said he
4 can't do.
5 If you can -- I'm not going to be
6 presumptuous. If you can make some argument
7 that convinces me that you're right and it
8 should come in, you should be allowed to ask
9 that, I'm opening to listening to it. I don't
10 want to be presumptive. But I just don't see
11 it, you know.
12 MR. MELODIA: The principal issue is as
13 you've defined it, you know. Mr. Sater is
14 speaking as somebody who had his relationship
15 with Mr. Trump and these projects that are
16 squarely at issue in the case by virtue of his
17 position at Bayrock. And to the extent that
18 Bayrock has asked him to leave as a result of
19 any reason, whether it's the New York Times
20 article or anything else, I think does go to
21 the witness's credibility and Bayrock as an
22 organization's view of his credibility.
23 I understand he's not being offered as
24 a Bayrock representative, but Mr. Sater's
25 credibility is still obviously at issue as a

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2 witness in the case.
3 MR. BURSTEIN: Okay. All right. But
4 here's my -- my response on that. And, you
5 know, if you want the witness to leave so you
6 think -- I don't have a problem if you think
7 this is somehow coaching the witness, because
8 that's not what I'm trying to do.
9 But when I see an order where the
10 court, you know, says that -- and I assume
11 that the New Jersey rules when they -- he
12 talks about Rule 608, it's the New Jersey
13 rules are essentially the same as the Federal
14 Rules.
15 MR. MELODIA: Correct.
16 MR. TAMBUSSI: They are.
17 MR. BURSTEIN: When a judge says that
18 the questioning is limited to 608, what I draw
19 from that is that's the limits of inquiry into
20 credibility.
21 So my answer to it is I understand why
22 you want to do it. But as I interpret the
23 judge's order, you can't do it on this
24 deposition. And I don't really, you know,
25 realistically see -- and I'm probably going

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1 Sater - Confidential
2 beyond -- I just don't see it.
3 MR. MELODIA: All right.
4 MR. BURSTEIN: If you want to go back
5 to the judge, you can go back. But I'm not
6 going to allow you to do it.
7 MR. MELODIA: Okay. I'm going to make
8 my record on certain points --
9 MR. BURSTEIN: Yeah, sure.
10 MR. MELODIA: -- so that we can do that
11 if we need to. But I very much want to get
12 Mr. Sater's testimony today. We started late,
13 took a long break.
14 MR. BURSTEIN: Yeah, go ahead.
15 MR. MELODIA: I want to get that done
16 so, I will try to keep it moving so we can do
17 that.
18 MR. BURSTEIN: Okay.
19 Q. What is your position today at Bayrock?
20 A. I basically deal with business
21 development.
22 Q. Do you have a title?
23 A. No.
24 Q. Have you ever been an officer or
25 director of Bayrock?

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 2 A. No.
 3 Q. Have you ever been any owner of Bayrock
 4 in any sense?
 5 A. No.
 6 Q. Have you had a title at any point
 7 during your five or six years at Bayrock?
 8 A. No.
 9 Q. What position did you hold before
 10 joining Bayrock?
 11 A. I was --
 12 DI MR. BURSTEIN: Wait. I'm going to
 13 direct him not to answer.
 14 Q. When did you join Bayrock?
 15 A. I'm guessing sometime in December or
 16 January of '01/'02.
 17 Q. At that time did Bayrock do any work
 18 with Mr. Trump or the Trump Organization?
 19 A. No.
 20 Q. When did Bayrock start to do some work
 21 with Mr. Trump or the Trump Organization?
 22 A. After I joined the firm.
 23 Q. Do you remember the year?
 24 A. No.
 25 Q. How did Mr. Trump come to do projects

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1 Sater - Confidential
 2 with Bayrock, if you know?
 3 A. I showed certain opportunities to
 4 Russell Flicker and Charlie Reese.
 5 Q. Who are Mr. Flicker and Mr. Reese?
 6 A. They work in the Trump Organization,
 7 also on the deal side.
 8 Q. Had you known Mr. Flicker and Mr. Reese
 9 prior to joining Bayrock?
 10 A. No.
 11 Q. How did you meet them?
 12 A. I was introduced to them by Nathan
 13 Nelson, who is also employed by the Trump
 14 Organization.
 15 Q. How did you know Mr. Nelson?
 16 A. From the building.
 17 Q. Had you ever worked in the Trump
 18 building on Fifth Avenue prior to joining Bayrock?
 19 A. No.
 20 Q. So you met him while you were an
 21 employee of Bayrock; you met Mr. Nelson?
 22 A. Yes.
 23 Q. You said you introduced certain
 24 opportunities to Mr. Flicker and Mr. Reese.
 25 Initially what opportunities were those?

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 2 A. Fort Lauderdale and Phoenix. And we
 3 discussed generally which areas countrywide and
 4 worldwide the Trump Organization was interested in
 5 expanding into and what were the opportunities for
 6 mutually working together on those various
 7 opportunities.
 8 Q. Do you remember presenting any type of
 9 written proposal to Mr. Flicker or Mr. Reese on
 10 these opportunities?
 11 A. I'm sure some of them may have been
 12 written; some of them were verbal. It was a
 13 pretty fluid relationship, so it didn't require
 14 the formality of the written offer. It was more
 15 of a discussion about potential transactions.
 16 Q. Do you remember whether you introduced
 17 the idea of Fort Lauderdale before, at the same
 18 time as, or after Phoenix?
 19 A. I don't remember which one came first.
 20 Close enough in time that that's why I wouldn't
 21 remember which one came first.
 22 Q. You've mentioned having a, quote, fluid
 23 relationship and discussion with Mr. Flicker and
 24 Mr. Reese. Was that in person, on the phone, and
 25 by e-mail? How did you tend to communicate?

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 2 A. Yes.
 3 Q. All the above?
 4 A. Yes.
 5 Q. At some point did Mr. Nelson,
 6 Mr. Flicker, and Mr. Reese bring others in the
 7 Trump Organization into a broader discussion of
 8 these ideas, of Fort Lauderdale and Phoenix?
 9 MR. RESSLER: I'll object to the form
 10 of the question.
 11 A. Eventually, yes.
 12 Q. Over what period of time do you think
 13 it took to get from an initial meeting or
 14 discussion with Mr. Flicker and Mr. Reese to a
 15 broader discussion with the Trump Organization
 16 about these ideas?
 17 A. I'd like you to qualify. What do you
 18 mean, "Trump Organization" and "the broader Trump
 19 Organization"?
 20 Q. I mean that in the sense of the
 21 organization that's one or two floors above your
 22 offices at Bayrock, the people who are employees
 23 of that organization.
 24 A. So what you're saying is at which point
 25 did Mr. Flicker and Mr. Reese introduce it to

<p style="text-align: right;">62</p> <p>1 Sater - Confidential</p> <p>2 others in the Trump Organization?</p> <p>3 Q. Yes, if you know.</p> <p>4 A. I would guess fairly rapidly, but I</p> <p>5 couldn't specifically tell you whether it was a</p> <p>6 day or a week or two weeks.</p> <p>7 Q. What was your idea or thought, the</p> <p>8 opportunity that you presented regarding Fort</p> <p>9 Lauderdale and Phoenix?</p> <p>10 A. It was to -- for Bayrock to acquire</p> <p>11 those opportunities, those properties, in whatever</p> <p>12 fashion, either as an outright purchase, as a</p> <p>13 joint venture, a variety of acceptable real estate</p> <p>14 structures, and bring in the Trump Organization to</p> <p>15 make those Trump properties.</p> <p>16 Q. And when you first spoke to Mr. Flicker</p> <p>17 and Mr. Reese about this idea, did you have</p> <p>18 specific locations and properties in mind?</p> <p>19 A. Yes and no. We spoke about those</p> <p>20 locations because they were specific. We also</p> <p>21 spoke about a variety of other cities that may or</p> <p>22 may not have been specific. To give you an</p> <p>23 example, maybe answering more than you're asking,</p> <p>24 but just to give you a better understanding,</p> <p>25 somebody proposed a potential deal to me, whether</p>	<p style="text-align: right;">64</p> <p>1 Sater - Confidential</p> <p>2 Q. You don't recollect whether that was</p> <p>3 '01 or '02?</p> <p>4 A. Again, yes, it could have been '01,</p> <p>5 could have been more than likely beginning of '02.</p> <p>6 Q. It sounds like there were many such</p> <p>7 discussions you've described as fluid and ongoing.</p> <p>8 Can you estimate -- using whatever time period</p> <p>9 makes sense to you, can you estimate for me the</p> <p>10 number of different opportunities that were</p> <p>11 discussed?</p> <p>12 A. No, I'm sorry, because there were</p> <p>13 discussions about China, and the discussion about</p> <p>14 China and its economy and growth in the real</p> <p>15 estate market actually may or may not have been</p> <p>16 part of a discussion should we find something in</p> <p>17 China and where.</p> <p>18 We had many conversations about real</p> <p>19 estate. I wouldn't possibly be able to</p> <p>20 guesstimate or estimate how many different</p> <p>21 opportunities we discussed, because not all</p> <p>22 conversations were related to specific</p> <p>23 opportunities. Sometimes conversations were</p> <p>24 specific to real estate development, sometimes to</p> <p>25 the economy. It was just -- it would be next to</p>
<p style="text-align: right;">63</p> <p>1 Sater - Confidential</p> <p>2 it was a broker or however it came to me, and</p> <p>3 there was a -- sort of a five-star type of an</p> <p>4 opportunity.</p> <p>5 I may have and in fact I did on many</p> <p>6 occasions either pick up the phone or go upstairs</p> <p>7 or ask them to come downstairs and discuss that</p> <p>8 city, its opportunities, that specific project.</p> <p>9 So as I said, when I say "fluid,"</p> <p>10 sometimes it was a specific opportunity; sometimes</p> <p>11 it was just a general geographical discussion</p> <p>12 about would it be good to have a Trump Tower in</p> <p>13 Los Angeles, say, and we would discuss should it</p> <p>14 be Wilshire Boulevard or should it be another</p> <p>15 location. And on Wilshire Boulevard there's very</p> <p>16 few places you can get a high-rise. There are</p> <p>17 other locations in southern California that may be</p> <p>18 better or worse.</p> <p>19 So as I say, specifically what, when,</p> <p>20 and how -- it was an ongoing business relationship</p> <p>21 where multiple discussions about projects took</p> <p>22 place.</p> <p>23 Q. When do you think these discussions</p> <p>24 with members of the Trump Organization started?</p> <p>25 A. Shortly after I joined Bayrock.</p>	<p style="text-align: right;">65</p> <p>1 Sater - Confidential</p> <p>2 impossible for me to estimate at this point.</p> <p>3 Q. Would it be also true to say not all of</p> <p>4 the discussions that surrounded specific</p> <p>5 opportunities resulted in any sort of a formal</p> <p>6 project or arrangement?</p> <p>7 A. Oh, absolutely.</p> <p>8 Q. Not everything that's discussed</p> <p>9 happens?</p> <p>10 A. No, of course not, of course not.</p> <p>11 Q. And why is that, in your experience?</p> <p>12 A. A variety of reasons: We couldn't get</p> <p>13 the deal, somebody else bought the deal, we</p> <p>14 decided it wasn't a good time to move there, it</p> <p>15 wasn't in our expansion plans, or there were some</p> <p>16 competing projects there that didn't make sense.</p> <p>17 Again, over the course of a five- or</p> <p>18 six-year period, I would say a variety of reasons</p> <p>19 for and against took place. So I can't really</p> <p>20 narrow it down to specifics.</p> <p>21 Q. Would it be fair to say that many of</p> <p>22 those impediments/problems that arose that would</p> <p>23 stop a particular idea from becoming a project and</p> <p>24 becoming an actual built building were not things</p> <p>25 that you or anybody else could predict when you</p>

66	<p>1 Sater - Confidential</p> <p>2 were first having the initial conversation?</p> <p>3 MR. RESSLER: Objection to the form of</p> <p>4 the question.</p> <p>5 A. No, not necessarily. Sometimes you</p> <p>6 look at a deal and you move forward and it doesn't</p> <p>7 pan out, for a variety of reasons. And I can</p> <p>8 almost assuredly tell you that any potential</p> <p>9 reason is something that is a possibility and you</p> <p>10 can foretell it.</p> <p>11 If you're a real estate professional,</p> <p>12 you know why a deal may not move forward. There</p> <p>13 is no guarantee that when you start that it will</p> <p>14 come to fruition. You could be outbid by somebody</p> <p>15 for the property. You could change your mind.</p> <p>16 Your architect could tell you that it doesn't fit.</p> <p>17 So no.</p> <p>18 Could we say that deals were started</p> <p>19 and eventually didn't move forward and we didn't</p> <p>20 know what the outcome would have been? The answer</p> <p>21 is yes and no. The outcome could be a variety of</p> <p>22 things. If you know what you're doing, you</p> <p>23 probably know all of the eventual possibilities</p> <p>24 without being able to guess which eventual outcome</p> <p>25 would be.</p>	68	<p>1 Sater - Confidential</p> <p>2 because of anything having to do with this book?</p> <p>3 A. It's a much bigger answer than just</p> <p>4 that simple.</p> <p>5 Q. Can you try to answer my question? I</p> <p>6 mean, did the L.A. opportunity not occur because</p> <p>7 of this book?</p> <p>8 A. Specifically, no.</p> <p>9 Q. Did the Colorado opportunity not arise,</p> <p>10 not actually come to fruition, because of this</p> <p>11 book?</p> <p>12 A. Specifically, no.</p> <p>13 Q. I know you can't give me a specific</p> <p>14 number -- and I appreciate that -- over a period</p> <p>15 of five plus years of discussions, but is it fair</p> <p>16 to say that there were dozens of possibilities and</p> <p>17 projects discussed with the Trump Organization</p> <p>18 that did not end up getting built with Bayrock?</p> <p>19 A. Yes.</p> <p>20 Q. Who do you report to currently at</p> <p>21 Bayrock?</p> <p>22 A. Mr. Arif.</p> <p>23 Q. How many people report to you?</p> <p>24 A. One.</p> <p>25 Q. Who is that?</p>
67	<p>1 Sater - Confidential</p> <p>2 Q. So from experience you have sort of a</p> <p>3 checklist in your head that you develop of the</p> <p>4 potential problems and challenges and which one</p> <p>5 might derail or whether one of those would derail</p> <p>6 a certain project is harder to predict?</p> <p>7 MR. RESSLER: Objection to the form of</p> <p>8 the question.</p> <p>9 Q. Is that correct?</p> <p>10 A. I would say yes.</p> <p>11 Q. You mentioned L.A., for example,</p> <p>12 earlier. Was that just an example you picked out</p> <p>13 of the air or was that a discussion you actually</p> <p>14 had?</p> <p>15 A. It was discussions that we had.</p> <p>16 Q. And Bayrock, as far as you know, as of</p> <p>17 today has not done a tower with Trump in L.A.?</p> <p>18 A. No, we have not.</p> <p>19 Q. You mentioned a trip earlier to</p> <p>20 Colorado that you took with Mr. Trump; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Has Bayrock done a tower in Colorado?</p> <p>23 A. No. We actually had a location in</p> <p>24 mind, sort of didn't pan out.</p> <p>25 Q. And did the L.A. discussion not pan out</p>	69	<p>1 Sater - Confidential</p> <p>2 A. Alina Gorbachev.</p> <p>3 Q. Is Ms. Gorbachev staying at the firm;</p> <p>4 do you know?</p> <p>5 A. I hope she comes with me.</p> <p>6 Q. Is Mr. Arif staying at Bayrock?</p> <p>7 A. I believe so.</p> <p>8 Q. I believe when I asked you what your</p> <p>9 position is at Bayrock you said business</p> <p>10 development.</p> <p>11 A. Yes.</p> <p>12 Q. What do you mean by that?</p> <p>13 A. I find deals. I find transactions. To</p> <p>14 be a little more specific, I would say new</p> <p>15 business development.</p> <p>16 Q. You mentioned earlier calls from a</p> <p>17 broker as one way that an idea might come to you.</p> <p>18 What are others?</p> <p>19 A. From knowledge of various areas or</p> <p>20 reading about exceptional opportunities. I could</p> <p>21 go start tracking down potential deals in a</p> <p>22 specific area; as an example, I would say</p> <p>23 California. If we discussed California was good,</p> <p>24 I would contact some brokers, I'd contact some</p> <p>25 attorneys, I'd contact some other developers.</p>

18 (Pages 66 to 69)

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2 Q. So it would be fair to say you might

3 work from the general to the specific or the

4 specific to the general?

5 A. Yes, absolutely.

6 Q. You mentioned that you introduced a few

7 opportunities relatively early in your tenure at

8 Bayrock to Mr. Flicker and Mr. Reese at the Trump

9 Organization, and you mentioned Fort Lauderdale

10 and Phoenix.

11 Were those specific opportunities that

12 came to you that you wanted to present to them or

13 were those examples of general markets that were

14 of interest and then you went looking for an

15 opportunity?

16 A. Specific.

17 Q. And how did the Fort Lauderdale, for

18 example, project specifically come to you before

19 you presented it to the Trump Organization?

20 A. I don't remember the guy's name, but he

21 was involved in this specific Fort Lauderdale

22 deal. He brought it to us, to Bayrock, to ask if

23 we would have an interest in participating in the

24 deal.

25 We did some due diligence, did some

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2 checking on the market, did some checking on the

3 project. And after we made the decision that it

4 may be a good project, presented it to the folks

5 at Trump.

6 Q. What about Phoenix?

7 A. Phoenix; a gentleman who I believe --

8 don't hold me to it -- is I think a title broker,

9 is involved in the title business, introduced me

10 to somebody who was a principal in this Phoenix

11 transaction, and we started negotiating the terms

12 under which Bayrock would come into this

13 transaction.

14 It was actually a bankruptcy court

15 proceeding, and we came in as, quote/unquote, the

16 white knight to buy it out of bankruptcy. And at

17 such time as we started negotiating the

18 transaction, looking at the transaction, again,

19 it's something that I represented to the Trump

20 Organization as a possibility for a Trump project.

21 Q. Do you recollect whether Bayrock had

22 already committed to purchase the Phoenix site

23 prior to approaching the Trump Organization?

24 A. No, we did not. We were in

25 negotiations for both sites before approaching the

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2 Trump Organization. Part of our strategy was to

3 build five-star properties, and Trump was in a

4 good sense a cornerstone of that strategy. So we

5 generally looked for deals that could be a Trump

6 deal.

7 Q. But at the time you had the initial

8 conversation you mentioned having with Mr. Flicker

9 and Mr. Reese, up to that point there hadn't been

10 a Bayrock-Trump transaction consummated yet?

11 A. No, there hadn't.

12 Q. So at that point --

13 A. Other than the lease for the space.

14 Q. Right. He was your landlord.

15 A. Exactly.

16 Q. But other than being your landlord, you

17 weren't -- Bayrock was not on a contract with him,

18 you didn't have any exclusive --

19 A. No.

20 Q. -- or other arrangement?

21 A. No.

22 Q. So at that point when you're having

23 that initial conversation, Mr. Trump isn't the

24 cornerstone of anything for Bayrock?

25 MR. RESSLER: Objection to the form of

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1 Sater - Confidential

2 the question.

3 Q. At that point?

4 A. What initial conversation?

5 Q. With Mr. Flicker and Mr. Reese?

6 A. Oh, no.

7 MR. RESSLER: Objection to the form of

8 the question.

9 A. Oh, no, no.

10 Q. That's just the beginning of it?

11 A. The beginning of it is when we

12 discussed the opportunity of working together and

13 the ability of doing Trump projects worldwide. It

14 became a -- certainly in my mind a cornerstone of

15 the strategy.

16 Now, that's not to say that we wouldn't

17 look at a transaction that did not include

18 Mr. Trump. Those situations also came across.

19 But for the most part my five to six years of deal

20 hunting predominantly centered around what I could

21 and could not turn into a Trump project.

22 Q. Has Bayrock done what you would

23 consider other five-star properties with investors

24 or developers other than Mr. Trump?

25 A. Yes.

19 (Pages 70 to 73)

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1 Sater - Confidential
2 Q. In what markets?
3 A. I'd like to qualify that by saying done
4 or in the process of doing.
5 Q. Okay. If you could distinguish the
6 two, that would be helpful.
7 A. I would say they're all in the process
8 of being done. When I say "in the process of
9 being done," it may mean that we are in the
10 project but the project is not yet completed,
11 because projects take three to five years,
12 sometimes longer, sometimes shorter.
13 So when we say there's got to be a
14 clear distinction between something we looked at
15 and something that we're actually already in.
16 Yes, there are deals that we are in that Trump is
17 not part of. And then there's a subdistinction
18 about deals that we're in or doing and are
19 potentially considering making or not making Trump
20 a participant to those deals.
21 Q. Let's try to use those distinctions.
22 A. Sure.
23 Q. As a new business developer, you at
24 Bayrock see transactions that you just look at and
25 never go anywhere; right?

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2 A. True.
3 Q. And we've discussed there have been
4 dozens of those just with the Trump Organization
5 that fall into that category?
6 A. I don't know about dozens, but half a
7 dozen to a dozen, I would say the answer is
8 probably yes, that we had discussions on potential
9 deals that we didn't take to the next step or the
10 next level, yes.
11 Q. And then the next level being what you
12 described as being, quote, in, which means what?
13 A. An example is our deal in Vevay,
14 Switzerland. We are in contract. In September it
15 will be a year that we're in contract. We're
16 closing in September on the transaction. It is a
17 castle that we're converting to residences. It's
18 a gorgeous product — gorgeous project. That one
19 I steered in a direction away from Mr. Trump.
20 Q. Now, using that example to define what
21 you mean by Bayrock being, quote, in a project,
22 because in a project in your mind means
23 committed —
24 A. We're committed.
25 Q. — contracted?

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2 A. We're committed, contracted, and we're
3 50 percent partners in that deal.
4 Q. Part of being committed is having at
5 least some money down?
6 A. Multiple millions of dollars already
7 committed.
8 Q. I'm just trying to understand sort of
9 your categories.
10 A. We have, I would say, over \$3 million
11 already at stake, and we're about to put in
12 significantly more. And that's committed and not
13 refundable, so it's pretty committed.
14 Q. And then just using the Switzerland
15 example, there's a period of time which I assume
16 varies deal to deal between contract and closing?
17 A. Yes.
18 Q. What are the —
19 A. Switzerland being a very extended
20 closing period, versus what's generally a fairly
21 quickly, quick, closing detail. But that's for a
22 completely strange reason. It's currently being
23 operated as a hotel school, and they needed to
24 finish their last couple of semesters, which gave
25 us the opportunity of not closing right away but

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2 closing in September.
3 It's just a unique situation.
4 Generally you close a lot faster than in a year,
5 sometimes days, sometimes — usually it's months.
6 But two to three months would probably be a more
7 normal closing period for a property that you're
8 interested in developing.
9 Q. Certainly the period normally between
10 committing and putting some money down,
11 contracting, and closing, that period is usually
12 much more compressed than the period between
13 initially looking at a property and coming to
14 contract?
15 A. Oh, yeah.
16 Q. Generally speaking?
17 A. Generally speaking there's — I
18 wouldn't say that there's an industry norm, but
19 there's an industry norm range. Common would be,
20 you know, 30 days due diligence, 30 days to close;
21 or 60 days due diligence, 30 days to close; or 90
22 days due diligence, 30 days to close; or 60 days
23 due diligence, 60 days to close.
24 It depends how you negotiate the
25 transaction, but within the range of, you know,

20 (Pages 74 to 77)

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 2 one or two months of due diligence and then one or
 3 two months to close. That would -- I would have
 4 to say is probably the norm.
 5 But again, every deal is different and
 6 every deal has its own wrinkles and pimples and
 7 reasons why it's shorter or longer or your due
 8 diligence period is much shorter or your closing
 9 period is much longer or shorter.
 10 Q. And all of what you've just described
 11 is in the stage of what you called already being,
 12 quote, in -- Bayrock is to some extent committed?
 13 A. Yes, yes, yes.
 14 Q. -- during that whole period?
 15 A. It's a big generalization, but yes,
 16 because this is past due diligence when your
 17 money's hard. During due diligence you're in
 18 investigation, but I couldn't say that you're in,
 19 because you still have the opportunity of finding
 20 out something unacceptable and pulling out because
 21 it's subject to DD.
 22 Q. "DD" being due diligence?
 23 A. Due diligence, yes.
 24 Q. So there's a pre, quote, in phase of
 25 due diligence where you're semicommitted?

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 2 A. You're semicommitted because you're
 3 already spending money, you're spending money
 4 legally, you're spending money on investigation,
 5 you're spending time. So you are in a sense
 6 committed with an out. After you go hard on a
 7 deal, there is no out other than to lose your
 8 deposit money if you decide to walk away.
 9 Q. Prior to even the due diligence phase,
 10 there are a lot of things that can happen between
 11 an initial conversation in an office or an
 12 elevator about an idea, for example, and getting
 13 to the due diligence phase, isn't there?
 14 A. Yes.
 15 MR. RESSLER: Objection to the form of
 16 the question.
 17 A. The answer is yes.
 18 Q. Can you even generalize about any sort
 19 of norm of what can happen --
 20 A. I'm sorry, I'm going to stop you. No.
 21 Q. Because there's just too much variety?
 22 A. Because a norm is -- yes, there's a
 23 hundred -- hundreds of things, including going to
 24 the site and looking across the street and
 25 realizing the site across the street is better.

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 2 So the variety of reasons that you would not move
 3 forward is wide and varied. The variety of
 4 reasons why you would move forward is wide and
 5 varied.
 6 Q. And would it be fair to say the variety
 7 of the amount of time it could take would also be
 8 wide and varied?
 9 A. There are some deals that you can do
 10 the due diligence in 20 minutes because they're --
 11 for instance, in New York City, as of right,
 12 there's no reason to go through a long-winded
 13 process; versus another deal, which could also be
 14 in New York City which has an environmental issue
 15 which could take months to figure out, because you
 16 need to get environmental consultants.
 17 So the answer is yes, no, and a variety
 18 of reasons.
 19 Q. And sometimes, I assume,
 20 notwithstanding hiring the right experts and lots
 21 of hard work, it doesn't work out?
 22 MR. RESSLER: Objection to the form of
 23 the question.
 24 Q. The deal doesn't happen?
 25 MR. RESSLER: Objection to the form of

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1 Sater - Confidential
 2 the question.
 3 A. Yeah, there's reasons why deals happen
 4 and reasons why deals don't happen. I mean,
 5 they're all industry norm, but it's a pretty big
 6 circle so hard to pin down.
 7 Q. In your experience at Bayrock, have you
 8 had the opportunity to see some of the projects
 9 that you've been instrumental in initially
 10 developing the idea for come all the way to
 11 fruition and be built?
 12 A. Again, we're in a project now that
 13 there is a significant amount of building to be
 14 done, but three buildings are already built. A
 15 gigantic portion of retail is already completed.
 16 Q. Which is that?
 17 A. Midtown Miami.
 18 Q. I'm just using that one, the one you
 19 chose to use, as an example. When approximately
 20 did Bayrock close on that?
 21 A. Well, we were in the deal for quite
 22 some time, years, and recently increased our
 23 position in the deal. So we've been in the deal I
 24 would say for five years or so. And again I'm
 25 guessing. Could be six; could be four. And maybe

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2 six to nine months ago increased our position by

3 paying more money to our partner and taking a

4 larger stake.

5 Q. So using that as an example, are there

6 times when even after you're, quote, in and

7 committed to a certain structure deal for whatever

8 reason that deal changes before it's actually

9 built?

10 MR. RESSLER: Objection to the form of

11 the question.

12 A. Yes, absolutely. And I think it's safe

13 to say that things change, in not just real estate

14 but, you know, for Ford Motor Company as well.

15 They used to make big gas guzzlers; now they're

16 trying to go green. Things change. I think in

17 any business there's a possibility of change

18 happens even after you make plans, and I don't

19 think real estate is any different.

20 Q. Is Phoenix an example of a project that

21 has changed over time in terms -- from Bayrock's

22 perspective?

23 A. Yes, yes.

24 Q. Why don't you tell me how Phoenix is

25 different today for Bayrock than it was at the

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2 time that you first introduced the concept to

3 Mr. Flicker and Mr. Reese:

4 A. We were hoping to get a taller building

5 approved by the city, and we were approved

6 eventually for a much shorter building. That in

7 itself is a major change. That's an example of a

8 change.

9 Q. I'm sure it's obvious to you as a

10 professional in this area, but why would that

11 matter?

12 MR. BURSTEIN: Can I just ask when

13 we're going to break for lunch, only because a

14 client needs to speak with me? Fifteen

15 minutes okay?

16 MR. MELODIA: We may even break a

17 little sooner than that.

18 (Discussion off the record.)

19 Q. Mr. Sater, I had asked you why having a

20 zoning restriction on the height of a building

21 would matter to a developer. Why does that change

22 the deal?

23 A. It's possible that height also equates

24 to square footage. Clearly as a developer -- as a

25 developer of what we would like to think as

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2 high-rise opportunities, although we have looked

3 at things that are low-rise, we think -- we think

4 it's more elegant to go vertical if it's not a

5 single-family home or a community of single-family

6 homes.

7 When you're looking at a larger

8 structure of mixed-use basis from a developer's

9 standpoint, it's better to go taller. You can

10 achieve greater square footage, in some cases, not

11 necessarily, but usually you can achieve greater

12 square footage, better views, more elegant design.

13 Very simply, it's better to have a

14 tall, lean building than short, fat building,

15 because if you can get 500,000 square feet into a

16 box, well, would you rather get that 500,000 into

17 an 8-story building or into 28-story building?

18 One is lean and elegant -- or maybe that's just an

19 opinion of mine -- or you can do a short, fat

20 building and no insult intended, but it could look

21 like the Macy's building on Herald Square. I

22 don't know if anybody would look at that and say

23 residentially that that's fantastic, whereas a

24 tall high-rise building may be viewed fantastic.

25 Although that's not to say that the Plaza isn't

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2 gorgeous, and it's not that tall.

3 So sometimes it's a tradeoff. It

4 depends. Generally we would like to build taller

5 high-rise structure that give us the ability of

6 getting better views, more square footage.

7 Q. Do you know, based on your work at

8 Bayrock for the past five or six years with the

9 Trump Organization, whether Mr. Trump and the

10 Trump Organization share your aesthetic and your

11 view of the general preference in terms of

12 building structure?

13 A. Yes, the Trump Organization, I believe,

14 my opinion is, would prefer to build a high-rise

15 structure. That's not to say that they would not

16 do a low-rise structure if it was in an extremely

17 upscale scenario, such as their Mar-A-Lago Club,

18 which is a two- or three-story structure but

19 clearly a gorgeous property and does not need to

20 have a high-rise there.

21 But I suspect -- and I'm not speaking

22 for Mr. Trump or the Trump Organization; I'm

23 speaking for myself. If I own that property and

24 could build a high-rise on that property, I would,

25 because I could get a lot more square foot and

<p style="text-align: right;">86</p> <p>1 Sater - Confidential 2 make a lot more money. 3 Despite the fact it's a gorgeous, 4 elegant building and everybody wants to get in 5 there, still you can make a lot more money with a 6 high-rise. 7 Q. With regard to Phoenix in particular, 8 do you know, based upon your work with the Trump 9 Organization, whether Mr. Trump and the Trump 10 Organization preferred a high-rise structure in 11 Phoenix? 12 A. Absolutely. Absolutely. That was more 13 than obvious and discussed; please don't ask me 14 how many times. But the answer is yes. It's not 15 even an issue of how many times. Both Bayrock and 16 the Trump Organization wanted to have a high-rise 17 on that property or as tall of a building as 18 possible on that property. 19 Q. And sitting here in April of 2008, such 20 a high-rise to the original design is not possible 21 under the laws in the Camelback Corridor; correct? 22 A. Correct. 23 MR. MELODIA: Why don't we finish for 24 lunch. 25 MR. RESSLER: Great.</p>	<p style="text-align: right;">88</p> <p>1 2 AFTERNOON SESSION 3 (Time noted: 1:22 p.m.) 4 THE VIDEOGRAPHER: We're back on the 5 record. The time on the video monitor is 1:22 6 p.m. This starts Tape Number 3. 7 FELIX H. SATER, 8 resumed and testified further as follows: 9 EXAMINATION CONTINUED BY 10 MR. MELODIA: 11 Q. Good afternoon, Mr. Sater. We finished 12 before the lunch break talking about Phoenix. 13 That's where we're going to pick up. 14 A. Okay. 15 Q. And we're going to pick up the pace to 16 try to get things done today. 17 What was the location, the address, of 18 the Phoenix project when you first presented it to 19 Mr. Flicker? 20 A. Camelback and 26th Street. 21 Q. Has that remained -- 22 A. Yes. 23 Q. -- the property in question? 24 A. Yes. 25 Q. And I think you said already that that</p>
<p style="text-align: right;">87</p> <p>1 Sater - Confidential 2 THE VIDEOGRAPHER: The time on the 3 video monitor is 12:42 p.m. We're off the 4 record. This ends Tape Number 2. 5 (Time noted: 12:42 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">89</p> <p>1 Sater - Confidential 2 property or the owner of that property was already 3 in a bankruptcy proceeding? 4 A. We're the owner of the property now. 5 Q. At that time. 6 A. We took it over -- at that time, yes. 7 Q. Bayrock took it over, as you described 8 it, as a white knight scenario? 9 A. We stepped in, we paid off all the 10 creditors, bought the land, because it was a 11 lease, subsequently after a variety of different 12 actions caused us to become the owner. 13 Q. How tall was the building that was on 14 the site when you bought it? 15 A. Oh, it was a one-story shopping mall. 16 Q. And were there any legal rulings or 17 promises made in the bankruptcy proceeding to 18 Bayrock that it could build a taller facility, 19 taller than the current zoning at that time? 20 A. Yes. 21 Q. Who made those promises? 22 A. One of the -- 23 MR. RESSLER: Wait. You said were 24 there any legal rulings or promises. 25 Q. Was it a legal ruling or promise?</p>

90	<p>1 Sater - Confidential</p> <p>2 A. Promise.</p> <p>3 Q. Who made that promise?</p> <p>4 A. It wasn't even a promise; it was a</p> <p>5 pitch by one of the owners who was in bankruptcy</p> <p>6 court, you know, using backup of various core plan</p> <p>7 and -- the village core plan there and various</p> <p>8 zoning and saying that we can get some height</p> <p>9 there.</p> <p>10 Q. Were you personally involved in the</p> <p>11 Phoenix project after pitching the original idea</p> <p>12 to Mr. Flicker and Mr. Reese?</p> <p>13 A. Yes.</p> <p>14 Q. Did you remain involved during the time</p> <p>15 when Mr. Trump had involvement?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remain involved today?</p> <p>18 A. Much less so.</p> <p>19 Q. Is the Phoenix project on that piece of</p> <p>20 land still an ongoing project at Bayrock?</p> <p>21 A. Yes.</p> <p>22 Q. You mentioned that the owner who was in</p> <p>23 the bankruptcy, one of them discussed the</p> <p>24 possibility of raising the height.</p> <p>25 A. Yes.</p>	92
91	<p>1 Sater - Confidential</p> <p>2 Q. Who was that?</p> <p>3 A. Ernest Menace.</p> <p>4 Q. I'm sorry, the last name?</p> <p>5 A. Ernest Menace.</p> <p>6 Q. Did Mr. Menace keep any ongoing</p> <p>7 interest in the property after the bankruptcy</p> <p>8 court proceedings were resolved?</p> <p>9 A. His partnership kept an ongoing</p> <p>10 interest, and so by the very nature he did as</p> <p>11 well, through his interest in the partnership.</p> <p>12 Q. And what's the name of the partnership?</p> <p>13 A. Camelback something or other. I don't</p> <p>14 remember the legal entity name.</p> <p>15 Q. Camelback Development Partners LLC?</p> <p>16 A. One is ours and one is theirs, and</p> <p>17 they're very close in name. I don't know which</p> <p>18 one is which.</p> <p>19 Q. Okay. Does Mr. Menace, through his</p> <p>20 partnership, maintain some ownership interest in</p> <p>21 that project today?</p> <p>22 A. No, he does not.</p> <p>23 Q. When did he cease to have any interest?</p> <p>24 A. A couple of months ago.</p> <p>25 Q. Did Bayrock buy out his interest or</p>	93
90	<p>1 Sater - Confidential</p> <p>2 another investor?</p> <p>3 A. We bought out his interest.</p> <p>4 Q. Does Bayrock have any other partners or</p> <p>5 investors in the Phoenix project today?</p> <p>6 A. Yes.</p> <p>7 Q. Who is that?</p> <p>8 A. The EFL Group.</p> <p>9 Q. Who are the principals of the EFL</p> <p>10 Group?</p> <p>11 A. I don't know. It's a publicly traded</p> <p>12 company.</p> <p>13 Q. Has Bayrock done other developments</p> <p>14 with the EFL Group?</p> <p>15 A. EFL Group came in and made a portfolio</p> <p>16 investment into a variety of projects, not just</p> <p>17 one. So the answer is yes but not as a stand-</p> <p>18 alone project. It was more of a portfolio</p> <p>19 investment for them.</p> <p>20 Q. A strategic partner?</p> <p>21 A. Strategic partner.</p> <p>22 Q. And was that done last summer?</p> <p>23 A. Yes.</p> <p>24 Q. At the time that Bayrock got, quote,</p> <p>25 in, as we previously discussed that term, and</p>	

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2 Q. At what point did the Trump

3 Organization and Mr. Trump become involved? You

4 said it was prior to committing?

5 A. From almost the very beginning past our

6 initial due diligence they became pretty involved.

7 I would say we discussed and in principle had an

8 agreement, had a verbal understanding that they

9 were in.

10 And I guess it was all formalized

11 sometime -- don't hold me to it but something

12 along the lines we had a verbal understanding, we

13 would go in, they liked the property, and as soon

14 as we secured the property and took it out of

15 bankruptcy court, I think we formalized our

16 relationship with them regarding that property and

17 started the rezoning process.

18 Q. Did Mr. Trump or the Trump Organization

19 put up any capital as part of that formalization?

20 A. No. They agreed to participate in

21 development, rezoning, you know, management of the

22 hotel. There were other considerations in

23 addition to using the Trump name, basically their

24 involvement in developing and then subsequently,

25 after built, managing the project.

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2 That was pretty much the -- I can't

3 give you the specific terms of the deal, but on --

4 on average that was pretty much the deal with them

5 regarding that project.

6 Q. And did you have any involvement in

7 negotiating that formalized deal?

8 A. Yes, I did.

9 Q. Who was involved in negotiating the

10 deal from the Bayrock side?

11 A. Myself; I don't remember which law firm

12 we used, I think it was Ackerman Senterfit; and on

13 the Trump side, I believe it was Charlie Reese,

14 Russ Flicker, and, if I'm not mistaken, Bernie

15 Diamond as the attorney for the Trump

16 Organization.

17 Q. Anybody else from Bayrock other than

18 you and Bayrock's lawyer?

19 A. Sure. I just don't remember who. Some

20 of the people from Bayrock I'm sure had

21 involvement.

22 Q. Do you know whether Mr. Reese was

23 involved?

24 A. No, he was not -- no, I know he was not

25 involved, other than updates I would give him

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2 about the situation.

3 Q. Were any of the Trump children involved

4 in the initial formalization of the deal on

5 Phoenix?

6 A. You know, Don, Jr. -- yes, Don, Jr.,

7 was involved, yes. You know what, it hits me

8 because we took a trip out there and it was

9 Charlie Reese, Russ Flicker, and Don, Jr., who

10 were there when we met various city politicians

11 and had various meetings about the zoning and were

12 picking a zoning lawyer. Just part of the whole

13 development process. So yes, Don, Jr., was

14 already part of that team.

15 Q. Is Jody Kriss somebody who works at

16 Bayrock?

17 A. He's on a leave of absence right now.

18 Q. Was Jody Kriss involved in the Phoenix

19 transaction?

20 A. To some extent I guess he was, but not

21 very actively the time frame that you're

22 mentioning.

23 Q. Let's take a broader time frame, then.

24 A. Sure.

25 Q. In terms of the Phoenix project during

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2 the time frame when Trump and the Trump

3 Organization had any involvement in it. During

4 that time frame, which Bayrock personnel were

5 among the core team?

6 A. In the beginning I did most of the

7 negotiating on the deal, and I handled most of the

8 deal. There were people who assisted me. I don't

9 remember which one of the Bayrock team members it

10 was.

11 And I sort of ran it until a point in

12 time when it became -- when there became a need to

13 hand it off to a full-time project manager, and

14 that was Beau Woodring. And it was handed

15 off to -- I don't remember if it first went to

16 Jody, then to Beau, then back to Jody or went

17 directly to Beau and then to Jody.

18 But there were other people in Bayrock

19 who were involved. Who specifically, from me then

20 Beau took it over, who Beau used within Bayrock,

21 he used various people. I don't know.

22 Q. Is there a norm in your work at Bayrock

23 for when you would have ceased to be involved in a

24 project as a new business developer and a PM, or

25 project manager, would take over?

25 (Pages 94 to 97)

98	<p>1 Sater - Confidential</p> <p>2 A. Norm, no, but that's the way it works.</p> <p>3 That's the way it works.</p> <p>4 Q. At some point it happens?</p> <p>5 A. At some point it happens, but there's</p> <p>6 no specific cutoff, there's no specific date,</p> <p>7 time, or event that causes that to happen.</p> <p>8 Q. When did it happen in Phoenix?</p> <p>9 A. When Beau took over.</p> <p>10 Q. When would that be?</p> <p>11 A. I'm sorry.</p> <p>12 Q. In terms of the status of the project,</p> <p>13 when was it, whether you remember the specific</p> <p>14 time frame or not?</p> <p>15 A. When we got into -- when we got into</p> <p>16 the zoning or when -- initially I was involved</p> <p>17 when we were still speaking about the zoning,</p> <p>18 speaking to various people, getting details,</p> <p>19 getting information, and then subsequently hiring</p> <p>20 the people, zoning lawyer, zoning consultants,</p> <p>21 things of that nature.</p> <p>22 At that point when the team was set or</p> <p>23 more or less set, at that point Beau Woodring took</p> <p>24 over.</p> <p>25 Q. So Jody or Beau but a project manager</p>	100	<p>1 Sater - Confidential</p> <p>2 not to anticipate the questions.</p> <p>3 Q. Are we in that due diligence time frame</p> <p>4 we talked about earlier?</p> <p>5 A. No. It's a different due diligence.</p> <p>6 It's already the due diligence to get the deal</p> <p>7 started, specifically regarding to their trip. I</p> <p>8 apologize for anticipating your question.</p> <p>9 Specifically to that trip, we were already moving</p> <p>10 forward on discussions on how, what, and where to</p> <p>11 do regarding the site. So at that point they were</p> <p>12 already either verbally or contractually</p> <p>13 committed.</p> <p>14 Q. And at that time it was still the</p> <p>15 zoning law of the Camelback Corridor that</p> <p>16 buildings such as the one you were contemplating</p> <p>17 could not exceed 56 feet, a certain height</p> <p>18 restriction?</p> <p>19 A. I think so, yes.</p> <p>20 Q. So whenever this trip occurred --</p> <p>21 A. Under old zoning, yes.</p> <p>22 Q. -- it was definitely under the old</p> <p>23 zoning regime?</p> <p>24 A. Absolutely, absolutely.</p> <p>25 Q. Do you remember which public officials</p>
99	<p>1 Sater - Confidential</p> <p>2 other than you had taken over the Phoenix project</p> <p>3 while the Trump Organization was still involved in</p> <p>4 it?</p> <p>5 A. Oh, yes.</p> <p>6 Q. You mentioned a trip with Donald Trump,</p> <p>7 Jr., and I believe you mentioned --</p> <p>8 A. Flicker and Reese were there.</p> <p>9 Q. -- Mr. Flicker and Mr. Reese from the</p> <p>10 Trump Organization to Arizona. When did that take</p> <p>11 place?</p> <p>12 A. Early in the beginning of the deal,</p> <p>13 very early in the deal.</p> <p>14 Q. Had these formalized documents with the</p> <p>15 Trump Organization already been signed?</p> <p>16 A. I don't know. But at that point they</p> <p>17 clearly knew it was a deal we were going to do</p> <p>18 together, whether they were formalized or not.</p> <p>19 Q. And the purpose of that trip or</p> <p>20 purposes of that trip were what?</p> <p>21 A. Due diligence regarding the deal.</p> <p>22 Q. So going back to --</p> <p>23 A. I can't tie it into the due diligence</p> <p>24 tying into what we discussed before.</p> <p>25 MR. BURSTEIN: I would ask the witness</p>	101	<p>1 Sater - Confidential</p> <p>2 you met with in Arizona?</p> <p>3 A. Sure. We met the mayor, we met the</p> <p>4 city councilman, we met other council people, we</p> <p>5 met city planning managers, a whole host of public</p> <p>6 officials.</p> <p>7 Q. At this time were you aware already of</p> <p>8 neighborhood groups who were opposing any change</p> <p>9 to the zoning?</p> <p>10 A. Yes.</p> <p>11 Q. So whenever this occurred, you were</p> <p>12 already aware that there was some public</p> <p>13 opposition to any height change?</p> <p>14 A. No, we knew that there would be</p> <p>15 neighborhood opposition. We were erroneously</p> <p>16 directed by the city councilman how to deal with</p> <p>17 them.</p> <p>18 Q. What do you mean by that?</p> <p>19 A. Well, the group there is run by a trio</p> <p>20 of guys who are interested in payoff. They take</p> <p>21 the money, put it into their organization. Who</p> <p>22 knows what they do with it, but under the auspices</p> <p>23 of pay us and we won't depose you.</p> <p>24 And Greg Stanton, who was the</p> <p>25 councilman there, told us if you pay these guys</p>

26 (Pages 98 to 101)

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 2 money, I won't support your project because then
 3 that will just be par for the course and everybody
 4 else who comes in, they're going to extort money
 5 from them also.
 6 Well, we didn't pay them. They came
 7 out in opposition, and Greg acted like a
 8 politician. And when the opposition became too
 9 vocal, he switched sides and didn't support our
 10 project to begin with.
 11 And we could have avoided all of that
 12 just by paying the neighborhood groups, under some
 13 sort of agreement. This was not intended to be an
 14 under-the-table payment; it's an official payment
 15 to their group for improvement of trees or
 16 whatever it is that they wanted improvements on.
 17 But you pay them; they don't come out to oppose
 18 you.
 19 The councilman said don't pay them. We
 20 listened to the councilman. We didn't. They
 21 opposed to us. Last minute he had lunch with me,
 22 and the next day -- he had lunch with me and
 23 guaranteed me his support, and the next day he
 24 told the press that he's not supporting the
 25 project.

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 2 Q. That was Greg Stanton?
 3 A. That was Greg Stanton, yes.
 4 Q. The neighborhood group, is one of those
 5 that you've been speaking of this organization
 6 that calls its P'OED, P'O-E-D, People Organized
 7 Exercising Democracy?
 8 A. No, I believe P'OED was a group that
 9 was formed by the previous neighborhood group when
 10 we won zoning to come out and start a referendum
 11 to stop our zoning. So P'OED was a spin-off of
 12 some other neighborhood group, which is the one
 13 I'm referring to in the first place.
 14 Q. The one you're talking about, then, is
 15 Preserve Our Community Core? Does that sound
 16 familiar?
 17 A. No, I forgot the name of the
 18 organization.
 19 Q. Did you become aware of that
 20 organization, Preserve Our Community Core, having
 21 a petition signed by 600 residents opposing
 22 raising the height limits in the Camelback
 23 corridor?
 24 A. Again, I believe that those were
 25 spin-off and subsequent groups formed to battle us

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 2 specifically. There was a neighborhood group --
 3 and I don't remember their name -- that existed
 4 and existed previously and had actually shaken
 5 down a couple of Fortune 500 companies for going
 6 into the core in the past.
 7 They received payments in the past from
 8 various developments and developers and large --
 9 it was a large Fortune 500 bank that wanted to
 10 come in there. They negotiated with them. And
 11 then subsequently after we won, they formed these
 12 other opposition groups. But I don't remember the
 13 name of the first one.
 14 I'm pretty sure, though, that P'OED and
 15 these other ones, especially if there are
 16 petitions, that was specifically related to
 17 battling our zoning and not the older sort of all-
 18 encompassing group that existed.
 19 Q: Prior to this Phoenix project, to your
 20 knowledge had Bayrock ever developed to complete
 21 any other development in Arizona?
 22 A. No.
 23 Q. To your knowledge prior to this Phoenix
 24 project had the Trump Organization developed to
 25 successful completion any other project in

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 2 Arizona?
 3 A. Not to my knowledge.
 4 I'm not making the 4 o'clock, am I?
 5 Sorry.
 6 (Pause.)
 7 A. Go ahead. I know how to multitask.
 8 Q. Did the Trump Organization receive any
 9 fees or other monies at any point for its role or
 10 participation in this Phoenix project?
 11 A. I believe there was a \$250,000 payment
 12 to kick off the contract with them for services
 13 rendered and then an ongoing payment that I don't
 14 remember how much the monthly payment was. But
 15 yes, they were receiving payment for, you know,
 16 development services under a development services
 17 agreement.
 18 Q. At some point did those payments stop?
 19 A. Yes.
 20 Q. Does the Trump Organization or
 21 Mr. Trump have any current stake or interest in
 22 the Phoenix project?
 23 A. No.
 24 Q. Are you aware of any monies being owed
 25 to Mr. Trump or the Trump Organization from

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1 Sater - Confidential
2 Bayrock in connection with the Phoenix project?
3 A. Technically it's possible that either
4 they owe -- we owe them some money or they owe us
5 some money. Contractually -- when I say
6 "technically," I mean contractually. But I don't
7 believe there's been a discussion lately about
8 monies owed.
9 Q. Have you seen any demand for any monies
10 owed from them?
11 A. We had discussed about their demand for
12 monies owed, and I think we had a discussion with
13 them about demand for monies that we owed. And I
14 think it was put in abeyance. I think that was
15 six months to a year ago.
16 Q. Do you remember whether all of those
17 monies on both sides related to Phoenix or --
18 A. Phoenix.
19 Q. Just to Phoenix?
20 A. It was a Phoenix-related issue. I
21 don't remember the issues surrounding it. But it
22 was -- I think they thought we owed them some
23 money, and we thought they owed us some money. I
24 remember it going nowhere.
25 Q. Who other than you at Bayrock would

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2 have been involved in those discussions?
3 A. Accounting, legal, a bunch of people.
4 Q. Was Mr. Arif involved in that?
5 A. If he was, it would only have been to
6 the point where somebody from legal or accounting
7 would have given him an update.
8 Q. As far as you know, within the past
9 year there have been no payments from either side
10 to the other, between the Trump Organization and
11 Bayrock, in connection with the Phoenix project?
12 A. I believe you're right, I don't think
13 there has been any payments.
14 Q. Did you ever see at any point any
15 projections by anybody, either from Bayrock or the
16 Trump Organization, as to what monies or potential
17 fees the Trump Organization might get if the
18 Phoenix project were completed and if it were
19 successful?
20 A. Sure.
21 Q. You have seen such?
22 A. I've seen them, and I probably created
23 one or two. We do pro formas on deals all the
24 time, and I'm sure there have been calculations.
25 I'm certain. Now who created, whether it was me

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2 or an analyst at the firm, but the answer is yes,
3 they were created, they were seen, they were
4 discussed, and they were shared.
5 Q. And would you in the normal course --
6 not just in connection with the Phoenix
7 transaction, but in dealing with Mr. Trump and the
8 Trump Organization -- create what you call pro
9 formas that would reflect the potential benefit of
10 a potential deal to the Trump Organization? I
11 mean, was that part of your service?
12 A. Yes, but a lot of times it would have
13 been verbal just as much as written, because it's
14 easy to calculate. So in conversation it's easy
15 to say it's 500,000 feet, we're going to sell at
16 1,000 a feet, your end is 10 percent, it's 100 a
17 foot times 500,000 or 50 million or something like
18 that.
19 So it's a very easy calculation that in
20 some case pro formas were made; in some cases pro
21 formas weren't made.
22 Q. You think one would have been made,
23 though, in connection with Phoenix?
24 A. I believe so.
25 Q. And would that have been done, do you

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2 think, in terms of time frame after the contracts
3 were drawn up and formalized?
4 A. It could have been as part of the
5 negotiation. I remember seeing one; but when, I
6 don't know why we would send over one after the
7 fact. It would be more in the negotiating phase
8 of the agreement where we would create one to show
9 to them. I remember seeing one, but I don't
10 remember if it was post or pre.
11 Q. But it would have been created from the
12 Bayrock side?
13 A. Or it could have been created by the
14 Trump side and sent down to us to confirm, review,
15 or make changes. It's a pro forma. It's a real
16 estate pro forma. Everybody does them. The
17 organization does them; we do them.
18 Q. Correct me if I'm wrong, but I don't
19 think Bayrock was guaranteeing a certain return or
20 other than the 250,000?
21 A. No, I don't believe we were -- I don't
22 believe we would guarantee a return.
23 Q. Why is that?
24 A. Only death and taxes. That we stand
25 behind our guarantee. Everything else is life.

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2 Q. All the variety we talked about

3 earlier?

4 A. Yeah.

5 Q. Things that can happen?

6 A. It's a deal.

7 Q. In fact, with regard to the Trump

8 Organization and Bayrock, the Phoenix deal did not

9 hold together, did not come to successful

10 completion; correct?

11 A. No, that's not correct. It's still up

12 in the air. There's still the possibility that

13 it's going to be completed, and there's still the

14 possibility that it may be a Trump, even, because

15 Donald keeps pitching for the work. He keeps

16 saying, you know, we should do Phoenix.

17 Q. When's the last time you heard him I

18 say that?

19 A. A couple months ago.

20 Q. Has he said that to you?

21 A. Either to me or in front of me, yes.

22 Q. Has he said that to Mr. Arif?

23 A. You'll have to ask Mr. Arif.

24 Q. But you've heard him say that within

25 the past few months?

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1 Sater - Confidential

2 A. Maybe six months ago, a year ago, I

3 don't know. But he said it to me maybe once or

4 twice that, you know, we really should do Phoenix.

5 Q. What is the status of the actual

6 building in Phoenix today?

7 A. We're reviewing our options.

8 Q. Just physically if I were to look at

9 it, what would I see?

10 A. The old shopping center. No, we may

11 have razed it already. I'm not sure. I haven't

12 been there in a while.

13 Q. At some point was there a formal

14 termination of the license agreement that you

15 negotiated and that was signed with the Trump

16 Organization?

17 A. I don't know. I don't think so.

18 Q. Has Bayrock ever taken the position

19 that the Trump Organization had defaulted on its

20 obligations under the agreements that were signed

21 that you negotiated with regard to the Phoenix

22 project?

23 A. Maybe. I'm not sure. A position of

24 that nature would have been a legal one and not

25 one that I would be creating.

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1 Sater - Confidential

2 Q. As far as you know, did Mr. Trump

3 himself ever go to Phoenix to see the site?

4 A. I don't know.

5 Q. Do you know --

6 A. I didn't take him there to see the

7 site, but he may have been there and saw the site.

8 Q. Do you know whether Mr. Trump ever made

9 any appearances in the Phoenix market in terms of

10 marketing the project?

11 A. I think he might have, but I don't

12 remember. And sometimes, you know, it's easy to

13 get confused: Did Don, Jr. go, did Ivanka go, did

14 Donald, Sr., go? I don't remember. I can't

15 answer that.

16 Q. You do remember that Don, Jr. went?

17 A. I remember that meeting, I remember the

18 lunch, I remember some of the meetings. We were

19 there for like two, three days, so it's kind of

20 vivid in my mind. Whether Donald went there or

21 not -- there were a bunch of times that he was

22 invited for certain things in Phoenix. I just

23 don't remember whether he actually went.

24 Q. You don't remember if he ever went?

25 A. I don't remember. If he said he did, I

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1 Sater - Confidential

2 I wouldn't contest it; and if he said he never went,

3 I wouldn't argue about that either.

4 Q. You --

5 (Unintelligible discussion interrupted

6 by the reporter.)

7 MR. RESSLER: This witness has now said

8 at least four or five times, Mr. Melodia, that

9 he doesn't remember, he doesn't know. You

10 keep asking the question, hoping he will say

11 something else. So let's move on.

12 MR. MELODIA: I don't have any

13 particular hope for what his testimony is.

14 I'm trying to make it clear.

15 MR. RESSLER: It is clear, based on his

16 five identical answers, critical clear.

17 MR. MELODIA: Pelucidly.

18 Q. When did Mr. Trump and the Trump

19 Organization cease to be involved in the Phoenix

20 project?

21 A. I don't remember. Maybe about a year

22 or two, about a year and change, maybe.

23 Q. You've mentioned previously that when

24 Bayrock committed to the Phoenix project the

25 zoning was the old zoning, the low zoning. I will

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2 represent to you that was 56 feet at the time.
3 A. Uh-huh.
4 Q. And you've also referenced a decision
5 by the Phoenix city council to raise that height
6 limit at some point.
7 A. Uh-huh.
8 Q. That decision was reversed; correct?
9 MR. RESSLER: I'll object to the form
10 of the question.
11 A. It wasn't reversed. I think it was --
12 they agreed to height. The opposition started
13 actions. And it was suggested to us by the
14 political forces that be that it's just time to
15 sit down and negotiate with them so as not to risk
16 a referendum so as not to spend millions of
17 dollars fighting a referendum. It was just -- it
18 was just -- we were ready to throw up. It was
19 done. We were just deep-fried over this whole
20 issue in Phoenix.
21 Q. You had already had the flip-flop you
22 described earlier from Greg Stanton; correct? Or
23 was this at the same time?
24 MR. RESSLER: Objection to the form of
25 the question.

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1 Sater - Confidential
2 A. No, Greg Stanton -- Greg Stanton was
3 earlier. This was already after the vote.
4 Q. You're aware that there was public
5 opposition at this point; correct?
6 MR. RESSLER: Objection. Mark, you're
7 just -- you're recapitulating testimony.
8 That's what you're doing now.
9 MR. MELODIA: I am actually covering a
10 period of time we have not covered in any way
11 in this deposition.
12 MR. BURSTEIN: Let me ask a question.
13 Does New Jersey -- since they follow the
14 Federal Rules of Evidence, do they have the
15 same rule about seven hours of depositions?
16 MR. MELODIA: They do not. And by the
17 way, we started 45 minutes late.
18 MR. BURSTEIN: I'm not saying you
19 haven't reached seven hours, but we're getting
20 to the point we've been through about four and
21 a half hours and there hasn't been a question
22 yet about whether or not the book had any
23 impact on any of these projects.
24 But it's your time. But at some point
25 we're going to get to the point where I'm

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1 Sater - Confidential
2 going to have to move for a protective order.
3 I'm not saying it's now and I'm not saying
4 it's necessarily seven hours. But this is --
5 I've told you what the guy's here for, and
6 we're not getting one question about this.
7 MR. MELODIA: I understand.
8 Q. In the fall of 2005, Mr. Sater, did you
9 see an advertisement in The New York Times by one
10 of these neighborhood activist groups that were
11 opposing the new height restrictions in Phoenix?
12 A. When?
13 Q. In the fall of 2005.
14 A. Fall of 2005. I may have. I don't
15 remember.
16 Q. Do you recollect any discussions at
17 Bayrock or with the Trump Organization about that?
18 A. I may have, but no, I don't remember.
19 Q. Were you still, in the fall of 2005,
20 involved directly in the Phoenix project, or at
21 this point had Beau Woodring or one of your other
22 colleagues become project manager?
23 A. I think Beau Woodring became project
24 manager at that time, but I still may have been
25 involved. I don't remember.

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2 Q. I'm going to represent to you that the
3 book that we looked at earlier that Mr. O'Brien
4 wrote, again, was published at the end of October
5 of 2005. Were you aware that there were petitions
6 circulated and signed by neighborhood opposition
7 groups in Phoenix prior to that time?
8 MR. RESSLER: Objection to the form of
9 the question.
10 A. I'm sure there were. I don't know
11 whether they were -- I mean, look, we had
12 opposition. As it relates to the book, I went to
13 a couple of meetings and a couple of opposition,
14 and the old ladies were showing the book up and
15 screaming "Trump's a fraud" and so on and so
16 forth.
17 So there may have been petitions before
18 or after. I don't know. But, I mean -- I don't
19 get it. Sure, okay, there may have been petitions
20 before.
21 I'm sorry I answered that way, but I'm
22 just trying to get to the point and move on,
23 because I'm getting tired as well.
24 Q. When was the vote on the referendum
25 scheduled?

<p style="text-align: right;">118</p> <p>1 Sater - Confidential</p> <p>2 A. I don't remember.</p> <p>3 Q. And you said the referendum -- do you</p> <p>4 know whether the referendum ever occurred?</p> <p>5 A. No, it did not.</p> <p>6 Q. Did you attend the December Phoenix</p> <p>7 city council meeting on the referendum?</p> <p>8 A. It wasn't on the referendum; it was on</p> <p>9 the zoning.</p> <p>10 Q. Did you attend a Phoenix city council</p> <p>11 meeting in December 2005?</p> <p>12 A. I believe I did, yes.</p> <p>13 Q. Who else attended from Bayrock, if</p> <p>14 anybody?</p> <p>15 A. There were a couple people. Beau was</p> <p>16 certainly there. There may have been a few other</p> <p>17 people. I don't remember.</p> <p>18 Q. What about from the Trump Organization?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know whether Donald Trump</p> <p>21 attended the meeting?</p> <p>22 A. I remembered that Donald Trump did not</p> <p>23 attend the meeting.</p> <p>24 Q. At that meeting did audience members</p> <p>25 voice their opinion that the Phoenix project</p>	<p style="text-align: right;">120</p> <p>1 Sater - Confidential</p> <p>2 A. Yes, there were. There were four</p> <p>3 others.</p> <p>4 Q. Have the height restrictions been</p> <p>5 lifted to date for any of them?</p> <p>6 A. Well, at the city council vote, they</p> <p>7 voted and gave all the developers something, maybe</p> <p>8 not everything they wanted, but they gave them</p> <p>9 some sort of a -- whatever the developers were</p> <p>10 asking for, something was given to them.</p> <p>11 Q. What --</p> <p>12 A. It was a win for the developers. What,</p> <p>13 I don't remember each and every guy's deal. I</p> <p>14 didn't care.</p> <p>15 Q. What did Bayrock and the Trump</p> <p>16 Organization get, if anything, out of that</p> <p>17 meeting?</p> <p>18 A. I think we got like 140 feet, if I'm</p> <p>19 not mistaken.</p> <p>20 Q. This is in December of 2005?</p> <p>21 A. I don't remember the date of the</p> <p>22 meeting. It was a city council meeting.</p> <p>23 Q. Have you attended more than one city</p> <p>24 council meeting in Phoenix?</p> <p>25 A. I attended I believe two city council</p>
<p style="text-align: right;">119</p> <p>1 Sater - Confidential</p> <p>2 should not go forward?</p> <p>3 A. Yes, did they ever.</p> <p>4 Q. And is this the meeting at which you</p> <p>5 say some people had the book in their hands?</p> <p>6 MR. RESSLER: Objection.</p> <p>7 A. One of the meetings.</p> <p>8 Q. I'm sorry?</p> <p>9 A. One of the meetings.</p> <p>10 Q. And how many people -- I'm speaking now</p> <p>11 about the December Phoenix city council meeting.</p> <p>12 How big a room was it in? Approximately how many</p> <p>13 people are we talking about?</p> <p>14 A. Large auditorium, maybe over a thousand</p> <p>15 people, if not more; probably more, maybe about</p> <p>16 2,000 people. People spilled out onto the street</p> <p>17 as well. It was a big city council vote on not</p> <p>18 just our project but there were other matters</p> <p>19 before the council. But our project in</p> <p>20 development in the Camelback core was a pretty</p> <p>21 contentious issue. So there were a lot of people</p> <p>22 there, I believe, because of this issue.</p> <p>23 Q. Were there other developers at this</p> <p>24 same time period trying to get the height</p> <p>25 restriction lifted?</p>	<p style="text-align: right;">121</p> <p>1 Sater - Confidential</p> <p>2 meetings, but we also had other meetings with the</p> <p>3 opposition groups where we were trying to do town</p> <p>4 hall meetings. We hosted one or two of those in</p> <p>5 the space right in one of the buildings on our</p> <p>6 property and invited the neighborhood in, which</p> <p>7 there's a lot of opposition people who showed up.</p> <p>8 We unveiled our idea for the property, so on and</p> <p>9 so forth.</p> <p>10 Q. At which of the meetings you just</p> <p>11 described did you personally see anybody with the</p> <p>12 book in their hand?</p> <p>13 A. If I'm not mistaken, both.</p> <p>14 Q. "Both" being, I'm sorry, what?</p> <p>15 A. The town hall meetings and the city</p> <p>16 council meeting.</p> <p>17 Q. Were there any recordings made of any</p> <p>18 of those meetings?</p> <p>19 MR. RESSLER: Objection to the form of</p> <p>20 the question. How would he know if people</p> <p>21 were recording the meeting?</p> <p>22 A. Well, I'm sorry, the city council</p> <p>23 meeting was definitely recorded.</p> <p>24 MR. BURSTEIN: He got you there.</p> <p>25 MR. RESSLER: What about the other</p>

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1 Sater - Confidential
 2 meeting.
 3 A. The problem is I don't know if they
 4 record when people speak in this form (indicating)
 5 or if it's a general recording. So I don't -- I
 6 don't know the details. He's right, I don't know
 7 the details of how they recorded it. But I'm sure
 8 there's some sort of record of the city council
 9 meeting.
 10 Q. Have you ever --
 11 A. Oh, you will find some instances -- if
 12 you get the recordings, you will definitely find
 13 some instances there of people screaming and
 14 referring to the book and referring to Donald
 15 Trump in negative ways and holding the book up as
 16 an example.
 17 I'm sure if you track it down you'll
 18 get it. I don't know if you want to track it
 19 down, but it exists.
 20 Q. How many people are we talking about
 21 who specifically referenced the book? This isn't
 22 a case about whether somebody has negative
 23 opinions about Donald Trump; this is about this
 24 book, as I've been remained by your lawyer.
 25 MO MR. RESSLER: Wait a minute. Objection

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1 Sater - Confidential
 2 to your testimony. Objection to your
 3 testimony, and I move to strike it from the
 4 record. Ask your question, please. Ask a
 5 question.
 6 Q. My question is how many people in --
 7 let's start with the city council meeting. How
 8 many people you saw with the book in their hands.
 9 A. Sorry, I didn't count them. I don't,
 10 know.
 11 Q. Did you see any?
 12 A. Yes.
 13 MR. RESSLER: Objection, asked and
 14 answered. The witness has now said several
 15 times that he saw people holding the book.
 16 Q. Do you know the identity of any such
 17 person?
 18 A. I don't know any of their names.
 19 Q. Did anybody actually on the city
 20 council have the book in their hands or on their
 21 desk, as far as you know?
 22 A. I didn't see them.
 23 Q. Did anybody on the city council
 24 reference the book to you or to the group at that
 25 meeting?

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1 Sater - Confidential
 2 A. I don't believe so.
 3 Q. What about in the town hall meeting
 4 setting where you said you invited the community
 5 in, did you see anybody with the book in their
 6 hands in the town hall meeting?
 7 A. Yes.
 8 Q. And similarly, do you not know the
 9 identity of any of those people?
 10 MR. RESSLER: Objection to the form of
 11 the question.
 12 A. We invited members of the neighborhood
 13 to come in. Who knows their names. Who cares to
 14 know their names. There was a sign-in sheet,
 15 which I have no idea where it is now, but it
 16 exists somewhere. There was more than a couple
 17 hundred people that showed up.
 18 You have to understand our property
 19 there is the old Hard Rock Cafe site, and it's now
 20 absent all furniture. So it's a pretty -- it's
 21 like a 4 or 5 thousand square foot, you know.
 22 It's easily ten of these rooms. So there was a
 23 lot of people there.
 24 And out of hundreds of people, I
 25 probably knew four. So I wouldn't know the names

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1 Sater - Confidential
 2 of people that showed up. They were opposition
 3 members. They were part of one group or another.
 4 I'm sure it was orchestrated. It
 5 didn't look like these people -- let me put it to
 6 you this way: I highly doubt that some old lady
 7 read the book and decided to become a major
 8 spokesperson for the opposition. You know, they
 9 used whatever they could in their fight against
 10 us.
 11 Q. Because they opposed the development?
 12 A. Well, first of all, they didn't get
 13 paid off. So that really pissed them off. And
 14 then maybe in the hope of getting paid off or
 15 maybe because they genuinely opposed the
 16 development. I don't know.
 17 But I know they were a pretty organized
 18 group. In fact, at the city council meeting I
 19 remember them saying break -- interrupting the
 20 city council meeting towards the end and saying
 21 the buses for such-and-such senior citizens home
 22 is going to be leaving from the corner, everyone
 23 from whatever the, you know, ABC senior citizens
 24 home, please go on your bus. So it was a pretty
 25 orchestrated campaign.

<p style="text-align: right;">126</p> <p>1 Sater - Confidential</p> <p>2 Do I believe that some random</p> <p>3 individual read the book and came out and decided</p> <p>4 to scream about it? No. I believe the opposition</p> <p>5 forces marched the forces, used whatever tools</p> <p>6 they had at their disposal. And if anybody yelled</p> <p>7 out, I'm sure it was an orchestrated and planned</p> <p>8 yelling out.</p> <p>9 Q. Did anybody who yelled out about the</p> <p>10 book specifically reference anything particular</p> <p>11 about the book?</p> <p>12 A. Yeah: Donald Trump's a sham, read this</p> <p>13 book, stuff like that. I can't -- now Mr. Resler</p> <p>14 comes to me and says, Remember what somebody said.</p> <p>15 How the hell do I remember what somebody says?</p> <p>16 You're asking me: Remember what somebody said. I</p> <p>17 remember that there were thousands of people in</p> <p>18 the room screaming bloody murder.</p> <p>19 I specifically remember that some</p> <p>20 people had a book, some people were screaming and</p> <p>21 saying things about it. Specifically what? To be</p> <p>22 honest with you, the both of you, I could care</p> <p>23 less.</p> <p>24 MR. MELODIA: I think we are officially</p> <p>25 out of pots on both of our houses there, Mark.</p>	<p style="text-align: right;">128</p> <p>1 Sater - Confidential</p> <p>2 THE VIDEOGRAPHER: We're back on the</p> <p>3 record. The time on the video monitor is 2:12</p> <p>4 p.m.</p> <p>5 MR. MELODIA: I'll mark as Defendants'</p> <p>6 Exhibit 159 a letter dated as of January 1,</p> <p>7 2005, on Trump Organization letterhead</p> <p>8 regarding Trump Moscow.</p> <p>9 (Defendants' Exhibit 159, letter dated</p> <p>10 1/1/05 from Trump Organization, marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Mr. Sater, earlier today you referenced</p> <p>13 I believe you called it an exclusive arrangement</p> <p>14 or agreement with Mr. Trump regarding Moscow. Is</p> <p>15 this what you were referencing?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Is there, to your knowledge, any other</p> <p>18 written agreement with the Trump Organization or</p> <p>19 Donald Trump and Bayrock concerning any project in</p> <p>20 Moscow other than this one?</p> <p>21 A. This is not referencing a specific</p> <p>22 project in Moscow.</p> <p>23 Q. Fair enough. You're right.</p> <p>24 Is there any license agreement,</p> <p>25 development agreement, or other type of contract</p>
<p style="text-align: right;">127</p> <p>1 Sater - Confidential</p> <p>2 MR. BURSTEIN: I agree.</p> <p>3 Q. In the town hall meeting and in the</p> <p>4 city council meeting, were people holding things</p> <p>5 up other than just the book? Were there placards,</p> <p>6 for example?</p> <p>7 A. Their fingers, their middle finger,</p> <p>8 some people came with a plaque, some people came</p> <p>9 with a sign. Some woman brought her cat; I don't</p> <p>10 know. It was pretty surreal.</p> <p>11 Have you ever been to one of these</p> <p>12 things where it's pretty heated? It's pretty</p> <p>13 surreal.</p> <p>14 (Discussion off the record.)</p> <p>15 Q. Did any government official tell you at</p> <p>16 any point that they would not approve the full</p> <p>17 height of the proposed project in Phoenix because</p> <p>18 of the book?</p> <p>19 A. Absolutely not. No, they did not.</p> <p>20 MR. MELODIA: Off the record for one</p> <p>21 minute.</p> <p>22 THE VIDEOGRAPHER: The time on the</p> <p>23 video monitor is 2:11 p.m. We're off the</p> <p>24 record.</p> <p>25 (Pause.)</p>	<p style="text-align: right;">129</p> <p>1 Sater - Confidential</p> <p>2 between Bayrock and Trump and the Trump</p> <p>3 Organization concerning any property in Moscow</p> <p>4 other than Defendants' Exhibit 159?</p> <p>5 A. I don't believe so, but I don't think</p> <p>6 so.</p> <p>7 Q. And you were not involved in</p> <p>8 negotiating any such document; correct?</p> <p>9 A. I don't remember, but I don't think so.</p> <p>10 Q. You pointed out to me that this</p> <p>11 document does not reference a specific project or</p> <p>12 property; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. What was, to your understanding --</p> <p>15 A. Hold on. Let me just get this. Just</p> <p>16 one second.</p> <p>17 Q. Okay.</p> <p>18 (Pause.)</p> <p>19 Q. What was the purpose of this agreement,</p> <p>20 if you know?</p> <p>21 A. I do know, I identified an opportunity</p> <p>22 in Moscow. I actually identified a specific</p> <p>23 opportunity. And I came to Mr. Trump and said</p> <p>24 that I have a very good opportunity in Moscow that</p> <p>25 I'd like to negotiate with the owner of the</p>

130	<p>1 Sater - Confidential</p> <p>2 property there and I think that there's a good</p> <p>3 opportunity to turning that into a Trump Tower.</p> <p>4 It's a very good location. It would be</p> <p>5 a very good development. And I'd like you to</p> <p>6 grant us a one-year exclusive so that while</p> <p>7 we're -- so that we don't waste our time,</p> <p>8 basically, while we're negotiating with them, A,</p> <p>9 so that nobody goes around us or another</p> <p>10 opportunity doesn't pop up, so that we don't waste</p> <p>11 our time. And that's where this came from.</p> <p>12 So there was a specific opportunity,</p> <p>13 but the letter is not referencing a specific</p> <p>14 opportunity. That's it.</p> <p>15 Q. What prior to the signing of this</p> <p>16 document had you shared with Mr. Trump about the</p> <p>17 specifics of that opportunity, if anything?</p> <p>18 A. Just that it's a large -- it's a</p> <p>19 high-rise, center of Moscow, great opportunity,</p> <p>20 megafinancial home run for us. That's pretty much</p> <p>21 it. You know, more or less. I may have shown him</p> <p>22 some pictures of the site or I may have pointed it</p> <p>23 out on the map. But that's pretty much the extent</p> <p>24 of it.</p> <p>25 Q. Sitting here today more than three</p>	132	<p>1 Sater - Confidential</p> <p>2 was during this time. It could have been --</p> <p>3 Q. It could have been later?</p> <p>4 A. It could have been earlier, or it could</p> <p>5 have been later. But I traveled there with Don,</p> <p>6 Jr., his wife Vanessa, and Ivanka Trump. I</p> <p>7 actually met them there, because I was in Europe</p> <p>8 at the time, and I met them in Moscow.</p> <p>9 Q. And was there more than one such trip</p> <p>10 with --</p> <p>11 A. No.</p> <p>12 Q. So it would have been just one trip</p> <p>13 with the Trump children to Moscow?</p> <p>14 A. There was just one trip.</p> <p>15 MR. MELODIA: Let's mark as exhibit</p> <p>16 Defendants' 160 this news article.</p> <p>17 (Defendants' Exhibit 160, news article</p> <p>18 dated 2/06, marked for identification, as of</p> <p>19 this date.)</p> <p>20 Q. I'm trying to place the timing of that</p> <p>21 trip, and I'd ask -- you can read the whole thing,</p> <p>22 but I direct your attention to the second page.</p> <p>23 A. Yes.</p> <p>24 Q. Does that refresh your recollection at</p> <p>25 all as to when you made that one trip with Don,</p>
131	<p>1 Sater - Confidential</p> <p>2 years later, did you ever travel to Moscow with</p> <p>3 Donald Trump to look at any properties?</p> <p>4 A. No, I did not.</p> <p>5 Q. The property that you had already</p> <p>6 identified when this document was negotiated, what</p> <p>7 was the address or location of that property?</p> <p>8 A. It was on Kutuzovsky Prospect, and it</p> <p>9 was the old Sacco & Vanzetti pencil factory. You</p> <p>10 want me to spell old Sacco & Vanzetti?</p> <p>11 Q. Did Bayrock eventually purchase or take</p> <p>12 an ownership interest in that facility?</p> <p>13 A. No, Bayrock did not.</p> <p>14 Q. Has Bayrock taken an ownership interest</p> <p>15 in any property in Moscow with an eye toward</p> <p>16 development since the time of this letter?</p> <p>17 A. Have we taken ownership? No.</p> <p>18 Q. Have you made any sort of equity</p> <p>19 investment in any property in Moscow with an eye</p> <p>20 toward development since the time of this letter?</p> <p>21 A. No, we're still negotiating some deals.</p> <p>22 Q. Did you travel to Moscow with any</p> <p>23 member of the Trump Organization during this one-</p> <p>24 year exclusive?</p> <p>25 A. I believe I traveled there I believe it</p>	133	<p>1 Sater - Confidential</p> <p>2 Jr., to Moscow?</p> <p>3 A. What? I'm sorry? How does this relate</p> <p>4 to --</p> <p>5 Q. Do you see that you're quoted in the</p> <p>6 article, halfway down the second page?</p> <p>7 A. Okay, yeah, yeah, yeah.</p> <p>8 Q. This article is dated in February of</p> <p>9 '06. It references an e-mail from you on Friday</p> <p>10 that you were traveling at that time with Don,</p> <p>11 Jr., in Moscow. Does that refresh your</p> <p>12 recollection at all as to when the trip occurred?</p> <p>13 A. No, but it makes sense that if this</p> <p>14 came out on February 25th on Saturday, then the</p> <p>15 24th would have been the time I traveled there</p> <p>16 with them.</p> <p>17 Q. Are there any other records that would</p> <p>18 just help us establish that time frame that you</p> <p>19 have?</p> <p>20 A. Yes. Donald Trump, Jr.'s travel</p> <p>21 itinerary or American Express card or however he</p> <p>22 pays for his trips, because I go there quite often</p> <p>23 so I wouldn't be able to determine which one.</p> <p>24 Q. As far as you know, that was Donald,</p> <p>25 Jr.'s only trip to Moscow?</p>

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1 Sater - Confidential
 2 A. I don't know.
 3 MR. RESSLER: Objection to the form of
 4 the question.
 5 A. I don't know that.
 6 Q. With you?
 7 A. Yes, the only trip with me.
 8 Q. Are you aware of any other trips with
 9 anyone from Bayrock and Donald, Jr.?
 10 A. I don't believe so.
 11 Q. Why were you in Moscow with Ivanka and
 12 Donald, Jr., in February of '06?
 13 A. Because Donald asked me if I wouldn't
 14 mind joining them there. They were on their way
 15 there, and he was all concerned. They were there
 16 by themselves, and he knew I traveled there and
 17 knew my way around. He asked if I wouldn't mind
 18 joining them and looking after them while they
 19 were in Moscow.
 20 Q. Were you doing business there with
 21 them? I mean, did you attend meetings with them,
 22 for example?
 23 A. No. Oh, well, I mean, we went to -- we
 24 went -- no, I didn't. Actually, no, I didn't. I
 25 took them to lunch; I took them to dinner. But

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1 Sater - Confidential
 2 no, I didn't go to meetings with them.
 3 Q. Were they there having meetings or were
 4 they just sightseeing?
 5 MR. RESSLER: Objection to the form of
 6 the question.
 7 A. I think both. I think both.
 8 Q. Did you, when you were in Moscow with
 9 them, show them the pencil factory you referenced?
 10 A. No.
 11 Q. Did you show them any other possible
 12 development sites in Moscow?
 13 A. No.
 14 Q. I'm going back to the time when --
 15 January of '05 when the exclusive arrangement was
 16 entered into regarding Moscow. At that time to
 17 your knowledge had Bayrock previously developed
 18 any successful projects in Moscow?
 19 A. No.
 20 Q. To your knowledge at that time in
 21 January of '05, had the Trump Organization
 22 developed any projects in Moscow?
 23 A. Not to my knowledge, no.
 24 Q. Between the time when Exhibit 159, the
 25 agreement with the Trump Organization, was entered

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1 Sater - Confidential
 2 into and the end of '05, what additional steps did
 3 you or others in Bayrock take concerning the
 4 potential project in Moscow?
 5 A. We did some massing plans, we asked BBG
 6 to do a preliminary set of plans on the tower to
 7 see how it would work as a hotel and -- condo
 8 hotel and residential tower. We did a whole bunch
 9 of work on it and, you know, a bunch of times that
 10 I went there and negotiated the transaction.
 11 Q. Who is BBG?
 12 A. Bob Brennan and Beer Gorman. It's an
 13 architectural firm in New York.
 14 Q. And who were you negotiating with in
 15 Moscow?
 16 A. The owners of the site.
 17 Q. And who were those?
 18 A. It was a group, but I generally dealt
 19 with a guy named Ilya. There were other people in
 20 the group that I met and people that worked for
 21 him, but I generally dealt with one of the owners
 22 whose name is Ilya.
 23 Q. Is that a first name?
 24 A. Yes.
 25 Q. Do you know what his last name is?

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1 Sater - Confidential
 2 A. Haykan, H-A-Y-K-A-N, or H-A-I-K-A-N.
 3 One of the two. I'm not sure of the exact
 4 spelling.
 5 Q. And to your knowledge is he still one
 6 of the owners of that facility?
 7 A. I believe so.
 8 Q. And was that facility still being used
 9 as a factory or --
 10 A. Oh, no, no, the factory had long shut
 11 down. They were already starting to tear it down.
 12 I think they started to tear it down around that
 13 same time, or at least portions of it. It was a
 14 pretty big site. It wasn't just one factory
 15 there; there were other structures on it. And
 16 they had already started clearing it for
 17 construction.
 18 Q. Are you aware of whether any other
 19 developer has started to build on that site?
 20 A. I don't know what's going on with that
 21 site now.
 22 Q. Has Bayrock taken an interest in any
 23 other sites in Moscow since then?
 24 A. No. It was bad enough on this one.
 25 Q. Were there any contracts drawn or even

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1 Sater - Confidential
2 term sheets exchanged with the owners of the
3 factory in Moscow and Bayrock?
4 A. It wasn't with the owners of the
5 factory; it was the owners of the site the factory
6 was on. There may have been. I don't remember.
7 I'm sure we must have exchanged something.
8 Q. What's your best recollection of how
9 far along discussions or negotiations got with the
10 owners of the site in Moscow?
11 A. Very far.
12 Q. Was a price reached?
13 A. Yes.
14 Q. What was that price?
15 A. It was a percentage participation over
16 current market price where we would step in, we
17 would sell the property over -- and I don't
18 remember the price now. They estimated that they
19 would sell at X; we suggested that using the Trump
20 name and using Trump marketing we would be able to
21 step in there and sell for Y and that there would
22 be -- and I don't remember what the deal is now,
23 some sort of profit participation between the X
24 and the Y because of the Trump -- because of the
25 added value that the Trump name brings.

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2 Q. To the best of your recollection, what
3 was the spread between X and Y on a percentage
4 basis?
5 A. I think it was close to 300,000 feet,
6 and I think it was at least \$250 a foot, or at
7 least that was my assumption. It doesn't mean
8 that that's so. That's just what I calculated in
9 my professional -- my personal professional
10 opinion was.
11 Q. Other than you and Ilya Haykan, were
12 there others, appraisers or other professionals,
13 involved in these discussions?
14 A. Well, I met with a significant number
15 of Moscow real estate companies. In these
16 specific discussions, no. General market
17 discussions, yes, but not as it relates to this
18 specific development. I didn't bring anyone in.
19 I knew the market; he knew the market.
20 You know, two guys who know the market don't
21 really need to pay 15 grand to CB Richard Ellis to
22 sit in and give their pontificated view.
23 Q. What is your best recollection of what
24 papers were created either by the Russian owners
25 or by you and Bayrock concerning this?

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2 A. I'm sorry, I don't remember. It may
3 have been a -- it may have been a pro forma that I
4 created. I remember sitting with him right in his
5 office doing some sort of pro forma.
6 Q. Either in connection with the document
7 production for Bayrock that you mentioned earlier
8 or in preparation for today's deposition, did you
9 look for any pro formas or documents in connection
10 with the Moscow transaction?
11 A. Yes, I did. I didn't see any;
12 otherwise I would have turned them over.
13 By the way, I see and have so much
14 paper that if I don't trash dead deals I'd need to
15 get -- you know the pods they deliver to your
16 house? I would need to keep one by the office on
17 Fifth Avenue in front of Trump Tower just for my
18 documents, because the amount of stuff that comes
19 in on a deal -- and I understand you're trying to
20 hone in on was there something specific and was
21 there a pro forma calculation.
22 But as part and parcel of that file,
23 there would have been maps of Moscow, there would
24 have been from various companies market analysis,
25 there would have been a million and one things

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2 that, you know, a deal dies, you just take the
3 file and throw it out because there's just no
4 place to file it.
5 So if anything exists, they could have
6 been in a dead deal file and thrown out or didn't
7 exist. I'm sorry, I just don't have that
8 recollection. And if I had something in my
9 files -- my files are pretty empty. Only the
10 stuff I'm currently working on is what I keep.
11 Everything else gets killed.
12 Q. What about electronic files, would
13 anything have been created that would have been
14 electronic?
15 A. I doubt it. These were all -- these
16 were all personal conversations. I traveled quite
17 a number of times there specifically to have a
18 conversation with them, because they're -- it
19 wasn't possible to deal with them in English, and
20 it wasn't possible to deal with them in e-mail
21 format. Well, I'm sure it was possible.
22 I didn't go through the trouble because
23 I thought that my personal touch on the ground was
24 more important than just an exchange of e-mails,
25 and especially in a place like Russia, that's

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2 considerably more so the case than here, where

3 people are just so much used to following the

4 Internet. There it's like, you know, I'll see you

5 many person. Let's not talk on the phone too

6 much. It's just a national character there.

7 Q. Did Mr. Trump ever meet Ilya or his

8 partners in person?

9 A. No.

10 MR. RESSLER: I'll object to the form

11 of the question.

12 THE WITNESS: Too late.

13 MR. RESSLER: Never too late.

14 MR. BURSTEIN: I've done it like five

15 questions later.

16 THE WITNESS: I'm just kidding. You

17 guys need to pump in oxygen.

18 MR. BURSTEIN: That's like when a

19 person says to make a long story short.

20 That's when you say too late.

21 Q. Was anybody else at Bayrock involved in

22 these discussions or was it really you --

23 A. It was me. It was me.

24 Q. Were there any other potential

25 investors that you were contemplating in

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1 Sater - Confidential

2 connection with this factory site? Was the idea

3 that Bayrock would acquire it?

4 A. No.

5 Q. It was the profit participation?

6 A. It was profit participation. That's

7 why there was no need for an investor. It was a

8 profit participation in conjunction with Trump.

9 So the investment by Bayrock and/or Trump would

10 have been limited to market and sales, and that we

11 were more than prepared to shoulder ourselves.

12 Q. Putting aside any paper that was or

13 wasn't created in connection with dealing with the

14 Russian owners, what about between Bayrock and the

15 Trump Organization in connection with the

16 potential transaction in Moscow? Any paper

17 created?

18 A. Maybe, but I doubt it. It was more of

19 verbal updates when I'd come back, pop my head

20 into Mr. Trump's office and tell him, you know,

21 moving forward on the Moscow deal, and he would

22 say all right.

23 Q. And what --

24 A. That was it. That was pretty much it.

25 Q. That was the extent of it?

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2 A. That was the extent of it. I mean,

3 there was conversations. I showed him -- I showed

4 him photos, I showed him the site, showed him the

5 view from the site. It's pretty spectacular.

6 That's pretty much it.

7 Then the next couple times I went

8 there, it would just be I was there, getting down

9 to the wire, it's coming together. That was it.

10 There was nothing else to discuss; there was

11 nothing else to write.

12 Q. I'm assuming there's no written

13 agreement with the Trump Organization in terms of

14 what their share or what their participation would

15 have been if the Moscow deal had gone forward;

16 correct?

17 A. We didn't get to that. We didn't get

18 to a final on that, just general conversations

19 about it but not a formalized final contract

20 between the splits there.

21 Q. Do you think you got to the point with

22 regard to the Moscow project that any pro forma

23 would have been done for the Trump Organization in

24 terms of potential fees and --

25 A. They may have taken what I told them

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1 Sater - Confidential

2 and turned it into a pro forma, but I don't see

3 any reason why they would have. They may have,

4 but I don't know that they did.

5 Q. You don't recollect doing one?

6 A. I don't recollect that they created,

7 no.

8 Q. So did the Moscow potential project

9 ever get to the point where it was being marketed

10 to anybody?

11 A. I'm sorry?

12 Q. That it was being talked about with

13 realtors or marketed in any way?

14 A. No, no.

15 Q. It didn't get to that point?

16 A. No, specifically -- specifically was

17 kept away from that conversation, because if we

18 did move forward with the deal, we would have

19 created an entire marketing plan, which it would

20 have been counterproductive to have these

21 conversations at that point.

22 Quite on the contrary, we were going to

23 put together a full marketing effort and a full

24 marketing approach and a kickoff party to which

25 Mr. Trump and other celebrities would attend. And

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1 Sater - Confidential
2 that would have been the kickoff.
3 So it would have been extremely
4 counterproductive to let the cat out of the bag.
5 So it was all very hush-hush conversations, only a
6 very, very tight circle.
7 Q. Who is Constantine Yudin?
8 A. Constantine is a consultant in Moscow.
9 Q. What role did he play in connection
10 with the Moscow project?
11 A. Help get some information, market
12 information. He was involved in putting together
13 ideas and plans for marketing and things of that
14 nature.
15 Q. Did he attend any of the meetings with
16 Mr. Haykan?
17 A. I believe he did. I'm not a hundred
18 percent sure, but I believe he did.
19 Q. Does Mr. Yudin continue to have any
20 relationship with Bayrock?
21 A. I know him, but he doesn't have any
22 relationship with Bayrock. I've spoken to him --
23 I spoke to him a while ago, but just touching
24 base, because we're still continuing to look for
25 projects in Moscow.

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1 Sater - Confidential
2 Q. Bayrock is?
3 A. Either Bayrock or myself or my newfound
4 life.
5 Q. Do you have a newfound life yet? Do
6 you know where you're headed after Bayrock?
7 A. If I did, I wouldn't tell you. Just
8 asking. Mr. Bagli would keep tracking me down.
9 Eventually he would find me, wherever I land. I'm
10 not trying to be nasty, just a sensitive subject
11 for me.
12 MO MR. MELODIA: Move to strike that last
13 comment as nonresponsive to any question that
14 was pending.
15 We need to change the tape. You need to
16 do that. Why don't we do that now.
17 THE VIDEOGRAPHER: The time on the
18 video monitor is 2:40 p.m. We're off the
19 record. This ends Tape Number 3.
20 (Recess taken from 2:40 to 2:50.)
21 THE VIDEOGRAPHER: We're back on the
22 record. The time on the video monitor is 2:50
23 p.m. This starts Tape Number 4.
24 Q. Mr. Sater, you said that there is no
25 current project of any sort that Bayrock is

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1 Sater - Confidential
2 involved with in Moscow. Maybe -- I don't want to
3 mischaracterize what you said. Is there?
4 A. We're looking at various transactions
5 in Moscow. But as I said, I don't know whether
6 that will be on behalf of Bayrock or on behalf of
7 whatever I do after I leave Bayrock. I'm working
8 on potential transactions this Moscow.
9 Q. Does anything you're working on in
10 Moscow involve the Trump Organization?
11 A. Not after the last go-around.
12 Q. What happened the last go-around with
13 the factory site that made that project not
14 happen?
15 A. After the publication of the book, the
16 developers mysteriously went radio silent.
17 Q. "The developers" being Ilya and his
18 partners?
19 A. And his partners, yes.
20 Q. Have you had any discussions with Ilya
21 or his partners since the end of October 2005?
22 A. It was a little after that, but it was
23 the end of -- end of maybe November. But no. I
24 saw him in Cannes, France, a year or more ago, but
25 we didn't discuss the project. We just said hello

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1 Sater - Confidential
2 to each other, how are you doing, how are you
3 doing, that was it.
4 Q. Did you have a specific discussion with
5 Ilya or any of his partners about the book?
6 A. No.
7 Q. Did Ilya or any of his partners ever
8 explain to you why they went, to use your words,
9 radio silent?
10 A. The answer is no. Me personally, I
11 just don't believe in coincidences.
12 Q. Has Constantine Yudin or anybody else
13 with whom you've been in contact had conversations
14 with Ilya and his partners concerning why they
15 went, quote, radio silent?
16 A. No. Constantine had a discussion with
17 me about the subject, and he's of the same
18 opinion. But he did not speak with them.
19 Q. Do you know whether Mr. Arif or anybody
20 else at Bayrock has spoken to Ilya and his
21 partners in Moscow concerning why they chose not
22 to go forward with the potential transaction
23 involving the pencil factory site in Moscow?
24 A. They never had any conversations with
25 them about any subject much less that subject. I

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1 Sater - Confidential

2 handled all the negotiations, gave Mr. Arif an

3 update as updates were required. But they never

4 dealt with them. I was the only one who dealt

5 with them.

6 Q. Are you aware, Mr. Sater, of whether

7 Mr. Arif and Mr. Trump have spoken about why the

8 Moscow transaction did not occur?

9 A. No, I'm not aware of that.

10 Q. Did you speak to Mr. Trump at any point

11 about --

12 A. I knew that's where you were going.

13 Q. -- why you believed the Moscow project

14 did not occur?

15 A. I danced around the issue, because I

16 didn't want to tell him my opinion.

17 Q. So you did not tell Mr. Trump that --

18 what did you tell Mr. Trump?

19 A. I told Mr. Trump that I'm looking --

20 I'll be looking at some other potential situations

21 that may be even taller. He likes height. And

22 Mr. Trump never met the developers, didn't know

23 who they were, was relying on me, and I was

24 relying on his name to get a deal concluded there.

25 I didn't think that he would take too

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1 Sater - Confidential

2 kindly to me reminding him that, you know, this

3 book is causing him grief. First of all, I don't

4 know for a fact that that is the reason.

5 Like I said, I don't believe in

6 coincidences. It just seems strange that the

7 timing -- they were all so gung ho. Everyone

8 was -- they were going to make a lot more money on

9 their development than without Trump. We were

10 going to make a lot of money on the development

11 because of Trump, and Trump was going to make a

12 lot of money on the development because he's

13 Trump.

14 And then all of a sudden for no reason

15 whatsoever for it to end and since there was no

16 negative articles about me at the time, I can only

17 conclude that it had possibly -- I underline

18 "possibly" because I can't be certain -- that it

19 possibly had something to do with the timing of

20 the book and the article published in The New York

21 Times around the same time.

22 But no, I didn't go to Mr. Trump and

23 tell him, you know what, the book killed the deal

24 for us, because I was a little bit concerned that,

25 you know, he would be upset, maybe, and blame me

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1 Sater - Confidential

2 for it. I didn't want that to be the case. So I

3 sort of sidestepped the issue with him. And

4 that's it.

5 MR. BURSTEIN: I hate to do this, but I

6 sort of have an emergency. Can we take a

7 10-15-minute break?

8 MR. MELODIA: Sure.

9 MR. BURSTEIN: I apologize, but I have

10 no choice.

11 MR. MELODIA: Sure.

12 THE VIDEOGRAPHER: The time on the

13 video monitor is 2:58 p.m. We're off the

14 record.

15 (Recess taken from 2:58 to 3:13.)

16 THE VIDEOGRAPHER: We're back on the

17 record. The time on the video monitor is 3:13

18 p.m.

19 Q. Mr. Sater, I just want to make sure to

20 finish up on the Moscow project. Are you aware of

21 anybody at Bayrock or anybody at all having heard

22 from Ilya and his partners in Moscow that the book

23 was the reason for them not proceeding with the

24 deal?

25 A. No.

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1 Sater - Confidential

2 Q. Let's talk about Turkey.

3 A. Okay.

4 Q. Did you have any involvement in a

5 potential project in Istanbul, Turkey, with the

6 Trump Organization?

7 A. No.

8 Q. Did you become aware through your work

9 at Bayrock of anything about that potential deal?

10 A. No.

11 Q. Who at Bayrock, if you know, was the

12 most involved in that deal?

13 A. I'm guessing it would be --

14 MR. BURSTEIN: Instruct the witness not

15 to guess. He's not here to guess.

16 A. No.

17 Q. Have --

18 A. I'm sorry, I'd like to elaborate on my

19 answer.

20 Q. Please go ahead.

21 A. As I've stated before, I speak to a lot

22 of development deals. In my organizer I probably

23 have 60 Turkish names of developers and real

24 estate-related people.

25 I've been to Turkey. I've looked at

154	<p>1 Sater - Confidential</p> <p>2 transactions. I've looked at towers that I looked</p> <p>3 at with a view towards, as I said in the past,</p> <p>4 Trump Tower.</p> <p>5 So I don't know -- when you say a</p> <p>6 specific Trump Tower deal, I don't know what</p> <p>7 you're referring to. But as I said, in the course</p> <p>8 of my everyday business, I look at transactions</p> <p>9 and look at how to do a branded Trump property.</p> <p>10 Q. During that investigation by you of the</p> <p>11 Turkish market, did you ever identify a project or</p> <p>12 a site that you then brought to anybody at the</p> <p>13 Trump Organization?</p> <p>14 A. Yes. I showed the Trump Organization a</p> <p>15 site recently, maybe within the last year, of a</p> <p>16 tall tower that was being planned, and I</p> <p>17 introduced the developer to the Trump</p> <p>18 Organization. And I don't know that there was a</p> <p>19 specific discussion about the tower being a Trump</p> <p>20 Tower.</p> <p>21 But, you know, when you bring somebody</p> <p>22 to them and you talk about real estate, back in my</p> <p>23 mind is let's see if we can do something. It's</p> <p>24 not just -- we're not -- it's not a brainstorming</p> <p>25 session about the real estate market. Everyone</p>	156	<p>1 Sater - Confidential</p> <p>2 but I know they were talking to somebody about</p> <p>3 Istanbul potentially moving forward or not moving</p> <p>4 forward. I don't know the details of the</p> <p>5 transaction.</p> <p>6 Q. You personally are not involved in that</p> <p>7 transaction; correct?</p> <p>8 A. No, I'm not.</p> <p>9 Q. You personally have not been involved</p> <p>10 in any transaction involving Istanbul with the</p> <p>11 Trump Organization that identified a specific</p> <p>12 property, have you?</p> <p>13 A. I have looked at properties. I have</p> <p>14 spoken about Istanbul with them. Rising to the</p> <p>15 level of what I think you're asking, probably the</p> <p>16 answer is no. General conversation, the answer is</p> <p>17 yes.</p> <p>18 Q. Let me really get to the bottom line on</p> <p>19 Turkey.</p> <p>20 (Pause.)</p> <p>21 Q. Are you aware of any project in Turkey</p> <p>22 that did not go forward with the Trump</p> <p>23 Organization because of the book?</p> <p>24 A. No.</p> <p>25 Q. Have you at any point presented any</p>
155	<p>1 Sater - Confidential</p> <p>2 has a permanent interest in getting something</p> <p>3 done.</p> <p>4 So I showed them a tower. I forgot the</p> <p>5 guy's name, Emra [phonetic] something or other. I</p> <p>6 showed them a large tower. He was in New York. I</p> <p>7 introduced him to the Trump Organization,</p> <p>8 introduced -- and he was introduced to Mr. Trump.</p> <p>9 I don't know that that the conversation took it to</p> <p>10 the next level about it being a Trump Tower.</p> <p>11 Q. The developer you're talking about,</p> <p>12 does he have any relationship to Yesil Insaat? Do</p> <p>13 you know that name at all, Y-E-S-I-L?</p> <p>14 A. I don't think he has any relation to</p> <p>15 that, no.</p> <p>16 Q. Do you know that organization?</p> <p>17 A. I've heard of it. I don't know them</p> <p>18 well, but I've heard of it.</p> <p>19 Q. Do you know if the Trump Organization</p> <p>20 has plans to or is proceeding in Istanbul with a</p> <p>21 tower?</p> <p>22 A. I know they were looking to do a tower</p> <p>23 there. I don't know what their current status is</p> <p>24 regarding building of a tower there. But they --</p> <p>25 and I heard -- this is not firsthand knowledge,</p>	157	<p>1 Sater - Confidential</p> <p>2 opportunities to the Trump Organization in Kiev</p> <p>3 Ukraine?</p> <p>4 A. Again, a "yes" or "no" answer.</p> <p>5 Specific opportunity? No. General conversation</p> <p>6 about possibly doing something in the Ukraine?</p> <p>7 Yes. Conversation about a specific site even,</p> <p>8 years ago, and we didn't move forward on it.</p> <p>9 Q. Why didn't that move forward?</p> <p>10 A. Huh?</p> <p>11 Q. Why didn't that particular deal move</p> <p>12 forward?</p> <p>13 A. It just never went to the next level.</p> <p>14 It wasn't a -- it just didn't progress. This was</p> <p>15 very, very early. This was 2002/2003 that I was</p> <p>16 there. I saw a hotel, and I inquired about it.</p> <p>17 Somebody said it was possible to get the hotel and</p> <p>18 then redevelop it.</p> <p>19 And I spoke to the Trump Organization,</p> <p>20 telling them about a potential Kiev site. And I</p> <p>21 couldn't even remember why it didn't move forward.</p> <p>22 It just didn't go to the next step.</p> <p>23 Q. Did you present any specific</p> <p>24 opportunities in Kiev, Ukraine, to the Trump</p> <p>25 Organization that did not move forward because of</p>

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1 Sater - Confidential
2 the book?
3 A. No.
4 Q. Are you aware of anybody at the Bayrock
5 Group having presented specific opportunities or a
6 specific opportunity in Kiev, Ukraine, for the
7 Trump Organization that did not move forward
8 because of the book?
9 A. I'm not sure. I don't think so.
10 Q. Who else at Bayrock, if anybody, would
11 travel to Kiev or be knowledgeable of the Kiev
12 real estate market other than you?
13 A. I would think Mr. Arif, probably.
14 Q. Has Mr. Arif ever told you that he had
15 a specific opportunity in the Kiev market with the
16 Trump Organization?
17 A. I can't recall. I'm sorry. We talk
18 about real estate a lot. So if he did and I don't
19 remember it, it doesn't mean that it didn't
20 happen.
21 Q. Do you recollect Mr. Arif ever telling
22 you that there was any specific opportunity that
23 was lost in Kiev, Ukraine, for the Trump
24 Organization because of the book? Did he ever
25 tell you that?

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1 Sater - Confidential
2 A. Not that I can recall.
3 Q. Do you know whether Bayrock, with any
4 other investors or by itself, has ever done a
5 successful real estate development in Kiev,
6 Ukraine?
7 A. No. Turkey is where Mr. Arif has some
8 significant experience, not in the Ukraine.
9 Q. Does the name Igor Voskoboynikov mean
10 anything to you?
11 A. Yes, it does.
12 Q. Who is that?
13 A. He's a gentleman that works with
14 Mr. Arif.
15 Q. Is he a Bayrock Group employee or
16 affiliated in some other way?
17 A. He's affiliated with Mr. Arif. And
18 it's hard to determine when you say "affiliated,"
19 because Mr. Arif is the owner and principal and
20 also has other companies. We interact with some
21 of those people. And it's not really separated or
22 split up as you would consider in a corporate
23 structure with -- Igor works with Teyfik. I can't
24 be a hundred percent certain. For all I know it's
25 Bayrock Ukraine, or it's another company. I don't

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1 Sater - Confidential
2 know.
3 Q. Have you had any discussions with
4 Mr. Voskoboynikov --
5 A. Voskoboynikov.
6 Q. -- Voskoboynikov about any Trump
7 investments or potential investments in Kiev, you
8 crane?
9 A. The answer is yes and no. It's a fact
10 that we do a lot of business with Donald Trump.
11 It's well known we look for Trump development
12 deals. I have spoken to Mr. Voskoboynikov about
13 putting in a Trump Tower in Kiev.
14 But again, these are conversations of
15 an ongoing business nature about the possibility
16 of what we'd like to find or looking at a site and
17 describing why we wouldn't do it or would do it.
18 So yes, I mean, I'd be -- I can't tell
19 you when, I couldn't tell you the extent of that
20 conversation, but -- let me put it to you this
21 way. And I'm sorry, I don't mean to be
22 nonresponsive to your question. It's highly
23 unlikely I've had conversations prior to the end
24 of 2005 with almost any developer where I didn't
25 use my Trump card. My Trump card was what is --

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1 Sater - Confidential
2 what is my value add, what is a competitive
3 advantage?
4 My competitive advantage is anybody can
5 come in and build a tower. I can build a Trump
6 Tower, because of my relationship with Trump.
7 We're doing other deals.
8 Prior to the end of 2005, it's a hell
9 of a good pitch, and it worked well.
10 Q. And as you said previously, you would
11 go into almost any market looking for what you
12 called a five-star opportunity. I think that's
13 referenced elsewhere on the Moscow agreement as a
14 Trump signature property. Is that the same thing,
15 in your mind?
16 A. Yeah. A Trump property, in my mind, is
17 one of two things: Trump Tower, center of town,
18 that we could do as a mixed use, meaning both
19 commercial as well as hotel as well as
20 residential; and/or a high-end resort situation
21 with some residential component that can also be
22 branded Trump. And I've spoken to the Trump
23 Organization about possibly even extending Trump's
24 Mar-a-Lago name to those type of things.
25 So yes, the answer is yes. I'm just

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1 Sater - Confidential
 2 expanding on the answer a little bit.
 3 Q. So in each new market, whether it's
 4 Kiev, Ukraine, or Istanbul, wherever you're
 5 looking for properties, you're looking with an eye
 6 toward significantly whether there's an
 7 opportunity for some Trump project?
 8 A. Yes. Not exclusive but yes. The
 9 answer is yes. Obviously if I see a transaction
 10 that's fantastic but doesn't qualify as a Trump
 11 transaction, that doesn't mean I won't look at it.
 12 But yeah, I go into a market, and my competitive
 13 advantage is we're a Trump partner and we can
 14 build a Trump Tower.
 15 Q. Understanding that discussion and I'm
 16 now reminded of Mr. Voskoboynikov, does that
 17 change in any way your testimony that you did not
 18 present a specific opportunity in Kiev, Ukraine,
 19 to the Trump Organization?
 20 MR. RESSLER: Objection to the form of
 21 the question.
 22 A. Please don't take this personally, but
 23 Mr. Ressler asked me the same questions, and I
 24 answered him the same way, and I'm answering you
 25 the same way.

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1 Sater - Confidential
 2 Q. I understand, but we didn't have --
 3 MR. BURSTEIN: Just answer the
 4 question.
 5 Q. We didn't have the advantage of being
 6 in that meeting, which is why we're doing this.
 7 MR. BURSTEIN: You know what, I don't
 8 care. You shouldn't be saying that, whether
 9 he asked or not. Just answer the question.
 10 THE WITNESS: No, everybody is asking
 11 me what specific deal. Who the hell remembers
 12 what specific deal? I look at 200 deals a
 13 day.
 14 MR. BURSTEIN: Just say that.
 15 THE WITNESS: Okay. I look at 200
 16 deals a day some days. How the hell do I know
 17 what deal. Everybody wants to know from me
 18 whether I know --
 19 MR. BURSTEIN: Who cares what everybody
 20 knows?
 21 THE WITNESS: You want to know.
 22 MR. BURSTEIN: You want to get out?
 23 THE WITNESS: No.
 24 MR. BURSTEIN: You want to stay here
 25 all night?

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1 Sater - Confidential
 2 THE WITNESS: I've already canceled the
 3 rest of my day. We're here till late.
 4 MR. BURSTEIN: No, I have dinner. You
 5 just go through this. You're paying me a lot
 6 per hour. Finish.
 7 THE WITNESS: I'll bill you to
 8 Debevoise.
 9 Q. I appreciate your frustration.
 10 A. I'm not frustrated. It's just very
 11 difficult to answer a specific -- did I show them
 12 a specific Kiev deal? Maybe I did.
 13 Q. Notwithstanding the volume of deals
 14 that you're seeing, are you sure that you are not
 15 aware of any particular deal in Kiev, Ukraine,
 16 which did not happen for the Trump Organization
 17 because of the book?
 18 MR. RESSLER: Objection to the form of
 19 the question.
 20 A. I'm not sure. No, I'm not sure.
 21 Q. Sitting here today, can you think of
 22 any Kiev transaction that did not happen because
 23 of the book?
 24 MR. RESSLER: Objection to the form of
 25 the question.

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1 Sater - Confidential
 2 A. Not that I can remember sitting here
 3 today.
 4 THE WITNESS: Sorry. I'm trying. I
 5 just want to get out of here.
 6 Q. Geographically we're not moving very
 7 far, but we are moving to another city here,
 8 Yalta, Yalta Ukraine. Do you have any
 9 recollection of presenting any specific
 10 opportunities to the Trump Organization in Yalta?
 11 A. I remember we were in Yalta, I remember
 12 we were looking at opportunities, I remember
 13 speaking to the Trump Organization about that
 14 opportunity. I even remember the specific
 15 opportunity. It was a -- their marina
 16 development.
 17 And we discussed it with them, I -- I
 18 personally discussed it with the minister of
 19 transportation. We discussed that deal moving
 20 forward, and we didn't move too much forward. It
 21 didn't -- it didn't get to the finish line.
 22 Q. You actually visited --
 23 A. Yes.
 24 Q. -- Yalta the Don, Jr., and Ivanka;
 25 correct?

42 (Pages 162 to 165)

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1 Sater - Confidential

2 A. No.

3 Q. No?

4 A. I don't think so.

5 Q. Did you visit with any Trump family

6 members?

7 A. I don't think so. I don't remember,

8 but no, I don't believe so. Wait a second, did I

9 or didn't I? I don't remember. I don't think so.

10 Q. Do you recollect any visit with Donald,

11 Jr., Ivanka, or Eric to Kiev?

12 A. No, I don't think so.

13 Q. Do you recollect being in either Kiev

14 or Yalta with Mr. Trump?

15 A. No.

16 Q. You're pretty sure that did not happen?

17 A. I'm pretty sure that did not happen.

18 Q. You do recollect some discussions

19 concerning a marina site in Yalta; correct?

20 A. It was a large waterfront development

21 potential which had at that moment I think it

22 was -- I don't remember. I think it was like the

23 old navy or old coastguard site. Yes, I remember

24 a waterfront development site in Yalta.

25 Q. How many meetings concerning that site

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1 Sater - Confidential

2 do you recollect, if any?

3 A. Three, four.

4 Q. In one trip or more than one trip?

5 A. I think it was more than one trip. I

6 think I was there two or three times.

7 Q. In your mind was this a potential site

8 that could qualify as a Trump signature site?

9 A. Absolutely.

10 Q. And did you discuss that site with

11 anybody in the Trump Organization?

12 A. I'm sure I did.

13 Q. Do you recollect who you had

14 discussions with?

15 A. No.

16 Q. Do you recollect whether there were --

17 there was any sort of an agreement like the one we

18 looked at earlier in connection with Moscow drawn

19 up between Bayrock and the Trump Organization?

20 A. There may have been.

21 Q. Are you aware of this sort of exclusive

22 arrangement being entered into between the Trump

23 Organization and Bayrock for any markets other

24 than Moscow?

25 A. There may have been for the Ukraine. I

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1 Sater - Confidential

2 just don't remember or for Kiev or for Yalta

3 specifically. I don't remember.

4 Q. Do you recollect showing, for example,

5 pictures or potential plans for the Yalta site to

6 anybody in the Trump Organization as you said you

7 did for Moscow?

8 A. I believe so, yes. To who and when, I

9 don't remember. But I must have shown them

10 something, if nothing more than pictures. I'm

11 sure I discussed it with them.

12 Q. Do you have any recollection of any

13 discussions with Mr. Trump specifically about the

14 site in Yalta?

15 A. Maybe. I can't be certain.

16 Q. Are you aware of any written documents

17 or any electronic documents that exist today

18 concerning the potential for a Yalta marina

19 project?

20 A. May have been. I don't remember. I

21 can't -- as I sit here today, I can't recall any

22 documents.

23 Q. And as you sit here today, you're not

24 aware of any documents existing?

25 A. No, I'm not -- I don't have a memory of

169

1 Sater - Confidential

2 documents existing or the absence of documents. I

3 just don't remember.

4 Q. Was there discussion of anybody being

5 involved in the Yalta project other than

6 potentially Bayrock and the Trump Organization?

7 Any other investors or interested parties?

8 A. I don't remember, I'm sorry.

9 Q. Do you recollect whether

10 Mr. Voskoboynikov was involved in any way in the

11 potential project in Yalta?

12 A. Yes, he was.

13 Q. Did he visit the site with you?

14 A. Yes, he did.

15 Q. Do you recollect when any of the two or

16 three trips you testified to earlier occurred?

17 A. No. I'd have to look at my passport or

18 one of my old passports to see the date stamps.

19 But no, I don't remember.

20 Q. Did Bayrock ever get to the point where

21 it was, quote, in or committed on the way we

22 described earlier to any project in Yalta?

23 A. One other site we went pretty far

24 along, but not to the point where we committed.

25 Q. Okay. So there was another nonmarina

170

1 Sater - Confidential

2 site in Yalta?

3 A. A waterfront site, but it wasn't a

4 marina site; it was another site that

5 Mr. Voskoboynikov introduced us to. And I

6 personally remember meeting with the owner of the

7 site and having numerous conversations with him.

8 I don't remember -- at this point I don't remember

9 the details surrounding it.

10 Q. Neither the marina site or the other

11 waterfront site in Yalta moved forward to final

12 contract or closing; correct?

13 A. Correct.

14 Q. Did you talk to anybody other than the

15 Trump Organization about potentially working with

16 you on either of those two Yalta sites?

17 A. I may have. I don't recall at this

18 point.

19 Q. Do you recollect that you were or were

20 not operating under the sort of exclusive

21 arrangement we looked at earlier for Moscow?

22 A. I don't remember, I'm sorry.

23 Q. Do you recollect who the owners at that

24 time were of the Yalta marina site?

25 A. The government of the Ukraine.

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1 Sater - Confidential

2 Q. And that's why you were meeting with

3 the minister you referenced?

4 A. Yes.

5 Q. And what about the other waterfront

6 site?

7 A. It was owned by an individual.

8 Q. Do you recollect who that is?

9 A. I forget his name.

10 Q. Do you know whether either of those two

11 sites have been developed by anybody since you were

12 there?

13 A. No, I do not.

14 Q. Are you aware of Bayrock having any

15 role in trying to develop either of those sites

16 with somebody other than Mr. Trump?

17 A. No, I do not.

18 Q. Did anybody from the Ukraine government

19 or the individual owner of the other waterfront

20 site that you referenced earlier in Yalta ever

21 tell you that they would not proceed with a Trump

22 project because of the book?

23 A. Not that I can recall.

24 Q. Let's talk about Warsaw, Poland.

25 A. Okay.

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1 Sater - Confidential

2 Q. Have you been to Warsaw, Poland?

3 A. Yes, I have.

4 Q. As a Bayrock employee?

5 A. Yes, I have.

6 Q. Have you ever presented any specific

7 opportunities for real estate development to the

8 Trump Organization in Warsaw, Poland?

9 A. No, I have not.

10 Q. Are you aware of anybody in the Bayrock

11 Group who has presented a specific real estate

12 opportunity to the Trump Organization in Warsaw,

13 Poland?

14 A. No, I do not.

15 Q. Have you heard from any source that a

16 specific opportunity in Warsaw, Poland, did not

17 come to fruition for the Trump Organization

18 because of the book?

19 A. No.

20 MR. MELODIA: Why don't we take a short

21 break.

22 MR. BURSTEIN: Are you almost done?

23 MR. MELODIA: Getting there.

24 MR. BURSTEIN: Good.

25 THE VIDEOGRAPHER: The time on the

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1 Sater - Confidential

2 video monitor the is 3:41 p.m. We're off the

3 record.

4 (Recess taken from 3:41 to 4:10.)

5 THE VIDEOGRAPHER: We're back on the

6 record. The time on the video monitor is 4:10

7 p.m.

8 Q. I have a few more questions but only a

9 few. No, I'm kidding. We'll get out of here.

10 Do you have a purely business

11 relationship with Mr. Trump or has it become a

12 personal, more of a friendship relationship with

13 Mr. Trump? I mean, what's your view of your

14 relationship with Mr. Trump?

15 A. We don't go to ball games together.

16 Q. Have you ever been to a social event

17 with him?

18 A. Yes. But I've been to social events

19 with him that were -- again, yesterday we

20 honored Jane Neveloff from Kramer Levin. I was

21 there, Don, Jr., was there, so were half a dozen

22 other lawyers and developers. I've been to events

23 like that with Mr. Trump.

24 He's friendly with me, but I wouldn't

25 call him my friend. I don't know how to, you

174

1 Sater - Confidential
 2 know -- what do you mean by "friend"?
 3 Q. Have you ever been to Mar-a-Lago?
 4 A. Yes, I have, but not at his invitation.
 5 But if I need to go to Mar-a-Lago and need to make
 6 a reservation, I would probably call his office
 7 and ask for him to help me make a reservation.
 8 But he has never invited me to Mar-a-Lago.
 9 Q. How did you first meet Mr. Trump?
 10 A. Through Nathan, who introduced me to
 11 Russell and Charlie, who then introduced me to
 12 Donald Trump.
 13 Q. I think you described your discussions
 14 with Nathan and his colleagues within the Trump
 15 Organization as being relatively early in your
 16 time at Bayrock.
 17 A. Almost instantly.
 18 Q. Would that be true for your first
 19 meeting with Mr. Trump as well?
 20 A. A month or so later.
 21 Q. Okay. Within your first year of
 22 employment, do you think?
 23 A. I would say within my first six months,
 24 if not within my first three months. But again,
 25 can't put my finger on it.

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1 Sater - Confidential
 2 Q. What was the most recent project that
 3 you've worked on with Mr. Trump, or are working
 4 on?
 5 A. Trump SoHo.
 6 Q. And you're involved in that project?
 7 A. Well, I found the land, negotiated all
 8 the contracts with our partners, was the bridge in
 9 the negotiation between our partners and the Trump
 10 Organization, helped run it eventually before
 11 others in my firm took over. It was a very
 12 difficult negotiation.
 13 Q. Was Mr. Trump or anybody in the Trump
 14 Organization aware of your prior criminal
 15 conviction?
 16 A. I disclosed --
 17 MR. RESSLER: I'll object to the form
 18 of the question.
 19 MR. MELODIA: Okay.
 20 A. I had disclosed my past to Russell and
 21 Charlie, and I gathered from my various meetings
 22 with Donald Trump, although it was never
 23 explicitly described, that they may have told him.
 24 I don't know for a fact that they did, but I
 25 assume that they did.

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1 Sater - Confidential
 2 Q. You yourself did not?
 3 A. I myself did not tell Mr. Trump about
 4 my prior history.
 5 Q. Had you told Mr. Arif and people at
 6 Bayrock?
 7 A. Yes.
 8 DI MR. BURSTEIN: You know what, I made a
 9 mistake by letting him to answer the first
 10 question, but the second question I'm telling
 11 him not to answer.
 12 Q. Are you being compensated in any way
 13 today for your testimony?
 14 A. I got to meet you guys.
 15 Q. Good answer. Other than that, no?
 16 A. No.
 17 Q. Is anybody other than you paying for
 18 your legal bills?
 19 A. No.
 20 MR. BURSTEIN: I think that assumes a
 21 fact not in evidence.
 22 Q. Is it your intention to pay your own
 23 legal bills?
 24 A. Not if I can get away with letting
 25 somebody else pay them.

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1 Sater - Confidential
 2 Q. Your lawyer actually asked me to ask
 3 that question.
 4 MR. MELODIA: That's all I have for
 5 today. Thank you for your time.
 6 THE WITNESS: Thank you.
 7 MR. BURSTEIN: Why don't we --
 8 MR. MELODIA: We can take a break with
 9 you for a second.
 10 MR. RESSLER: Yeah, why don't we take a
 11 break.
 12 THE VIDEOGRAPHER: The time on the
 13 video monitor is 4:15 p.m. We're off the
 14 record.
 15 (Recess taken from 4:15 to 4:33.)
 16 THE VIDEOGRAPHER: We're back on the
 17 record. The time on the video monitor is 4:33
 18 p.m.
 19 MR. RESSLER: No questions. Thanks.
 20 MR. MELODIA: Okay. Thanks for your
 21 time today.
 22 THE WITNESS: Thank you.
 23 (Continues on following page.)
 24
 25

<p style="text-align: right;">178</p> <p>1 Sater - Confidential</p> <p>2 THE VIDEOGRAPHER: The time on the</p> <p>3 video monitor is 4:33 p.m. We're off the</p> <p>4 record. This concludes the deposition.</p> <p>5 (Time noted: 4:33 p.m.)</p> <p>6</p> <p>7 <u>FELIX H. SATER</u></p> <p>8</p> <p>9 Subscribed and sworn to before me</p> <p>10 this ___ day of _____ 2008.</p> <p>11 _____</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">180</p> <p>1 ----- I N D E X -----</p> <p>2</p> <p>3</p> <p>4 WITNESS: EXAMINATION BY: PAGE</p> <p>5 Felix H. Sater Mr. Melodia 5</p> <p>6</p> <p>7 ----- TRANSCRIPT MARKINGS -----</p> <p>8 DIRECTIONS: 17:11, 18:14, 18:23, 51:11, 58:12,</p> <p>9 175:8</p> <p>10 MOTIONS: 122:25, 147:12</p> <p>11 REQUESTS:</p> <p>12 RULINGS:</p> <p>13 TO BE FURNISHED:</p> <p>14</p> <p>15 ----- EXHIBITS -----</p> <p>16 DEFENDANTS' NO. DESCRIPTION PAGE</p> <p>17</p> <p>18 Exhibit 159, letter dated 1/1/05 from 128</p> <p>19 Trump Organization</p> <p>20 Exhibit 160, news article dated 2/06 132</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Attorney Mr. Levine from Debevoise & Plimpton has</p> <p>25 retained all exhibits.</p>																																										
<p style="text-align: right;">179</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss.</p> <p>5 COUNTY OF NEW YORK)</p> <p>6</p> <p>7 I, LAURIE A. COLLINS, a Registered</p> <p>8 Professional Reporter and Notary Public</p> <p>9 within and for the State of New York, do</p> <p>10 hereby certify:</p> <p>11 That FELIX H. SATER, the witness whose</p> <p>12 deposition is hereinbefore set forth, was</p> <p>13 duly sworn by me and that such deposition is</p> <p>14 a true record of the testimony given by the</p> <p>15 witness.</p> <p>16 I further certify that I am not related</p> <p>17 to any of the parties to this action by blood</p> <p>18 or marriage, and that I am in no way</p> <p>19 interested in the outcome of this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set</p> <p>21 my hand this 11th day of April 2008.</p> <p>22</p> <p>23 <u>LAURIE A. COLLINS, RPR</u></p> <p>24</p> <p>25</p>	<p style="text-align: right;">181</p> <p>1</p> <p>2 ERRATA SHEET</p> <p>3 VERITEXT REPORTING COMPANY</p> <p>4 1350 Broadway</p> <p>5 New York, New York 10018</p> <p>6 (212) 279-9424</p> <p>7 CASE: Trump v. O'Brien</p> <p>8 DEPOSITION DATE: April 1, 2008</p> <p>9 DEPONENT: Felix H. Sater</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">PAGE/LINE(S)</th> <th style="width: 30%;">CHANGE</th> <th style="width: 40%;">REASON</th> </tr> </thead> <tbody> <tr><td>8</td><td>/</td><td>/</td></tr> <tr><td>9</td><td>/</td><td>/</td></tr> <tr><td>10</td><td>/</td><td>/</td></tr> <tr><td>11</td><td>/</td><td>/</td></tr> <tr><td>12</td><td>/</td><td>/</td></tr> <tr><td>13</td><td>/</td><td>/</td></tr> <tr><td>14</td><td>/</td><td>/</td></tr> <tr><td>15</td><td>/</td><td>/</td></tr> <tr><td>16</td><td>/</td><td>/</td></tr> <tr><td>17</td><td>/</td><td>/</td></tr> <tr><td>18</td><td>/</td><td>/</td></tr> <tr><td>19</td><td>/</td><td>/</td></tr> <tr><td>20</td><td>/</td><td>/</td></tr> </tbody> </table> <p>21 <u>FELIX H. SATER</u></p> <p>22 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>23 THIS ___ DAY OF _____, 2008.</p> <p>24</p> <p>25 <u>NOTARY PUBLIC</u> DATE COMMISSION EXPIRES</p>	PAGE/LINE(S)	CHANGE	REASON	8	/	/	9	/	/	10	/	/	11	/	/	12	/	/	13	/	/	14	/	/	15	/	/	16	/	/	17	/	/	18	/	/	19	/	/	20	/	/
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Phoenix Business Journal - September 22, 2005
[/phoenix/stories/2005/09/19/daily35.html](http://phoenix/stories/2005/09/19/daily35.html)

Members:

PHOENIX Business Journal

Thursday, September 22, 2005

Phoenix council OKs Trump-Bayrock, Westcor proposals

Phoenix Business Journal - by Mike Padgett The Business Journal

New York developer Donald Trump and partner **Bayrock Group** plan to start construction of their \$200 million luxury condo-hotel in Phoenix at 26th Street and Camelback Road in about three months.

Their proposal, as well as plans for a high-end residential tower across the street at Westcor's Biltmore Fashion Park, received a green light Wednesday when the Phoenix City Council voted to raise height limits in the Camelback Corridor.

The vote was 5-4, with Mayor Phil Gordon, Vice Mayor Mike Johnson and Council members Greg Stanton and Tom Simplot voting against the new height restrictions. Supporting the new height limits were Council members Peggy Bilsten, Doug Lingner, Claude Mattox, Peggy Neely and Dave Siebert.

The new height limits are expected to encourage several other developers to submit their own plans for higher residential buildings in the corridor.

Among the supporters of the new height limits was Peter Cosovich, who lives about three blocks south of the future Trump condo-hotel.

"This is a new direction for the area," he said. "For years, Scottsdale has been stealing our thunder but now we can get back on the map with appropriate development."

Opponents speaking against the new height limits included homeowner and attorney David Tierney, who isn't fond of developers.

"They get a bargain price on land so that they can heap a lot of steel on it, build a lot of product and make a very fine profit," Tierney told the council.

Changing building restrictions in an area at the request of developers will "empower a free-wheeling buccaneer class of developers" over the preferences of homeowners nearby, Tierney said.

The new height limits approved by the city council are:

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- 140 feet for the Trump International Hotel & Residences Phoenix at the former Hard Rock Café site.
- 165 feet at Biltmore Fashion Park at the northwest corner of 24th Street and Camelback.
- 140 feet for the vacant Hines property at the southwest corner of 24th and Camelback.
- 140 feet at the Town and Country shopping center at the southeast corner of 20th Street and Camelback.
- 140 feet at Colonnade at the southwest corner of 20th Street and Camelback.

The Trump-Bayrock proposal garnered much of the attention for height variances in the corridor. Originally, the partnership sought city approval of a 190-foot condo-hotel, and that proposal attracted strong opposition from neighboring homeowners.

The previous height limit for much of the corridor was 56 feet, excluding the five Camelback Esplanade office towers and the adjacent Esplanade Place, a luxury residential tower.

The new height limits were approved a week ago by the Phoenix Planning Commission and forwarded to the city council.

After the vote, Bayrock Managing Director Beau Woodring said his architects will have to move quickly to prepare a site plan for city planners.

"I have 30 days to get a site plan in, so the architects are going to have to work furiously," Woodring said. "We hope to begin construction by late winter or early spring."

Westcor attorney Stephen Earl said Westcor plans to start renovation of the mall in January, with construction of the 165-foot structure starting in a year or more.

The two-story east end of the shopping mall will be demolished and redesigned with retail on the ground floor and residential on the upper floors, Earl said.

"That east end is the greatest place for a residential tower," Earl said.

For more: Bayrock Group, www.bayrockgroup.com; Westcor, 602-953-6200.

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Arizona News

Neighbors Feel 'Trumped' by High-Rise Approval

PHOENIX (By Monica Alonzo-Dunsmoor, Arizona Republic)

September 27, 2005 — The word

"trumped" has new meaning for Phoenix residents who lost a nearly two-year battle to keep Donald Trump and other developers from building high-rise towers in the Camelback Corridor.

They say the City Council sided with money over the wishes of residents in its vote Wednesday to allow buildings as tall as 16 stories, or 165 feet, near 24th Street and Camelback Road. The sentiment has resonated with people throughout the city, regardless of their proximity to the east-central Phoenix area.

"We have touched a raw nerve in the community," said Alex Tauber, one of the neighborhood leaders from the Camelback Corridor. "People have been calling from



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- Act Arizona AZ Single Payer Health Care
- Jon Garrido for Phoenix City Council
- The Phoenix Business Community

Neighbors Feel Trumped by High Rise Approval

other parts of town asking, 'How can I support you?' We've been fielding calls from everywhere."

The decision also has caused a rift between the city and some residents who serve on planning committees that make recommendations on similar zoning matters. That's because the City Council's split 5-4 decision went against the Camelback East Village Planning Committee, which studied height limits in the corridor for more than a year before recommending that the 56-foot building height remain in areas closest to neighborhoods.

Dana Johnson, chairman of the Central City Village Planning Committee, now questions the city's structure and all the effort such volunteer groups make when they are so easily disregarded.

"Why do we waste our time for the city when they're just going to ignore our efforts?" he said, adding that the vote was the topic of conversation this weekend between him and other residents who sit on city committees.

Councilwoman Peggy Blisten said she is sorry that residents feel that way but she had the city's overall interests in mind with her vote to allow the projects to be taller. The city needs the revenue that the projects, from mall developer Westcor and Trump's hotel-condominium tower, to help stem years of budget cuts.

More than \$120 million has been slashed from the city's budget since 2002.

"I know it was very emotional," she said. "But in the end, we're supposed to look at the land use and I think it was a very appropriate use. We need to do everything we can. . . . We're competing with Scottsdale and Glendale and other cities that would want to have that type of development."

Outpouring of support

The day after the council's vote, Tauber said neighborhood leaders were flooded with e-mails, phone calls and visits from residents across the city upset about "how neighborhoods in the city have been treated."

One woman left a bottle of wine and a message that said in part, "Please know how grateful I am to you and all the dedicated people who worked to preserve our community core. I feel we have been betrayed by some members of the City Council, but I trust a public vote in the future will negate their decision."

- Phoenix News Premier Phoenix News website which includes Arizona 2008 Election Center.
- Arizona News Premier Arizona News website which includes Arizona 2008 Election Center with focus on Phoenix.
- US Times National USA news and includes the National 2008 Election Center.
- Blue Dogs Home of the Blue Dogs of the Democratic Party.
- Jon Garrido News Portal for The Jon Garrido Network.
- Hispanic News is ranked number 1 at Google, Yahoo and MSN and is the largest news website on the Internet for American Hispanics and Hispanics providing daily news, editorials, plus home to the Hispanic News National Diabetes Center and the Hispanic News National Election Center.
- Latin America News is the largest website on the internet covering Mexico, the Caribbean, Central and South America. Latin America News is the premier business website of Latin America.
- Latina The Latina Community for Today's Business and Professional Woman
- Mujer The National Magazine for the Hispanic/Latina Woman
- Ultra Living Ultra Living Hispanic Lifestyle

Mayor Phil Gordon, who voted against increased heights in the Camelback Corridor, said he understood the turmoil in the community but is confident everyone will be able to pull together again as a city.

"We've had a number of major community divisions in the past, and the city has moved forward after those challenges," he said. "And we've been better for it. Adversity presents opportunities, rather than problems."

Political groups formed

Neighborhood activists formed two political committees Monday in preparation for fighting the City Council's vote. One is called P'OE'D, or People Organized Exercising Democracy. The other is PROTECT, People Restoring Our Totally Endangered City Trust.

While it remains unclear exactly what those groups intend to do, an attorney representing them sent a letter to the City Clerk's Office requesting "materials which must be attached to a referendum."

It would take nearly 10,000 signatures to get a referendum on the ballot, which would allow Phoenix voters to decide whether developers get more height.

"If we don't put our foot down and take a stand now, I think the city is going to have some long-term problems," Tauber said. "If we don't do it, no one is."

Jack Leonard, a member of the Camelback East committee, doesn't understand the politics behind the decision.

"We couldn't understand the rationale for why the decision was made," he said. "It doesn't seem to be based on sound planning principals."

Leonard said he knows "you're not going to win them all, but you want to feel like you have a voice."

He and others have talked about quitting their village posts, but there were no official resignations as of Friday.

"My first reaction was, 'That's it. I'm off,'" Leonard said. "But I don't think that by stepping out of the process . . . that you do any good in the long run."

- ALEC Advocacy for anti-discrimination

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- Jon Garrido for Phoenix City Council
- The Phoenix Business Community
- Act Arizona Universal Health Care for AZ
- The Web Store — Get a website for \$29.95
- JonGarrido.com The Jon Garrido Network
- Phoenix News Rank 2 by MSN
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- Blue Dogs The Blue Dogs of the Democrats
- Mujer Hispanic women monthly magazine
- Latina Business and Professional Women
- Chica Magazine for young Hispanic girls
- Subete Opportunities for Hispanics
- ALEC
- Kid Town Where Kids Learn English
- Ultra Living Ultra Living Hispanic Lifestyle
- 51 Plus Rank 1 Baby Boomer site by Google
- For Sale By Owner USA
- Hispanic News 2005 Archive
- Hispanic News 2006 Archive
- Hispanic News 2007 Archive
- Hispanic News 2008 Archive

Tough decision

• US Times 2005 Archive

Other residents on planning committees said some decisions must be made with the whole city in mind, not just one area.

"Our village Planning Committee is just that, a planning committee," said Mel Hannah, vice chairman of the Ahwatukee Foothills Village Planning Committee.

"We are not hesitant about taking a position on issues and letting that position be known . . . but that doesn't automatically guarantee that each and every time we feel strongly about something, it will be granted."

He says he feels for the elected officials and the tough decision before them last week.

"There are sales taxes and revenues that help pay for the city services they provide, and this is not an opportunity that we want to risk not having," he said.

The favorable vote for developers has worried residents in other parts of the city who have zoning cases pending before the City Council.

In north Phoenix, residents have spent about eight months waging their own fight against mall developer Westcor's plans to develop an 80-acre auto mall near Interstate 17 and Dove Valley Road.

"It makes me nervous . . . but I hope it's not an indication of things to come," said Rick Robinson, vice chairman of the North Gateway Village Planning Committee.

"At this point, I have to stand behind the people who are supporting our fight against the auto mall. I can't afford to lose hope."

He said if the north Phoenix case "goes down in flames just like theirs did . . . then it would make us feel like we wasted an awful lot of time and an awful lot of effort, and we'd be just like the people down in Camelback."

The Jon Garrido Network

Published, Web Design and Hosted by The Jon Garrido Network, Phoenix, AZ 85254 602.244.1000 Jon@JonGarrido.com

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The Battle Has Begun

THE BATTLE HAS BEGUN!

Phoenix voters take on City Council

PHOENIX, AZ (October 5, 2005) – *People Restoring Our Totally Endangered City Trust* (“PROTECT”) will file an Initiative application this week with the Phoenix City Clerk. The Initiative action seeks to amend the City’s Charter so that the voters in a council district will vote on all future plans to allow buildings with excessive heights in that district.

“Phoenix City Council’s 5-4 vote on September 21 was a signal to the people of Phoenix that our neighborhoods are not safe from developers wishing to erect massive buildings. We need to protect our neighborhoods by allowing the citizens the right to voice their opinion through the ballot box,” said Paul Barnes, chairman of PROTECT.

People Organized, Exercising Democracy (P’OED), a companion group, will hit the streets Friday evening, October 7, at Phoenix’s First Friday Art Walk to pass out flyers seeking volunteers and supporters for the upcoming Initiative and Referendum actions.

P’OED will file a Notice of a Referendum with the Phoenix City Clerk in the next week or two. The Referendum action will seek to reverse Phoenix City Council’s September 21 vote allowing tall buildings as high as 165 feet in the Camelback Road and 26th Street area.

“It wasn’t enough for Donald Trump to get land out of the Bankruptcy Court, he probably spent a \$1 million to promote and lobby the City Council to triple the height on this project. His greed and the out-of-district council members’ indifferent negligence will destroy homes and neighborhoods,” said Jeff Fine, treasurer of P’OED. “All we ask is that the people sign the Referendum petition

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which will refer the Council's action to the City's voters to allow Phoenix residents a voice."

People Organized, Exercising Democracy (P'OED) and People Restoring Our Totally Endangered City Trust ("PROTECT") will officially open an office at 8:00 am at

Supporters can donate funds payable to P'OED,

For further information on P'OED or PROTECT, visit www.protectphoenix.com, or call 602.667.0300.

PHOTO OPPORTUNITIES

Friday, October 7, 7pm - 10pm:

P'OED and PROTECT volunteers seek supporters and volunteers at Phoenix's First Friday Art Walk.

Saturday, October 8, 9:00am:

Official opening of P'OED and PROTECT office at 4520 N. 16th Street

(northwest corner of 16th Street and Campbell facing 16th Street)

CONTACT:

Jeff Fine, Treasurer

P'OED (People Organized, Exercising Democracy)

602-957-0020

1575a

Paul Barnes, Chairman

PROTECT (People Restoring Our Totally Endangered City Trust)

602.840.1579

P.O. Box 10690, Phoenix, AZ 85064-0690

. There is no limit on the amount of contributions and they may be business or personal. Donations of any size are welcome. Donations are not tax deductible.

4520 N.16th Street

on Saturday, October 8. The office will serve as central command for organizing and signing up volunteers who will man phones and circulate petitions.

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chief David Scholl, adding that he was concerned about the amount of time that already has been devoted to the process.

"I just hope that everyone is genuine in their commitments to negotiate," he said, adding that he is willing to work toward a consensus.

Leaders of the neighborhood referendum group said they were ready to see the issue through to the ballot but were more pleased with the opportunity to continue working with developers.

However, earlier attempts to negotiate during the past year went nowhere.

"We were repulsed," said Paul Barnes, a member of P'OED. "Every single time, the answer was no, no, no."

However, the resident group now has the added clout of successfully forcing a referendum. The group turned in more than 19,000 signatures, and the city clerk found more than 15,000 to be valid, roughly 50 percent more than they needed to get the matter on the ballot.

Councilman Dave Siebert said he believes negotiations can be successful this time around.

"It's the healthiest thing for the city," Siebert said. "We have nothing to lose by bringing people together."

Councilwoman Peggy Neely said she favored allowing voters to make the final decision.

"I believe that is what the people wanted when they signed the petition," she said.

Councilman Doug Lingner also opposed the repeal, saying he didn't believe it was appropriate for the council to negate the signatures of all the people who want a public vote and allow developers and a small group of community leaders to make a decision for the entire area.

"Especially when those people have said that this council has ignored the voice of the people," he said. "Regardless of what is legal, we're responsible to the people who signed (the petitions), not just the ones who collected them."

Tauber said that they have been and will continue to be good stewards for the community.

"We have 19,000 people who believe in what we're doing," he said.

Reach the reporter at monica.alonzo-dunsmoor@arizonarepublic.com or (602) 444-2478.

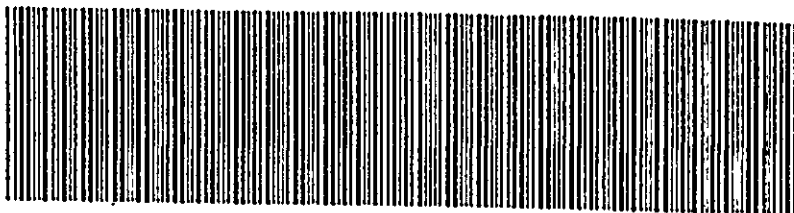
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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 30

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Document Date: 08-31-2006

Preparation Date: 09-05-2006

Document Type: MORTGAGE

Document Page Count: 28

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NEW YORK, NY 10017
212-949-0100
NY060569M

RETURN TO:

BLANK ROME LLP.
405 LEXINGTON AVENUE
NEW YORK, NY 10174
ATTN: MICHAEL J. FEINMAN, ESQ.

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANIATTAN	838	42	Entire Lot	392 5 AVENUE

Property Type: OFFICE BUILDING

Borough	Block	Lot	Unit	Address
MANHATTAN	838	45	Entire Lot	396 5 AVENUE

Property Type: OFFICE BUILDING

x Additional Properties on Continuation Page

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PARTIES

MORTGAGER/BORROWER:

400 FIFTH REALTY LLC
445 PARK AVENUE, 9TH FLOOR
NEW YORK, NY 10022

x Additional Parties Listed on Continuation Page

MORTGAGEE/LENDER:

UNICREDIT BANCA D'IMPRESA S.P.A.
VIA GARBALDI, N. 1, 37121
VERONA
ITALY

FEES AND TAXES

Mortgage		Filing Fee:	
Mortgage Amount:	\$ 27,264,672.40		\$ 0.00
Taxable Mortgage Amount:	\$ 27,264,672.40	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:		NYS Real Estate Transfer Tax:	\$ 0.00
TAXES: County (Basic):	\$ 136,323.50		
City (Additional):	\$ 306,727.88		
Spec (Additional):	\$ 68,161.75		
TASF:	\$ 0.00		
MTA:	\$ 81,794.10		
NYCTA:	\$ 170,404.38		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 763,411.61		
Recording Fee:	\$ 188.00		
Affidavit Fee:	\$ 0.00		

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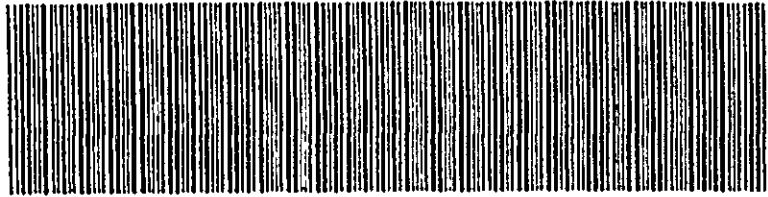
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Document ID: 2006090500585007

Document Date: 08-31-2006

Preparation Date: 09-05-2006

Document Type: MORTGAGE

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	838	46	Entire Lot	398 5 AVENUE
Property Type: NON-RESIDENTIAL VACANT LAND				
Borough	Block	Lot	Unit	Address
MANHATTAN	838	47	Entire Lot	400 5 AVENUE
Property Type: NON-RESIDENTIAL VACANT LAND				
Borough	Block	Lot	Unit	Address
MANHATTAN	866	9076	Entire Lot	397 5 AVENUE
Property Type: OFFICE BUILDING Air Rights				

PARTIES

MORTGAGEE/LENDER:

BANCA ITALEASE S.P.A.
VIA CINO DEL DUCA N. 12, 20122
MILAN
ITALY

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Acknowledgments

Exhibit A Description of Land

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Security Instrument") made as of the ~~31st~~ day of August, 2006, by 400 FIFTH REALTY LLC, a Delaware limited liability company ("Mortgagor"), having its principal place of business at 445 Park Avenue, 9th Floor, New York, New York 10022, as mortgagor, to UNICREDIT BANCA D'IMPRESA S.P.A. ("Unicredit"), having an address at Via Garibaldi, n. 1, 37121 Verona, Italy, as lender, and BANCA ITALEASE S.P.A. ("Banca Italease"), having an address at Via Cino del Duca n. 12, 20122 Milan, Italy, as lender (Unicredit and Banca Italease, as lenders, collectively "Lenders"), and Unicredit, as agent for the Lenders (in such capacity "Agent"; Lenders and Agent, collectively, "Mortgagee").

RECITALS:

WHEREAS, Mortgagor is the owner of certain real property, as more particularly described as Parcels A, B, C and D on Exhibit A attached hereto (the "Land"); and

WHEREAS, Mortgagor is the owner of certain real property, as more particularly described as Parcel E on Exhibit A attached hereto (the "Airspace Parcel" and, collectively with the Land, the "Real Property"); and

WHEREAS, Mortgagor by its Promissory Note of even date herewith given to Mortgagee is indebted to Mortgagee in the principal sum of TWENTY-SEVEN MILLION TWO HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SEVENTY-TWO AND 40/100 (\$27,264,672.40) DOLLARS in lawful money of the United States (the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note; and

WHEREAS, Mortgagor, Agent and Lenders are parties to a certain Loan Agreement (*Contratto di Finanziamento*) dated August 25, 2006 (as amended from time to time, the "Loan Agreement"), which Loan Agreement sets forth the terms of the loan evidenced by the Note and secured by this Security Instrument, and certain other agreements by and among Mortgagor, Mortgagee and the Lenders; and

WHEREAS, Mortgagor desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note, the Loan Agreement and the Other Obligations (as defined in Article 2);

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, Mortgagor and Mortgagee hereby agree that (i) the foregoing recitals are made a part of this Security Instrument and (ii) this Security Instrument shall secure all sums, obligations, liabilities and indebtedness of Mortgagor due or to become due under the Note and all amounts due or to become due under the Loan Agreement, up to the maximum principal amount of the Note, all in accordance with the following terms, covenants, conditions, representations and warranties.

ARTICLE I

GRANTS OF SECURITY

Section 1.1. PROPERTY MORTGAGED. Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Mortgagee, and grant a security interest to Mortgagee in and a lien on, the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "Property"):

- (a) the Real Property (as described in Exhibit A attached hereto);
- (b) all additional lands, estates and development rights now owned or hereafter acquired by Mortgagor for use in connection with the Real Property and the development of the Real Property, including, without limitation, (i) all the development rights, light and air easements, construction easements and other rights held by Mortgagor which were transferred to the portion of the Real Property known as Block 838, Lots 42, 45, 46 and 47, from the real property known as Block 838, Lot 48, pursuant to a Zoning Lot Agreement and Grant of Easements, dated as of May 5, 1988, recorded in the Office of the City Register, New York County (the "Register's Office") on May 16, 1988 in Reel 1402 Page 1999, as amended on July 26, 1988 by agreement recorded in the Register's Office on August 11, 1988 in Reel 1446 Page 1884 and on November 1, 2005 by agreement recorded in the Register's Office on December 23, 2005 under CRFN 2005000707128, and (ii) all rights held by Mortgagor pursuant to a certain Zoning Lot Development Agreement dated May 30, 2006, recorded in the Register's Office on July 12, 2006 under CRFN 2006000395211, by and between 400 Fifth Avenue Holdings LLC and 401 Fifth LLC (collectively, the "Development Rights Agreements");
- (c) all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;
- (d) all buildings and improvements now or hereafter erected or located on the Real Property (the "Improvements");
- (e) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, including, without limitation those created pursuant to the Development Rights Agreements, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Real Property and/or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Real Property and/or the Improvements and every part and parcel thereof, with the appurtenances thereto;

(f) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Real Property and/or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Real Property and/or the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Real Property and/or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Real Property and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code (the "UCC"), as adopted and enacted by the state or states where any of the Property is located and/or, as applicable, the state where Mortgagor is organized, superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(g) all leases and other agreements affecting the use, enjoyment or occupancy of the Real Property and/or the Improvements heretofore or hereafter entered into, including any and all guaranties of any such lease (a "Lease" or "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Real Property and/or the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(h) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(j) all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(k) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(l) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(m) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property and any part thereof and/or any Improvements or respecting any business or activity conducted on the Real Property and any part thereof, including without limitation, the Special Permit (defined herein) and all applications and other documents relating thereto, and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the existence of any Event of Default (as defined in Section 5.1 herein) hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(n) all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) all right, title and interest of Mortgagor in and to that certain Escrow Agreement dated May 30, 2006, by and among 401 Fifth LLC, 400 Fifth Avenue Holdings LLC and Alter Mantel, LLP (the "Escrow Agreement"); and

(p) any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (o) above.

Section 1.2. ASSIGNMENT OF RENTS. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Mortgagee grants to Mortgagor a revocable license to collect, receive and use the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Mortgagee, as security for the Obligations (defined in Section 2.1), a security interest in the Property to the full extent that the Property may be subject to the UCC.

Section 1.4. PLEDGE OF MONIES HELD. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter held by Mortgagee, including, without limitation, any net insurance proceeds and condemnation awards or payments, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall, at the request and at the expense of Mortgagor, be terminated.

ARTICLE 2

PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Mortgagee may determine in its sole discretion (the "Debt"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the European Union; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the other Loan Documents (defined below); (c) the payment of all amounts payable by Mortgagor to Mortgagee or any affiliate of Mortgagee under any interest rate swap agreement, interest rate hedge agreement or other interest rate protection or similar agreement entered into between Mortgagor and Mortgagee or any affiliate of Mortgagee at any time in connection with the loan evidenced by the Note; (d) the payment of all other moneys agreed or provided to be paid by Mortgagor in the Note, this Security Instrument or the other Loan Documents; (e) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and (f) the payment of all sums advanced and costs and expenses incurred by Mortgagee in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Mortgagor or Mortgagee, in each case, to the extent provided in and in accordance with the terms of this Security Instrument and/or any other Loan Document (as hereinafter defined). This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Mortgagor contained herein and the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Loan Agreement, the Note or the other Loan Documents (collectively, the "Other Obligations"). Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

Section 2.2. PAYMENTS. Unless payments are made in the required amount at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee at the place where the Note is payable (or any other place as Mortgagee, in Mortgagee's reasonable discretion, may have established by delivery of written notice thereof to Mortgagor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount

then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default (defined below).

ARTICLE 3

DUE ON SALE/ENCUMBRANCE

Section 3.1. LENDER RELIANCE. Mortgagor acknowledges that Mortgagee has examined and relied on the experience of Mortgagor and its principals in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt or the performance of the Other Obligations, Mortgagee can recover the Debt by a sale of the Property.

Section 3.2. NO SALE/ENCUMBRANCE. Except as expressly permitted pursuant to the Loan Agreement, (except for Permitted Exceptions), Mortgagor agrees that Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, mortgage, grant, bargain, encumber (except for Permitted Exceptions), pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered (except for Permitted Exceptions), pledged, assigned, or otherwise transferred.

Section 3.3. SALE/ENCUMBRANCE DEFINED. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 8 shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (c) if Mortgagor or any general partner of Mortgagor is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock or the creation or issuance of new stock by which any portion of the ownership of such corporation's stock shall be vested in or pledged to a party or parties who are not now stockholders; (d) if Mortgagor or any general partner of Mortgagor is a limited liability company, the voluntary or involuntary sale, conveyance, transfer or pledge of membership interests in the capital or profits of such company or the creation or issuance of new membership interests by which any portion of the ownership of such company's membership interests shall be vested in or pledged to a party or parties who do not now hold membership interests in such company; (e) if Mortgagor or any general partner of Mortgagor is a limited or general partnership or joint venture, (i) the change, removal or resignation of a general partner or managing partner, (ii) the transfer or pledge of the partnership interest of any general partner or managing partner or any profits or proceeds relating to such partnership interest, (iii) the transfer or pledge of any portion of the capital or profits of the partnership or (iv) the creation or issuance of new partnership interests by Mortgagor or its general partner by which any portion of the ownership of partnership interests in such

partnership shall be vested in a party or parties who do not now hold partnership interests in such partnership or joint venture; and (f) without limitation to the foregoing, any voluntary or involuntary sale, transfer, conveyance or pledge by any person or entity which directly or indirectly controls Mortgagor (by operation or law or otherwise) (a "Principal") of its direct or indirect controlling interest in Mortgagor.

ARTICLE 4

PREPAYMENT

Section 4.1. PREPAYMENT BEFORE EVENT OF DEFAULT. The Debt may be prepaid only to the extent provided in, and upon full compliance with, this Security Instrument, the Note and the Loan Agreement.

ARTICLE 5

DEFAULT

Section 5.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) if any portion of the Debt is not paid within five (5) days following the date the same is due or if the entire Debt is not paid on or before the Maturity Date;
- (b) if any of the Taxes or Other Charges are not paid within five (5) days following the date the same are due and payable, unless the same are being contested;
- (c) if the Policies are not kept in full force and effect;
- (d) if Mortgagor violates or does not comply with any of the provisions of Article 8;
- (e) if (i) Mortgagor or any general partner or member of Mortgagor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Mortgagor, or any general partner or member of Mortgagor, shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Mortgagor or any general partner or member of Mortgagor, any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against the Mortgagor or any general partner or member of Mortgagor, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results

in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) the Mortgagor or any general partner or member of Mortgagor, shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Mortgagor or any general partner or member of Mortgagor, shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(f) if Mortgagor shall be in default beyond applicable notice and cure periods, if any, under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument;

(g) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(h) if any federal tax lien is filed against Mortgagor, any general partner of Mortgagor, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(i) if Mortgagor shall fail to reimburse Mortgagee within five (5) Business Days following written demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Mortgagee pursuant to this Security Instrument;

(j) if any default occurs in the performance of any guarantor's or indemnitor's obligations under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace and cure periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(k) if for more than ten (10) days after written notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of an additional sixty (60) days; or

(l) if an Event of Default (*Evento Rilevante*) shall occur under the Loan Agreement or an Event of Default or a default beyond applicable notice or cure periods (if any) shall occur under any other Loan Documents.

Section 5.2. LATE PAYMENT CHARGE. If any sum payable under this Security Instrument or any of the other Loan Documents is not paid prior to the fifteenth (15th) day after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the other Loan Documents.

Section 5.3. DEFAULT INTEREST. Mortgagor will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) the default rate specified under the Loan Agreement (Section 6.1.4), and (b) the maximum interest rate which Mortgagor may by law pay or Mortgagee may charge and collect (the "Default Rate").

ARTICLE 6

RIGHTS AND REMEDIES

Section 6.1. REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable; subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor or of any person, firm or other entity liable for the payment of the Debt; (h) subject to any applicable law, the license granted to Mortgagor under Section 1.2 shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents,

nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) take all actions Mortgagee deems necessary or advisable with respect to the Special Permit or any other documents relating to the development of the Property, (iii) commence and complete any construction on the Property in such manner and form as Mortgagee deems advisable; and make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all third party, out-of-pocket expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property; (i) exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Mortgagor at its expense to assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least twenty (20) days prior to such action, shall constitute commercially reasonable notice to Mortgagor; (j) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such Insurance Premiums; (k) pursue such other remedies as Mortgagee may have under applicable law; (l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion; or (m) under the power of sale hereby granted, Mortgagee shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale,

by foreclosure, power of sale, or otherwise, Mortgagee may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the third party, out-of-pocket expenses of the sale, the third party, out-of-pocket cost of any enforcement proceeding hereunder and any other third party, out-of-pocket sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 6.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 5.1(e) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Mortgagee.

Section 6.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted (if any), Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 6.3. RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuation of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor (except as otherwise specifically provided in this Security Instrument or the other Loan Documents), and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the third party, out-of-pocket cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 6.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such third party, out-of-pocket costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such third party, out-of-pocket costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 6.4. ACTIONS AND PROCEEDINGS. Upon the occurrence and during the continuance of an Event of Default, Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 6.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right

from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a an Event of Default by Mortgagor existing at the time such earlier action was commenced.

Section 6.6. EXAMINATION OF BOOKS AND RECORDS. During business hours upon reasonable advance notice, Mortgagee, its agents, accountants and attorneys shall have the right, not more frequently than once in any twelve (12) month period, to examine the records, books, management and other papers of Mortgagor and Indemnitor which reflect upon their financial condition, at the Property or at any office regularly maintained by Mortgagor or Indemnitor or where the books and records are located. Mortgagee and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Mortgagee, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor and Indemnitor pertaining to the income, expenses and operation of the Property during business hours upon reasonable advance notice at any office of Mortgagor and Indemnitor where the books and records are located.

Section 6.7. OTHER RIGHTS, ETC.

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents, except as may be expressly set forth in such agreement or stipulation.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

(c) Upon the occurrence and during the continuance of an Event of Default, Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall

not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 6.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. To the extent not prohibited by Applicable Laws, Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 6.9. VIOLATION OF LAWS. If the Property is not in material compliance with Applicable Laws, Mortgagee may impose reasonable additional requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 6.10. RIGHT OF ENTRY. Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times, and upon reasonable prior written notice to Mortgagor. Provided there is no Event of Default in existence at such time, Mortgagee will use reasonable efforts to minimize interference with occupants at the Property.

ARTICLE 7

NOTICES

Section 7.1. NOTICES. All notices or other written communications hereunder shall be given in the manner specified in the Loan Agreement and addressed as follows.

If to Mortgagor: 400 Fifth Realty LLC
445 Park Avenue, 9th Floor
New York, New York 10022
Attention: Davide Bizzi

With a copy to: Greenberg Traurig, LLP
200 Park Avenue
New York, New York 10166
Attention: Joseph Farrell, Esq.

If to Mortgagee: Unicredit Banca D'Impresa S.p.A.
Via Garibaldi n. 1
37121 Verona
Italy

MTS # ____/Asset # _____

Banca Italease S.p.A.
Via Cino del Duca n. 12
20122 Milan
Italy

MTS # ____/Asset # _____

With a copy to:

Blank Rome, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Attention: Michael J. Feinman, Esq.

Simmons & Simmons
c.so Vittorio Emanuele 1
20122 Milan
Italy
Attention: Ugo Milazzo

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 8

SERVICE OF PROCESS

Section 8.1. JURISDICTION. Mortgagor, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (A) submits to personal jurisdiction in the State of New York over any suit, action or proceeding by any person arising from or relating to this Security Instrument or any of the other Loan Documents, (B) agrees that any such action, suit or proceeding may be brought in any State or Federal Court of competent jurisdiction over the State of New York, (C) submits to the jurisdiction of such courts, and, (D) to the fullest extent permitted by law, Mortgagor agrees that it will not bring any action, suit or proceeding in any other forum (but nothing herein shall affect the right of Mortgagee to bring any action, suit or proceeding in any other forum). Mortgagor further consents and agrees to service of any summons, complaint or other legal process in any such suit, action or proceeding by registered or certified U.S. mail, postage prepaid, to the Mortgagor at the address for notices described in Section 7.1 hereof, and consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

Section 8.2. CONSENT TO SERVICE. (a) Mortgagor will maintain a place of business or an agent for service of process in the State of New York and give prompt notice to Mortgagee of the address of such place of business or of the name and address of any new agent appointed by it, as appropriate. Mortgagor further agrees that the failure of its agent for service

of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Mortgagor available to be served, and if it at that time has no place of business in the State of New York, then Mortgagor irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to the first paragraph hereof.

Section 8.3. AGENT FOR SERVICE. Mortgagor unconditionally and irrevocably designates and appoints National Registered Agents, Inc., or its successor, with offices on the date hereof at 875 Avenue of the Americas, Suite 501, New York, New York 10001, to receive for and on behalf of Mortgagor service of process in New York, New York with respect to this Security Instrument through and including the date which is twenty-four (24) months following the Maturity Date. Mortgagor shall deliver to Mortgagee on the date hereof evidence that Mortgagor has duly and irrevocably appointed such agent for service of process in New York, and such agent has accepted such appointment.

ARTICLE 9

APPLICABLE LAW

Section 9.1. GOVERNING LAW. The Loan Agreement and the Debt shall be governed by Italian law. The creation, perfection and enforcement of the liens of this Security Instrument and the other Loan Documents shall be governed by the law of the State of New York.

Section 9.2. WAIVER OF JURY TRIAL. Mortgagor and Mortgagee hereby waive their right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Security Instrument or any of the other Loan Documents, any rights or obligations hereunder or thereunder or the performance of such rights and obligations. Mortgagor (a) certifies that no representative, agent or attorney of Mortgagee has represented, expressly or otherwise, that Mortgagee would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that Mortgagee has been induced to enter into this Security Instrument, and the other Loan Documents to which it is a party by, among other things, the waivers and certifications contained in this Section 9.2. Mortgagor acknowledges that they have an opportunity to review this Section 9.2 with its legal counsel and that each of them agrees to the foregoing as its free, knowing and voluntary act.

Section 9.3. USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under this Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal

balance of the Note. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 9.4. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 10

MISCELLANEOUS

Section 10.1. NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 10.2. LIABILITY. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

Section 10.3. INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 10.4. HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 10.5. DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts; each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 10.6. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 10.7. SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 10.8. NO VIOLATIONS OF TERRORISM LAWS OR OTHER GOVERNMENTAL PROHIBITIONS. Neither the making of the loan evidenced by the Note, nor the receipt of the proceeds of the loan by Mortgagor, violates any Applicable Laws, including, without limitation, any of the Terrorism Laws. No holder of any direct or indirect equitable, legal or beneficial interest in Mortgagor, or any guarantor or indemnitor, or any principal of any thereof is a "Specially Designated National" or "Blocked Person" or any similar designation under any of the Terrorism Laws. No portion of the proceeds of the loan evidenced by the Note will be used, disbursed or distributed by Mortgagor for any purpose, or to any Person, directly or indirectly, in violation of any Applicable Laws, including, without limitation, any of the Terrorism Laws. For purposes of this Security Instrument, the term "Terrorism Laws" means, collectively, Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the USA PATRIOT Act (Pub. L. No. 107-56, (2001), and all other present and future federal, state and local laws, ordinances, regulations, policies and any other requirements of any Governmental Authorities (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing.

Section 10.9. DEFINITIONS. As used in this Security Instrument, the following terms shall have the meanings set forth below:

"Business Day(s)" means any day other than a Saturday, Sunday or day on which the banks in New York are authorized or permitted to be closed.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any

corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"Indemnitor" means BI & DI Real Estate S.p.A., or such other Person as is consented to in writing by Mortgagee as a replacement indemnitor.

"Permitted Exceptions" means, collectively (a) the liens and security interests created by the Loan Documents, (b) all liens, encumbrances and other matters disclosed on Schedule B of the title insurance policy or the survey delivered to Mortgagee in connection herewith, (c) liens, if any, for Taxes or Other Charges imposed by any Governmental Authority not yet due or delinquent, (d) liens imposed with respect to Taxes or Other Charges and mechanics', materialmen's or other similar liens, in each case only if being contested in accordance with the applicable provisions of this Security Instrument, (e) rights of existing and future tenants as tenants only pursuant to written Leases entered into in conformity with the provisions of this Security Instrument, (f) financing leases with respect to furniture, fixtures and equipment or other Personal Property to the extent the same are entered into in the ordinary course of business and do not contravene the provisions of this Security Instrument, and (g) such other title and survey exceptions as Mortgagee has approved or may approve in writing.

"Person" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"Special Permit" means that certain permit which Mortgagor is currently seeking to obtain from the City Planning Commission of the City of New York and, if it takes jurisdiction, the City Council of the City of New York that will enable it to construct a mixed use high rise building on the Land.

Section 10.10. ASSIGNMENT UPON REPAYMENT. Upon repayment or prepayment of the Debt in full by Mortgagor in accordance with the terms of this Security Instrument, the Loan Agreement and the other Loan Documents, Mortgagee shall assign the Note and this Security Instrument, without recourse, covenant or warranty of any nature, express or implied, except that there has been no other assignment or transfer of the Note or this Security Instrument, to such new mortgagee designated by Mortgagor (other than Mortgagor or a nominee of Mortgagor); provided that Mortgagor has (a) caused to be paid the reasonable, out-of-pocket expenses of Mortgagee incurred in connection therewith and Mortgagee's reasonable attorneys' fees for the preparation, delivery and performance of such assignment, and (b) provided such other information and documents, if any, which a prudent mortgagee would reasonably require to effectuate such assignment. Mortgagor shall be responsible for the payment of all mortgage recording taxes (if any), recording fees and other charges payable in connection with any such assignment.

ARTICLE 11

SPECIAL NEW YORK PROVISIONS

Section 11.1. TRUST FUND. Pursuant to Section 13 of the New York Lien Law, Mortgagor shall receive the advances secured hereby and shall hold the right to receive the advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply the advances first to the payment of the cost of any such improvement on the Property before using any part of the total of the same for any other purpose.

Section 11.2. COMMERCIAL PROPERTY. Mortgagor represents that this Security Instrument does not encumber real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities.

Section 11.3. INSURANCE. The provisions of subsection 4 of Section 254 of the New York Real Property Law covering the insurance of buildings against loss by fire shall not apply to this Security Instrument. In the event of any conflict, inconsistency or ambiguity between the provisions of this Security Agreement and the provisions of subsection 4 of Section 254 of the New York Real Property Law covering the insurance of buildings against loss by fire, the provisions of this Security Instrument shall control.

Section 11.4. LEASES. Mortgagee shall have all of the rights against lessees of the Property set forth in Section 291-f of the Real Property Law of New York.

Section 11.5. STATUTORY CONSTRUCTION. The clauses and covenants contained in this Security Instrument that are construed by Section 254 of the New York Real Property Law shall be construed as provided in those sections (except as provided in Section 11.3). The additional clauses and covenants contained in this Security Instrument shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by Section 254 and shall not impair, modify, alter or defeat such rights (except as provided in Section 11.3), notwithstanding that such additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by Section 254. The rights of Mortgagee arising under the clauses and covenants contained in this Security Instrument shall be separate, distinct and cumulative and none of them shall be in exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding. In the event of any inconsistencies between the provisions of Section 254 and the provisions of this Security Instrument, the provisions of this Security Instrument shall prevail.

Section 11.6. NON-JUDICIAL FORECLOSURE. Supplementing Section 6.1 hereof, upon the occurrence and during the continuance of any Event of Default, Mortgagee may sell the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, including, without, limitation, pursuant to the non-judicial foreclosure procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law, at one or more sales, in

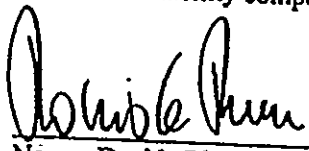
whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on the remaining portion of the Property.

Section 11.7. MAXIMUM PRINCIPAL AMOUNT SECURED.

(a) Notwithstanding anything to the contrary contained in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may be secured by this Security Instrument is TWENTY-SEVEN MILLION TWO HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SEVENTY-TWO AND 40/100 (\$27,264,672.40) DOLLARS, plus, to the extent permitted by applicable law; amounts expended by or on behalf of Mortgagee to the extent that any such amounts shall constitute payment of (i) taxes, charges or assessments that may be imposed by law upon the Property; (ii) premiums on insurance policies covering the Property; (iii) expenses incurred in upholding the lien of this Security Instrument, including the expenses of any litigation to prosecute or defend the rights and lien created by this Security Instrument; (iv) any amount, cost or charge to which Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority and (v) any other additional advances permitted by applicable law; and in each such event, such amounts or costs, together with interest thereon, shall be added to the Debt and shall be secured by this Security Instrument.

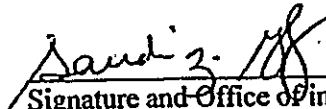
IN WITNESS WHEREOF, this Security Instrument has been executed by
Mortgagor on the day and year first above written.

400 FIFTH REALTY LLC,
a Delaware limited liability company,

By: 
Name: Davide Bizzi
Title: Authorized Signatory

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 30th day of August in the year 2006 before me, the undersigned, personally appeared Davide Bizzi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

SAUDI Z. GONZALEZ
Notary Public, State of New York
Reg. No. 01GO6115825
Qualified in Kings County
My Commission Expires September 13, 2008

SCHEDULE A

Block 838 Lot 42:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 36th Street;

RUNNING THENCE westerly along the northerly side of 36th Street, 125 feet;

THENCE northerly parallel with Fifth Avenue, 76 feet 11 inches;

THENCE easterly parallel with 36th Street, 25 feet;

THENCE southerly parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly parallel with 36th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along said westerly side of Fifth Avenue, 49 feet 4 inches to the point or place of BEGINNING.

Block 838 Lot 45:

All that certain plot, or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue, distant 49 feet 4 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of West 36th Street;

RUNNING THENCE westerly parallel with West 36th Street, 100 feet;

THENCE northerly parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly parallel with West 36th Street, 100 feet to the westerly side of Fifth Avenue;
and

THENCE southerly along the westerly side of Fifth Avenue, 27 feet 7 inches to the point or place of BEGINNING.

Block 838 Lot 46:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County, and State of New York, bounded and described as follows:

SCHEDULE A .
(continued)

BEGINNING at a point on the westerly side of Fifth Avenue, distant 76 feet, 11 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue and the northerly side of West 36th Street;

RUNNING THENCE northerly along the westerly side of Fifth Avenue, 27 feet, 7-1/2 inches;

THENCE westerly parallel with West 36th Street, 120 feet;

THENCE southerly parallel with Fifth Avenue, 5 feet, 9-1/2 inches to the center line of the block;

THENCE westerly parallel with West 36th Street and along the center line of the block; 5 feet;

THENCE southerly parallel with Fifth Avenue, 21 feet, 10 inches; and

THENCE easterly parallel with West 36th Street, 125 feet to the westerly side of Fifth Avenue, at the point or place of BEGINNING.

Block 838 Lot 47:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 65 feet 4-1/4 inches southerly from the corner formed by the intersection of the said westerly side of Fifth Avenue with the southerly side of 37th Street;

RUNNING THENCE westerly parallel with the southerly side of West 37th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 27 feet 7-1/4 inches;

THENCE easterly parallel with the southerly side of West 37th Street, 120 feet to the westerly side of Fifth Avenue.

THENCE northerly along said westerly side of Fifth Avenue, 27 feet 7-1/4 inches to the point or place of BEGINNING.

OVERALL DESCRIPTION OF LOTS 42, 45, 46 AND 47:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of West 36th Street and the westerly side of Fifth Avenue;

RUNNING THENCE westerly along the northerly side of West 36th Street, 125 feet.

THENCE northerly parallel with Fifth Avenue, 98 feet 9 inches to the point of intersection with the center line of the block;

SCHEDULE A .
(continued)

THENCE easterly parallel with West 36th Street and along the center line of the block, 5 feet 0 inches;

THENCE northerly and parallel with Fifth Avenue, 33 feet 4 3/4 inches;

THENCE easterly parallel with West 36th Street, 120 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 132 feet 1 3/4 inches to the corner first mentioned, the point or place of BEGINNING.

FEE & AIR RIGHTS

Block 866 Lot 9076:

ALL that certain volume of air, situate, lying and being in the Borough of Manhattan, City, County and State of New York, at and above a horizontal plane drawn at an elevation of 276.75 feet above the Manhattan Datum, bounded and described as follow:

BEGINNING at a corner formed by the intersection of the Southerly side of East 37th Street with the Easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 152 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the Southerly side of East 37th Street, 111 feet 8 inches to the Easterly side of Fifth Avenue; and

THENCE northerly along easterly side of Fifth Avenue, 117 feet 1 inch to the point or place of BEGINNING.

400 FIFTH REALTY LLC, as mortgagor
(Mortgagor)

to

UNICREDIT BANCA D'IMPRESA S.P.A., as Lender, and BANCA ITALEASE S.P.A., as
Lender and UNICREDIT BANCA D'IMPRESA S.P.A., as Agent, collectively, as mortgagee
(Mortgagee)

GAP MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY
AGREEMENT

Dated: August 31, 2006

Location:

Section: 3 Block: 838 Lots: 42,45,46, 47 County: New York	Section: 3 Block: 866 Lot: 9076 County: New York
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Maximum Principal Amount Secured: \$27,264,672.40, plus other sums described in Section
11.7

PREPARED BY AND UPON
RECORDATION RETURN TO:

Blank Rome LLP
405 Lexington Avenue
New York, New York 10174
Attention: Michael J. Feinman, Esq.
BR File No.: 125787.00401

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* * * C O N F I D E N T I A L * * *

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: CAMDEN COUNTY

DONALD J. TRUMP,

Plaintiff,

vs.

No. CAM-L-545-06

TIMOTHY L. O'BRIEN, TIME

WARNER BOOK GROUP INC.,

and WARNER BOOKS INC.,

Defendants.

April 14, 2008

9:57 a.m.

Deposition of HOWARD M. LORBER, held at
the offices of Kasowitz, Benson, Torres &
Friedman, 1633 Broadway, New York, New York,
before Laurie A. Collins, a Registered
Professional Reporter and Notary Public of
the State of New York.

2	<p>1</p> <p>2 APPEARANCES:</p> <p>3 BROWN & CONNERY LLP</p> <p>4 Attorneys for Plaintiff</p> <p>5 360 Haddon Avenue</p> <p>6 Westmont, New Jersey 08108</p> <p>7 BY: WILLIAM M. TAMBUSI, ESQ.</p> <p>8 WILLIAM F. COOK, ESQ.</p> <p>9 - and -</p> <p>10 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP</p> <p>11 1633 Broadway</p> <p>12 New York, New York 10019-6799</p> <p>13 BY: MARC E. KASOWITZ, ESQ.</p> <p>14 MARK P. RESSLER, ESQ.</p> <p>15 MARIA GORECKI, ESQ.</p> <p>16</p> <p>17 DEBEVOISE & PLIMPTON LLP</p> <p>18 Attorneys for Defendants</p> <p>19 919 Third Avenue</p> <p>20 New York, New York 10022</p> <p>21 BY: ANDREW J. CERESNEY, ESQ.</p> <p>22 ANDREW M. LEVINE, ESQ.</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 DANIEL McCLUTCHY, Videographer</p>	4
3	<p>1</p> <p>2 THE VIDEOGRAPHER: Good morning. My</p> <p>3 name is Daniel McClutchy of Veritext New York.</p> <p>4 The date today is April 14th, 2008. The time</p> <p>5 is 9:57 a.m. This deposition is being held in</p> <p>6 the office of Kasowitz, Benson located at 1633</p> <p>7 Broadway, New York, New York.</p> <p>8 The caption of this case is Donald J.</p> <p>9 Trump versus Timothy L. O'Brien, et al., in</p> <p>10 the Superior Court of New Jersey, Law</p> <p>11 Division: Camden County, Docket Number</p> <p>12 CAM-L-545-06. The name of the witness is</p> <p>13 Howard Lorber.</p> <p>14 At this time the attorneys will</p> <p>15 identify themselves and the parties they</p> <p>16 represent, after which our court reporter,</p> <p>17 Laurie Collins, will swear in the witness and</p> <p>18 we can proceed.</p> <p>19 MR. RESSLER: For Plaintiff Donald</p> <p>20 Trump from the firm of Kasowitz, Benson,</p> <p>21 Torres & Friedman, Mark Ressler, Marc</p> <p>22 Kasowitz, and Maria Gorecki.</p> <p>23 MR. TAMBUSI: From Brown & Connery,</p> <p>24 William Tambussi and William Cook for</p> <p>25 Plaintiff Trump.</p>	5
4	<p>1</p> <p>2 MR. CERESNEY: For the defendants,</p> <p>3 Andrew Ceresney and Andrew Levine from</p> <p>4 Debevoise & Plimpton LLP.</p> <p>5 HOWARD M. LORBER,</p> <p>6 called as a witness, having been duly sworn</p> <p>7 by the notary public, was examined and</p> <p>8 testified as follows:</p> <p>9 EXAMINATION BY</p> <p>10 MR. CERESNEY:</p> <p>11 Q. Good morning, Mr. Lorber.</p> <p>12 A. Good morning.</p> <p>13 Q. Let me introduce myself on the record.</p> <p>14 My name is Andrew Ceresney. I'm from the law firm</p> <p>15 of Debevoise & Plimpton, and I represent the</p> <p>16 defendants in this case - that's Timothy O'Brien,</p> <p>17 Time Warner Book Group, and Warner Books - who</p> <p>18 have been sued by Mr. Trump. I'll be asking you</p> <p>19 some questions today in connection with that</p> <p>20 litigation.</p> <p>21 As you heard, your testimony is under</p> <p>22 oath. It's being taken down by a stenographer and</p> <p>23 by the videographer, and it may be read or played</p> <p>24 at trial or used for other purposes. Do you</p> <p>25 understand that?</p>	4
5	<p>1</p> <p>2 Lorber - Confidential</p> <p>3 A. I do.</p> <p>4 Q. Because the court reporter is taking</p> <p>5 down all the testimony, it's important for you to</p> <p>6 verbalize all of your answers. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. And so that the court reporter can</p> <p>9 allow and take down both what I say and what you</p> <p>10 say, you have to just allow me to finish my</p> <p>11 question before you answer a question. Okay?</p> <p>12 A. Okay.</p> <p>13 Q. If an attorney makes an objection, if</p> <p>14 Mr. Ressler makes an objection, I'll ask you to</p> <p>15 stop, don't respond, allow him to state his</p> <p>16 objection, and then answer the question unless</p> <p>17 you're instructed not to.</p> <p>18 Do you understand that?</p> <p>19 A. I do.</p> <p>20 Q. And if you don't understand any of my</p> <p>21 questions, please let me know and I will clarify.</p> <p>22 If you do answer a question, I will understand</p> <p>23 that you understood the question. Okay?</p> <p>24 A. Yep.</p> <p>25 Q. Are you under the influence of any</p> <p>medication or drugs or alcohol that would impair</p>	5

2 (Pages 2 to 5)

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

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<p>1 Lorber - Confidential</p> <p>2 your ability to hear, understand, and respond to</p> <p>3 my questions today?</p> <p>4 A. No.</p> <p>5 Q. Do you have any physical disability</p> <p>6 that would prevent your hearing, understanding,</p> <p>7 or answering my questions today?</p> <p>8 A. No.</p> <p>9 Q. Any conditions that would impair your</p> <p>10 memory?</p> <p>11 A. No.</p> <p>12 Q. Are you represented today by counsel?</p> <p>13 A. No.</p> <p>14 Q. Are you here unrepresented?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Just to clarify, Mr. Ressler and</p> <p>17 the Kasowitz firm and Brown & Connery do not</p> <p>18 represent you; is that correct?</p> <p>19 A. In this matter, that's correct.</p> <p>20 Q. Do you have any sort of -- strike that.</p> <p>21 If you'd like to take a break at any</p> <p>22 time, just let me know. Okay?</p> <p>23 A. Yes.</p> <p>24 MR. CERESNEY: And I understand from</p> <p>25 counsel that Mr. Lorber has to leave today at</p>	<p>6</p> <p>1 Lorber - Confidential</p> <p>2 Q. And when you say it's a New York Stock</p> <p>3 Exchange, so it's a public company?</p> <p>4 A. Yes.</p> <p>5 Q. Who owns Vector generally? Is it just</p> <p>6 public stockholders?</p> <p>7 A. Public shareholders.</p> <p>8 Q. And what is your percent ownership in</p> <p>9 Vector?</p> <p>10 A. I own about 5 percent.</p> <p>11 Q. What do you spend the bulk of your time</p> <p>12 on?</p> <p>13 MR. RESSLER: Objection to the form of</p> <p>14 the question.</p> <p>15 Q. You can answer. Professionally, that</p> <p>16 is.</p> <p>17 A. I spend time on the Liggett Tobacco</p> <p>18 Company, watching over that, and I spend time with</p> <p>19 Douglas Elliman, the two main businesses. In</p> <p>20 addition, Vector owns some real estate, and we buy</p> <p>21 and sell real estate also, so spend some time</p> <p>22 doing that.</p> <p>23 Q. What kind of real estate does Vector</p> <p>24 own generally?</p> <p>25 A. We have bought and sold office</p>
<p>7</p> <p>1 Lorber - Confidential</p> <p>2 1 p.m.?</p> <p>3 MR. RESSLER: 1, correct.</p> <p>4 MR. CERESNEY: At 1 p.m. and we will</p> <p>5 obviously try to accommodate that, and just</p> <p>6 for the record we learned of that this</p> <p>7 morning.</p> <p>8 Q. Mr. Lorber, just give me your full name</p> <p>9 if you could.</p> <p>10 A. Howard Mark Lorber.</p> <p>11 Q. Have you used that name your entire</p> <p>12 life?</p> <p>13 A. Yes.</p> <p>14 Q. And what's your date of birth?</p> <p>15 A. September 8, 1948.</p> <p>16 Q. What are your current professional</p> <p>17 positions or titles?</p> <p>18 A. I'm the chief executive officer of</p> <p>19 Vector Group and the chairman of the board of</p> <p>20 Nathan's Famous.</p> <p>21 Q. What is the Vector Group?</p> <p>22 A. The Vector Group is a New York Stock</p> <p>23 Exchange company, a holding company, that owns the</p> <p>24 Liggett Tobacco Company and has control and owns</p> <p>25 50 percent of Prudential Douglas Elliman.</p>	<p>9</p> <p>1 Lorber - Confidential</p> <p>2 buildings, shopping centers, hotels, pretty</p> <p>3 varied.</p> <p>4 Q. Okay. I'll come back to that.</p> <p>5 Let me just focus for a moment -- and</p> <p>6 again, I don't want to go through your whole</p> <p>7 employment history. I'm sure it's long, varied,</p> <p>8 and interesting, but let me just focus on your</p> <p>9 real estate experience for the moment.</p> <p>10 What is your prior experience in the</p> <p>11 real estate industry, if you could walk me through</p> <p>12 your career in the real estate industry?</p> <p>13 A. I started investing in real estate in</p> <p>14 the eighties, and then I was doing co-op</p> <p>15 conversions in the eighties where we bought rental</p> <p>16 buildings and converted them into co-ops. And</p> <p>17 then did some small real estate deals myself. And</p> <p>18 then when I got involved with the Vector Group, we</p> <p>19 started doing -- which was in the nineties, we</p> <p>20 started, as I said, purchasing and selling real</p> <p>21 estate.</p> <p>22 Q. And primarily where was the real estate</p> <p>23 that you've invested in? Is it in New York</p> <p>24 generally?</p> <p>25 A. No. It was all over the country.</p>

10	<p>1 Lorber - Confidential</p> <p>2 Q. U.S., though, domestic?</p> <p>3 A. Yes, domestic.</p> <p>4 Q. Let me focus then on development</p> <p>5 projects in particular. You mentioned co-op</p> <p>6 conversions when you purchased a building that</p> <p>7 already exists and then take it co-op. Have you</p> <p>8 also been involved in situations where you</p> <p>9 purchased land and put up a building on it, for</p> <p>10 example?</p> <p>11 A. Well, through Vector Group we actually</p> <p>12 developed some real estate that way in Moscow.</p> <p>13 That was through Vector Group, not personally.</p> <p>14 Q. Okay. And when was that?</p> <p>15 A. In the nineties.</p> <p>16 Q. And how about other than the Moscow</p> <p>17 project, other projects where you've actually</p> <p>18 developed real estate?</p> <p>19 A. We haven't developed anything.</p> <p>20 Built -- I built my house in Southampton. That</p> <p>21 was about it. And that was very overbudget, so</p> <p>22 I'm not that good a developer.</p> <p>23 Q. Okay. Fair enough.</p> <p>24 Most of your work, then, has been</p> <p>25 purchasing existing buildings as investments,</p>	12	<p>1 Lorber - Confidential</p> <p>2 public company called Prime Hospitality, which</p> <p>3 owned a lot of hotels, of which some were in New</p> <p>4 York. So I was -- just as a director I was</p> <p>5 involved in those hotels and developing those</p> <p>6 hotels.</p> <p>7 Q. Was that a public company? private?</p> <p>8 A. It was a public company. It was</p> <p>9 purchased -- it was taken private by Blackstone</p> <p>10 Group a number of years ago.</p> <p>11 Q. And you were one of a number of</p> <p>12 directors of that company?</p> <p>13 A. That is correct.</p> <p>14 Q. So fair to say that your experience --</p> <p>15 you have not had really any development -- any</p> <p>16 purchasing -- excuse me. Strike that.</p> <p>17 You have not had real estate purchasing</p> <p>18 experience, direct purchases of real estate, in</p> <p>19 New York?</p> <p>20 MR. RESSLER: Objection to the form of</p> <p>21 the question.</p> <p>22 Q. Just so I understand.</p> <p>23 A. Other than -- other than some things I</p> <p>24 did myself, which was spec, you know, maybe I</p> <p>25 bought a knock-down house and redid it and put it</p>
11	<p>1 Lorber - Confidential</p> <p>2 presumably?</p> <p>3 A. That's correct.</p> <p>4 Q. And I think you mentioned you did this</p> <p>5 both through the Vector Group and personally?</p> <p>6 A. Yes.</p> <p>7 Q. How many projects would you say you</p> <p>8 have been involved with where you purchased a</p> <p>9 building and then either converted it or otherwise</p> <p>10 owned it for a while?</p> <p>11 A. Personally and Vector Group?</p> <p>12 Q. Yes, both.</p> <p>13 A. Probably a dozen.</p> <p>14 Q. And just some of those have been in New</p> <p>15 York?</p> <p>16 A. Most have been. The shopping centers</p> <p>17 were all over the country. I don't think there</p> <p>18 was anything in New York. The office buildings</p> <p>19 were -- yes, the office buildings were in New</p> <p>20 Jersey, over in New Jersey, and some in Michigan.</p> <p>21 We have a couple of hotels, one in Hawaii and one</p> <p>22 in Washington, D.C. that we just sold. So it was</p> <p>23 pretty -- pretty distributed throughout.</p> <p>24 I think my experience in New York was</p> <p>25 maybe more limited to -- I was a director of a</p>	13	<p>1 Lorber - Confidential</p> <p>2 on the market for sale, things like that.</p> <p>3 Q. Smaller projects?</p> <p>4 A. Yeah, nothing on a large scale.</p> <p>5 Q. How long have you been the CEO of the</p> <p>6 Vector Group?</p> <p>7 A. I've been involved with Vector since</p> <p>8 the early nineties. I became the CEO in 2004, I</p> <p>9 believe. No, excuse me, I think -- I became the</p> <p>10 president I think in 2001, and I think I became</p> <p>11 the CEO -- I was chief operating officer, and I</p> <p>12 became the CEO January 1st, '06.</p> <p>13 Q. Okay. So president starting 2001?</p> <p>14 A. Yes.</p> <p>15 Q. CEO 2006?</p> <p>16 A. Correct.</p> <p>17 Q. And prior to 2001?</p> <p>18 A. I was a consultant to the company and</p> <p>19 the president of a partially owned subsidiary of</p> <p>20 Vector Group called New Valley Corporation.</p> <p>21 Q. And what is New Valley?</p> <p>22 A. New Valley was basically the old</p> <p>23 Western Union company, which was liquidated</p> <p>24 through a bankruptcy in the nineties and it had a</p> <p>25 lot of cash and no assets. And we used that</p>

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 2 vehicle to purchase some other businesses but
 3 mostly to trade in real estate.
 4 Q. And was that the vehicle for some of
 5 the deals you just mentioned earlier?
 6 A. Early on, yes, it was.
 7 Q. There wasn't separate deals other than
 8 the ones you've mentioned before that involved New
 9 Valley?
 10 A. No, New Valley at the time was owned 55
 11 percent by Vector Group, and subsequent it was
 12 merged into Vector Group. So it's now a 100
 13 percent owned subsidiary. So when I refer to
 14 Vector Group, I refer to whether it's New Valley
 15 or Vector Group.
 16 Q. In the projects that you have done --
 17 the shopping centers, the office buildings in New
 18 Jersey and Michigan, and the hotels that you
 19 mentioned -- what has been your role in those
 20 projects?
 21 A. My role was basically to make contact,
 22 in many cases, with the owner or developer, to be
 23 involved in negotiating the transaction. And then
 24 after the purchase, I was pretty much hands off,
 25 just reviewing it, and I had an inside person that

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 2 would take care of the day-to-day operations of
 3 the property.
 4 Q. So it's fair to say that you were
 5 involved in the negotiation for the purchase
 6 primarily?
 7 A. Yes, correct.
 8 Q. How many such deals -- you told us the
 9 ones that you consummated, deals that you actually
 10 engaged in. How many deals during the period of
 11 time, say, the nineties and early 2000s were you
 12 actually involved in discussions with potentially
 13 doing, real estate deals?
 14 A. Well, substantially more than the ones
 15 we did the, and that's the nature of the business.
 16 But I did speak to developers along the way,
 17 although in the last number of years it was pretty
 18 easy to get money, so most of the developers
 19 didn't want it. Now they show up every day
 20 looking for money. It's a pretty different --
 21 different market today.
 22 Q. You said general nature of the
 23 business. What did you mean by that?
 24 A. Well, to get to the deals that you
 25 really want to do, you have to sift your way

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 2 through a lot of deals that you don't want to do.
 3 But until you really get into them, you really
 4 don't know, so we do spend time looking at deals
 5 and purchase some of those deals.
 6 Q. Just as a general sense, for every deal
 7 you consummate, how many deals do you think you
 8 look at overall?
 9 MR. RESSLER: Objection to the form of
 10 the question.
 11 A. Well, "look at" is tough to say. You
 12 look at hundreds, but do you really get involved
 13 in negotiating them or getting -- you know, really
 14 getting into due diligence. Probably not. Maybe
 15 you get into that area with three or four and do
 16 one or two of those.
 17 Q. Okay. So fair to say numerous deals
 18 that you'll look at generally, and maybe -- and
 19 then out of those you will do actually do due
 20 diligence on a smaller number, and then the ones
 21 you do is a smaller number than that?
 22 MR. RESSLER: Objection to the form of
 23 the question.
 24 A. I think that's pretty accurate other
 25 than there's a higher percentage of deals you do

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 2 if you are dealing with someone on the other side
 3 who you have dealt with before. So if someone
 4 comes to me that I've dealt with before with a
 5 project and I've done business with them before, I
 6 take it as a higher percentage chance that I'm
 7 going to do another deal with them.
 8 Q. At what point do you consider the deal
 9 done?
 10 A. When it's done, funded, purchased; or
 11 if it's a sale, when it's sold, when it's closed.
 12 Q. Do deals fall through before those
 13 periods, before that occurs?
 14 A. Upon occasion.
 15 Q. I'm going to come back to some real
 16 estate deals in a minute.
 17 Have you ever been involved in a
 18 litigation involving Mr. Trump before, either as a
 19 witness or a party?
 20 A. I was involved in an arbitration. If
 21 that's litigation, yes.
 22 Q. It is.
 23 And can you tell us about that
 24 arbitration?
 25 A. I was a third-party arbitrator in the

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 2 litigation between Mr. Trump and Conseco over the
 3 ownership of the General Motors Building.
 4 Q. Was that a three-arbitrator -- was that
 5 an arbitration in which there were three
 6 arbitrators involved?
 7 A. Correct.
 8 Q. How did you become an arbitrator in
 9 that litigation?
 10 A. I knew about what was going on and
 11 discussed it with Mr. Trump. And he thought that
 12 instead of having a lawyer as the arbitrator
 13 for -- on his side, in addition to his lawyer,
 14 obviously, but that his arbitrator maybe it would
 15 be better off if it was a businessman. And so he
 16 asked me if I would do it.
 17 Q. So you were appointed by Mr. Trump to
 18 be one of three arbitrators?
 19 A. That is correct.
 20 Q. And just so I understand how this
 21 works, Mr. Trump appointed one arbitrator and the
 22 other side appointed one?
 23 A. That's correct.
 24 Q. And there was a third arbitrator
 25 selected?

19

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 2 A. Correct.
 3 Q. Did you actually sit in -- did you
 4 actually sit as an arbitrator in that arbitration?
 5 A. I did.
 6 Q. And when was that?
 7 A. I don't remember the year. It seems
 8 like -- probably it was maybe four or five years
 9 ago. I don't remember the exact date. It was
 10 after September 11th, 2001, because that was part
 11 of the case. So it was, you know, maybe 2002 or
 12 2003.
 13 Q. Was Mr. Trump pleased with your work as
 14 an arbitrator in that case?
 15 MR. RESSLER: Objection to the form of
 16 the question.
 17 MR. KASOWITZ: Objection. Now, my
 18 recollection is that this arbitration was -- I
 19 forget whether it was AAA or not, but I
 20 believe there were confidentiality provisions
 21 that governed the arbitration. So I'm --
 22 MR. CERESNEY: I'm not asking about
 23 substance, obviously.
 24 MR. KASOWITZ: And we're not going to
 25 let you ask about whether Mr. Trump was

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 2 pleased or not. You can ask Mr. Trump about
 3 that. But I'm just going to remind the
 4 witness that there was, I'm pretty sure,
 5 confidentiality provisions governing that
 6 arbitration.
 7 So the witness probably ought not to be
 8 speaking about matters relating to the
 9 substance of the arbitration. So far you
 10 haven't asked him anything about the substance
 11 of it; but now you're starting to get into
 12 that, and that's why I remind the witness.
 13 MR. CERESNEY: Okay. Fair enough.
 14 Q. Without getting into the substance of
 15 the arbitration, did you have discussions with
 16 Mr. Trump following the arbitration about his
 17 views of your performance as an arbitrator in that
 18 arbitration?
 19 MR. RESSLER: Objection to the form.
 20 A. Did I ask him if he thought I did a
 21 good job?
 22 Q. Yes.
 23 A. No.
 24 Q. Did he voluntarily anything about how you
 25 did?

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 2 A. No.
 3 Q. Any other litigations, arbitrations,
 4 disputes, in which you've either been a witness or
 5 a party with Mr. -- that involved Mr. Trump?
 6 A. Not to the best of my recollection.
 7 Q. You mentioned earlier Prudential
 8 Douglas Elliman. What is Prudential Douglas
 9 Elliman?
 10 A. It's a real estate brokerage company in
 11 the New York, basically Manhattan, the boroughs,
 12 and Nassau and Suffolk County.
 13 Q. And what sort of services does
 14 Prudential Douglas Elliman provide?
 15 A. Traditional brokerage services to
 16 people who want to sell an apartment or buy an
 17 apartment or to a developer that's building a new
 18 building to market the apartments that he's
 19 building.
 20 Q. So it's just a traditional New York
 21 real estate brokerage, basically?
 22 A. Correct.
 23 Q. Is it privately held, Prudential
 24 Douglas Elliman?
 25 A. Well, 50 percent is held by Vector

6 (Pages 18 to 21)

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 2 Group, and there are two other shareholders for
 3 the other 50 percent.
 4 Q. Are those Dottie Herman and Prudential?
 5 A. Correct.
 6 Q. You mentioned that your role is
 7 chairman --
 8 A. Correct.
 9 Q. -- of Prudential?
 10 What are your responsibilities specific
 11 to Prudential Douglas Elliman as opposed to the
 12 Vector Group as chairman?
 13 A. My role at Douglas Elliman basically is
 14 to be there if someone needs me, if they're trying
 15 to get a project from a developer -- and I know a
 16 lot of developers -- they will ask me to help
 17 them. I'm sort of more of a person to just bring
 18 in business, and then everyone else executes.
 19 Q. How about Dottie Herman, what's her
 20 role? Is she involved in day-to-day operations?
 21 A. Dottie is the CEO, and she is involved
 22 in the day-to-day operations of the business.
 23 Q. And how about Prudential, do they play
 24 any role in the day-to-day operations?
 25 A. No.

23

1 Lorber - Confidential
 2 Q. Who has operating control of Prudential
 3 Douglas Elliman generally?
 4 MR. RESSLER: Objection to the form.
 5 A. Well, we have 50 percent and two board
 6 members out of the four, so I would say -- whether
 7 you call that control or not, it's I guess
 8 tantamount to control.
 9 Q. And "we" being the Vector Group?
 10 A. Yes, correct.
 11 Q. Has the ownership structure of
 12 Prudential Douglas Elliman changed since 2005?
 13 A. No, it has not.
 14 Q. So the same at that times as you just
 15 mentioned?
 16 A. That's correct.
 17 Q. How about your responsibilities, same
 18 in the last three or four years?
 19 A. Same.
 20 Q. You have been involved with Prudential
 21 Douglas Elliman how long?
 22 A. Well, prior to it being Prudential
 23 Douglas Elliman, it was Prudential Long Island
 24 Realty. It was a company in Long Island without a
 25 city presence, and I got involved with that

24

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 2 probably eight or nine years ago.
 3 And then when Douglas Elliman became
 4 available for sale, we purchased it and renamed
 5 the whole company Prudential Douglas Elliman.
 6 Q. That occurred when?
 7 A. Around March of '03.
 8 Q. How much time do you spend on
 9 Prudential Douglas Elliman in a typical week?
 10 A. Quite a bit.
 11 Q. Would you say 20 hours, 30 hours a
 12 week?
 13 A. Yes.
 14 Q. And you said two of the four board
 15 members are I guess yourself and one other person
 16 from Vector Group?
 17 A. That's correct.
 18 Q. And who are the other board members?
 19 A. Dottie Herman and Laila Gerochi
 20 [phonetic], who is an employee of Prudential Real
 21 Estate Finance Company. It's called PREFSA,
 22 P-R-E-F-S-A.
 23 Q. And that's a subsidiary of Prudential
 24 the insurance company?
 25 A. Yes, it is.

25

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 2 Q. We talked earlier about some of the
 3 earlier -- the other real estate deals you've been
 4 involved with over the years, in particular the
 5 shopping centers, the office buildings, and the
 6 hotels that you discussed, and also the other
 7 deals that you have been in discussions about but
 8 not consummated.
 9 Any of those -- have you ever over the
 10 years had any projects -- setting aside 400 Fifth
 11 Avenue, which we'll obviously discuss in detail,
 12 have you had other projects that you've discussed
 13 that involved Mr. Trump?
 14 A. I'm sure over the years we've
 15 discussed, you know, projects, a few. I don't
 16 think they were anything that either one of us was
 17 committed to. It was just maybe something -- an
 18 idea he had or an idea I had and we talked about
 19 it.
 20 Q. Any of those that you can recall
 21 sitting here today, specifics?
 22 A. We once looked at a piece of property,
 23 I think it was the old Grumman facility, out in
 24 Riverhead, Long Island.
 25 Q. When was that?

26	<p>1 Lorber - Confidential</p> <p>2 A. Five years ago.</p> <p>3 Q. And what happened with that, those</p> <p>4 discussions?</p> <p>5 A. Neither of us decided it made any sense</p> <p>6 to do anything with it. Someone else purchased</p> <p>7 it.</p> <p>8 Q. Make a bid?</p> <p>9 A. No.</p> <p>10 Q. Any others you recall?</p> <p>11 A. No, there were a couple of projects</p> <p>12 that I found out that he was bidding on and I was</p> <p>13 bidding on separately.</p> <p>14 Q. Okay. Which ones? Do you recall any</p> <p>15 in particular?</p> <p>16 A. Recently there was the Garden City</p> <p>17 Hotel.</p> <p>18 Q. You were competitors?</p> <p>19 A. Yes.</p> <p>20 Q. Did either of you get it?</p> <p>21 A. No.</p> <p>22 Q. Any other projects that you can recall</p> <p>23 that you have discussed with Mr. Trump over the</p> <p>24 years, other than 400 Fifth Avenue?</p> <p>25 (Discussion off the record.)</p>	28	<p>1 Lorber - Confidential</p> <p>2 introduced Mr. Trump to the owners of the 400</p> <p>3 Fifth Avenue site, not that we were going to own</p> <p>4 it but that we wanted to do the sales on the</p> <p>5 project.</p> <p>6 Q. Putting aside 400 Fifth Avenue for the</p> <p>7 moment, have there been other projects in which</p> <p>8 you have -- involving Mr. Trump that fit that</p> <p>9 description?</p> <p>10 A. He has not used us on a particular</p> <p>11 project; he's used other companies. He's done it</p> <p>12 himself, his own sales team that he's put</p> <p>13 together. Although since the size of our company</p> <p>14 and the number of brokers we have, we have</p> <p>15 obviously sold individual units in buildings that</p> <p>16 he's a principal of.</p> <p>17 Q. Right. So other than 400 Fifth Avenue,</p> <p>18 you personally are not aware of specific projects</p> <p>19 in which you were going to play the role of sales</p> <p>20 agent for Mr. Trump's project?</p> <p>21 A. Well, sales agent maybe on a particular</p> <p>22 few apartments in a project, but not where he's</p> <p>23 building a building and we're the on-site</p> <p>24 salespeople and doing a whole project, no.</p> <p>25 Q. So 400 Fifth Avenue is the only one?</p>
27	<p>1 Lorber - Confidential</p> <p>2 A. I'm not sure how to answer because you</p> <p>3 keep referring back to 400 Fifth Avenue. That was</p> <p>4 not -- 400 Fifth Avenue was not a project that I</p> <p>5 was a principal of. You're now asking me about</p> <p>6 projects that I'm a principal of.</p> <p>7 Q. Okay. Thank you for making that</p> <p>8 distinction. Let's just first do projects your a</p> <p>9 principal of.</p> <p>10 Any other projects that it was</p> <p>11 contemplated you would be principal of?</p> <p>12 A. No.</p> <p>13 Q. Now let's go to other projects in</p> <p>14 which -- let me just understand the distinction</p> <p>15 you're drawing. There were projects in which you</p> <p>16 were going to be a principal, that is, you've got</p> <p>17 to invest directly, I take it.</p> <p>18 A. Correct.</p> <p>19 Q. What other types of projects have you</p> <p>20 done over the years with Mr. Trump?</p> <p>21 A. Well, no particular projects, but like</p> <p>22 we tried doing in 400 Fifth Avenue was that we</p> <p>23 were going to be the sales agent for the project.</p> <p>24 Although we were not a principal, we wanted to be</p> <p>25 the sales agent for the project, which is why we</p>	29	<p>1 Lorber - Confidential</p> <p>2 where you remember that was contemplated by</p> <p>3 Prudential Douglas Elliman?</p> <p>4 A. That was contemplated with the owners</p> <p>5 of 400 Fifth Avenue, regardless of whether it was</p> <p>6 a Trump project or not a Trump project. We were</p> <p>7 going to be the sales agent for the project.</p> <p>8 Q. Okay. And I'm going to come to 400</p> <p>9 Fifth Avenue in just a couple of minutes,</p> <p>10 actually. But just to clarify, other than that</p> <p>11 project, there were no other projects that you</p> <p>12 recall in which Mr. Trump -- in which Mr. Trump</p> <p>13 was involved in and which Prudential Douglas</p> <p>14 Elliman was going to be the exclusive sales agent?</p> <p>15 A. For the whole project, no.</p> <p>16 Q. Any other real estate-related projects</p> <p>17 that you have over the years discussed with</p> <p>18 Mr. Trump?</p> <p>19 A. I'm sure there's a couple I can't think</p> <p>20 of years ago; nothing that I can recollect right</p> <p>21 now.</p> <p>22 Q. Now, we're going to talk about 400</p> <p>23 Fifth Avenue, but let me ask you this: When were</p> <p>24 you first approached about testifying in this</p> <p>25 litigation?</p>

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2 A. Probably -- I don't remember exactly

3 when the litigation started, but I'm sure soon

4 after it started.

5 Q. If I told you that the litigation

6 started in January of 2006 -- I think we can

7 stipulate to that -- do you have any -- does that

8 help you sort of --

9 MR. KASOWITZ: Do you remember?

10 A. I don't think it was that early. I

11 would have thought it was after that.

12 MR. KASOWITZ: Okay. If you don't

13 remember --

14 A. I don't recollect, but I don't think it

15 was as early as that.

16 Q. Who approached you first about

17 testifying in this litigation?

18 A. I believe Marc Kasowitz.

19 Q. And what was the conversation that you

20 had with Mr. Kasowitz about testifying in this

21 litigation?

22 A. The conversation was that he wanted me

23 to -- that I would be called to testify as to

24 deals that I knew about with Mr. Trump that I was

25 involved with that did not happen because of the

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2 book about Mr. Trump and The New York Times

3 article.

4 Q. And which deals in particular were

5 discussed during that conversation?

6 A. Well, there was --

7 MR. RESSLER: Objection to the form.

8 Q. You can answer.

9 A. There were two. One was 400 Fifth

10 Avenue, and one was him being involved in the

11 Prudential Douglas Elliman brokerage business.

12 Q. Anything else discussed during that

13 conversation with Mr. Kasowitz?

14 A. No.

15 Q. Did you discuss the substance of what

16 your the testimony would be at all?

17 A. Can you repeat the question?

18 Q. Did you discuss the substance of what

19 your testimony would be during that conversation?

20 A. At what point? You're talking about

21 when he first discussed it with me or more

22 recently?

23 Q. First when he first discussed it.

24 A. I don't recollect whether we discussed

25 it at that time.

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2 Q. Is there anything else that would help

3 you recollect the timing of that discussion with

4 Mr. Kasowitz?

5 MR. RESSLER: Objection to the form of

6 the question.

7 A. I don't think so.

8 Q. I guess what I'm asking is if you have

9 a calendar or record of calls, that sort of thing.

10 A. No, I don't. And I speak to

11 Mr. Kasowitz fairly frequently. So I would not

12 record those.

13 Q. How many other conversations have you

14 had, either with Mr. Kasowitz or others, about

15 testifying in this litigation?

16 A. Very few, just a couple with

17 Mr. Kasowitz, and maybe Mr. Trump asked me once or

18 twice if I did my deposition yet.

19 Q. So the two people you've discussed this

20 testimony with are Mr. Kasowitz and potentially

21 Mr. Trump?

22 A. Correct.

23 Q. First as to your conversations with

24 Mr. Trump, do you recall any conversations with

25 Mr. Trump about your testimony here?

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2 A. I told him that I was scheduled for a

3 deposition, and I told him it was changed. Then I

4 told him it was scheduled. Then I told him it was

5 changed. That was about the substance of my

6 conversations with him.

7 Q. How many conversations did you have

8 with him about this?

9 A. Two, three, four, of those type of

10 conversations.

11 Q. Other than scheduling issues, did you

12 discuss anything else during those conversations

13 with Mr. Trump?

14 A. I did not discuss any detail with him.

15 Q. Did you discuss --

16 A. During -- during those conversations.

17 Q. Okay.

18 As opposed to you mean earlier

19 conversations prior to the litigation?

20 A. I'm not exactly sure of the timing, but

21 I'm sure earlier on I discussed with him what I

22 thought the implications were of the book and The

23 New York Times article as it related to his real

24 estate business in New York and how it's related

25 to things that I was considering doing with him.

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2 Q. Anything else you recall from your

3 conversations with Mr. Trump about testifying in

4 this litigation?

5 A. No.

6 Q. And as for your conversations with

7 Mr. Kasowitz, you said you had a couple of

8 additional conversations?

9 A. Yes, also about scheduling but also

10 about the substance of my testimony.

11 Q. How many conversations did you have

12 with Mr. Kasowitz about the substance of your

13 testimony?

14 A. Maybe one, two, maybe two.

15 Q. When were those?

16 A. Last Friday and maybe once before -- we

17 never really met because the schedule kept

18 changing on the deposition, so we really -- other

19 than a telephone conversation, a short telephone

20 conversation, we never really went into much

21 detail.

22 Q. Did you meet in person last Friday?

23 A. Yes.

24 Q. And then you might have had a telephone

25 conversation prior to that about the substance?

35

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2 A. I don't think it was about the

3 substance. I think the prior conversations were

4 pretty much about the scheduling of the

5 deposition. Friday was about the substance.

6 Q. And how long did you meet with

7 Mr. Kasowitz on Friday about the substance of your

8 testimony?

9 A. It was scheduled for two hours, and we

10 did it this about 20 minutes.

11 Q. Anybody else present at that

12 conversation?

13 A. Yes, Mr. Ressler. I don't know who

14 else. I think it was some -- the lady who is

15 present.

16 Q. Let me come back to that conversation.

17 Are you here voluntarily today?

18 A. Yes.

19 Q. And why did you agree to come

20 voluntarily?

21 MR. RESSLER: Objection to the form of

22 the question. What do you mean, why did he

23 agree to come?

24 Q. Why did you agree to testify

25 voluntarily?

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2 A. I don't think I've ever not come to a

3 deposition that I was asked to testify at, so that

4 would be normal for me to come.

5 Q. All right.

6 Have you reviewed the complaint in this

7 case?

8 A. No, I don't think I ever saw the

9 complaint.

10 Q. Have you ever read TrumpNation, the

11 book?

12 A. I did.

13 Q. When did you read it?

14 A. Right after it became out.

15 Q. Have you ever spoken to Mr. O'Brien?

16 A. I don't believe so.

17 Q. Have you reviewed any written documents

18 from this litigation other than the complaint,

19 which I know you said you didn't review that. So

20 have you reviewed any written documents from this

21 litigation?

22 A. The book and I read the -- reread The

23 New York Times fictional piece on Donald Trump's

24 net worth.

25 MO MR. CERESNEY: Okay. Move to strike

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2 the answer.

3 Q. Have you reviewed any interrogatory

4 responses in this case?

5 A. No, I have not.

6 Q. So let's talk about 400 Fifth Avenue.

7 When did you first become involved with 400 Fifth

8 Avenue?

9 A. I am not sure. I've been trying to

10 recollect and look through notes. And to the best

11 I can come up with, it was sometime in the

12 beginning of '06. There may have been a

13 conversation before that, but I don't believe so.

14 I believe it was '06.

15 Q. You said you went through notes.

16 A. Well, notes as to my deal with the 400

17 Fifth Avenue owners when I first got involved in

18 helping them buy the property; and then my notes

19 in entering into an agreement with them to be the

20 exclusive sales agent, which I reviewed, I looked

21 at the dates there.

22 And all that seemed to have happened

23 starting in the spring, culminating, you know, in

24 the summer of '06.

25 Q. Do you have those notes with you today?

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2 A. No.

3 Q. Have you been asked for those notes by

4 the Kasowitz firm?

5 A. I don't think so. When I say "notes,"

6 what I really mean is I have -- we have a written

7 sales agreement to be the sales agent for 400

8 Fifth Avenue. I don't really think there's any

9 notes other than that actual agreement.

10 Q. Do you have a copy of that agreement in

11 your office?

12 A. Yes.

13 Q. And what's the date of that agreement?

14 A. I don't know the actual date of the

15 agreement, but it seemed to say that it was

16 effective as of June 1st, 2006.

17 Q. So when was it signed, then? What's

18 your understanding of when it was signed in

19 relation to that June 1st effective date?

20 A. My guess is it would have been signed

21 around that time. It could have been a month

22 earlier, it could have been a month later, but it

23 would have been around that time.

24 RQ MR. CERESNEY: First of all, I call for

25 the production of that agreement.

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2 MR. KASOWITZ: You're asking Mr. Lorber

3 for the agreement?

4 MR. CERESNEY: We don't have to do this

5 right now, we can do it at the end, because I

6 don't want to take Mr. Lorber's time. But we

7 had called for the production of any documents

8 relevant to this deal, and we were told that

9 there were none.

10 MR. KASOWITZ: You called for the

11 production of documents directed to Mr. Trump

12 related to this deal. You're talking about --

13 Mr. Lorber is talking about documents --

14 Mr. Lorber is talking about documents that he

15 has relating to his transaction at 400 Fifth

16 Avenue.

17 MR. CERESNEY: We don't have to do this

18 now, but there were interactions between us,

19 and I don't know --

20 MR. KASOWITZ: Why don't we not -- why

21 don't we --

22 MR. CERESNEY: Let me just make my

23 record.

24 Your team will be familiar with those

25 communications about you, that is, Mr. Trump

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2 going to Mr. Lorber and seeing if there are

3 documents relating to some of these

4 interactions. We had understood that that had

5 been done and there were none.

6 We can discuss that at the end today.

7 MR. KASOWITZ: That's fine, Andrew,

8 we'll discuss it at the end of today.

9 Q. Going back to the sales agreement, tell

10 us what specifically is that agreement and who are

11 the parties?

12 A. The parties to that agreement is 400 --

13 some corporation that purchased 400 Fifth

14 Avenue -- I don't remember the name of the

15 corporation -- and Prudential Douglas Elliman

16 Realty.

17 Q. Is that 400 Fifth Realty LLC? Does

18 that sound familiar?

19 A. It sounds familiar. Could be.

20 Q. And who signed on behalf of Prudential

21 Douglas Elliman?

22 A. I don't recall.

23 Q. Tell us to the best of your

24 recollection the circumstances surrounding the

25 entry into that agreement.

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2 A. I was recommended to the -- to this

3 Italian group who -- I was recommended to them by

4 a commercial broker who asked me to speak to them.

5 And my first conversation with them was about a

6 project they were going to do in Mexico, in

7 Cancun.

8 And I actually flew down to Cancun --

9 it was the first time I met them; and again, I

10 believe that was in the winter, you know, like

11 December, January, February, March, you know,

12 December '05 to January, February, March '06 -- to

13 look at their site on that project.

14 And then at the same time they happened

15 to -- we started talking about New York City; they

16 would like to do a project in New York City. They

17 started asking me -- I think they may have brought

18 up 400 Fifth Avenue first, and I said I know it

19 very well because it was owned at the time by

20 Lehman Brothers and a developer named Tessler,

21 T-E-S-S-L-E-R, that has been a client of Douglas

22 Elliman's.

23 And we had actually discussed with him

24 doing the work on that site and that I knew the

25 site very well and if they wanted that site I was

11 (Pages 38 to 41)

42	<p>1 Lorber - Confidential</p> <p>2 the right person to speak to because of my</p> <p>3 background on that site and that we would help</p> <p>4 them negotiate an agreement to purchase it from</p> <p>5 the Lehman-Tessler group.</p> <p>6 Q. And when was the conversation that you</p> <p>7 mentioned about 400 Fifth Avenue and Tessler and</p> <p>8 Lehman purchasing it, when did that conversation</p> <p>9 occur?</p> <p>10 A. That was at that meeting in Mexico.</p> <p>11 That was the first conversation about it, which I</p> <p>12 don't know. I don't know what --</p> <p>13 Q. Do you have any way of checking a</p> <p>14 calendar as to when you were in Mexico?</p> <p>15 A. I could possibly go back and look at my</p> <p>16 diaries from that year and see.</p> <p>17 Q. Do you have a sense of whether it was</p> <p>18 in the winter or spring?</p> <p>19 A. My recollection -- I could be wrong --</p> <p>20 it was after the new year, so it was in '06, is</p> <p>21 the best of my recollection.</p> <p>22 RQ MR. CERESNEY: I'm going to call for</p> <p>23 the production of -- I'm making my record</p> <p>24 here. I'm going to call for the production of</p> <p>25 calendars related to that trip, any calendar</p>	44	<p>1 Lorber - Confidential</p> <p>2 correct?</p> <p>3 A. We were working on other projects with</p> <p>4 Mr. Tessler, and Mr. Tessler's son is a sales</p> <p>5 person, a broker, at Prudential Douglas Elliman.</p> <p>6 Q. That was going to be my next question,</p> <p>7 is that Mr. Tessler's son.</p> <p>8 A. Yes.</p> <p>9 Q. In this first conversation with -- let</p> <p>10 me -- actually let me back up.</p> <p>11 Mr. Bizzi, is he with a company called</p> <p>12 Bi & Di Realty, B-I and D-I?</p> <p>13 A. It sounds familiar.</p> <p>14 Q. What was his background?</p> <p>15 A. He had told me that he had done real</p> <p>16 estate in Milan. He was from Milan. Did a bunch</p> <p>17 of real estate in Milan. Did real estate in other</p> <p>18 parts of the world, including I think he told me</p> <p>19 he built in Cuba.</p> <p>20 I don't think he had done anything --</p> <p>21 he definitely had not done anything in New York</p> <p>22 City. I don't think he had done anything in the</p> <p>23 United States prior to purchasing the 400 Fifth</p> <p>24 Avenue site.</p> <p>25 Q. So Milan?</p>
43	<p>1 Lorber - Confidential</p> <p>2 entries relating to that trip.</p> <p>3 A. I don't know if I have my diaries from</p> <p>4 that year. I will look.</p> <p>5 Q. I appreciate that.</p> <p>6 So you were down in Mexico, just so I'm</p> <p>7 clear, on a different project, and this came up?</p> <p>8 A. I went down there to meet with them on</p> <p>9 the Mexican project, and then we started talking</p> <p>10 about New York City real estate.</p> <p>11 Q. Who was "them," just so we understand?</p> <p>12 A. I don't remember all the names of the</p> <p>13 people there. The one person that was our primary</p> <p>14 contact was an Italian named David Bizzi.</p> <p>15 B-I-Z-Z-I, I believe.</p> <p>16 Q. You mentioned Mr. Tessler. Is that</p> <p>17 Yitzhak Tessler?</p> <p>18 A. Yes.</p> <p>19 Q. He was the one who at the time, along</p> <p>20 with Lehman Brothers, owned 400 Fifth Avenue?</p> <p>21 A. That's correct.</p> <p>22 Q. Do you have any sense of when they</p> <p>23 purchased that property?</p> <p>24 A. No, I don't.</p> <p>25 Q. You knew Mr. Tessler from prior;</p>	45	<p>1 Lorber - Confidential</p> <p>2 A. Cuba I think he told me he built. I</p> <p>3 think he said he built condominiums in Cuba.</p> <p>4 There were some others. Brazil, I think he had a</p> <p>5 project in Brazil. There were some other places</p> <p>6 in Europe, I believe, and South America.</p> <p>7 Q. Real estate projects, though?</p> <p>8 A. Correct.</p> <p>9 Q. Condominiums or other types of</p> <p>10 projects?</p> <p>11 A. It sounded like both. It sounded like</p> <p>12 office buildings and also commercial and</p> <p>13 residential sites.</p> <p>14 Q. And what was he contemplating doing in</p> <p>15 Cancun? Also condominiums?</p> <p>16 A. That was residential, but he also flew</p> <p>17 us by helicopter over some other properties that</p> <p>18 he was involved in somehow -- he didn't go into</p> <p>19 details -- was involved which was more of a</p> <p>20 commercial and office building area downtown.</p> <p>21 Q. And what was your understanding</p> <p>22 about -- strike that.</p> <p>23 In this first -- in this meeting in</p> <p>24 Mexico that you described, did you raise 400 Fifth</p> <p>25 Avenue or did they raise that?</p>

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2 A. We started talking about New York City.

3 I don't remember who brought up New York City

4 first. And either I said it first or he said it.

5 But if he said it, I told him I knew about the

6 site already and that I could fill him in on what

7 I thought. I don't really remember who mentioned

8 the word "400 Fifth Avenue" first.

9 Q. And what specifically did you discuss

10 about the building at that time?

11 A. I told him what I thought about the

12 site, you know, what the issues were, and what I

13 thought it was worth on a per square foot basis.

14 Q. And why don't you give us specifically

15 what you told him about your thoughts and issues

16 on the site.

17 A. Well, I told him I thought to get a

18 site on Fifth Avenue, where it was my

19 understanding you could build a very tall

20 building, was a very good location and that I

21 thought it was a great location for what it was

22 zoned for, which was partially hotel and then

23 partially condominium residences and some retail

24 on the ground floor; and that I thought it could

25 be a very exciting project, albeit a very big

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2 project for somebody who had never built before in

3 New York City.

4 Q. And what did Mr. Bizzi say in response?

5 A. I don't remember exactly. We talked

6 about it, and I think we came to the conclusion

7 it's as difficult to build small as big. So, you

8 know, if you're going to do something, you know,

9 why not if the site can be bought right, then

10 maybe do something that he should really take a

11 shot at trying to buy.

12 Q. Anything else you recall from that

13 initial discussion in Mexco regarding 400 Fifth

14 Avenue?

15 A. Where we left it is he was going to get

16 back to me and he was going to be coming to New

17 York. I told him I would arrange a meeting with

18 Lehman to discuss purchasing the site.

19 Q. Anything else that you recall?

20 A. No.

21 Q. What happened after that? What

22 happened next, with regard to 400 Fifth Avenue?

23 A. To the best of my recollection, he came

24 in; we arranged a meeting with Lehman. There was

25 already a process -- a sales process on the site

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2 that was being handled by CB Richard Ellis, I

3 believe, to sell the site with bids.

4 And we negotiated a purchase agreement

5 with Mr. Bizzi, on behalf of Mr. Bizzi, to

6 purchase the site, preempt the bidding, even

7 though I think the bids were submitted already,

8 and purchase the site.

9 Q. Do you have a sense for timing when

10 that was?

11 A. Yeah, I believe again about the same

12 time. I believe it was around spring, late

13 spring, early summer, because that's when the

14 sales agreement was signed as of June 1st. So I'm

15 assuming it was right around that time was when

16 they entered into a contract to purchase the site.

17 Q. Was the sales agreement signed before

18 or after you met with Lehman Brothers regarding

19 400 Fifth Avenue?

20 A. I believe it was signed after.

21 Q. How long after?

22 A. Shortly thereafter.

23 Q. So within weeks?

24 A. Probably.

25 Q. So fair to say your best recollection

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2 is that the meeting with Lehman would have been in

3 the May-June time frame?

4 A. Correct.

5 Q. Who was present at the meeting with

6 Lehman? Was it you and Mr. Bizzi?

7 A. Yes, I think a lawyer for Mr. Bizzi or

8 one of his in-house lawyers from Italy, and the

9 Lehman people: Carmine Vasone [phonetic] and his

10 associate, Chris McKenna.

11 Q. You said that you pre-empted the

12 bidding, that there was a bidding process already

13 ongoing with regard to the building? Is that --

14 A. I believe there were bids that were

15 actually unopened that were due on the day that we

16 finally negotiated -- when we finally negotiated

17 the final price and shook hands on the deal, there

18 were bids that were -- that were there.

19 But let me correct myself. I think

20 that that was -- I'm not so sure that was the day

21 that we finalized the negotiations. That may have

22 been the day that we signed. There were -- there

23 were bids that were actually unopened bids.

24 Q. When you say you pre-empted them, you

25 offered a price, I take it, that was sufficiently

50	<p>1 Lorber - Confidential</p> <p>2 attractive that it pre-empted the bidding process?</p> <p>3 A. I thought it was a fair price for both</p> <p>4 sides. Based on what other people were paying for</p> <p>5 sites at the time, I thought it was a good deal</p> <p>6 for Mr. Bizzi.</p> <p>7 Q. What did the sales agreement provide</p> <p>8 was going to be Prudential -- the sales team being</p> <p>9 Prudential Douglas Elliman, and Mr. Bizzi or his</p> <p>10 company, what did that provide?</p> <p>11 A. It provided that basically we would</p> <p>12 help him find a hotel, whether to sell off the</p> <p>13 hotel or find an operator, and we would be paid</p> <p>14 for doing that providing that. When they started</p> <p>15 sales in the condominium units, we would be paid a</p> <p>16 commission for that.</p> <p>17 Pretty much a normal sales agreement,</p> <p>18 that we would be involved with him in finding, as</p> <p>19 I said, the hotel owner or operator, you know,</p> <p>20 helping on the layouts of the condominiums. And</p> <p>21 then obviously, when everything was approved by</p> <p>22 the attorney general to sell, we would -- we would</p> <p>23 have an on-site sales team and we would sell the</p> <p>24 apartments and receive a commission.</p> <p>25 Q. You mentioned hotel and condos. Was it</p>	52	<p>1 Lorber - Confidential</p> <p>2 in June of '06?</p> <p>3 A. I don't remember when it was received.</p> <p>4 I'm not so sure anything was received until the</p> <p>5 closing, and the closing might have been a couple</p> <p>6 months later. And then we received some money,</p> <p>7 some money up front and then some money on a</p> <p>8 monthly basis for a number of months.</p> <p>9 Q. You said the closing -- as I assume is</p> <p>10 typical in real estate deals, the closing was a</p> <p>11 couple months after the contract was signed?</p> <p>12 A. Yeah, it was a few months after. I</p> <p>13 don't remember how long. It was a few months</p> <p>14 after.</p> <p>15 Q. So it would have been summer of '06,</p> <p>16 basically?</p> <p>17 A. Summer or fall of '06, yeah.</p> <p>18 Q. Let me actually, for purposes of</p> <p>19 orienting, me show you Defendants' Exhibit 161.</p> <p>20 (Defendants' Exhibit 161, document from</p> <p>21 NYC Department of Finance, Office of City</p> <p>22 Registrar, marked for identification, as of</p> <p>23 this date.)</p> <p>24 Q. I've placed before you a document from</p> <p>25 the New York City Department of Finance, Office of</p>
51	<p>1 Lorber - Confidential</p> <p>2 going to be both?</p> <p>3 A. It had to be. The zoning, from what I</p> <p>4 remember, was 150,000 feet of the site pretty much</p> <p>5 had to be either office or -- it had to be</p> <p>6 commercial or hotel, and the balance could have</p> <p>7 been straight residential. So there had to be a</p> <p>8 hotel component.</p> <p>9 Q. Just so we're clear, what corner --</p> <p>10 it's Fifth Avenue and which corner?</p> <p>11 A. It's 36th Street. It's the -- it</p> <p>12 starts from 36th going towards 37th on the west</p> <p>13 side of Fifth Avenue.</p> <p>14 Q. Was there any compensation agreement</p> <p>15 with regard to your role in actually purchasing</p> <p>16 the -- helping Mr. Bizzi purchase the property?</p> <p>17 A. The seller had already retained, as I</p> <p>18 mentioned, CB Richard Ellis, so they were being</p> <p>19 paid by the owners of the property. And when we</p> <p>20 entered into an agreement for Mr. Bizzi, we</p> <p>21 received some compensation, which was sort of a</p> <p>22 combination of helping him in the process and some</p> <p>23 payments for starting to work on everything that</p> <p>24 had to be done regarding the project.</p> <p>25 Q. Okay. And that was received sometime</p>	53	<p>1 Lorber - Confidential</p> <p>2 City Registrar. You can see the third page of</p> <p>3 this is a deed on 400 Fifth Avenue from 400 Fifth</p> <p>4 Avenue Holdings to 400 Fifth Realty LLC dated</p> <p>5 August 31st, 2006.</p> <p>6 I just ask you to take a look at that</p> <p>7 and tell me whether this refreshes your</p> <p>8 recollection about the date of the closing of the</p> <p>9 sale to Mr. Bizzi and his company.</p> <p>10 A. Yes, it does.</p> <p>11 Q. So fair to say the closing was in late</p> <p>12 August -- approximately late August 2006?</p> <p>13 A. Correct.</p> <p>14 Q. Who else from Prudential Douglas</p> <p>15 Elliman was involved in this deal, say, in the</p> <p>16 June-July time frame?</p> <p>17 A. Dolly Lenz.</p> <p>18 Q. Who is Dolly?</p> <p>19 A. She's a broker with Prudential Douglas</p> <p>20 Elliman.</p> <p>21 Q. What was her role?</p> <p>22 A. I brought her into it to work -- to be</p> <p>23 the day-to-day person to work with the Italians on</p> <p>24 the project.</p> <p>25 Q. Okay. So it was her and you,</p>

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2 basically, from Prudential?
3 A. Well, the idea was for me to step out.
4 I put them together, and for her to be involved on
5 a day-to-day basis.
6 Q. By the way, did Mr. Bizzi have an
7 office in New York?
8 A. He did not at the time. He
9 subsequently took some space.
10 Q. Where is his offices now?
11 A. His office right now is in the same
12 building I'm in, 712 Fifth Avenue.
13 Q. Do you know the floor?
14 A. No, I do not.
15 Q. When did he take that office?
16 A. Sometime, you know, within six or nine
17 months, I think, purchasing a property he decided
18 he had to have a presence to have his team there
19 to work on the project.
20 Q. Did there come a time when you
21 discussed with BI & DI, Mr. Bizzi, the idea of
22 Mr. Trump having some kind of involvement in
23 this -- in 400 Fifth Avenue?
24 A. Yes.
25 Q. When did that occur?

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2 A. I think it probably occurred at the
3 first meeting when we were just talking about
4 ideas when he came to New York and we met with
5 Lehman. Probably around that time is when I first
6 started discussing it with him.
7 Q. So in the May 2006 time frame?
8 A. Correct.
9 Q. Was this the first time you raised it
10 with Mr. Bizzi?
11 A. I may have even raised it when I spoke
12 with him in Cancun, because I had told him that
13 Trump was going to do a project close by and he
14 asked me what I thought about Trump. And I told
15 him what I thought. So I may have even mentioned
16 something saying that maybe he'd be a good partner
17 to have in Cancun and maybe he'd be a good partner
18 to have at 400 Fifth Avenue.
19 Q. Then you raised it again at the May
20 2006 meeting?
21 A. Yes.
22 Q. And what did you tell Mr. Bizzi at that
23 time and what did he say in response?
24 A. I said that I thought it would be a
25 great site for another Trump International type of

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1 Lorber - Confidential
2 hotel as he has on Columbus Circle and that with
3 the Trump name you could expect to get higher per
4 square foot prices, as has been proven by the
5 market, and obtain a sellout quicker than without
6 his name.
7 Q. And who else was present at this
8 meeting?
9 A. I believe Dolly Lenz was present,
10 myself, Mr. Bizzi, and Mr. Bizzi's -- one of his
11 associates; I don't remember who.
12 Q. What did Mr. Bizzi say in response?
13 A. He said he'd like to meet Mr. Trump.
14 Q. Anything else that you discussed at
15 this meeting about Mr. Trump or what the terms
16 might be or anything like that?
17 A. I told him that typically the way
18 Trump's deals were being done now was more of a
19 license agreement, but on a project like this
20 Trump may consider becoming an equity -- regular
21 equity partner in the project.
22 Q. Anything else?
23 A. Again, you know, my reasons why I
24 thought Trump would be the right brand to do it
25 with.

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2 Q. Was he the only possibility at the
3 time?
4 A. No. We talked about other brands and
5 other people.
6 Q. Who else did you discuss at the time?
7 A. We discussed a new brand. Bulgari was
8 coming out with a new brand of hotels. We
9 discussed some of the Starwood brands. We
10 discussed having Ian Schrager be involved in it.
11 I think -- I think there were a few more also. I
12 just don't remember.
13 Q. And what was Mr. Bizzi's response about
14 the various different options?
15 A. He seemed interested. He wanted to
16 obviously see what would be the best deal for him
17 and try to be convinced of what would be best for
18 the project.
19 Q. Did he instruct you to move ahead with
20 any of those options other than Mr. Trump?
21 A. We did move ahead with them. I don't
22 remember if he instructed me, but we did speak to
23 a couple of people. But it seemed like in the
24 beginning the focus was on Trump. He liked the
25 idea of Trump, and we liked the idea. Being that

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2 Trump has done it and been very successful. So I

3 think that was our first choice was Trump.

4 Q. We'll come to Trump in a minute. Who

5 else did you pursue in those early conversations?

6 A. We pursued afterwards, after the Trump

7 deal didn't happen, after Mr. Bizzi decided not to

8 go along with the Trump deal, we then pursued a

9 lot of work with Ian Schrager, with it being a Ian

10 Schrager hotel.

11 Q. Had you produced Mr. Schrager prior to

12 Mr. Trump -- the Trump aspect of this?

13 A. I don't think so. I think we sort of

14 went down the line with Trump first, and then when

15 Bizzi decided not to do it, then we then to

16 Schrager.

17 Q. After this meeting in May 2006

18 regarding Mr. Trump potentially having some

19 involvement, what happened next?

20 A. I don't know if it was during that

21 period -- that visit or his next visit. I brought

22 him over to Trump's office to meet with Mr. Trump

23 and discuss it.

24 Q. When was his next visit?

25 A. I don't recall.

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2 Q. Who was present at the meeting with

3 Mr. Trump?

4 A. Myself, Mr. Trump, I believe Donald

5 Trump, Jr., Mr. Bizzi.

6 Q. Dolly Lenz there or no?

7 A. I don't recall.

8 Q. Had you had a conversation with

9 Mr. Trump about the property prior to the meeting

10 that you arranged between him and Mr. Bizzi?

11 A. Yes, I believe either on the phone or I

12 went to see him and filled him in on it.

13 Q. What did you tell him and what did he

14 say?

15 A. I told him what I thought about the

16 site, I told him I thought it was a great site,

17 you know, international type of site, and

18 obviously it had the size and the scale and it was

19 going to be a very big, tall building, which

20 Mr. Trump likes, and that I thought it would be a

21 very good project and that there was probably an

22 opportunity there to also be an equity partner in

23 it.

24 Q. And what did he say?

25 A. He said he was interested.

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2 Q. And you set up the meeting?

3 A. Yes.

4 Q. By the way, do you have any sort of

5 calendar entries? Would you have calendar entries

6 in your diary that would indicate the date of this

7 meeting?

8 A. I doubt it, because with Mr. Trump it's

9 more like you call him and say, I'm here with

10 Mr. Bizzi, I want to come over and see you, and

11 he'll say come over, and we'll run over there. So

12 I don't -- Mr. Bizzi's schedule was also the type

13 that I really didn't know when he was coming in

14 until generally when he would show up, because it

15 would change a lot. So I would wait, and then

16 when he showed up, I would call Mr. Trump and go

17 over there.

18 Q. Any other discussions with anybody

19 about Mr. Trump's involvement with this building

20 prior to the meeting between Mr. Bizzi and

21 Mr. Trump?

22 A. Can you repeat the question?

23 Q. Sure. Other than your conversations

24 you described with Mr. Trump and Mr. Bizzi, did

25 you have any conversations with anyone else about

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2 Mr. Trump's role in this building prior to the

3 meeting?

4 A. I believe I did. I believe -- we had

5 recommended counsel for Mr. Bizzi, and I believe

6 the counsel, which is Robert Ivanhoe, at Greenberg

7 Traurig. And I'm sure I discussed it with

8 Mr. Ivanhoe the ongoing conversations with

9 Mr. Trump.

10 Q. Anything else you recall? I don't want

11 to get into those conversations.

12 A. Did I discuss it with any other people?

13 Q. Yeah.

14 A. Donald Trump, Jr. I don't know if I

15 discussed it with anyone else.

16 Q. Okay. Tell us about what you recall

17 about the meeting with Mr. Trump.

18 A. The one where Mr. Bizzi --

19 Q. The one where Mr. Bizzi and Mr. Trump.

20 A. I think Mr. Bizzi was pleased to meet

21 him, he liked him. Donald basically said, you

22 know, let's do, let's try to do it -- or let's do

23 it, I think was his words. We left it there where

24 I'd be in touch with Donald Trump, Jr., to try to

25 put together some sort of term sheet for the

16 (Pages 58 to 61)

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1 Lorber - Confidential
2 project.
3 Q. What was discussed at the meeting --
4 well, let me ask you this: Do you remember
5 anything else about this meeting in terms of
6 other -- anything else that happened at this
7 meeting or any other things that were said at this
8 meeting?
9 A. No.
10 Q. Any other discussion of the terms or
11 discussion of the -- what the nature of the
12 project would be, at this meeting?
13 A. Well, we discussed what it would be, a
14 hotel and condo, but I don't think there was any
15 discussion of terms at that meeting.
16 Q. What happened after the meeting?
17 A. After the meeting, came back to my
18 office with Mr. Bizzi. We talked about again
19 about Mr. Trump. He seemed very interested. And
20 I told him I would follow up, try to get a term
21 sheet or proposal from Donald Trump, Jr.
22 Q. What happened then?
23 A. After that I -- I don't remember the
24 exact timing, but sometime after that I had a
25 couple of telephone conversations with Donald

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1 Lorber - Confidential
2 Trump, Jr., and came up with some broad outline of
3 proposed deal and asked him to get me a term
4 sheet.
5 Q. What was the broad outline that you
6 discussed with Mr. Donald Trump, Jr.?
7 A. The broad outline was -- at the time
8 Bizzi wasn't sure whether he wanted to have an
9 equity partner or not, so we were going down the
10 path of a licensing type of agreement where it
11 would be a licensing deal which would give him
12 some equity anyway without an equity investment,
13 based on how most of his licensing deals work.
14 When I say "equity investment,"
15 basically how his agreement -- the agreement he
16 wanted at the time and I believe the type of
17 agreements he was doing was they would get an
18 upfront fee, they would get a fee for running the
19 hotel, running the hotel, and they would also on
20 the sales get a piece of the sales price with
21 tiers that based on the higher the sales price
22 went, the bigger piece they would get of the
23 increase in the sales price.
24 Q. So basically if the apartments or the
25 hotel rooms were sold at a premium, he would get a

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1 Lorber - Confidential
2 percentage of that premium?
3 A. That is correct.
4 Q. Do you remember anything specific about
5 the numbers, that is, what the percentages and
6 what the upfront fee payment was contemplated?
7 A. I believe the upfront fee payment was
8 somewhere in the neighborhood of 3 to 5 million
9 dollars and that the percentages were pretty high.
10 It was something like 25 percent over a base
11 number, over a base per square foot number, that
12 he wanted to get 25 percent of the additional over
13 the base number that was decided upon.
14 Q. Do you know what the base number was?
15 A. I don't think we ever got so far as to
16 define exactly what the base number would be.
17 Q. Do you have any records of what -- of
18 these discussions with Donald Trump, Jr., any
19 notes, similar?
20 A. I had thought that I actually got a
21 term sheet, but I never was able to find one. I
22 looked in my e-mails and -- it would have been
23 e-mailed to me -- and I never found one, whether
24 there was actually a term sheet. I recollect I
25 thought that there was, but I haven't come up with

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1 Lorber - Confidential
2 it.
3 Q. Okay.
4 A. I wasn't sure whether I sent him one or
5 he sent me one. But then when I thought about it,
6 I think he sent me one and I may have responded to
7 it. But I can't find it.
8 Q. So sitting here today, do you know
9 whether there was a term sheet or not?
10 A. Oh, yeah, I'm sure, because I remember
11 reading a term sheet and discussing the terms with
12 Mr. Bizzi.
13 Q. So you think that there was such a
14 document at some point?
15 A. Yes.
16 MR. RESSLER: Objection, asked and
17 answered.
18 You can answer it again.
19 A. I believe there was.
20 Q. Who created the document, to your
21 recollection?
22 A. I believe Donald, Jr.
23 Q. And you've said you've looked for the
24 documents or e-mails, and you haven't been able to
25 find them?

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2 A. No, I have not.
3 RQ MR. CERESNEY: I call for the
4 production of any such term sheet from
5 plaintiff that exists.
6 Q. So you had discussions with Mr. Trump,
7 Jr., Donald Trump, Jr., about the terms. You've
8 told us what the discussion was. Do you have any
9 recollection of -- so what happened next? Let me
10 ask it that way.
11 A. I had a conversation, a couple
12 conversations, with Bizzi, and he asked me who
13 else I was talking to. I said, well, I have some
14 other people in mind, but I still think Trump was
15 the best.
16 He seemed to be getting a little less
17 interested in Trump, and I tried to find out from
18 him. He's not the type of guy -- he's very
19 proper, and he's not the type of guy to say
20 anything bad.
21 Finally when I pulled it out of him, he
22 said, well, he had heard things about The New York
23 Times article. And I don't remember whether he
24 mentioned the book, but I know he mentioned the
25 article, which was about the book, that, you know,

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2 made Donald look like a phony and that, you know,
3 why did I think that it was such a good idea to
4 brand, you know, with the Trump name as opposed to
5 someone else.
6 Q. When did this conversation occur?
7 A. I can't recollect whether it
8 happened -- obviously it happened subsequent to
9 the meeting with Trump, and I can't remember
10 whether it happened in the summer or happened in
11 the fall after they closed. But it had to be
12 sometime summer of '06, fall of '06.
13 Q. Had you obtained the term sheet that
14 you discussed earlier from Mr. Trump, Jr., at this
15 point?
16 A. I believe so.
17 Q. And had you discussed that term sheet
18 with Mr. Bizzi at that point?
19 A. Not in detail but just that we had the
20 term sheet and in general terms.
21 Q. What specifically do you recall
22 discussing with him about the term sheet?
23 A. The fees -- the fee, the percentage of
24 the sales that he wanted.
25 Q. Did he agree to those terms?

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1 Lorber - Confidential
2 A. He didn't agree or disagree. He seemed
3 to have been losing interest at that point in
4 pursuing the deal with Trump.
5 Q. Now, this conversation that you just
6 described, was this a single conversation about
7 where Mr. Bizzi mentioned The New York Times?
8 A. No, it was not a single conversation.
9 Q. How many conversations were there?
10 A. At least a couple, two or three.
11 Q. Were they phone conversations or in
12 person?
13 A. Both, I believe.
14 Q. How many in person and how many phone
15 conversations?
16 A. I don't recollect.
17 Q. How much time was between each of those
18 conversations?
19 A. Probably weeks.
20 Q. So two or three conversations over the
21 course of weeks?
22 A. Yes, correct.
23 Q. In the first conversation amongst these
24 two or three conversations, what specifically did
25 you discuss with Mr. Bizzi about Mr. Trump's

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2 involvement?
3 A. Can you repeat the question?
4 Q. Yeah. In the first -- I want to sort
5 of break down these conversations. In the first
6 conversation that you're describing in the fall --
7 late summer/fall of 2006, what specifically did
8 Mr. Bizzi say about Mr. Trump's involvement in 400
9 Fifth Avenue?
10 A. He was asking me if I spoke to anyone
11 else, if we were following up any other avenues,
12 and I said we had a few but we were trying to put
13 the Trump thing together. He seemed to -- as I
14 said before, he seemed to be losing interest a
15 little bit.
16 And he didn't seem the type to say
17 anything bad about anyone, but the more I talked
18 to him the more it became obvious he was troubled
19 by the things he had heard. I don't even know if
20 he read the article himself or he just had other
21 people telling him.
22 And I don't know if maybe the lawyers
23 that he was using at the time maybe said something
24 negative. I'm not sure. It was conjecture on my
25 part. But someone was putting something -- it

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2 became obvious to me that someone was putting

3 something in his head that he should not do it

4 with Trump. And that wasn't coming from me, so it

5 obviously was from someone else he was talking to.

6 Q. Did he actually mention the article or

7 did you mention the article, The Times?

8 A. He didn't volunteer it, but I believe

9 that I said, Oh, are you talking about, you know,

10 the book and the article about the book. And he

11 said, yeah, it puts him this a bad light, you

12 know, maybe he's not, you know, an honest guy to

13 deal with, you know, he lies about that type of

14 stuff. It was that kind of conversation.

15 Q. About what type of stuff?

16 A. Net worth.

17 Q. Did he mention net worth?

18 A. No, he did not mention net worth.

19 Q. Did you mention net worth?

20 A. I may have, probably.

21 Q. Did you?

22 A. Well, if I talked about the article,

23 the article was -- the whole article was basically

24 about his net worth. So obviously I would mention

25 the word "net worth" if we were talking about the

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1 Lorber - Confidential

2 article and the book.

3 Q. What I'm asking you is do you recall

4 what you said about net worth, if anything.

5 A. What I said was if that's what you're

6 concerned about, I wouldn't be concerned about it

7 is because the fact is he has a substantial net

8 worth. I've seen his financial statement. And I

9 think that the article and the book were

10 completely fiction.

11 Q. And what did he say?

12 A. He didn't comment.

13 Q. So what was discussed during that

14 conversation after this part of the conversation?

15 A. Same: What's doing with the project,

16 who else are we talking to, sort of that type of

17 conversation, just business-as-usual conversation.

18 Q. Did he ever tell you that he wasn't

19 interested in working with Mr. Trump because of

20 the article?

21 A. Did he say -- are you asking did he

22 say, I am not doing the deal because of the

23 article, I can't say that he said it exactly like

24 that. My belief was, in listening to him talk, he

25 didn't want to say anything bad about Mr. Trump.

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2 Here's a guy who is coming from Italy.

3 He's going to do real estate in New York City.

4 And the last person in the world I think he is

5 going to start talking bad about is someone that

6 was the king of real estate in New York City.

7 So I think it would have made him very

8 uncomfortable to sit there and tell me what he

9 thought about Mr. Trump. But it became obvious,

10 again, that someone was saying things to him about

11 it because he seemed less interested as time went

12 on.

13 Q. But my question is did he ever tell you

14 that he wasn't going to do this deal because of

15 the article.

16 MR. RESSLER: Objection. Andrew, you

17 just asked that question, and Mr. Lorber, the

18 witness, just answered the question.

19 Q. You can answer.

20 A. Just what I said. I think -- did he

21 come out and say it exactly that way? I don't

22 recall. But did he make it obvious to me that

23 because of what people were telling him about the

24 article or about the book that he wasn't going to

25 do it? I think that's the case, because he went

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2 from being very excited about doing the project

3 with Mr. Trump to not being excited about it.

4 Q. Did you mention any other articles that

5 had been written about Mr. Trump over the years?

6 A. No, I did not.

7 Q. Did he mention any other issues with

8 Mr. Trump?

9 A. Not that I recollect.

10 Q. Did you -- when you said -- earlier I

11 think you said the article or the book. Do you

12 know which one, if at all, he -- I think you said

13 you don't even know whether he read them. Is that

14 what you said?

15 MR. RESSLER: Objection to the form of

16 the question. What's the question?

17 Q. Do you know whether he even read the

18 article or the book?

19 A. I don't know. I doubt that he did. It

20 seemed to me, from what I was getting from him,

21 pulling out of him, was that someone told him

22 about it, that he did not read it, unless they

23 showed it to him. They may have showed to it him,

24 but I don't believe he read it when it first came

25 out in '05.

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2 Q. And what specifically did he reference
3 that made you think that someone was talking to
4 him about the book or the article?
5 MR. KASOWITZ: Other than what he's
6 just testified? Other than what he's just
7 testified?
8 MR. CERESNEY: No, I just asked the
9 question.
10 MR. KASOWITZ: No, you've asked him a
11 whole bunch of questions about this. I'm
12 asking other than what he's just testified,
13 are you asking whether there's anything else
14 that gave him an indication that he was
15 referring to the article or the book?
16 MR. CERESNEY: No, I'm going to ask --
17 Q. My question is what, if anything --
18 MR. KASOWITZ: Because if it's what he
19 just testified about, he's basically told you
20 the story now three or four times.
21 Q. What, if anything, did they say, did
22 Mr. Bizzi say, that led you to believe that the
23 information he was receiving was from the article
24 or the book?
25 MR. RESSLER: Objection, Andrew, you

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2 asked that question.
3 MR. KASOWITZ: Asked and answered.
4 MR. RESSLER: Do you want to do it
5 again?
6 Q. Go ahead.
7 A. Same thing as I said before.
8 Q. Which is?
9 MR. RESSLER: He already answered the
10 question.
11 Q. What I'm asking is what specifically in
12 what he said led you to think that it was the book
13 or the article that he was referring to, because
14 you said you were the one who raised the book and
15 the article.
16 MR. RESSLER: Objection, objection,
17 mischaracterizes the witness's testimony.
18 A. I don't know what I said now, so would
19 you like to read it back to me?
20 Q. Let me rephrase the question. You
21 said -- let me ask it this way: I believe you
22 said that you raised the book and the article; he
23 didn't necessarily raise that himself; is that
24 correct?
25 MR. RESSLER: Objection,

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2 mischaracterizes of the witness's testimony.
3 A. I don't think I said it that way. Let
4 me make it clear.
5 Q. Sure.
6 A. To the best of my recollection, the
7 conversation was that it became obvious to me that
8 he was becoming less interested in pursuing the
9 deal with Trump. And I saw that because he was
10 spending a lot of time asking me about who else
11 that we're talking to and what are the deals
12 around there.
13 And as I questioned him about that, it
14 became obvious to me that someone was telling him
15 negative things about Donald. And he -- I believe
16 that he had even mentioned the fact that -- and
17 again, I don't want to confuse it, but I believe
18 that he said that someone told him about the bad
19 press or the bad article that came out around the
20 book and questioning what Trump really has and
21 what his net worth was.
22 Whether he came out and said those
23 words exactly, I don't recollect. But to me that
24 is the gist of what he was trying to say, and
25 that's why he was pushing me to look for other

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2 avenues for the 400 Fifth Avenue project.
3 Q. You mentioned that you had seen his
4 financial statements, you've seen Mr. Trump's
5 financial statements.
6 A. Yes.
7 Q. When did you see Mr. Trump's financial
8 statements?
9 A. I believe it was after the book and the
10 article that I was in his office once and he had
11 mentioned -- talked to me about it. And he had
12 Mr. Weisselberg come into the office and brought
13 his financial statement and showed it to me.
14 Q. How long before this conversation with
15 Mr. Bizzi can that occur?
16 A. I think it was a while before, because
17 I think what I'm talking about is right after the
18 article and the book came out. So I think right
19 after that time when I was up there on something
20 else, he had Weisselberg come in and show me the
21 financial statement.
22 Q. Was this a financial statement prepared
23 by his accountants, Weiser?
24 A. I believe so.
25 Q. And did you review those financial

20 (Pages 74 to 77)

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 2 statements at the time?
 3 A. I looked at it quickly. I looked at
 4 the end. My recollection is it said something at
 5 that time \$3 billion or 2.6 stuck in my mind, 2.6
 6 to 3 billion dollars.
 7 Q. And you actually mentioned that — in
 8 this conversation with Mr. Bizzi, you mentioned
 9 that you had seen Mr. Trump's financial statements
 10 before?
 11 MR. RESSLER: Objection to the form of
 12 the question.
 13 Q. Did you mention that?
 14 A. I think I probably — I don't recollect
 15 a hundred percent, but I think I probably did say
 16 I wouldn't believe a hundred percent what people
 17 are telling you, because I have seen his financial
 18 statements, and it is quite substantial.
 19 Q. What did Mr. Bizzi respond?
 20 A. Nothing.
 21 Q. Anything else you recall about this
 22 conversation with Mr. Bizzi that we've been
 23 discussing in the last little while?
 24 A. No.
 25 Q. Did you have any other conversations

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 2 with Mr. Bizzi, following this conversation we've
 3 been discussing, about Mr. Trump?
 4 A. Yes, I again asked him what he thought
 5 about pursuing it, and he basically had said he
 6 had decided not to and that his lawyer had
 7 recommended the Sati Group [phonetic].
 8 And subsequent to that conversation
 9 with Bizzi, I had a meeting with Mr. Bizzi with
 10 Robert Ivanhoe with people from the Sati Group to
 11 discuss the Sati Group doing the project.
 12 Q. And other than the conversation that
 13 we've been discussing where you mentioned — or
 14 the book and the article came up, were there any
 15 other conversations where the book and the article
 16 came up with Mr. Bizzi?
 17 A. No.
 18 Q. Do you know whether Mr. Trump spoke to
 19 Mr. Bizzi after — at any point after their
 20 meeting?
 21 A. You know, I don't remember — I don't
 22 remember him telling me, but I remember when he
 23 was questioning me about it what happened with 400
 24 Fifth Avenue, what's going on, why isn't it done,
 25 and I believe I told him that they sort of are

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 2 sour on it and they're not going forward.
 3 And if I had to guess, I would tell you
 4 as soon as he hung with me after that
 5 conversation, he called Mr. Bizzi. But no, I
 6 don't know for a fact.
 7 Q. Did you ever have a conversation with
 8 Mr. Trump in which he told you he had spoken to
 9 Mr. Bizzi?
 10 A. I don't recall. And I don't recall
 11 Mr. Bizzi telling me he spoke directly to
 12 Mr. Trump.
 13 MR. CERESNEY: Let's change the tape.
 14 THE VIDEOGRAPHER: The time is 11:13.
 15 This ends Tape 1.
 16 (Pause.)
 17 THE VIDEOGRAPHER: We're back on the
 18 record. The time is 11:16. This is Tape 2.
 19 Q. Mr. Lorber, let me show you what we'll
 20 mark as Defendants' Exhibit 162.
 21 (Defendants' Exhibit 162, objections
 22 and responses to defendants' second set of
 23 interrogatories, marked for identification, as
 24 of this date.)
 25 Q. I put before you Plaintiff Donald

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 2 Trump's objections and responses to defendants'
 3 second set of interrogatories, and I'll ask you to
 4 turn in particular to page 13.
 5 MR. RESSLER: What page?
 6 MR. CERESNEY: Thirteen.
 7 Q. And in particular I want to direct your
 8 attention to the second-to-last paragraph on the
 9 page that starts with your name. Do you see that?
 10 A. Uh-huh.
 11 Q. I'll just read it for you. Howard
 12 Lorber of Prudential Douglas Elliman engaged in
 13 negotiations with David Bizzi of El & Di Real
 14 Estate SpA concerning a possible project to
 15 develop a Trump hotel and condominium at 400 Fifth
 16 Avenue, New York, New York.
 17 Trump has been advised by Lorber that
 18 it was Lorber's impression that Bizzi did not
 19 proceed with Trump for the project because Bizzi
 20 had concerns about Trump, based at least in part
 21 on defendants' defamatory statements about Trump
 22 and his net worth that appeared in the book.
 23 Do you see that?
 24 A. Yes, I do.
 25 Q. Have you ever seen this document

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 2 before?
 3 A. No.
 4 Q. Is this an accurate characterization of
 5 your views?
 6 A. Yes.
 7 Q. And is this based upon the information
 8 that you've provided here today in this
 9 deposition?
 10 A. Yes, it is.
 11 Q. Is there anything else other than the
 12 conversation that we've described -- that you've
 13 described with Mr. Bizzi that gives you the
 14 impression that is a basis for your impression
 15 regarding the reason that Mr. Bizzi did not
 16 proceed with the project?
 17 MR. RESSLER: Objection to the form of
 18 the question.
 19 A. Can you repeat it, please?
 20 Q. Sure. Other than the conversation that
 21 you've described with Mr. Bizzi today at length,
 22 is there anything else that forms the basis for
 23 your impression that Mr. Bizzi did not proceed
 24 with the deal because of at least in part
 25 Defendants' defamatory -- allegedly defamatory

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 2 statements about Trump and his net worth that
 3 appeared in the book?
 4 MR. RESSLER: Objection.
 5 A. Nothing else that I can think of.
 6 Q. By the way, was it ever contemplated
 7 that Mr. Trump would put any of his own money into
 8 this project?
 9 A. We talked about it early on, and Bizzi
 10 was not -- didn't know if he wanted to have an
 11 equity partner, so we really didn't go into any
 12 detail. I think Donald -- early on when I
 13 discussed the project with him, I think Donald
 14 offered that he could be -- that, you know, he
 15 wouldn't mind putting in -- if we liked the
 16 project so much, be an equity partner. I
 17 mentioned that to Mr. Bizzi.
 18 Q. But by the summer, early fall of 2006,
 19 that was not something that was being contemplated
 20 about the deal?
 21 A. That was -- by the time we talked about
 22 the term sheet or received the term sheet, I don't
 23 believe that was contemplated.
 24 Q. You mentioned that after these
 25 discussions with -- actually -- strike that

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 2 You mentioned a conversation with
 3 Mr. Trump about your conversations with Mr. Bizzi.
 4 During the conversation with Mr. Trump, did you
 5 reference the book or the article in discussing
 6 Mr. Bizzi?
 7 A. I don't recall my specific
 8 conversation, but he would have asked me -- most
 9 likely would have asked me why I thought it
 10 happened, and I would have said I think this is
 11 one of the reasons.
 12 Q. Any other reasons this didn't happen,
 13 in your view, in your impression?
 14 MR. RESSLER: Objection to form of the
 15 question.
 16 Q. Go ahead.
 17 A. It's hard to think of other reasons
 18 because Bizzi was new to New York City real
 19 estate, and he had me guiding him and then he
 20 started talking to other people. And it seemed --
 21 the more people he talked to, it seemed he got
 22 negative.
 23 So it seemed obvious to me that people
 24 were talking about it and saying that, you know,
 25 Trump isn't what he really appears to be and maybe

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 2 you shouldn't be doing it with him. I can't think
 3 of any other reason why he didn't want to go
 4 forward at that particular time.
 5 I think ultimately the deal he signed
 6 with Sati was a costly deal. I don't think the
 7 Trump deal would have been any more costly. And I
 8 don't know how you can compare --
 9 Off the record for a second? I don't
 10 know if I want to say anything about Sati if it's
 11 going to be -- unless it's -- because I don't want
 12 it to be out there in the deposition that I'm
 13 saying something about Sati, who we also do
 14 business with.
 15 MR. RESSLER: Well, this deposition is
 16 going to be confidential.
 17 THE WITNESS: This will be
 18 confidential?
 19 MR. RESSLER: Right.
 20 And Andrew, you understand that?
 21 MR. CERESNEY: Of course the witness I
 22 assume understands, though, that although it
 23 can be designated confidential for purposes of
 24 litigation, there is always -- if this is used
 25 at trial or for some other purpose that

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2 confidentiality may no longer apply.
3 Obviously -- that's the nature of a
4 confidentiality order.
5 MR. RESSLER: Right. But the sole --
6 the sole reason why this could ever see the
7 light of day would be in the context of a
8 trial and other than that --
9 MR. TAMBUSSI: Or motion.
10 MR. RESSLER: I'm sorry?
11 MR. TAMBUSSI: Or motion.
12 MR. RESSLER: But a motion will
13 probably do.
14 THE WITNESS: There's going to be a
15 trial, most likely, so...
16 Okay, could you read me back what I
17 said so far?
18 MR. CERESNEY: I just don't want the
19 witness to be under the impression
20 confidentiality always applies to this.
21 THE WITNESS: Okay. No problem. Thank
22 you.
23 (Record read as follows: Answer: It's
24 hard to think of other reasons because Bizzi
25 was new to New York City real estate, and he

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2 had me guiding him and then he started talking
3 to other people. And it seemed -- the more
4 people he talked to, it seemed he got
5 negative.
6 So it seemed obvious to me that people
7 were talking about it and saying that, you
8 know, Trump isn't what he really appears to be
9 and maybe you shouldn't be doing it with him.
10 I can't think of any other reason why he
11 didn't want to go forward at that particular
12 time.
13 I think ultimately the deal he signed
14 with Sati was a costly deal. I don't think
15 the Trump deal would have been any more
16 costly. And I don't know how you can
17 compare --
18 THE WITNESS: -- compare the value of
19 the Trump brand to the Sati brand.
20 Q. You mentioned that he'd been talking --
21 that Mr. Bizzi had been talking to people about
22 Mr. Trump and that these people, at least your
23 impression was they were telling him that Trump
24 was not what he appeared to be.
25 Do you know which people Mr. Bizzi had

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1 Lorber - Confidential
2 been speaking to?
3 A. I didn't say that for sure. I said
4 that was my impression would be because he doesn't
5 know really the New York City real estate people.
6 So it had to be people he was speaking to.
7 It could have been any of the people he
8 dealt with, which was Lehman in purchasing the
9 property, it could have been the Greenberg Traurig
10 people who actually were the ones that brought in
11 the -- the Greenberg Traurig people were the ones
12 who brought in Sati. So it could have come from
13 them. It could have been the Sati people. I
14 really don't know.
15 Q. Do you know specifically what these
16 people were telling him?
17 A. No, I do not.
18 Q. Do you know specifically the sources of
19 information that Mr. Bizzi had on Mr. Trump at
20 that time?
21 A. No, I do not.
22 Q. Is it fair to say that there have been
23 thousands of articles and other media reports
24 about Mr. Trump over the years?
25 MR. RESSLER: Objection to the form of

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2 the question.
3 A. I don't know if thousands, but there's
4 been a lot.
5 Q. Is it fair to say that there have been
6 a number of negative pieces on Mr. Trump over the
7 years?
8 MR. RESSLER: Objection to the form of
9 the question.
10 A. I think negative is one thing. I think
11 a complete fabrication is something else. And I
12 believe that even the negative stories or articles
13 that I've seen about Trump were at least to even
14 if -- even at the very least were to a small
15 degree based on fact, while I believe that The
16 Times article and the book were not based on any
17 fact at all, purely fictional.
18 Q. By the way, other than your review
19 of -- strike that.
20 Who else at Prudential Douglas Elliman
21 was involved in the project at that -- in the sort
22 of summer/fall of '06 time frame? Was Dolly Lenz
23 the only person?
24 A. Our in-house counsel Kenny Haber who
25 prepared the agreements, helped prepare the

23 (Pages 86 to 89)

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2 agreements. That was all.
3 Q. At any point in your involvement --
4 excuse me, strike that.
5 At any point during the period of time
6 when there was -- when there were discussions
7 about Trump's involvement in the project, were
8 there any projections created of -- sales
9 projections?
10 A. At that stage I'm not so sure there was
11 any real projections done.
12 Q. Any financials on the project at that
13 point?
14 A. I don't believe so.
15 Q. Why not?
16 A. I think it was too early to decide, you
17 know. We had to decide exactly what we were
18 building and what it was going to be. So I think
19 it would have been hard to come up with
20 projections.
21 Q. Any plans created at that point?
22 A. Oh, the plans for the building were
23 pretty much finished. Tessler and Lehman had gone
24 a long way, and it was already -- they were
25 purchasing air rights, and it was already at

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2 landmarks for the approval of the air rights
3 purchase from across the street.
4 So the plans were pretty much complete,
5 because it was the second set of plans. The city
6 council or the local council didn't like the first
7 set of plans that were done. And then they got
8 rid of the architect, and they hired Rothman
9 Siegel on the plans.
10 At least the renderings and a lot of
11 the preliminary plans were already completed by
12 Rothman Siegel.
13 Q. And government approval said they had
14 been received yet, final government approvals?
15 A. All the final approvals were not yet
16 received at that time.
17 Q. You said that you guys -- you guys,
18 Mr. Bizzi -- strike that.
19 You said that you and Mr. Bizzi then
20 had conversations with the Satow Group [phonetic]?
21 A. Sati.
22 Q. Sati Group. Who are the Sati group?
23 A. Sati Group had one successful hotel in
24 Miami. They're doing one actually in the city now
25 that's downtown Manhattan. They're a small group

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1 Lorber - Confidential
2 with a brand, the Sati brand, which is basically a
3 relatively new -- new brand.
4 Q. And when was that deal completed with
5 Sati?
6 A. I don't know the -- I was not privy to
7 all the meetings with Sati afterwards. And I
8 really don't know when it was finalized, but I
9 believe it was finalized sometime in '07.
10 Q. So do you have any sense of when in
11 '07?
12 A. No. It could have been the end of '06.
13 I mean, they were talking for quite a while.
14 Q. Why did it take so long between the end
15 of the discussions with Mr. Trump and having an
16 agreement with Sati?
17 MR. RESSLER: Objection to the form of
18 the question.
19 A. I do not know.
20 Q. Where does the deal stand today?
21 A. The deal with Sati?
22 Q. Yeah.
23 A. They have an agreement with Sati where
24 they have some group that's going to basically
25 purchase the hotel portion and purchase some of

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2 the condominium units that's signed. It's -- from
3 what I understand, it's a hard contract that will
4 close when the building is completed.
5 Construction has not yet started on the building.
6 It should start, from what I understand, fairly
7 soon.
8 Q. Do you know why construction hasn't
9 started yet?
10 A. No.
11 Q. What remained to be done between the
12 signing of the Sati deal with Mr. Bizzi and the
13 completion -- and the starting of the building of
14 the project?
15 MR. RESSLER: Objection to the form.
16 To the extent this witness would know.
17 Q. Yeah.
18 A. I believe they were waiting for all
19 their approvals, which I do believe they now have.
20 I believe they can start construction now.
21 Q. So that process took a year and a half,
22 two years, basically?
23 MR. RESSLER: Objection to the form of
24 the question.
25 A. Well, I don't think that long, but

24 (Pages 90 to 93)

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1 Lorber - Confidential
2 longer than expected.
3 Q. Does that happen sometimes?
4 A. All the time.
5 Q. Do they have financing now; do you
6 know?
7 A. I was told they do.
8 Q. And do you know when that occurred?
9 A. No, but Mr. Bizzi had told me in a more
10 recent conversation that they had financing from a
11 bank in Italy I believe called Unit Credito, Unit
12 Credit Bank, something like that, an Italian bank.
13 Q. I take it that Prudential Douglas
14 Elliman will obtain commissions once the building
15 is built and then the units are sold, that's when
16 the commissions will be paid to Prudential Douglas
17 Elliman?
18 A. Yeah, we don't -- we did get some money
19 in the beginning, as I mentioned earlier in my
20 testimony, but the bulk of it comes in when the
21 building is sold and you're delivering units.
22 Q. And when is it contemplated that the
23 building would be completed?
24 MR. RESSLER: Objection to the form of
25 the question.

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1 Lorber - Confidential
2 A. I would guess most of these buildings,
3 you know, are 18 months to 24 months from when you
4 start construction, and they should be starting
5 soon.
6 MR. CERESNEY: Can we take a
7 five-minute break, and we'll continue.
8 MR. RESSLER: Okay.
9 THE WITNESS: Okay.
10 THE VIDEOGRAPHER: Going off the
11 record. The time is 11:33.
12 (Recess taken from 11:33 to 11:46.)
13 THE VIDEOGRAPHER: We're back on the
14 record. The time is 11:46.
15 Q. Mr. Lorber, let me turn to a different
16 topic. Did you ever have discussions with
17 Mr. Trump about a transaction involving Prudential
18 Douglas Elliman?
19 A. Yes.
20 Q. When did those discussions begin?
21 A. Probably -- I purchased the Douglas
22 Elliman company in '03. I think it started -- he
23 spoke -- we have an awards breakfast every year to
24 honor the top people, and he spoke at the one in
25 '04. And everyone raved about him and everything,

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2 and I started thinking maybe we ought to try to
3 put the brands together and do something
4 different.
5 So probably sometime after that. So
6 maybe the end of '04 into '05 was the first time
7 we started talking about it.
8 Q. When was the awards banquet?
9 A. It's usually March, so it was probably
10 like March '04.
11 Q. So you think the discussions started
12 sometime in late '04, early '05?
13 A. Yeah.
14 Q. And what was --
15 A. I don't know -- excuse me. I don't
16 know if the discussions started. I started
17 thinking about it myself during that period of
18 time, and then started kicking it around with
19 Donald in '05 sometime.
20 Q. When was the first time you started
21 kicking it around with Donald?
22 A. Sometime in '05.
23 Q. What was the concept that you were
24 kicking around?
25 A. The concept was that -- we had actually

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2 done some -- we had an appraisal done and did a
3 study as to really the value of his name in the
4 real estate projects in the city, and they came
5 back basically using comparables showing that if
6 you take comparable buildings, comparable
7 locations, and one was a Trump name and one
8 wasn't, the difference in the sales price; higher
9 sales price in the building with the Trump name
10 and also a quicker sellout, which effectively is
11 the same as getting more money, a higher sales
12 price.
13 And I started thinking about how that
14 would benefit the Douglas Elliman customers in
15 general if the Trump name was somehow involved
16 with it.
17 Q. In your discussion with Mr. Trump, what
18 did you discuss the terms of what the deal would
19 be?
20 A. I had said to him that I thought it
21 would be a great idea if we somehow combined -- he
22 has a small brokerage operation, and we had a big
23 one. So I said it would be great if we combine
24 them and we combine the names in some fashion, and
25 it would be a real major force in the real estate

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1 Lorber - Confidential
2 brokerage business, at least in New York City.
3 Q. Would this have involved the
4 combination of -- strike that.
5 You say Mr. Trump has a small brokerage
6 business?
7 A. Correct.
8 Q. What did that consist of at the time?
9 A. He has a few salespeople that do
10 resales and they do -- a lot of the resales they
11 do are in the Trump buildings, so they sort of
12 specialize in those buildings. But they have a
13 general brokerage business, small compared to the
14 leaders in New York.
15 Q. And in the first discussion you had
16 with Mr. Trump, what was the structure you were
17 contemplating ultimately?
18 A. It was a combination, you know, take
19 his firm, make it part of ours, and figure out
20 what the name would be with his name and our name
21 in it.
22 Q. So it would be basically Mr. Trump
23 having interest in Prudential Douglas Elliman as a
24 broad -- as a whole?
25 A. Correct.

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2 Q. Let's just talk about the first time
3 you raised this with Mr. Trump. Was that in
4 person or on the phone?
5 A. Probably on the phone.
6 Q. And what did you say to him and what
7 did he say to you?
8 A. I basically said that I was thinking,
9 you know, about this idea of putting the names
10 together and how big we could be market share-wise
11 in the city. And he thought about it for a few
12 seconds and said, boy, that sounds interesting.
13 And he said we should talk about it. And we
14 continued having conversations on and off after
15 that.
16 And then a couple of times when I would
17 have seen him, maybe not necessarily on that, he
18 would say to me, you know, what's going on, what
19 are you thinking about regarding the brokerage
20 companies that we spoke about. And I'd tell him,
21 well, I'm thinking about it, I'm trying to think
22 about how it would be structured.
23 One of the things I was really trying
24 think about was the name, because I know what he
25 would think the name should be as opposed to what

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1 Lorber - Confidential
2 I would think the name would be. So that was like
3 to me the biggest stumbling block at the time.
4 Q. How many such discussions did you have
5 with Mr. Trump?
6 A. Oh, I think probably every phone
7 conversation, you know, after we started the
8 conversation, it would come up for at least a half
9 a minute or so every conversation about what was
10 going on. And I would speak to him once every
11 couple of weeks, something like that.
12 Q. So the first conversation, fair to say,
13 was early '05, approximately?
14 A. I don't know if it was early '05, mid
15 '05, you know. It was in '05 sometime.
16 Q. Would you have any notes or other
17 mechanism of refreshing your recollection on the
18 first conversation regarding this?
19 A. No, I would not.
20 Q. Did you ever put anything down on paper
21 regarding this deal?
22 A. Nope.
23 Q. And then you think after that first
24 conversation you had a number of conversations
25 with Mr. Trump about --

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2 A. Conversations in person and on the
3 telephone.
4 Q. Did you have conversations with anybody
5 else at Prudential Douglas Elliman about this
6 contemplated project?
7 A. No. I knew it would be a little
8 complicated to do, but I thought I could do it.
9 Basically because of the current structure the way
10 it was, I thought I could definitely get it done.
11 But I really wanted to in my mind -- I wanted to
12 be clear that I had a clear understanding with
13 Donald as to what the deal would be before I would
14 present it to the other shareholders of Prudential
15 Douglas Elliman.
16 Q. Did you ever present this to the other
17 shareholders of Prudential Douglas Elliman?
18 A. No, I did not, because, as I said, I
19 wanted to have a clear idea. And at that time I
20 was also trying to buy out, which would have been
21 an integral part of it, I think, would have helped
22 the situation, I was trying to buy out
23 Prudential's 20 percent share of the company.
24 Q. Just tell me a little bit about that.
25 When were those discussions ongoing?

26 (Pages 98 to 101)

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2 A. Those were '05/'06.
3 Q. And why were you trying to buy out
4 Prudential generally?
5 A. There was always the thought that at
6 some point we would buy them out. Therefore there
7 would be stock to give out to other important
8 people in the organization, there'd be additional
9 stock for Dottie, who was running it as CEO,
10 obviously additional stock for my company.
11 And surely if we were going to try to
12 do any mergers or acquisitions, it would just make
13 it easier if we had more stock rather than less
14 stock.
15 Q. So those discussions had started in '05
16 and continued into '06?
17 A. Yes.
18 Q. Was that acquisition of their share, 20
19 percent share, ever consummated?
20 A. No, it was not.
21 Q. Why not?
22 A. I think for a few reasons. I think
23 that there was some time constraints when they
24 wanted it done if they were going to do it, and we
25 couldn't deal with the time constraints. And then

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2 what happened -- I guess it was good luck or bad
3 luck, would have it, the company did better,
4 started doing better and the valuation went up.
5 And then as the valuation went up, I was less
6 interested in buying them out.
7 Q. So a variety of reasons led to that
8 deal not being consummated?
9 MR. RESSLER: Objection to the form of
10 the question.
11 A. Correct.
12 Q. And what was the connection between the
13 buyout of Prudential's interest and your
14 conversations with Mr. Trump?
15 A. Well, there would have been dilution --
16 If we did a deal with Trump, there would have been
17 a dilution to Dottie Herman and to Vector Group.
18 Therefore if we were able to buy out the
19 Prudential fees, there would have been less
20 dilution or no dilution depending on the deal we
21 made with Donald.
22 I surely would have been thrilled to
23 swap Prudential for Trump and have no dilution and
24 have a much stronger and better company at the
25 time, although I don't think -- Donald was

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1 Lorber - Confidential
2 obviously talking about a higher percentage than I
3 was thinking.
4 Q. Did the Prudential discussions about
5 buying them out fail for reasons completely
6 unconnected to Mr. Trump, your discussions with
7 Mr. Trump?
8 A. Yes, I think that's fair to say.
9 Q. So just going back to Mr. Trump, then,
10 and your conversations with Mr. Trump -- and I
11 just want to make sure I'm clear on this. So with
12 regard to Prudential or Dottie Herman or others in
13 the Vector Group, you didn't have any discussions
14 with them about the Trump aspect -- the Trump
15 coming into Prudential Douglas Elliman?
16 A. I definitely did not have any
17 conversations with the Prudential people about it.
18 I don't believe I had any substantive
19 conversations with Dottie other than maybe a
20 passing comment of wouldn't it be an interesting
21 idea type of comment. That would have been all I
22 would have said.
23 Q. Do you remember her reaction to the
24 interesting idea?
25 A. She likes Donald Trump, and I think she

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2 would have been -- or she was, would have been
3 very positive about it. Obviously depending on
4 what the deal was. We never got into that. If
5 she was losing all her stock and it would have
6 Trump's name, that would be a different story.
7 Q. That wouldn't make her happy?
8 A. No.
9 Q. You said you had a number of
10 conversations following the first conversation
11 with Mr. Trump about this. In those subsequent
12 conversations, did you discuss anything about the
13 structure of the project?
14 A. Yes. We started talking about it.
15 Obviously we would have, you know, complete
16 management control that we have now.
17 Q. "We" being --
18 A. Yeah, the existing -- the existing
19 shareholders, whoever they maintained to be,
20 whether with Pru or without Pru. That structure
21 would be the same. So it was really more of the
22 economics of the transaction, who was going to get
23 what.
24 And I think Donald started off saying,
25 oh, I'm sure it will be a 50-50 deal, and I said

27 (Pages 102 to 105)

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1 Lorber - Confidential
2 no, it couldn't be a 50-50 deal. We were much
3 bigger. Then of course he made his pitch how his
4 name would add so much more to it and it would be
5 very fair for it to be 50-50. So that was his
6 starting point at the time.
7 My starting point was more -- in the
8 beginning when I first started thinking about it,
9 my starting point was more like if I could get the
10 20 percent back from Prudential and Donald could
11 have that 20 percent, then Dottie and I still have
12 the same -- Dottie and Vector Group would still
13 have the same and we would have great synergies to
14 go forward.
15 But I don't think I would have ever got
16 to that. I think if we could have made a deal, it
17 probably would have been 25 percent to a third,
18 something like that, would have been a more
19 realistic deal to make with Donald.
20 Q. Did these conversations with Mr. Trump
21 lead to any further narrowing of that gap or any
22 change in terms that you were offering?
23 A. No, we talked about different -- you
24 know, things that would -- that would -- synergies
25 that would really help the business grow and were

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2 there any problems and related to the business in
3 general where it would be a negative for either of
4 us. So those were really what we spent time
5 talking about.
6 Q. Did you ever reach any agreement on
7 terms?
8 A. I think as we were talking I said,
9 Donald, let's not concentrate on the percentages.
10 I said it's never going to be 50 percent, and I
11 know you're not going to take 20 percent, which
12 was the Prudential piece. So let's assume it's
13 going to be somewhere in between, and let's see
14 how far we get, you know, without finalizing that.
15 And that's pretty much how we proceeded in our
16 discussions.
17 Q. So after those initial discussions
18 about the percentages and those terms, did you
19 have further discussions about the terms of
20 Mr. Trump's involvement other than the way you
21 were going to structure the business?
22 MR. RESSLER: Objection to form.
23 A. Yes, we had continuing conversations.
24 But again, discussing these things with Donald is
25 not like where you sit down and you have a meeting

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1 Lorber - Confidential
2 for two hours and you go through it all. It's
3 generally more of many conversations for very
4 short periods of time.
5 So it was sort of every couple of weeks
6 on the phone call talk about it for a couple of
7 minutes, you know, talk about ten other things,
8 then, you know, talk about it again, you know, two
9 weeks later.
10 Until -- and I didn't really want to
11 get to the point of being ready to do it and back
12 off from doing it, so we sort of let it go on for
13 a while to see what comfort level we both would
14 have and whether we both thought we could get it
15 done.
16 Q. What else did you discuss over time,
17 other than what you've said already, about the
18 structure?
19 A. Not a lot about the structure. We
20 talked more about where we both thought the market
21 was going, the real estate market was going in New
22 York. We talked about expansion in other parts of
23 the country, which did create some difficulties
24 because of the Prudential connection because, like
25 in New York City, we have an exclusive, no one

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2 else can have the Prudential name. But in south
3 Florida someone else has the exclusive,
4 So if Trump is doing a bunch of
5 projects in south Florida, now all of a sudden we
6 want to be involved in the selling of them and,
7 you know, that could violate our franchise
8 agreement.
9 So there was a bunch of different
10 issues that we discussed as time went on, because
11 we didn't look at it as just a New York City
12 concept. One of the ideas of the synergy is we
13 think his brand is very strong nationally and
14 internationally. So obviously that was important
15 to us, what would we do on the national scene and
16 the international scene. So we did a little
17 research on that as to, you know, checking around
18 what could be done.
19 And I think during that period of time
20 I found out that -- I think under the charter for
21 Prudential you cannot use the Prudential real
22 estate name outside of North America. So
23 basically it would have been limited to, you know,
24 U.S., Canada, Mexico. So if it was something to
25 be done, you know, in Europe, I don't think we

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1 Lorber - Confidential
 2 could have used the Prudential name.
 3 Q. And you couldn't use it in south
 4 Florida either because of some --
 5 A. We couldn't use it in south Florida at
 6 the time. We tried negotiating -- actually we
 7 tried -- because of this and other reasons, we
 8 tried negotiating a deal with the Prudential
 9 franchisee, which was WCI Corporation, in south
 10 Florida. And there was a couple times we thought
 11 we had a deal with them, because they needed us to
 12 help them --
 13 Q. "Us" being --
 14 A. They needed Prudential Douglas Elliman
 15 at the time because they wanted us -- they were
 16 doing a lot of these golf course communities in
 17 south Florida, and some high-rises, and they know
 18 a lot of the buyers come from New York. So we
 19 were trying to do a deal saying let us open some
 20 places in south Florida, and we will help you sell
 21 your projects to the New York market, your
 22 projects so far to the New York market, but we
 23 never really made any progress with them so...
 24 Q. And those discussions were separate
 25 from the Trump discussions?

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1 Lorber - Confidential
 2 A. It was separate from the Trump but sort
 3 of brought on by the Trump because we knew Trump
 4 was doing a bunch of projects in south Florida.
 5 So obviously it was important to us.
 6 Q. But you never consummated it at the
 7 time?
 8 A. Never consummated it.
 9 Q. Did you ever reach an agreement about
 10 what the entity was going to be called?
 11 A. No. I'm sure in my mind it was going
 12 to be Douglas Elliman Trump, and in his mind it
 13 was going to be Trump Douglas Elliman.
 14 Q. Would Mr. Trump have any role in this
 15 project, in the business?
 16 A. Well, he wouldn't have any day-to-day
 17 operational role, but obviously as a spokesman --
 18 I mean, you know, he was at the height of his
 19 popularity with The Apprentice and everything
 20 else. I think it would have been fabulous for the
 21 company.
 22 Q. I take it the management of the entity,
 23 at least you contemplated, would remain the same?
 24 A. That's -- definitely.
 25 Q. Did you create a business plan?

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1 Lorber - Confidential
 2 A. No.
 3 Q. Did you create any projections?
 4 A. No.
 5 Q. Would Mr. Trump have invested any money
 6 in the venture, as far as you understood?
 7 A. You know, we never discussed money,
 8 because money wasn't needed. You know, the
 9 company was profitable going forward, so there
 10 really was no need for capital that I saw at the
 11 time.
 12 Q. You mentioned earlier kind of the
 13 percentages of interest that you contemplated
 14 Mr. Trump might have. Any other forms of
 15 compensation that you discussed with Mr. Trump
 16 about the entity?
 17 A. No, no.
 18 Q. Did you contemplate any other forms of
 19 compensation with Mr. Trump other than being a
 20 percentage owner?
 21 A. No.
 22 Q. Anything else you recall about the
 23 discussions about this deal, about this
 24 contemplated potential business?
 25 MR. RESSLER: Objection to the form of

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1 Lorber - Confidential
 2 the question.
 3 A. Well, the only other thing I thought
 4 about in my mind is what's the company worth today
 5 at the time we were talking about what could it be
 6 worth, you know, with his name.
 7 I think at the time I think the
 8 company -- well, we paid in October '03 \$72
 9 million for the company, for the Douglas Elliman
 10 portion of the company, and we put in the Long
 11 Island company, which was maybe worth another 20
 12 or 25 million. So maybe it had a value of about
 13 \$100 million.
 14 And I think when I was talking to
 15 Donald it was worth a little more than that, you
 16 know, in '05. It really didn't start taking off
 17 until really after that.
 18 So the question is what are we giving
 19 up. So effectively if he's ending up with 25
 20 percent, you know, that's \$25 million, is it worth
 21 25 million. But he had his brokerage operation,
 22 which from what I remember was earning pretty good
 23 money. It was small but it was earning I think
 24 around \$5 million a year, which probably would
 25 have made it worth 25, 30 million dollars in a

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1 Lorber - Confidential
 2 normal multiple.
 3 Q. So did you discuss these issues with
 4 Mr. Trump, or was this something --
 5 A. No, I believe I told him what I thought
 6 and he asked me how much we were earning at the
 7 time, and I told him. And I asked him how much
 8 his company was earning, and he told me. So we
 9 talked about the values a little bit.
 10 Q. Had you made a decision to actually go
 11 forward with this?
 12 A. I was pretty close to wanting to go
 13 forward and speak with the -- I didn't believe --
 14 I believed that Dottie would not be an issue. I
 15 believe Prudential would be a little bit of a
 16 sales job to sit down with them and tell them why
 17 we wanted to do it.
 18 But then just around that time is when
 19 the article in The Times appeared and then the
 20 book came out, and I knew after that that was the
 21 end of it, that there would be no way after
 22 reading that article in The Times and the book
 23 that Prudential would go along with it.
 24 Q. Why do you say that?
 25 A. I say that because, you know,

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1 Lorber - Confidential
 2 Prudential I think is a -- is a company very
 3 similar to how our people view The New York Times.
 4 You know it's a rock and they're theoretically
 5 conservative, although not -- although, please,
 6 I'm not saying that The Times is politically
 7 conservative; we know they're not.
 8 But I thought that the idea of having
 9 the Trump name associated with the Prudential
 10 name, forgetting about the Douglas Elliman name,
 11 at that time right after The Times really killed
 12 him and the book came out that really would be no
 13 chance that they'd want to be involved in
 14 something like that.
 15 Q. Did you contemplate buying them out,
 16 though?
 17 A. It wouldn't matter. Buying them out
 18 would be buying them out of their equity interest.
 19 But we had a ten-year franchise agreement that we
 20 were stuck with the Prudential name. They were
 21 stuck with us, and we were stuck with them. So
 22 Prudential would be involved anyway; it's just
 23 whether they had an equity interest.
 24 Most of the companies that use the
 25 Prudential name, Prudential does not have an

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1 Lorber - Confidential
 2 equity interest. In our company they did have an
 3 equity interest because they helped with the
 4 financing when we purchased Douglas Elliman.
 5 So Prudential would have been there.
 6 And they're very, you know, guarding of their
 7 trademark, you know, the Prudential trademark. So
 8 I thought when all the negative stuff came out
 9 about Trump there was no way they wanted their
 10 trademark next to his name.
 11 Q. Did you ever raise the prospect of
 12 Trump coming into the business with Prudential?
 13 A. Never.
 14 Q. Have you raised it with them since?
 15 A. No. They knew of my relationship with
 16 him. Obviously a couple of -- I think the
 17 Prudential people were there when Trump spoke at
 18 the -- at that breakfast I was talking about. So,
 19 I mean, I think they knew of the relationship.
 20 But I never went so far as to tell them that I was
 21 going to, you know, suggest a combination of the
 22 companies.
 23 Q. When did you make the decision not to
 24 continue future discussions about this?
 25 A. After the article and the book came

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1 Lorber - Confidential
 2 out.
 3 Q. So how long after the article and the
 4 book?
 5 A. I told Donald -- asked me what was
 6 going on. I told him, Donald, I don't think I
 7 have any chance of doing this deal, you know,
 8 because of the article and the book, and I just
 9 don't think there's any chance of putting it
 10 together. I said maybe, you know, in a few years
 11 something, but just didn't.
 12 Q. When was that conversation in relation
 13 to when the book and article --
 14 A. I sort of dropped it -- in my mind I
 15 dropped it when the article and book came out,
 16 which I believe was -- the end of '05?
 17 Q. October of '05.
 18 A. October of '05? That was the article
 19 and the book came out right afterwards, couple
 20 weeks afterwards, something?
 21 Q. Right afterwards.
 22 A. Right around then. I don't think I
 23 really told him the news. I don't like to tell
 24 him bad news. I don't think I told him the news
 25 until the beginning of -- probably the beginning

<p style="text-align: right;">118</p> <p>1 Lorber - Confidential</p> <p>2 of '06 when he said, hey, whatever happened, you</p> <p>3 know, I thought we were going to do this. I</p> <p>4 basically told him that I don't think there's any</p> <p>5 chance I'd get it done.</p> <p>6 Q. Had you revisited at that point -- by</p> <p>7 the way, had Mr. Trump brought his lawsuit by that</p> <p>8 point?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you discuss with anybody else at</p> <p>11 Prudential Douglas Elliman the -- this project</p> <p>12 after the book was published?</p> <p>13 A. No.</p> <p>14 Q. Had you put anything in writing with</p> <p>15 Mr. Trump about the -- this business venture prior</p> <p>16 to the book being published?</p> <p>17 A. No.</p> <p>18 Q. Had you reached any agreement with him</p> <p>19 on specific terms for the business structure?</p> <p>20 MR. RESSLER: Objection, that question</p> <p>21 and the previous two you've already asked.</p> <p>22 The witness has already answered them.</p> <p>23 MR. CERESNEY: I don't think I have.</p> <p>24 MR. RESSLER: Now you're going over the</p> <p>25 same ground.</p>	<p style="text-align: right;">120</p> <p>1 Lorber - Confidential</p> <p>2 off, and our business is probably worth, by the</p> <p>3 end of '07, 500 million. So I think it would have</p> <p>4 been a lot tougher, you know, trying to put a deal</p> <p>5 together when our business is worth 500 million</p> <p>6 instead of 100 million, and that's because our</p> <p>7 cash flow went up five times.</p> <p>8 So I didn't think -- I thought it would</p> <p>9 be very difficult, even if Prudential was willing</p> <p>10 to do it. And I think Donald missed a good</p> <p>11 opportunity because he would have owned somewhere</p> <p>12 between probably a third of a company worth 500</p> <p>13 million, but it didn't happen.</p> <p>14 And with him in it, who knows, maybe it</p> <p>15 would have been worth 6 or 7 or 8 hundred million.</p> <p>16 I don't know.</p> <p>17 Q. What about the article or the book led</p> <p>18 you to end your discussions regarding this?</p> <p>19 A. The problem I had is that, you know, as</p> <p>20 we said before, there have been others articles.</p> <p>21 You asked me about other articles, and there have</p> <p>22 been other articles. I don't think I ever saw an</p> <p>23 article -- even very negative articles about</p> <p>24 people or companies, there is always a modicum of</p> <p>25 truth in the article. Or if they're just trying</p>
<p style="text-align: right;">119</p> <p>1 Lorber - Confidential</p> <p>2 A. There was nothing in writing, and we</p> <p>3 never came up with a definitive business</p> <p>4 combination. I told you that I thought the bid</p> <p>5 and asked was, you know, 20 percent, 50 percent,</p> <p>6 and it would have gotten done probably somewhere</p> <p>7 in between.</p> <p>8 Q. Did you ever create any kind of</p> <p>9 business plan or any kind of projections for what</p> <p>10 the business would be worth after the Trump --</p> <p>11 MR. RESSLER: Objection, asked and</p> <p>12 answered.</p> <p>13 Q. By the time the article had come out,</p> <p>14 had you created any business plan or projections</p> <p>15 or other financial statements that would indicate</p> <p>16 what potentially the business would be worth?</p> <p>17 MR. RESSLER: Objection, asked and</p> <p>18 answered.</p> <p>19 A. No, I didn't. I told you that I think</p> <p>20 at the time we were discussing it I thought the</p> <p>21 business was worth about \$100 million. I would</p> <p>22 say by the end of '07, you know, I started</p> <p>23 thinking about it again, and I guess, you know,</p> <p>24 probably in '07 sometime.</p> <p>25 The problem is that our business took</p>	<p style="text-align: right;">121</p> <p>1 Lorber - Confidential</p> <p>2 to knock someone, they'll throw in something</p> <p>3 that's, you know, a positive instead of all</p> <p>4 negatives.</p> <p>5 This is the only time I ever really</p> <p>6 read an article that was so negative and so --</p> <p>7 lacked any -- in my opinion lacked any</p> <p>8 truthfulness to it that I think what it did is it</p> <p>9 took people that didn't know Trump or know the</p> <p>10 facts, it took them from thinking that he was a</p> <p>11 guy who was a grand salesman and maybe would</p> <p>12 exaggerate, as all salesmen do, to thinking that</p> <p>13 he's just an outright liar, because, again, you</p> <p>14 know, The New York Times -- by The New York Times</p> <p>15 writing about the book, it gave it that, you know,</p> <p>16 credibility of the institution of the New York</p> <p>17 Times.</p> <p>18 Subsequent we've learned that, you</p> <p>19 know, The New York Times, you know, is not so holy</p> <p>20 and, you know, as obvious by what they wrote about</p> <p>21 McCain. But I think it gave it so much</p> <p>22 credibility that it would be very hard to convince</p> <p>23 people -- they may have just read the book also</p> <p>24 and said, okay, the book you know, whatever, and</p> <p>25 it's pretty bad and they would have bad feelings</p>

<p style="text-align: right;">122</p> <p>1 Lorber - Confidential</p> <p>2 of Mr. Trump.</p> <p>3 But I think The Times endorsement of it</p> <p>4 was equally as bad or, if nothing else, how many</p> <p>5 people read The Times as opposed to how many</p> <p>6 people read the book. The Times obviously -- the</p> <p>7 circulation of The Times I'm sure -- I don't know</p> <p>8 how many books were sold, but I imagine there were</p> <p>9 more copies of The Times sold out when the article</p> <p>10 came out than there were of the book.</p> <p>11 Q. What particular part of the article did</p> <p>12 you find to be problematic from the standpoint of</p> <p>13 this project?</p> <p>14 A. At the end of the day, they basically</p> <p>15 said it best, as my recollection of the article,</p> <p>16 they said -- the book, they said at best they</p> <p>17 could maybe say he's worth \$100 million. I think</p> <p>18 maybe they used 100 to 200 as the range. And</p> <p>19 here's a guy saying he's worth, you know, 3</p> <p>20 billion or multi billions.</p> <p>21 So, again, it's not the difference of</p> <p>22 arguing whether a guy has 3 billion or 6 billion.</p> <p>23 You know, when you say 100 million or, you know,</p> <p>24 150 million on one side and the other person is</p> <p>25 saying 3 or 4 billion, it becomes obvious that</p>	<p style="text-align: right;">124</p> <p>1 Lorber - Confidential</p> <p>2 Q. Did the book actually say that?</p> <p>3 A. I think it said 100 to 200 million I</p> <p>4 think is what -- I think I remember more what the</p> <p>5 article said than the book said. And I did reread</p> <p>6 the article, and I haven't reread the book. My</p> <p>7 recollection is that the article said that the</p> <p>8 book said it was 100 to 200 million dollars.</p> <p>9 Q. And that the author had concluded that?</p> <p>10 Is that your understanding?</p> <p>11 A. That's the way it seemed to have been</p> <p>12 postured in the book, yes.</p> <p>13 Q. Didn't it quote three unnamed sources</p> <p>14 as saying that?</p> <p>15 A. Yes, it did say that there were unnamed</p> <p>16 sources saying it.</p> <p>17 Q. Didn't it also say that Mr. Trump and</p> <p>18 Forbes concluded he was worth over a billion</p> <p>19 dollars?</p> <p>20 A. Yes.</p> <p>21 Q. Didn't it also list the various assets</p> <p>22 that Mr. Trump claimed to own?</p> <p>23 A. Yes. It had a chart, I think, or</p> <p>24 something of the assets, yes.</p> <p>25 Q. And the chart listed values that</p>
<p style="text-align: right;">123</p> <p>1 Lorber - Confidential</p> <p>2 someone is lying.</p> <p>3 It's not a matter of, you know, the</p> <p>4 valuation of the assets. It has to be an outright</p> <p>5 lie because, you know, you can't value the same</p> <p>6 set of assets and circumstances.</p> <p>7 Again, there could be a</p> <p>8 differentiation. There could be a 50 percent</p> <p>9 difference, even. But it can't be 30 times or</p> <p>10 1/30 of what someone is claiming. It just doesn't</p> <p>11 make any sense. So there had to be -- it looked</p> <p>12 fraudulent that somebody had to have been putting</p> <p>13 out something that was fraudulent.</p> <p>14 I think the only -- the only -- what I</p> <p>15 used to say to people when would say, Oh, Trump</p> <p>16 said he never had anything. I would say, well,</p> <p>17 you know -- okay, you have the Times and the book</p> <p>18 saying it, but the real fact is you have Trump</p> <p>19 saying one thing and you have Forbes. And Forbes</p> <p>20 is a very credible source. In my opinion, anyway,</p> <p>21 in the business world Forbes is quite credible.</p> <p>22 And, you know, Forbes wasn't saying it</p> <p>23 was only 100 million. I mean, no one was saying</p> <p>24 it was only 100 million to 150 million. The only</p> <p>25 person that was saying it was the book.</p>	<p style="text-align: right;">125</p> <p>1 Lorber - Confidential</p> <p>2 Mr. Trump claimed that he placed upon those</p> <p>3 assets; correct?</p> <p>4 A. I believe so.</p> <p>5 Q. So someone reading the article or the</p> <p>6 book would have seen that chart; correct?</p> <p>7 MR. RESSLER: Objection to the form of</p> <p>8 the question.</p> <p>9 A. Look, I mean, it's obvious that's not</p> <p>10 why the book was written. The book wasn't written</p> <p>11 to show a chart to prove Donald's high net worth.</p> <p>12 It was a book that was written to try to put a</p> <p>13 large amount of doubt in the public's mind about</p> <p>14 Trump's net worth; and, if nothing else, to make</p> <p>15 it seem like he was a liar about his net worth, he</p> <p>16 was doing something fraudulent as it relates to</p> <p>17 his net worth.</p> <p>18 That's what the book very obviously</p> <p>19 tried to do, and that's, I guess, why the decision</p> <p>20 was made to have a book that would sell lots of</p> <p>21 copies. And I guess if they were putting out a</p> <p>22 book which was basically coming to the same</p> <p>23 conclusion that Trump came out with or Forbes came</p> <p>24 out with, no one would have bought the book. So</p> <p>25 the only way you were going to sell the book is by</p>

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2 having something that was outrageous.
3 And I think it was totally outrageous
4 to have unnamed sources saying one thing and then
5 you have the other sources who you name saying
6 something else. And the book tries to point you
7 to the unnamed sources saying that's the truth.
8 The unnamed sources are telling the truth; the
9 named sources are not telling the truth. That is
10 sort of nonsensical to me.
11 MO MR. CERESNEY: Move to strike the
12 answer as nonresponsive.
13 MR. RESSLER: Objection to the motion.
14 MR. KASOWITZ: You asked the question.
15 MR. CERESNEY: That wasn't the
16 question.
17 MR. KASOWITZ: That was the question.
18 Q. Mr. Lorber, do you know whether
19 Prudential would have approved the deal absent the
20 book?
21 A. I believe they would have. We have a
22 pretty good relationship with them, and everything
23 that we've gone through them with we've basically
24 come to an agreement. I think that -- I don't
25 think there would have been an issue. I can't be

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1 Lorber - Confidential
2 a hundred percent sure, but I don't think there
3 would have been an issue. My business judgment
4 tells me there would not have been an issue.
5 Q. Did you ever try to get their approval?
6 A. No.
7 Q. Did the article or the book change your
8 opinion of Mr. Trump?
9 A. I will say when I saw the article I
10 said to myself, boy, this is like, you know, very
11 strange to me that -- again, I think because The
12 Times published it, you know, it sort of added
13 credibility, I guess, in my mind. I don't know
14 why, but it did.
15 And I took a minute to think about it,
16 and I was quite pleased when I was at Trump's
17 office when Allen Weisselberg showed me the
18 financial statement, because then I knew that what
19 was written was just completely not true and that,
20 again, I think there probably could have been -- I
21 looked through the categories, and I remember as I
22 was sitting there looking through -- thumbing
23 through the financial. And look, I could have
24 been a naysayer and argued about some of the
25 valuations, so instead of coming up with 3 billion

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1 Lorber - Confidential
2 maybe I would have come up with 2.2 billion. But
3 I wasn't going to go from 100 -- from 3 billion to
4 100 or 200 million. I mean, that was the problem.
5 You know, if the book came out and said
6 we don't believe it's 3 billion we believe it's,
7 you know, 1.6 billion and went through it, I think
8 the book would have been more credible. But I
9 think it took such a ridiculous position that it
10 was hard to think there was anything credible
11 about it.
12 Q. What was the context in which Mr. Trump
13 showed you his statement of financial condition?
14 A. I think it was -- what I testified
15 before was that when I finally told him -- I think
16 I saw it twice, actually. I think I saw it twice.
17 I think I saw it a couple of months after the
18 article and the book, okay, and I think he showed
19 it to me just because I was there and maybe he was
20 getting ready for litigation. I really don't know
21 exactly. But I think he again showed it to me
22 again when the Bizz-100 Fifth Avenue thing came
23 up. I think he even said to me: Do you want to
24 show it to Bizz? And I said, Well, I don't think
25 it's going to make a difference at this point.

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1 Lorber - Confidential
2 So I think I saw it twice. I don't
3 know if it was the same financial statement I saw,
4 but I think I saw financial statements from him
5 twice, at two different times.
6 Q. Do you know whether that was a
7 compilation or an audited financial statement?
8 A. No, I do not. I believe it was a
9 compilation.
10 Q. Do you know where the information in
11 that financial statement came from?
12 A. No, I do not.
13 Q. Do you know if that's -- if the
14 auditors passed any opinion on that financial
15 statement?
16 A. I do not.
17 Q. What was the basis for your belief that
18 what was in the financial statement was accurate?
19 A. I think that -- again, I saw the
20 categories, I saw some of the categories, and just
21 my own knowledge of things that he was doing. I
22 thought that they took ridiculous, one-sided
23 positions, The Times had taken and the book had
24 taken crazy, you know, positions that, again, I
25 think I could have maybe had some arguments with

130	<p>1 Lorber - Confidential</p> <p>2 some of the valuations I saw quickly on the</p> <p>3 financial statement.</p> <p>4 But it would have been the difference</p> <p>5 of, as I said, of maybe a 10 or 20 percent</p> <p>6 difference overall as opposed to 90 percent</p> <p>7 difference.</p> <p>8 Q. How did you know that the debt side of</p> <p>9 the financial statements was accurate?</p> <p>10 A. I think they had -- I think they had a</p> <p>11 category in there for liabilities.</p> <p>12 Q. How did you know those liabilities were</p> <p>13 accurate?</p> <p>14 A. I wouldn't have been 100 percent sure,</p> <p>15 but I would assume if an accountant is putting it</p> <p>16 on, you know, writing it on their stationery and</p> <p>17 they're issuing it -- I don't remember even if it</p> <p>18 was a compilation. If they thought it was</p> <p>19 fraudulent, I doubt very seriously that they</p> <p>20 would -- that they would have issued it.</p> <p>21 Q. Do you know if a -- you know what a</p> <p>22 compilation is?</p> <p>23 A. Yes.</p> <p>24 Q. A compilation is a statement -- a</p> <p>25 financial statement on which the auditors pass no</p>	132	<p>1 Lorber - Confidential</p> <p>2 Q. I understand that. I guess I'm</p> <p>3 speaking about other than the sources. Do you</p> <p>4 know what other information he had access to or</p> <p>5 was provided?</p> <p>6 A. No.</p> <p>7 Q. After the book was published, did you</p> <p>8 call Mr. Trump your hero?</p> <p>9 A. After? You mean right after the book</p> <p>10 was published or any time after?</p> <p>11 Q. Soon after the book was published.</p> <p>12 A. I don't know when. I mean, I could</p> <p>13 have said something like that at some point, but I</p> <p>14 don't remember if it was right after the book was</p> <p>15 published.</p> <p>16 Q. Was it in March of 2006, do you</p> <p>17 believe?</p> <p>18 A. I don't recollect.</p> <p>19 Q. Let me show you Exhibit 163.</p> <p>20 (Defendants' Exhibit 163, Real Deal</p> <p>21 article dated 7/1/06, marked for</p> <p>22 identification, as of this date.)</p> <p>23 Q. Is this a July 1st, 2006, article in</p> <p>24 which you were interviewed? Do you recognize</p> <p>25 that?</p>
131	<p>1 Lorber - Confidential</p> <p>2 judgment; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Fair to say even the liability side</p> <p>5 they don't pass judgment?</p> <p>6 A. I think that's true, but I don't think</p> <p>7 I've ever seen -- I don't think I've ever seen an</p> <p>8 accountant -- I've dealt with lots of</p> <p>9 accountants -- put out something they thought was</p> <p>10 patently false, as the The New York Times did.</p> <p>11 Q. You feel very strongly about the New</p> <p>12 York Times article?</p> <p>13 A. You know, the problem I have is that I</p> <p>14 think the The New York Times gave credibility to</p> <p>15 the book. I don't know how credible the book</p> <p>16 would have been. I'm not sure, I don't know.</p> <p>17 Q. Do you know what information, by the</p> <p>18 way, that Mr. -- do you know what information</p> <p>19 Mr. O'Brien had at the time he wrote the book</p> <p>20 about Mr. Trump's financial condition?</p> <p>21 A. Well, you know, as we spoke before, he</p> <p>22 basically was naming unnamed sources. He said</p> <p>23 there were unnamed sources that gave him</p> <p>24 information as to what they thought the net worth</p> <p>25 was.</p>	133	<p>1 Lorber - Confidential</p> <p>2 A. I do.</p> <p>3 Q. Is this a publication called the Real</p> <p>4 Deal, New York real estate news?</p> <p>5 A. Yes.</p> <p>6 Q. Interview with you?</p> <p>7 A. Yes.</p> <p>8 Q. On page 2 are you asked, Who is your</p> <p>9 hero and why? Do you see that towards the bottom?</p> <p>10 A. Yes.</p> <p>11 Q. And what did you respond there?</p> <p>12 A. Donald Trump, because of everything</p> <p>13 he's accomplished. Everything he does is first</p> <p>14 class, be it developing a building, a golf course,</p> <p>15 casinos, or producing a television show. A</p> <p>16 first-rate guy.</p> <p>17 Q. Did you believe that at the time?</p> <p>18 A. I definitely believed it at the time,</p> <p>19 and I still believe it.</p> <p>20 Q. Did you believe that even after reading</p> <p>21 the The New York Times article?</p> <p>22 A. I didn't believe the The New York Times</p> <p>23 article, so it wouldn't have changed my opinion.</p> <p>24 I did not believe it. I am one of the people who</p> <p>25 did not believe it.</p>

34 (Pages 130 to 133)

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2 Q. You had this view before and after the

3 article; correct?

4 A. That's correct.

5 Q. Have you also referred to Mr. Trump as

6 the truest of all friends?

7 A. Yes.

8 Q. Always there when you need him?

9 A. Yes.

10 Q. Where did you refer to him as that?

11 A. I think it was a TV spot on E! True

12 Hollywood or one of those shows where they

13 interviewed me.

14 Q. Do you remember what you said

15 specifically at that time?

16 A. Yes. I said Melania was like an angel

17 walking down the aisle in her white gown. That

18 was from jealousy.

19 Q. Did you also say he was the truest of

20 all friends, always there when you need him?

21 A. Yes.

22 Q. And who asked you to be interviewed for

23 that show?

24 A. I believe he did.

25 Q. Mr. Trump?

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2 A. Yes.

3 Q. And you agreed?

4 A. I agreed.

5 Q. Have you also been a reference for

6 Mr. Trump on his casino applications?

7 A. Yes.

8 Q. For how many years?

9 A. I remember writing a few letters. I

10 don't remember exactly how many years. But I

11 absolutely have been a reference, and I consider

12 Donald a friend, which made it even more difficult

13 for me to not be able to do the Douglas Elliman

14 deal, because he was a friend.

15 And even though he was a friend, I

16 thought the article and the book was so bad that

17 it would cause issues for my company and I would

18 never get it past Prudential.

19 Q. Did you even try to get it past

20 Prudential?

21 MR. RESSLER: Objection to the form of

22 the question.

23 A. I never tried to get it past Prudential

24 because I knew it could not have happened after

25 that article and the book.

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2 Q. Have you had discussions with

3 Prudential about it since?

4 MR. RESSLER: Andrew, you have asked

5 that question several times.

6 Q. Have you?

7 A. I haven't, but I'm having dinner with

8 one of the people next week. And if you would

9 like, I will discuss it with him and come back and

10 report what they say.

11 Q. Who are you having dinner with?

12 A. Andrew - let me just think. Can I

13 look in my diary?

14 Q. Sure.

15 A. Andrew Downs from Prudential, Andrew

16 Downs.

17 Q. What is his position at Prudential?

18 A. The head of the real estate finance

19 company that him and the woman I mentioned before,

20 Laila, who is the director are the representatives

21 to the company.

22 Q. Do you socialize with Mr. Trump?

23 A. I've played golf with him, I've gone to

24 a few basketball games with him. Do I go out to

25 dinner with him? Is that socializing, our wives

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2 and things like that? No.

3 Q. How often do you play golf with him?

4 A. I play golf with him maybe three times,

5 three or four times.

6 Q. And you've also, I assume, been to his

7 wedding?

8 A. I was at his wedding, myself and 500 of

9 his other closest friends.

10 MR. KASOWITZ: More than one wedding?

11 THE WITNESS: No, no, it was only that

12 one, actually.

13 Q. By the way, has your son ever worked

14 for Mr. Trump?

15 A. My son was a nonpaid intern one summer

16 while he was in college.

17 Q. Has he worked for him since?

18 A. No.

19 Q. And how did he get that job?

20 A. Actually Mr. Trump had nothing to do.

21 At the time there was a person named Abe Wallach

22 that worked for Mr. Trump. And when I told Abe

23 that my son was looking to do something in real

24 estate for the summer, he said, Have him call me,

25 and he hired him to work for that summer.

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2 Q. Have you appeared on The Apprentice?

3 A. I did once as a judge at the end of the

4 season.

5 Q. How did that happen?

6 A. I called Donald and said it would be

7 great if I could be on, because it would be good

8 for the company, Douglas Elliman. He said he'd

9 see what he could do. One day he called me --

10 actually I think they had a cancellation of

11 someone else who was supposed to do it, because he

12 called me and said can you do it today and I said

13 yes, and I did it.

14 Q. We talked earlier about the business

15 dealings Prudential Douglas Elliman had with

16 Mr. Trump. Did Prudential Douglas Elliman have

17 any role as the selling agent on Trump Park

18 Avenue?

19 A. As I said to you before, they had their

20 own on-site sales team. At some point after the

21 project was completed and mostly sold out, he gave

22 us the exclusive agreement to sell some apartments

23 that were left in the building as well as giving

24 some apartments to other brokerage firms in the

25 New York City brokerage community. So we sort of

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2 divided them up and said you do these, you do

3 those.

4 Q. When was that?

5 A. A couple years ago.

6 Q. 2006?

7 A. Sounds right.

8 Q. And did Prudential Douglas Elliman sell

9 the apartments you were allocated?

10 A. No, not all of them. I sold -- we sold

11 two.

12 Q. Which ones?

13 A. Two of the bigger apartments. One was

14 about I think a \$17 million sale and one was just

15 recently I think, a few months ago, was a \$12

16 million.

17 When you say did we sell them, we had

18 the listing. Another brokerage firm sold it. So

19 you split the commissions between the two

20 companies.

21 Q. Approximately how much in revenues did

22 you make from that relationship?

23 A. Well, after we sold this last one, he

24 negotiated the commission down. But I think at

25 the end of the day the revenue to -- the revenue

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2 to the company or to the broker? I mean, the

3 company -- at the end of the day, the company

4 keeps a very small piece. The gross revenue was

5 probably -- was probably a couple hundred thousand

6 dollars.

7 Q. Any other buildings that you've had

8 that relationship with Mr. Trump on?

9 A. Nope.

10 Q. Other than buyers who were purchasing

11 Mr. Trump's apartments that are built by Mr. Trump

12 or owned by Mr. Trump that you might represent,

13 any other business that Prudential Douglas Elliman

14 has done or is doing with Mr. Trump?

15 A. Not to the best of my ability. There

16 could be a broker that's talking to him about

17 something, but nothing that I'm aware of at this

18 point.

19 Q. Did Prudential Douglas Elliman

20 represent Mr. Trump in connection with the Gossman

21 estate?

22 A. Well, we represented him on the

23 marketing from New York because we're not licensed

24 in Florida. So we had a broker in Florida. And

25 we were doing -- running some ads and involved for

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2 about a year on the Gossman property. He fired

3 us, so we're not doing it anymore.

4 Q. Didn't sell during that period?

5 A. Did not sell.

6 Q. Do you know why it didn't sell?

7 A. No.

8 Q. Was it priced too high?

9 A. I didn't think it was priced too high,

10 maybe a little too high at the time. I think the

11 real reason it didn't sell was because everyone

12 knew what he paid for it, and he was asking a

13 price substantially higher than he paid. And I

14 think people just objected giving him such a

15 profit so quickly. I think as time goes on he

16 will probably get that price, but he hasn't gotten

17 it yet.

18 Q. By the way, are you familiar with a

19 company called Bayrock?

20 A. Yes, I know who they are.

21 Q. Who is Bayrock?

22 A. Bayrock was partners with Trump in

23 Trump SoHo and I think a hotel condominium also in

24 Florida; Fort Lauderdale, I believe.

25 Q. Have you ever met anybody from Bayrock?

<p style="text-align: right;">142</p> <p>1 Lorber - Confidential</p> <p>2 A. I have.</p> <p>3 Q. Who have you met?</p> <p>4 A. I've met the principal owner, Tevfik.</p> <p>5 I don't remember his second name.</p> <p>6 Q. Arif?</p> <p>7 A. Arif.</p> <p>8 And I met Felix Sater.</p> <p>9 Q. How many times had you met him?</p> <p>10 A. Tevfik maybe half a dozen; Felix maybe</p> <p>11 a half a dozen.</p> <p>12 Q. In what context have you met those two?</p> <p>13 A. We were trying to get the listing to be</p> <p>14 exclusive sales agents for Trump SoHo, and we did</p> <p>15 not get it. Donald did not give it to us. He</p> <p>16 actually had given it to a competitor first, and</p> <p>17 then I think the competitor got fired and it went</p> <p>18 to someone else. But we never got it.</p> <p>19 Q. In those meetings that you had with</p> <p>20 them about that issue, those six meetings were all</p> <p>21 about that issue, or the half dozen,</p> <p>22 approximately, were about that issue?</p> <p>23 A. I don't think I've ever met with them</p> <p>24 on anything else other than Trump SoHo.</p> <p>25 Q. Was anybody from the Trump Organization</p>	<p style="text-align: right;">144</p> <p>1 Lorber - Confidential</p> <p>2 A. I just read it, yeah.</p> <p>3 Q. Do you see how it references the</p> <p>4 transaction involving, quote, the opportunity to</p> <p>5 obtain an ownership interest in Prudential Douglas</p> <p>6 Elliman? Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any knowledge regarding</p> <p>9 when Mr. Trump's attorneys notified us regarding</p> <p>10 this alleged lost opportunity?</p> <p>11 A. I have no idea.</p> <p>12 Q. Any discussions with Mr. Trump or</p> <p>13 Mr. Kasowitz or Mr. Ressler or anyone else at</p> <p>14 Kasowitz, Benson or Brown & Connery regarding the</p> <p>15 timing of that notification?</p> <p>16 A. No.</p> <p>17 Q. I want to go back -- when did you learn</p> <p>18 that Mr. Trump had raised this claim in this</p> <p>19 litigation?</p> <p>20 MR. RESSLER: I'm sorry, is there a</p> <p>21 question?</p> <p>22 MR. CERESNEY: I said when did you</p> <p>23 learn that Mr. Trump had raised this claim in</p> <p>24 this litigation.</p> <p>25 A. I don't recall. I do remember that I</p>
<p style="text-align: right;">143</p> <p>1 Lorber - Confidential</p> <p>2 present for those meetings?</p> <p>3 A. No, just when I met Tevfik and met</p> <p>4 Felix, there was no one else.</p> <p>5 Q. Have you ever done any business</p> <p>6 transactions with the Bayrock Group, ultimately?</p> <p>7 A. None.</p> <p>8 Q. Ever discuss Bayrock with Mr. Trump?</p> <p>9 A. You know, it may have come up in</p> <p>10 conversation. I don't remember anything</p> <p>11 substantive. But it may have come up in</p> <p>12 conversation.</p> <p>13 Q. Do you remember anything about those</p> <p>14 conversations at all?</p> <p>15 A. No.</p> <p>16 Q. Let me show you Defendants' Exhibit</p> <p>17 164.</p> <p>18 (Defendants' Exhibit 164, letter dated</p> <p>19 9/18/07 from Ressler to Ceresney, marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. It's a letter dated September 18th,</p> <p>22 2007, from Mr. Ressler to me. Have you ever seen</p> <p>23 this letter?</p> <p>24 A. No.</p> <p>25 Q. If you would take a look at the letter.</p>	<p style="text-align: right;">145</p> <p>1 Lorber - Confidential</p> <p>2 think in discussion with Marc Kasowitz I always</p> <p>3 knew there were -- there were two issues regarding</p> <p>4 this litigation and me; and one was 400 Fifth</p> <p>5 Avenue, and one was Prudential Douglas Elliman. I</p> <p>6 don't remember the timing, that one was different</p> <p>7 than the other. I don't know.</p> <p>8 Q. I want to just go back to the</p> <p>9 Prudential Douglas Elliman venture for a moment,</p> <p>10 and I want to go back to the time frame when the</p> <p>11 book and article came out. And in particular I</p> <p>12 understand which you've testified regarding the</p> <p>13 decision not to further discuss the issue.</p> <p>14 What would have been the rationale --</p> <p>15 strike that.</p> <p>16 When were you planning at that time to</p> <p>17 raise that issue with the other partners of</p> <p>18 Douglas Elliman, Prudential Douglas Elliman?</p> <p>19 A. I don't recall the exact time.</p> <p>20 Q. Were you planning to raise it soon</p> <p>21 after that right away?</p> <p>22 A. I don't want to say that because I</p> <p>23 don't know if it's true or not.</p> <p>24 Q. So it may have been -- there may</p> <p>25 actually have been some additional time that you</p>

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2 were going to be discussing this before raising it
3 with the partners?
4 A. Yes, could be.
5 Q. What were you going to discuss during
6 that additional -
7 A. I hadn't gotten down to a concrete
8 proposal with Donald as far as a number and the
9 exact structure, so therefore I wasn't going to
10 bring it to them and just talk in general. When I
11 would have brought it to them, it would have been
12 here's the deal, here's why I think we should do
13 the deal.
14 Q. Do you know how far away you were from
15 that point?
16 A. With Donald it was more a matter of,
17 you know, spending the time to sit down and try to
18 get through it with him. You know, it could have
19 been six months, it could have been a year, it
20 could have been two months. I really don't know.
21 Q. Do you know when you actually would
22 have gotten there?
23 MR. RESSLER: Objection to the form.
24 A. From a business perspective I think it
25 would have made a lot of sense for us whether he

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2 would have said no to, you know, 25 percent or 20
3 or holding out for 250. I don't know. I couldn't
4 answer.
5 Q. Do you know when the deal would have
6 gotten done?
7 MR. RESSLER: Objection, asked and
8 answered.
9 MR. KASOWITZ: Asked and answered a
10 number of times.
11 Q. You can answer.
12 A. I don't think you ever know until it's
13 completely finished.
14 MR. CERESNEY: Let's do this, because I
15 need to go over my notes. I do have a couple
16 of other things to cover relatively quickly, I
17 think, but I want to do it efficiently. So
18 why don't we take a few minutes to discuss.
19 If we can reconvene in a few minutes.
20 THE VIDEOGRAPHER: Going off the
21 record. The time is 12:39. This ends Tape 2.
22 (Recess taken from 12:39 to 12:48.)
23 THE VIDEOGRAPHER: We're back on the
24 record. The time is 12:48. This is Tape 3.
25 Q. Mr. Lorber, I neglected to ask you how

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2 long you've known Mr. Trump.
3 A. I think I met him in the eighties.
4 Q. In what context?
5 A. A lawyer that was doing real estate
6 work for me was his real estate lawyer in those
7 days.
8 Q. And he introduced you?
9 A. Yes.
10 Q. And you've been friends with him ever
11 since?
12 A. I wouldn't say I was friends with him.
13 then. I knew him. I really would not say I
14 became friends with him probably closer to the mid
15 nineties. I don't think I was really friends with
16 him before that.
17 Q. I take it you admire him?
18 A. I think he's great at what he does.
19 Q. Do you know if you're testifying today
20 as a representative of Mr. Trump's in this
21 litigation?
22 A. Never thought about it that way. I'm
23 testifying as to this litigation and what I know.
24 Q. Do you know whether or not Mr. Trump's
25 attorneys identified you as a representative to

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2 testify about the 400 Fifth Avenue deal?
3 A. I don't know.
4 Q. Is anybody paying you for your time
5 today?
6 A. No.
7 Q. You mentioned that you had met with
8 Mr. Kasowitz and some others in preparation for
9 today's deposition on Friday. I think you said it
10 lasted about 20 minutes.
11 A. That's correct.
12 Q. What did you discuss with Mr. Kasowitz
13 and others on Friday in connection with this
14 deposition?
15 A. I asked him for a copy of The Times
16 article. I wanted to just read it again, which he
17 gave me. I talked to them about the timing of the
18 400 Fifth Avenue transaction, my recollection of
19 it. And I talked to him a couple minutes about
20 the proposed potential Douglas Elliman
21 transaction.
22 Q. Just to be clear, because I don't think
23 I asked this earlier in connection with - had you
24 discussed with anyone from Mr. Kasowitz's firm the
25 Prudential Douglas Elliman venture that we've been

150	<p>1 Lorber - Confidential</p> <p>2 discussing prior to Friday?</p> <p>3 A. I believe that when I first talked to</p> <p>4 them about the litigation there were two things to</p> <p>5 talk about: 400 Fifth Avenue and Prudential</p> <p>6 Douglas Elliman. I don't remember the timing of</p> <p>7 those conversations, but those were always the two</p> <p>8 things that I assumed I was going to testify</p> <p>9 about.</p> <p>10 Q. Now, have you done any kind of search</p> <p>11 for any documents relating to this deposition in</p> <p>12 your possession? Have you conducted any search?</p> <p>13 A. I looked -- I looked for the term</p> <p>14 sheet. I think I testified earlier I looked for</p> <p>15 the term sheet, and I couldn't find it.</p> <p>16 Q. Any other documents you've looked</p> <p>17 for --</p> <p>18 A. No.</p> <p>19 Q. -- relating to either transaction?</p> <p>20 A. No, I know there were none relating to</p> <p>21 Prudential Douglas Elliman. There were no</p> <p>22 documents. We never got to a term sheet or</p> <p>23 anything. They were just conversations on the</p> <p>24 telephone and in person, so there was nothing to</p> <p>25 look for.</p>	152	<p>1 Lorber - Confidential</p> <p>2 there's any e-mails relating to Mr. Trump and the</p> <p>3 400 Fifth Avenue project?</p> <p>4 A. Yes, I believe I testified to that</p> <p>5 earlier today. I did try to see if -- I was</p> <p>6 looking for the term sheet.</p> <p>7 Q. Right. But other than the term sheet,</p> <p>8 putting that aside.</p> <p>9 A. Well, I put in -- I put in Trump's</p> <p>10 name, Trump, Jr.'s, name, 400 Fifth Avenue, and</p> <p>11 Bizzi. And I came up with stuff, but none of it</p> <p>12 is what I was looking for.</p> <p>13 Q. And the stuff you came up with, did any</p> <p>14 of that relate to Mr. Trump's stuff apart from the</p> <p>15 term sheet?</p> <p>16 A. No. I don't think Trump sends e-mails.</p> <p>17 I don't think he has a BlackBerry. I've never --</p> <p>18 I've never communicated with him that way.</p> <p>19 Q. Do you communicate with Donald Trump,</p> <p>20 Jr., that way?</p> <p>21 A. Trump, Jr., more so than Sr.</p> <p>22 Q. Were there any others within your</p> <p>23 organization that might have e-mails relating to</p> <p>24 Mr. Trump and 400 Fifth Avenue, like Ms. Lens, for</p> <p>25 example?</p>
151	<p>1 Lorber - Confidential</p> <p>2 Q. And with regard to 400 Fifth Avenue,</p> <p>3 other than the term sheet, you didn't look for any</p> <p>4 other documents relating to that?</p> <p>5 A. No, I did not. As I testified, I do</p> <p>6 have other documents, nothing to do with Trump but</p> <p>7 has to do with the relationship between Prudential</p> <p>8 Douglas Elliman and 400 Fifth Avenue Partners.</p> <p>9 Q. Understood. There were potentially</p> <p>10 some calendar entries --</p> <p>11 A. I said I would look for my diary if I</p> <p>12 have it and see whether there are any calendar</p> <p>13 entries.</p> <p>14 Q. Does anybody else keep a record of your</p> <p>15 schedule, by the way, your secretary?</p> <p>16 A. No. I do it myself. It's right here,</p> <p>17 right here in my pocket (indicating.)</p> <p>18 Q. For this year?</p> <p>19 A. For this year. This is it. When I</p> <p>20 lose it, that's it, business is over.</p> <p>21 Q. I think you said this earlier. You use</p> <p>22 e-mail? You have your own e-mail account?</p> <p>23 A. Yes.</p> <p>24 Q. Did you do any kind of search of your</p> <p>25 e-mail from the 2006 time frame to see whether</p>	153	<p>1 Lorber - Confidential</p> <p>2 A. I don't believe so.</p> <p>3 Q. And why don't you think so?</p> <p>4 A. I don't think she ever was involved in</p> <p>5 that part of it. You know, she may have been at</p> <p>6 the one meeting with Trump and myself and Bizzi.</p> <p>7 I don't even think she was there. I don't think</p> <p>8 there would be any e-mails between her and</p> <p>9 Mr. Trump.</p> <p>10 Q. And does your secretary keep a record</p> <p>11 file of paper correspondence?</p> <p>12 A. I'm not a letter writer, so I don't --</p> <p>13 yes, I guess she does, but it's very -- very few.</p> <p>14 Q. You don't think you had any letters</p> <p>15 relating to Mr. Trump's involvement with 400 Fifth</p> <p>16 Avenue?</p> <p>17 A. No, I do not.</p> <p>18 Q. Do you, by the way, have a single</p> <p>19 e-mail account that you use?</p> <p>20 A. Yes.</p> <p>21 Q. And that's the one that you checked?</p> <p>22 A. Correct.</p> <p>23 Q. Do you keep your e-mails from that far</p> <p>24 back, well, from 2006?</p> <p>25 A. You can't on your BlackBerry. He has</p>

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1 Lorber - Confidential

2 them archived, and he checked as far back as he

3 can go. I had my technology guy when he was in

4 the office once look for me, and he couldn't find

5 anything.

6 Q. Do you typically delete your e-mails

7 after you read them?

8 A. No, I don't, not typically. He deletes

9 them at some point when my computer gets

10 overloaded and it can't handle them anymore. He

11 deletes them; I don't delete them.

12 Q. Did you have e-mails from that early

13 time period, 2006 onward? What I'm trying to

14 figure out is whether there could have been an

15 e-mail that was deleted or whether your

16 recollection, you know, might be different

17 regarding this e-mail.

18 A. I'd be happy to ask him again to look.

19 I don't generally delete e-mails. So it would

20 have been at a time when I was having a computer

21 problem and he came in and deleted them because it

22 was stuffed up with too many old e-mails.

23 So I don't remember the dates, but I'd

24 be happy to ask him and get back to Mr. Kasowitz,

25 who can get back to you on it.

155

1 Lorber - Confidential

2 Q. Do you have any e-mails relating to

3 your deposition in this litigation or this

4 litigation in general?

5 A. No, I don't believe so.

6 Q. Who else have you spoken to other than

7 Mr. Kasowitz and Mr. Trump about — Mr. Kasowitz,

8 when I say that, I mean Kasowitz, Benson as a

9 whole, and Mr. Trump about this litigation?

10 A. I don't think I've spoken to anyone

11 else about it.

12 MR. CERESNEY: Okay. We're at 1

13 o'clock. That's all I have for today.

14 MR. RESSLER: Thanks. Just again, it's

15 a confidential designated deposition.

16 MR. CERESNEY: Thank you.

17 THE WITNESS: Okay. Thank you.

18 (Continued on following page.)

19

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1 Lorber - Confidential

2 THE VIDEOGRAPHER: Going off the

3 record. This completes the videotaped

4 deposition. The time is 12:57.

5 (Time noted: 12:57 p.m.)

6

7 _____

8 HOWARD M. LORBER

9 Subscribed and sworn to before me

10 this ___ day of _____ 2008.

11

12 _____

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157

1

2 CERTIFICATE

3 STATE OF NEW YORK)

4 : ss,

5 COUNTY OF NEW YORK)

6

7 I, LAURIE A. COLLINS, a Registered

8 Professional Reporter and Notary Public

9 within and for the State of New York, do

10 hereby certify:

11 That HOWARD M. LORBER, the witness

12 whose deposition is hereinbefore set forth,

13 was duly sworn by me and that such deposition

14 is a true record of the testimony given by

15 the witness.

16 I further certify that I am not related

17 to any of the parties to this action by blood

18 or marriage, and that I am in no way

19 interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set

21 my hand this 20th day of April 2008.

22

23

24 _____

25 LAURIE A. COLLINS, RPR

<p style="text-align: right;">158</p> <p>1 2 ----- INDEX ----- 3 4 WITNESS: EXAMINATION BY: PAGE 5 Howard M. Mr. Ceresney 4 6 Lorber 7 8 ----- TRANSCRIPT MARKINGS ----- 9 DIRECTIONS: 10 MOTIONS: 36:25, 126:11 11 REQUESTS: 38:24, 42:22, 66:3 12 RULINGS: 13 TO BE FURNISHED: 14 15 ----- EXHIBITS ----- 16 LORBER NO. DESCRIPTION PAGE 17 18 Exhibit 161, document from NYC 52 19 Department of Finance, Office of City 20 Registrar 21 Exhibit 162, objections and responses 80 22 to defendants' second set of 23 interrogatories 24 Exhibit 163, Real Deal article dated 132 25 7/1/06</p> <p style="text-align: right;">159</p>	<p style="text-align: right;">160</p> <p>1 2 ERRATA SHEET 3 VERITEXT REPORTING COMPANY 4 1350 Broadway 5 New York, New York 10018 6 (212) 279-9424 7 CASE: Trump v. O'Brien 8 DEPOSITION DATE: April 14, 2008 9 DEPONENT: Howard M. Lorber 10 PAGE/LINE(S)/ CHANGE REASON 11 / / / 12 / / / 13 / / / 14 / / / 15 / / / 16 / / / 17 / / / 18 / / / 19 / / / 20 / / / 21 22 HOWARD M. LORBER 23 SUBSCRIBED AND SWORN TO BEFORE ME 24 THIS _____ DAY OF _____, 2008. 25 NOTARY PUBLIC DATE COMMISSION EXPIRES</p>
<p>1 2 Exhibit 164, letter dated 9/18/07 from 143 3 Ressler to Ceresney 4 5 6 7 Attorney Mr. Ceresney from Debevoise & Plimpton 8 has retained all exhibits. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

41 (Pages 158 to 160)

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Andrew J. Ceresney
Partner
Tel 212 909 6947
Fax 212 909 6836
ajceresney@debevoise.com

February 13, 2008

BY EMAIL AND REGULAR MAIL

Mark P. Ressler, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, NY 10019

Donald J. Trump v. Timothy L. O'Brien, et al.

Dear Mark:

We are writing to raise several issues regarding plaintiff's compliance with the Court's rulings at the December 7, 2007 hearing (as memorialized in the Order entered on January 23, 2008 ("Order")), directing plaintiff to supplement his responses to defendants' First Set of Interrogatories ("First Interrogatories") and defendants' Second Set of Interrogatories ("Second Interrogatories"). Although plaintiff's supplemental answers of January 7 and 14, 2008 provided certain information, three of plaintiff's interrogatory answers remain woefully deficient. In an effort to expedite discovery and prevent the further slowing of efforts to schedule depositions (about which the parties just exchanged potential dates), this letter focuses on three deficiencies in plaintiff's responses. These issues were fully explained and vetted at the December 7, 2007 hearing, and we hope that plaintiff will cure these deficiencies in the immediate future.

First, in granting defendants' Cross-Motion in Aid of Litigant's Rights, the Court ordered plaintiff to "respond fully to each subpart of Interrogatory No. 20" from defendants' First Interrogatories, which related to plaintiff's claimed damages. (Order ¶ 6.) However, plaintiff neither has "set forth the nature and amount of, and facts and data supporting each and every claim of damages in this action, including a description of: (a) the method used to calculate the total amount of such damages; (b) the source of all facts and data supporting such damages; (c) all persons involved in making such calculations of damages; and (d) all persons with knowledge of such damages or any data used to calculate such damages," nor "[i]dentif[ied] and attach[ed] . . . copies of all documents on which you relied in calculating such damages." (Defendants' First Interrogatories, Interrogatory No. 20.)

In particular, in your January 7, 2008 letter, plaintiff for the first time claimed mitigation damages. However, you failed to include in your response any information about the amount of such alleged damages, any data allegedly supporting such damages, or any documents relevant to calculating such alleged damages. Plaintiff clearly is obligated to provide such information under the Court's Order. It is plainly insufficient just to assert broadly that plaintiff incurred costs in meeting with Forbes, drafting letters to The New York Times, purchasing advertising to counteract the Book, and demanding a retraction. Just by way of example, plaintiff points to no particular advertisements, let alone the costs of any such advertisements that were incurred to mitigate any alleged damage from the Book.

We note also that we have been seriously prejudiced by plaintiff's considerable delay in raising this claim. Defendants have already deposed Mr. Trump, Michelle Scarbrough, Donald Bender, and Gerald Rosenblum, the majority of the witnesses plaintiff has indicated he intends to rely on at trial to support his claim for mitigation damages. Defendants reserve the right to continue these depositions in connection with Mr. Trump's late-disclosed mitigation claims, and to take any other measures to mitigate the associated prejudice to defendants.

Plaintiff's supplemental response regarding alleged reputational damage also is deficient. For example, plaintiff indicated that he will rely upon witness testimony to support his claim, but he failed to name any such witness. The Court's Order clearly required the identification of any such witnesses so that we can conduct adequate discovery. We request that you immediately provide us with the names of all relevant witnesses or indicate that you are unaware of anyone who can provide such testimony.

Second, plaintiff has not complied with the Court's Order that "[o]n or before January 7, 2008, plaintiff must respond fully to, and provide relevant documents (whether in electronic or hard copy form) in connection with, each subpart of Interrogatory No. 9 from defendants' Second Set of Interrogatories, which the Court has limited to written offers or written proposals – maintained within plaintiff's organization or of which plaintiff otherwise has a record – to license the Trump name for any purpose." (Order ¶ 8.) Plaintiff did not respond to any subpart of Interrogatory No. 9 and instead referred defendants to some forthcoming production, which has not materialized. As required by the Court's Order, plaintiff must answer each subpart of the Interrogatory and also produce the relevant documents.

Third, plaintiff still has not provided any information responsive to Interrogatory No. 14 of defendants' Second Interrogatory, regarding "any offer or proposal to purchase . . . the Gossman Estate in Palm Beach, Florida." (Defendants' Second Interrogatories, Interrogatory No. 14.) The Court's Order required plaintiff to provide such information "[o]n or before January 7, 2008" (Order ¶ 7), and your letter of January 7, 2008 indicated that such information would be provided "shortly" (Letter of Mark P. Ressler, Esq. to

Mark P. Ressler, Esq.

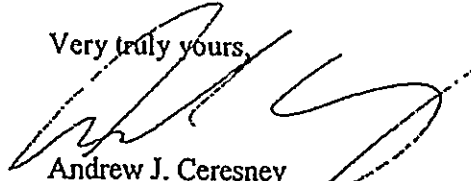
3

February 13, 2008

Andrew J. Ceresney, Jan. 7, 2008). Defendants again request that this information be provided.

As always, we prefer to resolve these issues amicably and without needlessly involving the Court, which previously has ruled on these issues. To that end, we request that plaintiff provide by February 20, 2008 the supplemental information previously required by the Court. Please contact me if you would like to discuss this further.

Very truly yours,



Andrew J. Ceresney
Debevoise & Plimpton LLP

/s/ Mark S. Melodia
Mark S. Melodia
Reed Smith LLP

cc: Maria Gorecki, Esq.
William M. Tambussi, Esq.
James F. Dial, Esq.

1652a

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ATLANTA
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July 16, 2008

BY HAND AND E-MAIL

Andrew J. Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022


Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Enclosed please find a supplemental production bearing bates stamps TR000092386 through TR000092388. These documents concern expenses incurred by Mr. Trump in connection with his efforts to mitigate damages caused by defendants' defamatory statements about him. (See January 7, 2008 letter from Mark P. Ressler to Andrew Levine supplementing plaintiff's response to defendants' Interrogatory No. 20).

As always, feel free to contact me with any questions.

Sincerely,


Maria Gorecki

cc: Andrew M. Levine (by e-mail)
Mark S. Melodia (by e-mail)
Kellie A. Lavery (by e-mail)
William M. Tambussi (by e-mail)
William F. Cook (by e-mail)



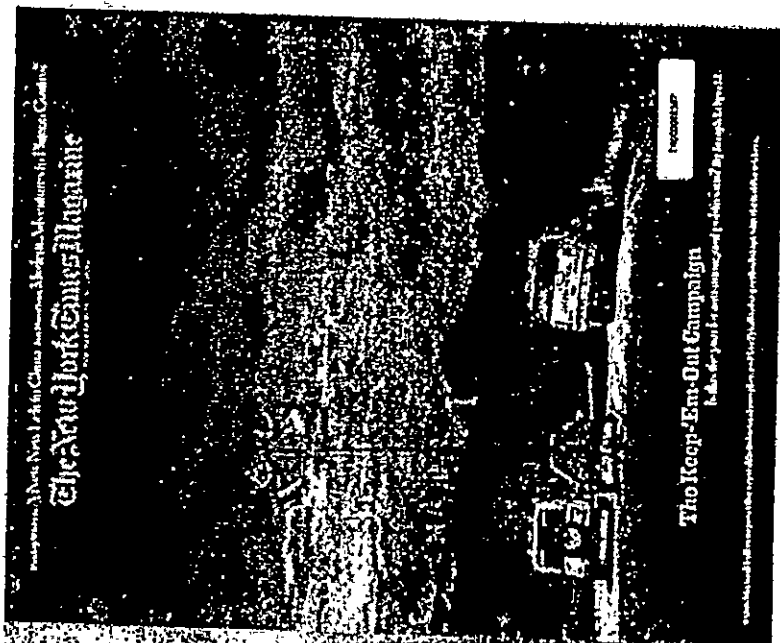
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3. New York Post -	March 21, 2007	\$45,000
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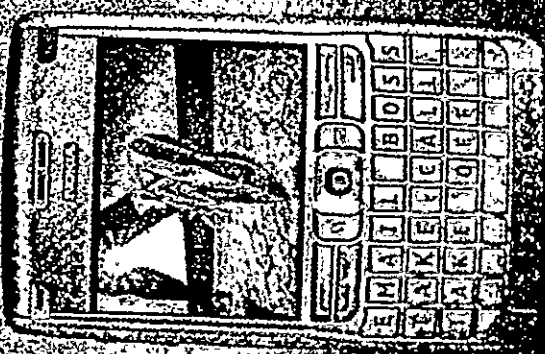
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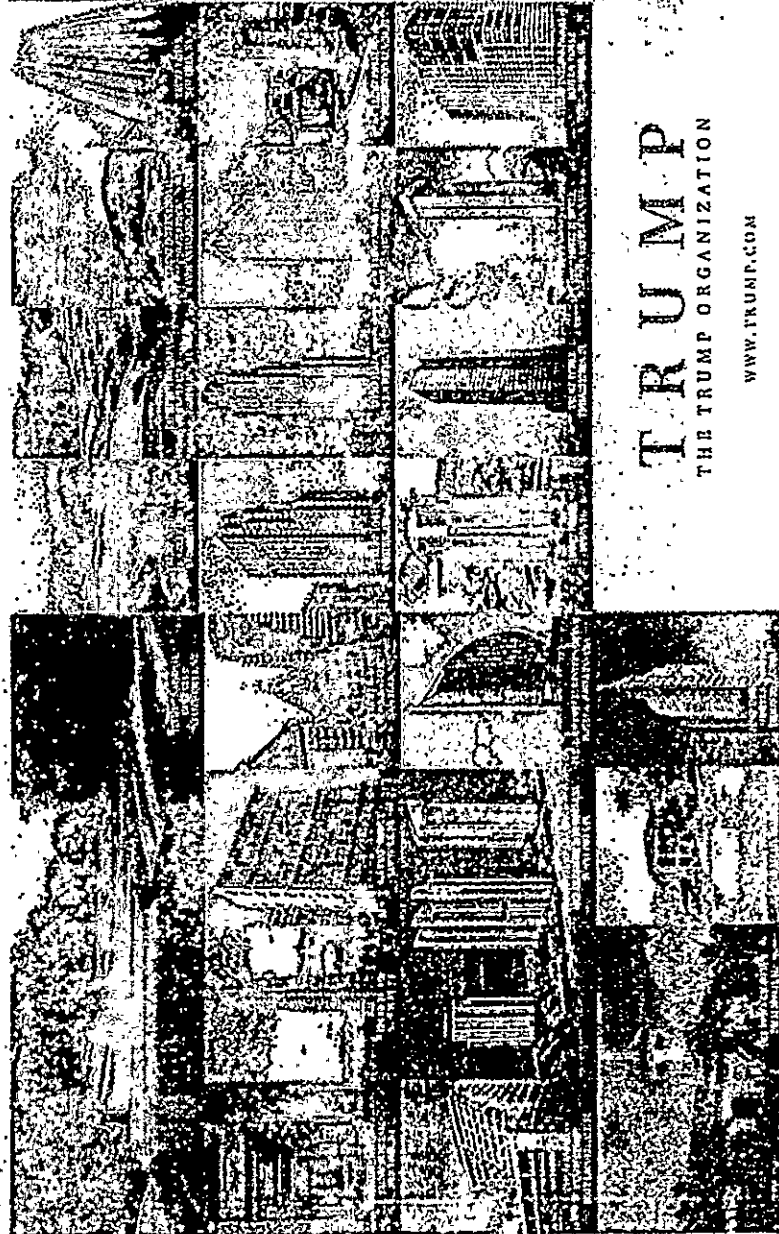
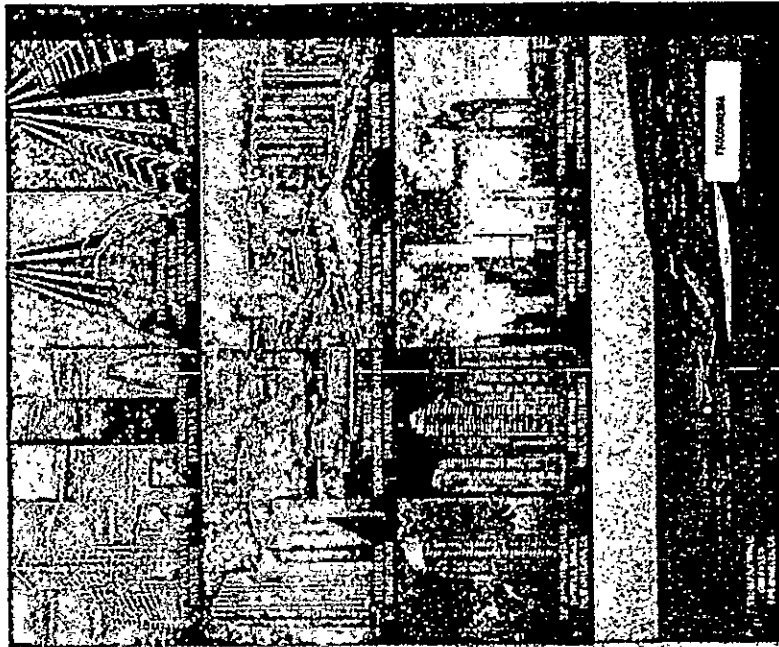
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Dallas Business Journal

Dallas Business Journal

February 20, 2006 Monday

LENGTH: 425 words

HEADLINE: Trump eyeing sites for Dallas tower

BYLINE: Christine Perez

BODY:

Real estate mogul Donald Trump says he's considering several locations for his Trump Tower Dallas, one of them in partnership with another investor.

"I have three sites I'm looking at, two in particular," Trump told the Dallas Business Journal. "And I may invest in two and not do them for a while. I wouldn't do them all at the same time, because then I'd be competing against myself."

Two of the sites would accommodate multiple uses, including residential and retail; the third would be purely residential. One of the locations would require Trump to partner with another investor.

"I'm doing two of the deals very distinctly and very directly without anybody," Trump said.

The real estate investor denied rumors that a deal with developer Hillwood at its Victory Park project is imminent.

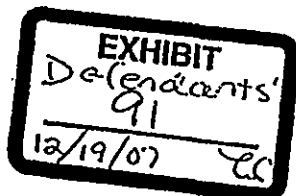
Trump Towers are sprouting in several cities across the country. In Chicago, construction is under way on a 92-story skyscraper along the Chicago River, where \$750 million in residences have already been sold. Trump's 1,283-unit Trump Tower Las Vegas is sold out. He's also pursuing projects in Miami, Tampa, Denver and Philadelphia.

Why the flurry of new developments? "The name is blazing hot," Trump said. "The television show (NBC's "The Apprentice") is a monster -- though I think I was hot before the television show, in all fairness.

"Wherever we do a Trump Tower, whatever market we're in, we sell faster and we sell for higher prices. The key is, we only want the best sites."

Trump flew to Dallas from Palm Beach, Fla., on his private jet Feb. 19 to speak at Real Estate Wealth Expo, a two-day symposium at the Dallas Convention Center. He toured the local development sites before hitting the stage, then flew to New York City after the event.

Bill Zanker, founder of The Learning Annex, which hosts the Real Estate Wealth Expo tour, said he was hoping for 15,000 attendees in Dallas -- and got 18,000.



1657a

Trump eyeing sites for Dallas tower Dallas Business Journal February 20, 2006 Monday

Trump, who was paid a cool \$1.5 million for his appearance at the wealth expo, said the time is right to invest in Dallas.

"I like Dallas as a market," he said. "It's not a great market right now, but that's a good time to buy."

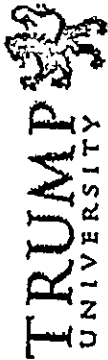
There's a 50-50 chance that Trump Tower Dallas will come to fruition, Trump said.

"I would never say more than a 50-50 chance about any deal," he said. "I've done deals where everything is done and the papers are ready to be signed and I walk into the office and an hour later, for some reason, the deal doesn't get done. So I never say any deal has more than a 50-50 chance until it has a 100% chance -- meaning, it's signed."

LOAD-DATE: August 14, 2006

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Ideas and Opinions from Donald Trump and TrumpU Faculty.

Home : [The Trump Brand](#)

The Trump Brand

POSTED BY DONALD J. TRUMP ON 2/21/2008 AT 10:49 AM

Chairman, Trump University

I know that the "Trump" name is a powerful one. Nearly every day I'm approached by one company or another wanting me to put that name on some product or service. They know that with the Trump stamp of approval comes immediate recognition and an expectation of quality and success.

I think you'd be surprised at some of the proposals that come through my office. To be honest, many of them don't warrant more than a glance. Some of them get my attention, but it takes a lot for an idea to actually get any serious consideration.

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I recently put my name on a new travel site, GoTrump.com. It has everything from the ultimate in luxury travel to the absolute best deals on everything from hotels to airfare. It's a great site, check it out. It has to be, or I wouldn't have put my name on it.

I've worked hard to make sure the Trump name is found only on buildings of the highest caliber and products of the finest quality. I won't even consider giving my approval to anything unless I know it's the top of the line because when people see or hear Trump, they expect the best. That's just basic marketing and good business.

Recently I read that when the great fashion designer Karl Lagerfeld announced he was creating a new line of clothing with his name on it, Neiman Marcus and Bergdorf Goodman immediately ordered it sight unseen. His name is so powerful in the fashion world that people know whatever he presents, it will be spectacular.

That's what I keep in mind when deciding which products to present as Trump.

If I were to put Trump on everything that came my way from potato chips to paper clips from the power of my name would be diluted. I'm very demanding and selective about where that name goes. And I always try to make sure the letters are in gold.

Donald J. Trump is Chairman of Trump University.

Why I Selected Claudia Jordan for The Celebrity Apprentice

Why I Selected Scott Hamilton for The Celebrity Apprentice

Commercial Real Estate 101: 5 Ways to Sell an Investment Property in a Tough Market

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See how you stack up against Donald Trump

18 Comments

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Posted by Matthew Dixon on 02/21/2006 2:11 PM

I hope the Trump slot machine casino in Pennsylvania comes through. Firstly, it would be good to have a high quality casino. Secondly, it would also take one of the casino applications away from the probability of the casino going up in Gettysburg.

Posted by Emily on 02/21/2006 5:35 PM

I thought that I had heard somewhere that you yourself, Mr. Trump, were going to be putting out a business line of clothing? Is this correct? If so, when is that to happen?

Posted by Nut Suwapiromchot on 02/21/2006 7:29 PM

Agree on your thinking.

But if someone want to spread your success story to the far away land (for non profit, propose)

I believe this will make you legend alive and spread around and alot of people in the far away who cannot read english language can access your ideas.

Think about it

Posted by Mike Wyman on 02/21/2006 10:18 PM

When I hear or see the name "Trump" on anything, I immediately do think of the highest quality of product. Most of the public knows this, but it's only because of the high quality of Trump related ventures in the past. With all the talk of the value on names like Coke or MacDonalds, it would be interesting to know where Trump fits in (surely near or at the top).

Posted by Iltuoyu on 02/22/2006 12:43 AM

go big or go home? please tell whether you would like to develop real estate in China market...

Posted by Kennet Calhoun on 02/22/2006 3:29 PM

That's a great point ... one's name and reputation are key to success. With all the success and entrepreneurship that goes with a name like "Trump", it's important to maintain the quality of the brand. And associate only with the very best people for all business dealings. I like your point re expanding to a travel site, that co-brands well with the high-quality hotels you're known for building and operating. Here's to success!

Posted by Lakhbir Gill on 02/23/2006 3:29 AM

One thing the Trump brand is missing is ba

Posted by Gary Kelly on 02/23/2006 4:59 AM

I don't think there can be any debate with regards to the strong value of the Trump name.

Trump World I, II, III - Donald Trump receives \$5 Million licensing fee just to lend his name to a project in Seoul Korea.

Trump International Hotel and Tower - Donald Trump receives a reported \$40 Million from General Electric for his name and expertise involving the project.

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March

February

January

Because of the Trump name, Donald Trump has made more money with these two deals than most people will ever make in their lives. Mr. Trump has been paid millions from other companies just for the use of his name. If that is not validation for the value of the Trump brand, I don't know what is.

The Trump name is synonymous with top quality in my mind. Period. Full Stop. End Of Sentence.

Posted by Lakhbir Gill on 02/23/2006 1:23 PM

Two things that would be deserving the Trump brand name would be childrens clothing and a online video game.

A slick man with a wavy hairdo would be a perfect caricature logo. Making the clothing line affordable to all would certainly please your fans. Plus, the line would be a perfect souvenir gift in your Las Vegas hotel. I have family in India that are in the manufacturing business. ;)

A Trump-style online "Game of Life" would be another venture. Xbox and the Internet allows you a large platform. Pick your character and play. Working your way to the top during the game to have a real chance at meeting the Donald himself. Making the game a place to learn; at the same time, integrating the "ups and downs" of life with the "school of business". People pay to play ridiculous games like Halo, Grand Theft Auto, etc. to learn what?? EA Sports has its head office close to where I live. ;)
I think these are some good ideas, what does everyone else think???

Posted by Charles McGill on 02/23/2006 3:58 PM

Hi all

GoTrump, great name and I like the site, it seems like a natural extension when you already have the best in buildings on offer.

Nobody would need to see them to want to visit any of them, so it looks like a another great move to me.

I'll keep my eye out for the affiliate opportunity with this one being internet based and whenever you need a search engine to take on Google, I'll be waiting.

Regards
Charlie
Founder
<http://www.netaid.co.uk>

Posted by Jason Ottmann on 02/26/2006 1:46 PM

Business is a serious issue, and I like the fact that you watch what you put your name on. I have the highest respect for you. In saying that, I hope you don't mind me proposing an idea... Get the children to know you more, it makes sense to me to put it as a business-form of a video game or board game. Let's face it, children love games, and eventually they all will grow up. This would be a great way to get them to grow up and start taking responsibilities for their actions. I can't wait to see your show again... I think it's going to be great.

Posted by Huu Phuc Nguyen on 03/02/2006 11:08 AM

Mr. Trump, beside what I saw in the television, ads or any information about how smart and talent your are,

Posted by nisa on 03/02/2006 10:04 PM

When I explore most of your website, its really open up my mind. i really enjoy every site that I go through. You are intelligent

Posted by Irving on 03/28/2006 4:23 AM

If everything trump merchandise must be labelled in gold lettered trump, why isn't trump university in gold??

Posted by JD on 04/10/2006 12:47 AM

I'm a big fan of yours, Mr. Trump. With respect, I think you're the last of a dying breed - the businessman with flair and honesty. I think The Apprentice should be prescribed study material for all business school majors.

Posted by lojlnkuel on 05/23/2007 4:33 AM

I study intellectual property and design. the trump brand is flexible yet known. I have got automotive concepts if your into cars. they're like a blend of custom design and purpose, form and function. kinda like a ultimate set of compromises and values for an auto enthusiast, perfect Trump material.. very high standard of quality and consideration. and a brilliant marketing plan to boot! you are an inspiration. thanx

Posted by Eric Chen on 07/24/2007 10:35 AM

I am wondering if you try to put TRUMP on every product, does it violate the law of 'Line Extension' - by Jack Trout & Al Ries. When people think of TRUMP, what comes to their mind? Is it buildings, or luxury office chairs? - and how can make sure each product can become the beset in that category? Maybe focus is better - but we will see.

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August

July

June

 [Posted by Rachael Sutton #1253595 on 11/30/2008 8:22 AM](#)

This makes perfect sense to me. Your name, reputation and character are all things to be closely guarded. Thats good advice for everybody. It takes much more time and effort to build them than to destroy them.

[Post a comment »](#)

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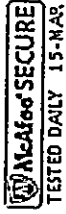
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May

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The Philadelphia Inquirer

Found on Philly.com
The Philadelphia Inquirer

December 15, 2006 Friday

SECTION: NATIONAL; Pg. A01

LENGTH: 1896 words

HEADLINE: Trump the best-known city casino-game player

BYLINE: Suzette Parnley, Inquirer Staff Writer

BODY:

Fourth in an occasional series.

NEW YORK - When nine casinos sprang up in Atlantic City after New Jersey legalized gambling there in 1977, some experts said the seaside resort had overbuilt as the gaming halls struggled to fill up.

But not Donald J. Trump.

He bet that there was room for one more major player who could lure the high rollers. That bet produced mixed results for The Donald.

He developed three casinos by 1990 that helped shape the city's skyline. But his business also went bankrupt - twice.

Now Trump is betting on Philadelphia - where he wants to build the TrumpStreet Casino & Entertainment Complex on the 30-acre former Budd site between East Falls and Nicetown. The \$395 million casino is one of five proposals for the two city licenses that the Pennsylvania Gaming Control Board is expected to award Wednesday.

TrumpStreet is the only one of those not on the waterfront. Its proximity to residential neighborhoods and three schools has sparked protests from community groups.

Donald John Trump, 60, was seated behind his Hummer-size desk in his office on the 26th floor of Trump Tower, where he lives, works and promotes himself.

He announced that his latest book, *Why We Want You to Be Rich*, had just made it to No. 1 on the New York Times best sellers' list and that Trump Vodka was being launched that same week in late October. BusinessWeek recently named Trump "the world's most competitive businessperson." No. 2 was Microsoft Corp.'s Bill Gates.

"That's not bad for Philadelphia," Trump said.

Trump the best-known city casino-game player The Philadelphia Inquirer December 15, 2006 Friday

Trump is No. 71 on the Forbes list of the 400 richest Americans, with an estimated net worth of \$2.9 billion. He has 33 high-rise projects under way around the world, including hotels in Chicago; Las Vegas; Fort Lauderdale, Fla.; and Dubai, United Arab Emirates. He also plans to build Trump Tower Philadelphia, a 60-story condominium tower on the Delaware River waterfront near Northern Liberties.

There are few people who seek and attract more publicity. The walls in his spacious yet cluttered office overlooking Central Park are decorated with magazine covers featuring him. Trophies and awards crowd the floor.

Howard Davidowitz, who lives at Trump Tower, recalled mob scenes whenever Trump's reality-TV show, *The Apprentice*, held auditions at Trump's office.

"There's a riot. There's people all over the place," said Davidowitz, chairman of Davidowitz & Associates Inc., a New York-based national retail consulting and investment-banking firm. "People want to be associated with him one way or another because he's viewed as a winner."

Still, some who worked for and later competed against Trump in Atlantic City say Trump is more Barnum & Bailey than casino operator.

"Donald Trump wasn't involved very much in the operations of a casino, except in marketing," said Dennis Gomes, president of the Trump Taj Mahal from 1991 to 1995. "We used him to promote major casino events, and he would consistently bring in the huge crowds."

Trump embraces his star power. "I have the hottest brand in the world," he said. "When you have a name that's so valuable and so good that you get a percentage of a building for nothing, I consider that to be a great honor."

In a recent conference call with investors, Trump boasted about how he snapped up the premier locations in Atlantic City in the early '80s for his casinos.

"I've been very good to Atlantic City. It's been very good to me," Trump said. "Many people abandoned Atlantic City. I never did. I've been a constant."

Trump partnered with Harrah's Entertainment Inc. in 1984 to develop his first casino. Harrah's eventually sold its interest to Trump, and the property became Trump Plaza. Trump's second casino, Trump Marina, opened in 1985.

The '90s brought trouble for Trump. He financed the construction of his third casino, the \$1 billion Taj Mahal, primarily with high-interest junk bonds. That put him at a disadvantage with competitors who used more of their own money to finance their projects, industry experts have said. The debt consumed almost all of the company's cash flow. Eventually, the company was borrowing more to pay existing debt. In 1991, Trump's company was forced to file for bankruptcy protection.

It emerged from bankruptcy the next year, but continued to struggle. From 1992 to 2003, Trump's casinos would barely eke by as competitors around him expanded. When the glitzy Las Vegas-style Borgata Hotel Casino & Spa opened in summer 2003, Trump's market share and revenue plummeted. Higher interest rates on the junk bonds added to the pressure.

Trump's company filed for bankruptcy again in November 2004 and underwent a restructuring. It emerged from protection in May 2005 with a \$500 million line of credit from Morgan Stanley, a new name - Trump Entertainment Resorts Inc. - and a new management team. Trump was the largest shareholder - he owns 31 percent of the company - and chairman. But he was no longer its chief executive officer.

"The bondholders did not want Trump running the casino company," said Barbara J. Cappaert, a high-yield-bond analyst at KDP Investment Advisors Inc., a corporate-bond research firm in Montpelier, Vt. "They paid him for his

brand," some property near the site of the 1964-65 New York World's Fair, "and to essentially step aside from running the company."

In summer 2005, Trump plucked James B. Perry, the former head of Argosy Gaming Co., out of retirement to lead the restructured company.

Under Perry, Trump's casinos have undergone their first major renovations in more than a decade. Bars and restaurants have been added and hotel rooms refurbished. The three casinos, which employ 9,200, are pursuing repeat overnight business instead of less profitable day-trippers on buses.

There are signs of a turnaround. Third-quarter revenue was up 4 percent to \$288 million. Profit was up 80 percent to \$5.83 million. Trump Entertainment stock was close to trading at a 52-week high, at \$22.48 yesterday. It was trading as low as \$15.85 in March.

Trump sold his riverboat casino in Gary, Ind., in 2005, and used the proceeds to improve his Atlantic City casinos. He is also developing a \$350 million casino in Diamondhead, Miss., where a resort community was virtually erased by Hurricane Katrina in 2005.

Philadelphia is a growth opportunity for the company. Trump Entertainment would operate the TrumpStreet casino, and Perry said it would aim to draw customers like Nancy Palumbo, 59, of South Philadelphia, who is a regular at the Taj Mahal.

"Oh, definitely, I'd check it out," she said as she played a slot machine at the casino recently. "It would cut down on my travel."

Trump, a 1968 graduate of the Wharton School, has had his eye on Pennsylvania for years, going back to the days when Gov. Rendell championed riverboat gambling as mayor of Philadelphia. Since 2001, Trump has given \$32,000 in political contributions to Rendell, according to campaign disclosure forms.

Trump bought an option for the old Jack Frost Sugar Refinery site on Delaware Avenue in Fishtown in 1994. He abandoned it in 1996, when prospects for riverboat gambling cooled. The same site was optioned late last year for a \$550 million casino by SugarHouse Gaming, one of Trump's competitors for a city license.

Perry said the Trump team began scouting locations about two years ago and selected the Budd Manufacturing Co. site in late summer 2005.

Concerned about competition from Pat Croce, who was putting together his own group to bid for a slots license, Trump Entertainment general counsel Robert Pickus set up a meeting with the former 76ers general manager and president. The two met for lunch at Sails Restaurant in Somers Point, N.J., in early August 2005.

"He's selling his project on me," Croce recalled, "and then he asks: 'How about you bringing your partnership with us and we join forces?' I had to think about it."

Croce said a phone call a week later to City Councilman Michael Nutter, whose district included the Adam's Mark Hotel that Croce was considering as a casino site, persuaded him to join the Trump team.

"He told me his constituency really wanted a Target there," said Croce, who brought his group of original investors, including Peter Ciarrocchi Jr. - the owner of Chickie's & Pete's Restaurants - with him.

Pickus said about 30 potential partners, including Inquirer and Philadelphia Daily News publisher Brian Tierney, held their first meeting about 15 months ago at the Taj Mahal. Pickus said a key criteria in selecting the investors for Keystone Redevelopment Partners L.L.C. was that they had to be local and ready to write a check.

Trump the best-known city casino-game player The Philadelphia Inquirer December 15, 2006 Friday

In July, Keystone Redevelopment paid \$1.6 million for an option to buy 12 acres from Tasty Baking Co. next to the Budd site. Pickus said the added space allowed the casino's entrance to be reoriented away from a school and residences, which community groups wanted.

But the groups were not placated by the modified design. A casino, they said, should not be dropped in the midst of a population highly vulnerable to gambling addiction.

The casino's neighbors include two high schools, an elementary school, public housing, and a planned state residential facility to treat alcohol and drug addiction.

"I know addictions cross over to other addictions," 38th Ward leader Ralph Wynder said. "That community is very vulnerable to a product like gambling."

Wynder, chairman of the Multi-Community Alliance, a coalition of 27 community organizations, claims the Trump team engaged in divide-and-conquer tactics. He said Trump pulled five or six "marginal" groups away from the Multi-Community Alliance, including Tioga United Organization and Allegheny West Foundation, and, through deceptive marketing, made it appear as if the entire alliance embraced the project.

The community groups say a casino is the last thing the area needs. On their wish list: a supermarket, hospital, and senior recreation center.

"Their sales pitch is that they're revitalizing a community - that we need Trump," said Irv Ackelsberg of the Southwest Germantown Neighbors Association. "Economic development is about building wealth in a community. Gambling is economic development in reverse.

"It's about sucking wealth out of the community so that a couple of people can make a lot of money off of it," he said. "All you have to do is look at Atlantic City for Exhibit A of what happens to the community."

The two sides also differ on how much traffic the casino will generate and how to address it.

By the city's own estimates, the casino would bring in six million cars a year. The community groups say the Trump team has focused too much on getting people to the casino, and not enough on getting them out.

Pickus said Trump had agreed to spend \$15 million on road improvements to address those concerns.

He also said his team negotiated a "Community Benefits Agreement" with Tioga United and the Allegheny West Foundation in the fall that established a foundation with \$2.5 million in initial funding for community improvement initiatives and \$1.5 million for school upgrades and scholarships, and gives preference for hiring to residents within a mile of the casino.

"We have the community that is closest to us, that is really impacted, supporting us," Pickus said. "We don't have the guys across the road that really aren't going to be impacted who just want to make noise."

Contact staff writer Suzette Parmley at 215-854-2594 or sparmley@phillynews.com.

LOAD-DATE: December 15, 2006

Copyright 2007 The Palm Beach Newspapers, Inc.
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Palm Beach Post (Florida)

January 28, 2007 Sunday
FINAL EDITION

SECTION: BUSINESS; Pg. 1F

LENGTH: 814 words

HEADLINE: IT'S TRUMP VS. MARKET IN CONDO PROJECT

BYLINE: Alexandra Clough

BODY:

The condo market is tanking, and many projects are being canceled or put on hold nationwide.

Donald Trump's response? Don't worry. Be happy.

The real-estate mogul says his brand is so strong that it now has the power to defeat poor market conditions, wherever they may be.

As proof, he pointed to his latest Trump Tower in Hawaii. Despite a slumping real estate market there, that project sold out for a whopping \$700 million in just eight hours, setting a world record. Buyers were from around the globe.

Average unit price: \$1.5 million.

Those kind of results are music to the ears of Jorge Perez, head of The Related Group of Miami.

Perez has been trying to drum up pre-sales for his latest planned West Palm Beach condo, Icon Palm Beach, on North Flagler Drive. Even though Perez has a loyal following on U.S. and South American projects, the Palm Beach County market is so tough these days that Perez knew he needed something more: Access to the worldwide market.

Enter The Donald to goose Icon's chances of success. Perez said he's counting on Trump's worldwide name to bring international buyers to his high-priced project, now renamed Trump Tower Palm Beach.

Would Perez have gone forward if he didn't have Trump?

"We think the land and the project are fabulous," he said. "But would we have waited one year for the launch until the market got better? We might have."

Perez said he's not concerned that Trump's bold way of speaking will hurt sales. "He's always been a controversial guy who speaks his mind," he said.

Indeed, Trump has made waves nationally for his verbal attacks on comedian and The View host Rosie O'Donnell, whom he's called a "loser" and "fat pig." Closer to home, Trump's also feuding with Palm Beach town officials over an oversized U.S. flag and flagpole at Mar-a-Lago.

In Trump style, he called these events positive. "Fox did a poll that said 91 percent of Americans are in favor of what I said about Rosie," he said. "And everyone is in favor of the American flag."

So will Trump fly the big flag at Trump Tower Palm Beach when it's done?

"I think we should have one," Trump said. "It's a prominent site, and any prominent site should proudly fly the American flag."

Perez may go along with Trump's over-the-top comments and his flag-loving ways. But one thing's for sure: He won't be joining Trump on the small screen.

Perez said he's frequently asked if he and Trump have discussed filming *The Apprentice: South Florida*, starring the telegenic Perez. The answer is a big fat no.

"I have no desire whatsoever to be on TV," Perez said.

One fish, two fish, bankrupt Bluefish.

Bluefish Concierge is a Delray Beach-based business that arranges special events, one-of-a-kind adventures and exotic travel. Later this month, Bluefish's Stephen D. Sims will do some traveling of his own, to a hearing in the U.S. Bankruptcy Court in West Palm Beach. Three creditors just forced Bluefish into involuntary bankruptcy, claiming they are owed more than \$300,000. Court records show Bluefish's total debts push the \$3.8 million mark.

Delray Beach lawyer Michael Weiner is a client, using Bluefish to arrange a spin as a Grand Prix racer in Monaco. "They've been good to me," Weiner said. "I have only nice things to say about Bluefish."

Others aren't so nice. Among them: Greg Young, a lawyer at the white-shoe law firm of Edwards & Angell in West Palm Beach. Young filed a complaint with the state attorney's office after Sims wrote the firm a \$33,000 check that bounced, according to court documents. (In happier times, Young's wife, Bittina, used Bluefish to party with Sting at a Grammy event.)

Other creditors include \$640,000 to a Dr. Frederic Sternback; \$900,000 in equity lines to two banks; and \$131,000 to *The Robb Report* magazine, according to court documents. Court documents show the creditors are worried Sims is using company money for personal expenses and to stave off foreclosure of his home in Delray Beach. Court records also show several other lawsuits have been filed against Sims in recent months.

In an interview Tuesday, Sims acknowledged business has been down, chiefly because of Hurricane Wilma and the war in Iraq.

"When the market is low, the first thing to go is frivolous luxuries, and we're a luxury item," Sims said. Sims added that he also was pinched by the decline in the real estate market.

But Sims dismissed the involuntary bankruptcy as nothing more than an attempt by creditor Kenneth Topper to launch a "hostile takeover" of his company through "malicious claims."

Sims plans to fight. "We're a small company and we're having growing pains, and some people are trying to ... benefit from it," he said. "But I will not be giving up that easy."

Alexandra Clough writes about business and the law. Contact her at *The Palm Beach Post*, 2915 Congress Ave., Delray Beach, Fla. 33445; (561) 820-3469 or (561) 279-3469; e-mail: alexandra_clough@pbpost.com.

GRAPHIC: PHOTO (C)

Donald Trump: Newest Trump Tower sold out in Hawaii. (mug)

LOAD-DATE: January 29, 2007

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Reuters News

July 6, 2007 Friday 8:10 PM GMT

LENGTH: 537 words

HEADLINE: INTERVIEW-Trump stays upbeat despite setbacks

BYLINE: By Chris Reiter

DATELINE: July 6, 2007

BODY:

NEW YORK, July 6 (Reuters) - There's no keeping Donald Trump down.

Despite the failure to sell his struggling casino company and slumping ratings on his reality television show, "The Apprentice," the celebrity tycoon, who has built a real estate and marketing empire off his brash image, remains irrepressibly upbeat.

"We're doing more than we've ever done before, and we've never had success like we've had as of this moment," Trump told Reuters in a telephone interview on Friday.

He also will be able to claim an important win by keeping "The Apprentice" on the air for at least one more season. Industry sources said the extension, which seemed unlikely two months ago, could be announced on July 16.

The flamboyant businessman, who flirted with running for U.S. president in 1999, shrugged off the setback at Trump Entertainment Resorts Inc, the casino company in which he's the chairman and holds 28.8 percent.

Trump Entertainment, he said, represents "a very small portion" of his wealth, which is estimated by Forbes at \$2.9 billion.

"I'm an investor in that company. I'm not running that company," said Trump, who is No. 94 on the Forbes list of richest Americans.

While the risk may be minimal for Trump, it's been a bad deal for public investors. His casino business has gone through bankruptcy twice.

And there's no relief in sight.

The gambling company, which owns three casinos in Atlantic City, New Jersey, said on Monday that it did not reach a deal with potential acquirers and ended discussions to sell itself, prompting a 17 percent drop in its share price

INTERVIEW-Trump stays upbeat despite setbacks Reuters News July 6, 2007 Friday 8:10 PM GMT

that day.

Trump Entertainment posted a loss of \$8.7 million in the first quarter, burdened by competition from new gaming venues in nearby Pennsylvania and from a partial smoking ban.

"It's a good company," Trump said, but he acknowledged that Trump Entertainment struggles with high debt and a tough Atlantic City market.

TARNISHED IMAGE

The setback at the casino company, which is the only part of Trump's empire that is public, casts a shadow over his image of flashy success. That image has fueled the growth of his branding business -- a business that some marketing experts say is now looking vulnerable.

Trump's name appears on a range of products including water, vodka, steaks and shirts, but the unfocused merchandising effort cheapens the brand, the marketing experts say.

"What makes Trump an expert in bottled water or steaks?" said Brad Puckey, a director at brand consultancy CoreBrand. "It looks more like somebody who's trying to hawk products."

"His relatively lofty positioning of maybe three years ago, when he was getting all this attention, has faded. No doubt about it," said Paul Argenti, professor of corporate communication at Dartmouth College. "If nothing new develops in a couple years, then it will be pretty hard for him to continuing marketing things."

But Trump has been resilient and looks set to retain his spot on prime time, which is a key platform for the Trump brand.

"The brand has never been stronger. We're doing more jobs now than we've ever done," said Trump. "The shirts are setting records, the ties are setting records."

"Everything's doing fantastic," he said.

NOTES: TRUMP/ (INTERVIEW)|LANGEN|ABN|E|U|D|RBN;
PUBLISHER: Reuters Limited

LOAD-DATE: July 7, 2007

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June 6, 2007

Via Hand Delivery

Clerk, Law Division - Civil Part
Camden County Hall of Justice
101 South 5th Street
Suite 150
Camden, New Jersey 08103

Re: Trump v. O'Brien, et al.
Docket No. CAM-L-545-06

Dear Sir/Madam:

On behalf of Defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc., enclosed please find the original and two copies of:

1. Notice of Motion to Compel Plaintiff to Answer Interrogatories;
2. Letter Brief in Support of Motion to Compel;
3. Certification of Mark S. Melodia, Esq.
4. Proposed Order; and
5. Certification of Service.

Kindly file these documents and return a filed stamped copy to me in the enclosed self-addressed stamped envelope. Please charge our Superior Court account # 141013 for any filing fees.

Thank you very much for your assistance. Should you have any questions, please feel free to call me.

Very truly yours,

Mark S. Melodia/kac
Mark S. Melodia

Enclosures

cc: Honorable Irvin J. Snyder, J.S.C. (Via Hand Delivery)
William M. Tambussi, Esq. (Via Electronic Mail and Overnight Mail)
Mark P. Ressler, Esq. (Via Electronic Mail and Overnight Mail)
Andrew J. Ceresney, Esq. (Via Electronic Mail and Overnight Mail)

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

**NOTICE OF MOTION TO COMPEL
PLAINTIFF TO ANSWER
INTERROGATORIES**

TO:

William M. Tambussi, Esq.
William F. Cook, Esq.
Brown & Connery LLP
360 Haddon Avenue
Westmont, New Jersey 08108

Marc E. Kasowitz, Esq.
Mark P. Ressler, Esq.
Maria Gorecki, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019

PLEASE TAKE NOTICE that on Friday, June 22, 2007, or as soon thereafter as
counsel may be heard, the undersigned counsel for Defendants Timothy L. O'Brien, Time

Warner Book Group Inc., and Warner Books Inc. (collectively, "Defendants"), shall move before the Honorable Irvin J. Snyder, Camden County Courthouse, Hall of Justice, 101 South 5th Street, Camden, New Jersey, for an Order compelling Plaintiff to answer Interrogatories # 4, 10, 17, 20, 26, 28, 35, and 38, in accordance with R. 4:23-1.

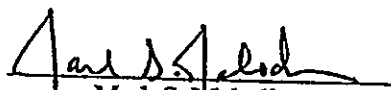
PLEASE TAKE FURTHER NOTICE that in support of this Motion, Defendants will rely upon the accompanying Letter Brief and Certification of Mark S. Melodia, Esq., submitted herewith.

PLEASE TAKE FURTHER NOTICE that in accordance with R. 1:6-2, a proposed form of Order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that Defendants waive oral argument and request a ruling on the papers unless opposition is timely filed and served, in which case oral argument is requested.

PLEASE TAKE FURTHER NOTICE that discovery in this matter is scheduled to be completed by August 2, 2007.

REED SMITH LLP


Mark S. Melodia

DEBEVOISE & PLIMPTON LLP

/s/ Andrew J. Ceresney
Andrew J. Ceresney

Date: June 6, 2007

ReedSmith

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June 6, 2007

Via Hand Delivery

Honorable Irvin J. Snyder, J.S.C.
Camden County Hall of Justice
101 South 5th Street
Camden, New Jersey 08103-4001

Re: **Trump v. O'Brien, et al.**
Docket No. CAM-L-545-06

Dear Judge Snyder:

We submit this letter to request the Court's assistance in remedying deficiencies in plaintiff's responses and objections to defendants' interrogatories. In an effort to heed the Court's request that the parties limit discovery briefing, please accept this letter in lieu of a more formal brief in support of defendants' Motion to Compel.

On August 21, 2006, defendants served Defendants' First Set of Interrogatories (Certification of Mark S. Melodia ("Melodia Cert."), Ex. A), to which plaintiff provided objections and responses on October 20, 2006 (Melodia Cert., Ex. B). On November 2, 2006, defendants wrote a letter to plaintiff's counsel, identifying serious deficiencies in plaintiff's responses and requesting that plaintiff remedy these deficiencies by close of business on November 7, 2006. (Melodia Cert., Ex. C) The parties met and conferred by telephone on November 15, 2006, and plaintiff's counsel indicated they would supplement certain interrogatory responses by December 4, 2006. (Melodia Cert., ¶8) On December 19, 2006, plaintiff provided certain supplemental responses (Melodia Cert., Exs. D and E), just prior to our December 20, 2006 hearing, and then provided certain additional supplemental responses on January 10, 2007 (Melodia Cert., Ex. F), January 11, 2007 (Melodia Cert., Ex. G), and April 26, 2007 (Melodia Cert., Ex. H). Notwithstanding these supplemental responses, numerous deficiencies remain. (Melodia Cert., ¶19)

Rather than raise the many deficiencies in plaintiff's responses, defendants submit this targeted letter, which requests the Court's assistance with respect to several of the most significant deficiencies. For each of the deficiencies addressed below, except for plaintiff's answer to Interrogatory No. 17, plaintiff refused to provide any supplemental information in response to defendants' concerns:

NEW YORK ♦ LONDON ♦ LOS ANGELES ♦ PARIS ♦ SAN FRANCISCO ♦ WASHINGTON, D.C. ♦ PHILADELPHIA ♦ PITTSBURGH ♦ OAKLAND

MUNICH ♦ PRINCETON ♦ NORTHERN VIRGINIA ♦ WILMINGTON ♦ NEWARK ♦ BIRMINGHAM, U.K. ♦ CENTURY CITY ♦ RICHMOND

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▪ Interrogatory No. 17: Plaintiff has refused to identify all of the individuals that he claims O'Brien harassed, intimidated, or threatened. In particular, the Complaint alleges that O'Brien harassed, intimidated, and threatened sources and that plaintiff's business associates, employees, and former employees have complained to Trump about such behavior. In response to the interrogatory seeking the identities of these individuals (and the complete factual basis for the Complaint's allegation), plaintiff merely references Michelle Scarbrough and Allen Weisselberg, several articles unrelated to TrumpNation, and a letter from Lawrence S. Rosen to David McCraw, dated August 26, 2004 (Melodia Cert., Ex. B). However, the Rosen letter references but does not identify the "[s]everal current and former employees" and "current and former business associates" who allegedly complained to Trump. Thus, by referencing the Rosen letter, plaintiff has provided no further information on the identities of the individuals described in the Complaint. In short, defendants seek to have the Court order Trump to identify these other individuals who allegedly were harassed, intimidated, or threatened by O'Brien, so that defendants may proceed with depositions and other inquiry.

▪ Interrogatory Nos. 38 and 10: Defendants have requested communications that Trump made about O'Brien or the Book (Interrogatory No. 38), and that Trump's former employee Scarbrough made relating to O'Brien or any of the other defendants (Interrogatory No. 10). Plaintiff has failed to identify these communications or to attach the relevant documents. In response to Interrogatory No. 38, plaintiff simply objects to the interrogatory as "overly broad, unduly burdensome, and oppressive." This blanket objection is surprising given that plaintiff requested the same materials from all defendants, and defendants in fact produced exhaustive communications. Plaintiff's baseless refusal to identify such communications is especially concerning given that plaintiff produced hardly any emails in response to defendants' document requests or interrogatories. Likewise, plaintiff objects to identifying Scarbrough's relevant communications, which is difficult to understand given that she is at the center of plaintiff's claim of actual malice. Plaintiff produced a single email chain in which Scarbrough communicated with O'Brien, and none in which Scarbrough communicated about O'Brien. To the extent that plaintiff has knowledge or possession of Scarbrough's other communications with or about O'Brien (particularly given the claim of plaintiff's counsel on June 4, 2007 that they do in fact represent Scarbrough), we ask for the Court's assistance to ensure that plaintiff produces these communications.

▪ Interrogatory Nos. 4 and 20: Notwithstanding plaintiff's continued damage claims, he refuses to provide any factual basis for the valuation of his brand name (Interrogatory No. 4) or for the amount of alleged damages

to his brand or reputation (Interrogatory No. 20). Plaintiff's response to Interrogatory No. 4 indicates that an expert witness will testify to the value of the Trump brand name, which according to the Complaint "is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value." With respect to alleged damages to brand and reputation, plaintiff objects to Interrogatory No. 20 as prematurely seeking expert discovery and damages calculations, and merely asserts that the Book has damaged his reputation and brand. However, we are not seeking expert discovery at this time, but merely the relevant facts upon which any expert would need to rely to evaluate Trump's claims about the value of his brand and his related claim that the Book has damaged his brand and reputation.

▪ Interrogatory No. 28: Plaintiff has refused to identify the representations he has made or others have made on his behalf regarding his net worth, objecting to the interrogatory as overly broad, unduly burdensome, and oppressive, and stating that the information would be neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. To the contrary, plaintiff's wildly inconsistent claims about his net worth, as well as such claims by others on his behalf, are directly relevant to actual malice and further bolster a central point of the Book's relevant chapter, namely the difficulty in pinpointing Trump's actual net worth. Even the financial statements compiled by Trump's accountants and produced in this litigation differ markedly from the representations that Trump previously made to O'Brien about Trump's net worth. Defendants therefore request that the Court order plaintiff to identify the relevant representations.

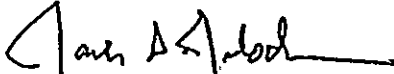
▪ Interrogatory Nos. 26 and 35: Plaintiff refuses to specify his prior involvement in lawsuits other than this litigation (Interrogatory No. 26) or instances in which he has threatened to sue or actually sued for libel, or he was threatened with or sued for libel (Interrogatory No. 35). Plaintiff's refusal with respect to Interrogatory No. 26 is curious given that plaintiff propounded the same interrogatory on O'Brien and then complained when O'Brien initially answered only in regard to lawsuits in his professional capacity. Upon plaintiff's demand for all lawsuits -- not just in a professional capacity -- O'Brien provided this information. It is inexplicable that plaintiff pushed for this information yet refuses to provide it in turn. With respect to Interrogatory No. 35, there is no basis for plaintiff's refusal to detail his prior involvement with potential or actual libel actions. Defendants are entitled to know of all such instances, which would support defendants' view that Trump has engaged in a longstanding pattern of conduct designed to chill free speech and retaliate against journalists who write stories not to his liking.

Honorable Irvin J. Snyder, J.S.C.
June 6, 2007
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ReedSmith

Thank you for the Court's consideration of this matter.

Respectfully submitted,



Mark S. Melodia
Reed Smith LLP

/s/ Andrew J. Ceresney
Andrew J. Ceresney
Debevoise & Plimpton LLP

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

ORDER

THIS MATTER having been opened to the Court by Reed Smith LLP and Debevoise & Plimpton LLP, counsel for defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc. (Mark S. Melodia, Esq. of Reed Smith LLP, and Andrew J. Ceresney, Esq. and Andrew M. Levine, Esq. of Debevoise & Plimpton LLP appearing on behalf of defendants), on notice to Brown & Connery, LLP and Kasowitz, Benson, Torres & Friedman, LLP, counsel for plaintiff Donald J. Trump (William M. Tambussi, Esq. and William F. Cook, Esq. of Brown & Connery, LLP, and Mark P. Ressler, Esq. of Kasowitz, Benson, Torres & Friedman, LLP appearing on behalf of plaintiff), for an Order in accordance with R. 4:23-1, compelling Plaintiff to answer Defendants' First Set of Interrogatories, and the Court having reviewed the moving

and responding papers and the arguments of counsel; for the reasons stated on the record, and for other good cause shown;

IT IS on this _____ day of June, 2007, **ORDERED**

1. Defendants' Motion to Compel is **GRANTED**; and
2. On or before _____, 2007, Plaintiff must respond fully to Interrogatory Nos. 4, 10, 17, 20, 26, 28, 35, and 38 from Defendants' First Set of Interrogatories; and
3. Counsel for Defendants serve a copy of this Order on all parties within 7 days of its receipt hereof.

Honorable Irvin J. Snyder, J.S.C.

- Opposed
- Unopposed

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

**CERTIFICATION OF
MARK S. MELODA**

MARK S. MELODA, of full age, hereby certifies as follows:

1. I am an attorney licensed to practice in the State of New Jersey, and a partner with the law firm Reed Smith LLP, attorneys for Defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc. (collectively "Defendants") in this matter. As such, I am fully familiar with the facts set forth herein.

2. I make this Certification in support of Defendants' Motion to Compel.

3. On August 21, 2006, Defendants served their First Set of Interrogatories directed to Plaintiff.

4. A true and correct copy of Defendants' First Set of Interrogatories directed to Plaintiff, dated August 21, 2006 is attached hereto as **Exhibit A**.

5. A true and correct copy of Plaintiff's objections and responses to Defendants' First Set of Interrogatories, dated October 20, 2006, is attached hereto as **Exhibit B**.

6. On November 2, 2006, in accordance with R. 1:6-2, Defendants sent a letter to Plaintiff's counsel identifying serious deficiencies in Plaintiff's responses to the Interrogatories and requesting that Plaintiff remedy the deficiencies.

7. A true and correct copy of Defendants' letter to Plaintiff's counsel, dated November 2, 2006, is attached hereto as **Exhibit C**.

8. On November 15, 2006, counsel for Plaintiff and Defendants conferred about Plaintiff's responses to the Interrogatories. During this teleconference, Plaintiff agreed to supplement certain interrogatory responses by December 4, 2006, and also indicated that Plaintiff would not supplement certain other interrogatory responses.

9. By letter dated December 4, 2006, counsel for Plaintiff reiterated that Plaintiff would supplement his responses to Interrogatory Nos. 1, 12, 15, 16, 17, 18, 19, 21, 22, 29, and 31, but would not supplement his responses to Interrogatory Nos. 4, 10, 20, 23, 24, 25, 26, 32, 33, 34, 35, 37, 38, 39, 40 and 41.

10. A true and correct copy of Plaintiff's letter to Defendants' counsel, dated December 4, 2006, is attached hereto as **Exhibit D**.

11. On December 19, 2006, Plaintiff supplemented his responses to Interrogatory Nos. 1, 12, 15, 16, 17, 18, 19, 22, and 29.

12. A true and correct copy of Plaintiff's supplemental responses to Interrogatory Nos. 1, 12, 15, 16, 17, 18, 19, 22, and 29, provided on December 19, 2006, is attached hereto as **Exhibit E**.

13. On January 10, 2007, Plaintiff supplemented his responses to Interrogatory Nos. 21 and 31.

14. A true and correct copy of Plaintiff's supplemental responses to Interrogatory Nos. 21 and 31, provided on January 10, 2007, is attached hereto as **Exhibit F**.

15. On January 11, 2007, Plaintiff's counsel clarified Plaintiff's supplemental response to Interrogatory No. 21.

16. A true and correct copy of the letter from Plaintiff's counsel dated January 11, 2007, referring to the January 10, 2007 supplemental responses to Interrogatories is attached hereto as **Exhibit G**.


17. On April 26, 2007, Plaintiff provided additional information in response to Interrogatory No. 21.

18. A true and correct copy of the additional information provided by Plaintiff on April 26, 2007, regarding Interrogatory No. 21, is attached hereto as **Exhibit H**.

19. Many deficiencies remain in Plaintiff's responses to Defendants' First Set of Interrogatories, including Plaintiff's responses to Interrogatory Nos. 4, 10, 17, 20, 26, 28, 35, and 38. Plaintiff refused to provide any supplemental information for each of these, except Interrogatory No. 17 – for which the supplemental response was deficient.

20. Defendants are not in default of any discovery obligations.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.


Mark S. Melodia

Dated: June 6, 2007

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

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DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC. and WARNER
BOOKS, INC.,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION, CIVIL PART
: CAMDEN COUNTY

:
: Case No. L-545-06

:
: PLAINTIFF DONALD J. TRUMP'S
: OBJECTIONS AND RESPONSES TO
: DEFENDANTS' FIRST SET OF
: INTERROGATORIES

TO: Steven J. Picco, Esq.
James F. Dial, Esq.
Reed Smith LLP
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Princeton Forrestal Village
Princeton, New Jersey 08540

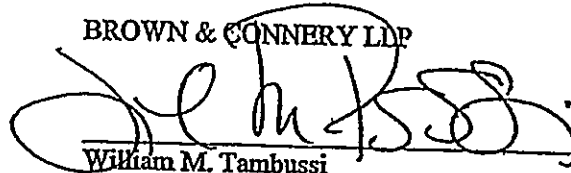
Mary Jo White, Esq.
Andrew J. Ceresney, Esq.
Andrew M. Levine, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Sirs:

PLEASE TAKE NOTICE that the following are the objections and responses of plaintiff Donald J. Trump ("Trump") to Defendants' First Set of Interrogatories (the "Interrogatories").

Dated: October 20, 2006

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Attorneys for Plaintiff Donald J. Trump

OBJECTIONS

A. Trump objects to the Interrogatories to the extent they seek information not currently available to Trump. Trump will provide information currently available to him, and will supplement his answers, if necessary, as required by the Court Rules.

B. Trump objects to the Interrogatories to the extent they seek to impose obligations on him greater than those imposed by the Court Rules.

C. Trump objects to the Interrogatories to the extent they are unreasonably cumulative or duplicative. Where a document is responsive to more than one Interrogatory, Trump will produce such document once.

D. Trump objects to the Interrogatories to the extent they are vague, ambiguous, or confusing.

E. Trump objects to the Interrogatories to the extent that are overly broad, unduly burdensome, or oppressive.

F. Trump objects to the Interrogatories to the extent they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

G. Trump objects to the Interrogatories to the extent they seek information or documents that already is in the possession, custody, or control of Defendants, is as readily available to the Defendants as to Trump, or is ascertainable from public sources.

H. Trump objects to the Interrogatories to the extent they seek information protected from disclosure by any privilege or immunity, including the attorney-client privilege, the work-product doctrine, or any other privilege or protection from disclosure provided by law. Any inadvertent disclosure of any privileged information shall not be deemed or construed to constitute a waiver of any of Trump's privileges or rights.

I. Trump objects to the Interrogatories to the extent they seek disclosure of information that would violate individual privacy interests, confidentiality agreements, or other arrangements with any individual or entity.

J. Trump objects to the defendants' listed "Definitions" and "Instructions" because they purport to impose duties on him beyond those required by the Court Rules.

K. Trump objects to the use and definition of the term "Trump-related entities" on the grounds that it is overly broad, it renders the Interrogatories unduly burdensome and oppressive, and it makes the Interrogatories call for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

L. Trump objects to Instructions Nos. 10 and 11 because they purport to impose obligations beyond those imposed by the Court Rules and are unduly burdensome and oppressive.

M. Trump objects to Instruction Number 20 of the Interrogatories on the grounds that the time period set forth renders the Interrogatories overly broad and unduly burdensome, and calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Unless otherwise indicated herein, Trump will deem the Interrogatories to cover the time period from January 1, 2005 through October 31, 2005.

N. Any statement herein that Trump will produce information or documents in response to an Interrogatory does not mean that Trump does, in fact, have any such information or documents, or that any such information or documents exist.

O. The foregoing objections shall be considered as made, to the extent applicable, in response to each of the Interrogatories, as if the objections were set forth fully in such response.

RESPONSES

INTERROGATORY NO. 1

Identify each communication that you allege to have been defamatory, including but not limited to the specific words alleged to have been defamatory.

RESPONSE TO INTERROGATORY NO. 1

Trump objects to this interrogatory on the ground that it is unduly burdensome. Trump further objects to this interrogatory on the ground that it is vague and ambiguous. Subject to and without waiving any of the foregoing, Trump responds as follows:

The defamatory communications include but are not limited to: *TrumpNation: The Art of Being the Donald* ("TrumpNation" or the "Book"); O'Brien's October 23, 2005 article in *The New York Times* entitled "What's He Really Worth?"; and statements made by O'Brien and Time Warner Book Group Inc. and Warner Books, Inc. ("Warner Books") in promoting the Book, including but not limited to O'Brien's October 31, 2005 appearance on CNBC's *Squawkbox* program, his November 12, 2005 appearance at Coliseum Books in New York City, and each of O'Brien's appearances identified in O'Brien's response to Plaintiff's Interrogatory No. 24.

The defamatory statements made in the defamatory communications identified above include but are not limited to: statements that Trump's net worth is \$150 to \$250 million; statements that Trump is not a billionaire; statements that Trump has misrepresented or exaggerated his net worth; statements that Trump is an incompetent businessman; statements that Trump is not an honest businessman; statements concerning Trump's family and his relationship with his children; those statements identified in a letter dated October 20, 2005 from Jason

Greenblatt to Larry Ingrassia; and those statements identified in paragraphs 1, 2, 5, 17, 19, 29, 31, 32, 34, and 35 of the Complaint.

Trump reserves the right to supplement this response as appropriate under the Court Rules.

INTERROGATORY NO. 2

Set forth your net worth within \$50 million, or as precisely as possible, as of each of the following dates: (a) August 1, 2004; (b) March 5, 2005; (c) April 21, 2005; (d) April 25, 2005; (e) October 26, 2005; and (f) as of the date of your response to these Interrogatories. For each of these dates, set forth how you calculated or arrived at the net worth you set forth. If you are unable for any of these dates to set forth your net worth within \$50 million, explain why you cannot.

RESPONSE TO INTERROGATORY NO. 2

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory to the extent it seeks expert discovery prematurely. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to the documents produced in response to Defendants' First Set of Document Requests (the "Document Requests") for information relevant to calculating his net worth as of the date of publication of the Book.

INTERROGATORY NO. 3

As of the first day of each year from 2000 to 2005, and also as of April 21, 2005 and October 26, 2005: (a) identify each of your assets and liabilities; (b) specify the value that you assigned to each asset and liability at the relevant times as well as any alternative valuations and responses thereto; (c) explain the basis for the value that you specified for each asset and liability; (d) explain the terms of your ownership interest in each asset as well as the terms of your obligations regarding each liability; and (e) identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 3

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects that the term "any alternative valuations" is vague and ambiguous. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to the documents produced in response to the Document Requests for information about his assets and liabilities as of the date of publication of the Book.

INTERROGATORY NO. 4

Set forth the complete factual basis for the claim contained in paragraph 3 of the Complaint that "the value of Trump's brand name alone is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value," specify any alternative valuations and responses thereto, and identify and attach all documents relevant thereto, including but not limited to any

financial statements (audited, unaudited, or compilations) or other documents that assign a particular value to the Trump brand name.

RESPONSE TO INTERROGATORY NO. 4

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory on the ground that it is premature. Trump further objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege and the work-product doctrine. Trump further objects that the term "any alternative valuations" is vague and ambiguous. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump will offer the testimony of an expert witness or witnesses that the value of the "Trump" brand name is in the hundreds of millions, if not billions, of dollars.

INTERROGATORY NO. 5

Set forth the complete factual basis for the allegation contained in paragraph 6 of the Complaint that O'Brien referred to Trump as a "financial pomograph[er]," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 5

Trump objects to this interrogatory on the ground that it is confusing. Trump further objects to this interrogatory on the ground that it improperly assumes that paragraph 6 of the Complaint alleged that O'Brien referred to Trump as a "financial pomograph[er]." Subject to and without waiving the foregoing, Trump responds as follows:

Paragraph 6 of the Complaint does not allege that O'Brien referred to Trump as a "financial pornograph[er]."

INTERROGATORY NO. 6

Set forth the complete factual basis for the allegation contained in paragraph 6 of the Complaint that "O'Brien knew that the statements in his book about Trump's net worth were false—and subsequently admitted on at least two occasions that those statements were erroneous and that Trump was worth considerably more than \$150 million to \$250 million," and identify and attach all documents relevant thereto. For each of these two alleged occasions, set forth: (a) the exact words, if known; and, if not known, the substance of it; (b) the date it was made; (c) all persons present when it was made (if oral); (d) all persons to whom it was made or provided (if written); (e) the place where it was made; (f) the method of its communication; and (g) all persons, to your knowledge, with whom it was discussed.

RESPONSE TO INTERROGATORY NO. 6

Trump objects to this interrogatory on the ground that it is unduly burdensome in that this information is already within the possession of defendants. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 6 of the Complaint that "O'Brien knew that the statements in his book about Trump's net worth were false—and subsequently admitted on at least two occasions that those statements were erroneous and that Trump was worth considerably more than \$150 million to \$250 million" includes but is not limited to:

- (1) O'Brien's admission to Michelle Scarbrough

(a) The substance of O'Brien's admission was that in discussing Trump's actual share of the property, he admitted that, in the context of a sale, Trump's ownership interest in Trump Place on the Upper West Side was by itself worth more than \$500 million.

(b) The admission was made on a date between April 21, 2005 and July 31, 2005.

(c) The persons present were O'Brien, Michelle Scarbrough, and Trump.

(d) Not applicable.

(e) The admission was made by telephone.

(f) The admission was communicated over telephone.

(g) To Trump's knowledge, the admission was discussed by Trump and Michelle Scarbrough.

(2) In an article published in *The New York Times* on October 23, 2005 entitled "What's He Really Worth?" O'Brien wrote, "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and \$250 million. (Donald's casino holdings have recently rebounded in value, perhaps adding as much as \$135 million to these estimates.)" In the Book, which was published after the article, O'Brien made the statement, "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and \$250 million," while omitting the parenthetical about Trump's casino holdings having recently rebounded in value, perhaps adding as much as \$135 million to these estimates:

(a) See above.

(b) October 23, 2005.

(c) Not applicable.

- (d) Trump does not know all of the persons to whom it was made or provided.
- (e) Trump does not know the place where it was made.
- (f) The method of its communication was *The New York Times*.
- (g) Trump discussed the admission with Michelle Scarborough and Allen

Weisselberg.

INTERROGATORY NO. 7

Set forth the complete factual basis for the allegation contained in paragraph 7 of the Complaint that "Warner also knew that O'Brien's statements about Trump's net worth were false and knew or should have known that O'Brien was an unreliable and irresponsible reporter who had a history of using his position to pursue malicious personal vendettas against the subject of his reporting," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 7

Trump objects to this interrogatory on the ground that it is unduly burdensome. Trump further objects to this interrogatory on the ground that it calls for a legal conclusion. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 7 of the Complaint that "Warner also knew or should have known that O'Brien's statements about Trump's net worth were false and knew or should have known that O'Brien was an unreliable and irresponsible reporter who had a history of using his position to pursue malicious personal vendettas against the subject of his reporting" includes but is not limited to:

- (1) The Warner Defendants published the Book.
- (2) The defendants had a motive to disregard the truth — to increase sales of the Book.

(3) In the Book, O'Brien relied on anonymous sources in stating that Trump is not remotely close to being a billionaire, yet provided no information about the sources, even though other anonymous sources in the book are footnoted to indicate dates of interviews.

(4) O'Brien knew that the statements about Trump's net worth were false and admitted on at least two occasions that Trump was worth considerably more than \$150 to \$250 million. Before publication of the Book, O'Brien admitted to Trump's in-house lawyer that Trump's ownership of Trump Place on the Upper West Side was by itself worth more than \$500 million, and O'Brien knew that the valuation of Trump's net worth should be increased by \$135 million to reflect the rebound in the casino business. Trump refers defendants to his responses to Interrogatory No. 6. The Warner Defendants knew these facts or should have known these facts.

(5) Trump made available to O'Brien voluminous information demonstrating his net worth, as well as his chief financial officer and in-house lawyer, and directed them to answer any of O'Brien's questions. Rather than examine the information made available or take advantage of the opportunity to talk to Trump's advisors, O'Brien spent his time at Trump's offices flirting with one of Trump's employees. The Warner Defendants knew these facts or should have known these facts.

(6) O'Brien has a history of maligning Trump in articles he wrote. Warner knew these facts or should have known these facts.

(7) O'Brien harassed, threatened, and intimidated Trump's business associates, employees, and former employees to attempt to pressure them into making false, defamatory, and misleading statements about Trump. The Warner Defendants knew these facts or should have known these facts.

(8) O'Brien has a history of using unprofessional and unethical tactics in pursuing stories about Trump, and he used similar tactics in pursuing stories about others. The Warner Defendants knew these facts or should have known these facts.

(9) O'Brien's oral statements demonstrate his anti-Trump bias.

(10) O'Brien knew that every reliable source said Trump was worth orders of magnitude more than the \$150 million to \$250 million that the three anonymous sources estimated. The Warner Defendants knew these facts or should have known these facts.

(11) The Warner Defendants knew the statements were false, knew of O'Brien's personal animus toward Trump, and knew of O'Brien's proclivity for substituting fiction for fact in his reporting.

(12) Defendants refused to retract the statements in the Book asserting or clearly implying that Trump is "not remotely close to being a billionaire," even after those statements were demonstrated to be false and defamatory.

(13) The Warner Defendants published in the Book O'Brien's statement that the tax assessor valued Trump's building at 40 Wall Street at only \$90 million.

INTERROGATORY NO. 8

Set forth the complete factual basis for the allegations contained in paragraph 21 of the Complaint that O'Brien: (a) "scarcely glanced at any of the thousands of pages of documents made available to him" on April 21, 2005; and (b) instead spent "most of the time . . . inappropriately [trying] to pressure [Michelle] Scarborough to go on a date with him." Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 8

Trump objects to this interrogatory on the ground that it is unduly burdensome in that this information is already within the possession of defendants. Subject to and without waiving any of the foregoing, Trump responds as follows:

(a) The factual basis for the allegation contained in paragraph 21 of the Complaint that O'Brien "scarcely glanced at any of the thousands of pages of documents made available to him" on April 21, 2005 includes but is not limited to the personal observations of Allen Weisselberg and Michelle Scarbrough on April 21, 2005. Trump refers defendants to the documents produced in response to the Document Requests, which include the materials made available to O'Brien and a letter dated October 21, 2005 from Michelle Scarbrough to Larry Ingrassia.

(b) The factual basis for the allegation contained in paragraph 21 of the Complaint that O'Brien instead spent "most of the time . . . inappropriately [trying] to pressure [Michelle] Scarbrough to go on a date with him" includes but is not limited to the personal observations of Michelle Scarbrough on April 21, 2005.

INTERROGATORY NO. 9

Set forth the complete factual basis for the allegations contained in paragraph 22 of the Complaint that "O'Brien continued to harass Ms. Scarbrough" and that he "admitted [to her] that Trump's ownership of Trump Place . . . was by itself worth more than \$500 million," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 9

Trump objects to this interrogatory on the ground that it is unduly burdensome in that this information is already within the possession of defendants. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 22 of the Complaint that "O'Brien continued to harass Ms. Scarbrough" is Michelle Scarbrough's personal experiences with O'Brien after April 21, 2005, including his telephone calls and e-mails to her. Trump refers defendants to the documents produced in response to the Document Requests, which include e-mails from O'Brien to Michelle Scarbrough.

For the factual basis for the allegation contained in paragraph 22 of the Complaint that O'Brien "admitted [to her] that Trump's ownership of Trump Place . . . was by itself worth more than \$500 million," Trump refers defendants to his response to Interrogatory No. 6 above.

INTERROGATORY NO. 10

Identify all communications between Michelle Scarbrough and any individuals relating to O'Brien or any of the other Defendants, and identify and attach all relevant documents thereto.

RESPONSE TO INTERROGATORY NO. 10

Trump objects to this interrogatory on the ground that it is overly broad. Trump further objects to this interrogatory on the ground that it is unduly burdensome in that this information is already within the possession of defendants. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory on the ground that the phrase "any individuals relating to O'Brien or any of the other Defendants" is vague, ambiguous, and confusing. As such the interrogatory is improper.

INTERROGATORY NO. 11

Set forth the facts and circumstances surrounding the June 2005 sale of Trump Place and/or the "West Side Project" as referenced in paragraph 26 of the Complaint, including but not

limited to information on any payments or funds due to you as a result of the sale, and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 11

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory on the ground that the phrase "facts and circumstances surrounding the June 2005 sale of Trump Place and/or the 'West Side Project'" is vague, ambiguous, and confusing. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to his allegations in the First Amended Complaint filed in *Trump, et al. v. Cheng, et al.*, Index No. 05/602877, in the Supreme Court of the State of New York, County of New York, a copy of which is attached.

INTERROGATORY NO. 12

Set forth the complete factual basis for the claim contained in paragraph 28 of the Complaint that, "prior to the publication of the book, Trump had invested approximately \$380 million in cash . . . in various real estate ventures," including but not limited to the following information for each investment: (a) the identity of the real estate venture; (b) the identity of the investor (e.g., you or a specific Trump-related entity); (c) structure (e.g., LLC, LLP, or Inc.); (d) amount invested; (e) specific source of funds; (f) accounts from which funds were withdrawn; (g) any related loans or other indebtedness or liability for which you or any Trump-related entity were liable, potentially liable, or guaranteed; and (h) the identity of any other parties to the transaction. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 12

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the interrogatory calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for Trump's claim in paragraph 28 of the Complaint that "prior to the publication of the book, Trump had invested approximately \$380 million in cash . . . in various real estate ventures" is as follows:

Equity in Ventures

Atlantic City	72,000,000	
Trump International Hotel & Tower -- Chicago	37,000,000	
Trump International Hotel & Tower -- Las Vegas	33,000,000	
Trump World Tower -- Partner Buyout	5,500,000	
Trump Park Avenue	10,000,000	
Estate -- 513 N County Drive, Palm Beach	22,000,000	
Purchase of Trump National -- Bedminster, NJ	10,000,000	
Purchase of Trump National -- Los Angeles, CA	<u>10,000,000</u>	
		199,500,000

Construction Expenditures

Trump National -- Bedminster, NJ	32,904,246	
Trump National -- Los Angeles, CA	45,570,607	
Trump National -- Westchester, NY	71,043,943	
Trump International -- West Palm Beach, FL	<u>29,889,144</u>	
		<u>179,407,940</u>
		378,907,940

INTERROGATORY NO. 13

Set forth the complete factual basis for the claim contained in paragraph 28 of the Complaint that, at the time of the book's publication, you maintained "approximately \$117 million in cash," including but not limited to the accounts in which such funds resided and

whether such funds were in anyway [sic] encumbered or pledged, and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 13

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the ground that the phrase "whether such funds were in anyway [sic] encumbered or pledged" is vague, ambiguous, and confusing. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to the documents produced in response to the Document Requests.

INTERROGATORY NO. 14

Set forth the complete factual basis for the allegation contained in paragraph 32 of the Complaint that O'Brien made "false statements about Trump's relationship with his children," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 14

Trump objects to this interrogatory on the ground that it is unduly burdensome in that this information is already within the possession of defendants. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 32 of the Complaint that O'Brien made "false statements about Trump's relationship with his children" is the verbal comments O'Brien made in his November 12, 2005 appearance at Coliseum Books in New York City to promote the Book, including a statement to the effect that Trump "doesn't get involved with his kids until they are about 18."

INTERROGATORY NO. 15

Identify any individual known to you or any of your agents who approached O'Brien at the Coliseum Books event referenced in paragraph 32 of the Complaint. State the substance of what the individual said to O'Brien.

RESPONSE TO INTERROGATORY NO. 15

Trump objects to this interrogatory on the ground that the term "approached" is vague and ambiguous. Trump further objects to this interrogatory on the ground that the interrogatory calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 16

Set forth the complete factual basis for the allegation contained in paragraph 33 of the Complaint that O'Brien has a "history of anti-Trump reporting," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 16

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien has access to his articles and writings about Trump.

Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 33 of the Complaint that O'Brien has a "history of anti-Trump reporting" is the articles and writings that O'Brien authored or co-authored about Trump.

INTERROGATORY NO. 17

Set forth the complete factual basis for the allegation contained in paragraph 36 of the Complaint that: (a) O'Brien "resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information"; and (b) "Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory and misleading statements about Trump." Identify all individuals that O'Brien allegedly harassed, intimidated, or threatened, as well as those individuals reporting such allegations. In addition, identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 17

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien is in possession of the information called for by subpart (a). Subject to and without waiving any of the foregoing, Trump responds as follows:

(a) The factual basis for the allegation contained in paragraph 36 of the Complaint that O'Brien "resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information" includes: reports from Trump's current and former employees and business associates that O'Brien harassed them; a letter dated August 26, 2004 from Lawrence S. Rosen to David E. McCraw, a copy of which is attached; an article entitled "Source Turns on Times Reporter" published in the *New York Post* on January 17, 2000; an article entitled "Poisoned at the Source" published in *New York Magazine* on March 6, 2000; and articles publicly reported on the Internet.

(b) The factual basis for the allegation contained in paragraph 36 of the Complaint that "Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory

and misleading statements about Trump" includes: reports from Trump's current and former employees and business associates that O'Brien harassed them; a letter dated August 26, 2004 from Lawrence S. Rosen to David B. McCraw, a copy of which is attached.

INTERROGATORY NO. 18

Set forth the complete factual basis for the allegations contained in paragraph 37 of the Complaint (upon information and belief) that: (a) "various persons have filed complaints with the New York City Police Department after being stalked and threatened by O'Brien"; (b) "O'Brien has threatened sources by telling them he can 'settle scores' with enemies by writing negative articles about them"; (c) "O'Brien has been accused of attempting to use his position as a reporter to obtain dates, or other entanglements, with women"; (d) "O'Brien was terminated by the *Wall Street Journal* for violation of company policy"; (e) "O'Brien has been accused by sources and subjects alike of a volatile, uncontrollable temper"; and (f) "it has been reported that O'Brien has boasted that 'access to the [*New York Times*] pages to settle personal scores was a fringe benefit available to *New York Times* reporters." Identify and attach all documents relevant thereto; and identify all witnesses with information relating to these allegations.

RESPONSE TO INTERROGATORY NO. 18

Trump objects to this interrogatory on the ground that it is unduly burdensome and oppressive in that defendant O'Brien is in possession of much if not all of this information. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegations identified in (a) through (f) above includes articles about O'Brien that are publicly reported, including on the Internet.

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INTERROGATORY NO. 19

Set forth the complete factual basis for the allegation contained in paragraph 38 of the Complaint that Warner "knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his report[ing]," and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 19

Trump objects to this interrogatory on the ground that it calls for publicly available documents that are equally available to defendants as to Trump. Subject to and without waiving any of the foregoing, Trump responds as follows:

The factual basis for the allegation contained in paragraph 38 of the Complaint that Warner "knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his report[ing]" includes: the numerous articles O'Brien has authored and co-authored about Trump, for which Trump refers to defendants to his response to Interrogatory No. 16 above; and articles about O'Brien that are publicly available, including on the Internet.

INTERROGATORY NO. 20

To the present, set forth the nature and amount of, and facts and data supporting each and every claim of damages in this action, including a description of: (a) the method used to calculate the total amount of such damages; (b) the source of all facts and data supporting such damages; (c) all persons involved in making such calculations of damages; and (d) all persons with knowledge of such damages or any data used to calculate such damages. Identify and attach hereto copies of all documents on which you relied in calculating such damages.

RESPONSE TO INTERROGATORY NO. 20

Trump objects to this interrogatory to the extent it seeks expert discovery and damages calculations prematurely. Subject to and without waiving any of the foregoing, Trump responds as follows:

The nature of Trump's damages include (1) his loss of business opportunities as a result of defendants' defamatory statements, following the publication of those statements in October 2005; (2) the injury to his reputation sustained as a result of defendants' defamatory statements; and (3) the injury sustained by the Trump brand name as a result of the defendants' defamatory statements.

Trump reserves the right to supplement this interrogatory response.

INTERROGATORY NO. 21

To the present, set forth the details of any deals that you believe were prevented or interfered with because of the allegedly defamatory statements referenced in your Complaint, including but not limited to transactions, purchases, sales, transfer of real or other assets, or other arrangements. Specify the nature and basis for your belief, and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 21

Trump objects to this interrogatory on the ground that it is unduly burdensome. Trump further objects to this interrogatory on the ground that it is premature. As such, the interrogatory is improper.

INTERROGATORY NO. 22

Identify any accountants or accounting firms, attorneys or law firms, or other financial or legal professionals that you or any Trump-related entity have retained in the past five years.

RESPONSE TO INTERROGATORY NO. 22

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such the interrogatory is improper.

INTERROGATORY NO. 23

Identify any financial institution, any labor union or entity related to or affiliated with a labor union, or any other person or entity from whom or which you or any Trump-related entity has received or to whom or which you or any Trump-related entity has extended loans, officer loans, advances, lines of credit, letters of credit, debt financing, or any other type of extension of credit. Set forth the details relating to each such instance, including but not limited to: (a) total amount received or extended; (b) terms and conditions, including applicable interest rate and repayment period; (c) whether secured or unsecured; (d) collateral, if any; and (e) current amount outstanding, if any. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 23

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to the documents produced in response to the Document Requests, which identify extensions of credit outstanding as of October 2005.

INTERROGATORY NO. 24

For the period of January 1, 1990 to February 8, 2006, identify any family member, family trust, or estate of a deceased family member, from whom or which you or any Trump-related entity has received or to whom you or any Trump-related entity has extended loans, officer loans, advances, lines of credit, letters of credit, debt financing, or any other type of extension of credit. Set forth the details relating to each such instance, including but not limited to: (a) total amount received or extended; (b) terms and conditions, including applicable interest rate and repayment period; (c) whether secured or unsecured; (d) collateral, if any; and (e) current amount outstanding, if any. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 24

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to the documents produced in response to the Document

Requests:

INTERROGATORY NO. 25

Set forth the details relating to any real estate transactions -- not already detailed in your answer to Interrogatory 12 -- in which you or any Trump-related entity participated, including but not limited to the following information for each transaction: (a) the identity of the real estate;

(b) the identity of the investor (e.g., you or a specific Trump-related entity); (c) structure (e.g., LLC, LLP, or Inc.); (d) amount invested; (e) specific source of funds; (f) accounts from which funds were withdrawn; (g) any related loans or other indebtedness or liability for which you or any Trump-related entity were liable, potentially liable, or guaranteed; and (h) the identity of any other involved parties. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 25

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory on the ground that it infringes on his privacy interests. Trump further objects to this interrogatory on the ground that the phrase "details relating to any real estate transactions" is vague and ambiguous. As such the interrogatory is improper.

INTERROGATORY NO. 26

If you have been involved in any lawsuit, other than this litigation, set forth for each lawsuit: (a) your role in the case; (b) the nature of the case; (c) your attorneys in the matter; (d) the other parties to the case and their attorneys; (e) the court and docket number; and (f) the disposition of the case.

RESPONSE TO INTERROGATORY NO. 26

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 27

Identify all persons with knowledge, information, or documents concerning your net worth (past or present) or any other subject matter of the foregoing interrogatories, and state with particularity for each such person the substance of such knowledge and information as well as how it was acquired.

RESPONSE TO INTERROGATORY NO. 27

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 28

Identify every representation made by you or on your behalf regarding your net worth, including any reference to an estimated value or to a general classification of your wealth (e.g., billionaire or millionaire). In addition, identify and attach all documents referencing or supporting each representation.

RESPONSE TO INTERROGATORY NO. 28

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such the interrogatory is improper.

INTERROGATORY NO. 29

For the period of January 1, 2000 to the present, set forth the details relating to all estimates of your net worth of which you are aware, including estimates contrary to your own estimates, and identify the individual or entity making each estimate. In addition, identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 29

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump refers defendants to his response to Interrogatory No. 2.

INTERROGATORY NO. 30

For the period of January 1, 2000 to the present, identify all communications in which anyone has questioned you or any of your employees or representatives, directly or indirectly, and whether in writing, orally, electronically, telephonically, or otherwise, about your net worth or more generally about whether you are a millionaire or billionaire.

RESPONSE TO INTERROGATORY NO. 30

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 31

Identify all individuals who created or contributed to the content of the brochure left in guest rooms at Mar-a-Lago, which estimated your net worth at \$9.5 billion (referenced on page 154 of the Book). Set forth the complete factual basis for that estimate, including but not limited to the source(s) of information used in connection with the estimate, and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 31

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 32

Identify every instance relating to your business dealings and those of any Trump-related entity in which you exaggerated or misrepresented the truth. In addition, identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 32

Trump objects to this interrogatory on the grounds that it is argumentative. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 33

Identify every instance in which someone else claimed, in relation to your business dealings and those of any Trump-related entity, that you exaggerated or misrepresented the truth, including: (a) the identity of the claimant; (b) date; (c) nature of claim; and (d) resolution, if any. In addition, identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 33

Trump objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 34

Identify every instance in which your accounting books or those of any Trump-related entity did not comply and/or were found not to have complied with Generally Accepted Accounting Principles, and state the reasons therefore.

RESPONSE TO INTERROGATORY NO. 34

Trump objects to this interrogatory on the grounds that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 35

Set forth the details relating to every instance from 1975 to the present in which: (a) you or anyone on your behalf (including your attorneys or other representatives) threatened any individual or entity with a lawsuit claiming defamation (libel or slander) and/or filed such a lawsuit; or (b) you or any Trump-related entity were threatened with or actually were sued for

defamation (libel or slander). Identify and attach all documents relevant thereto, including related communications and any pleadings. If a lawsuit was filed, state: (a) the court and docket number; (b) all parties to the lawsuit and their attorneys; and (c) the disposition.

RESPONSE TO INTERROGATORY NO. 35

Trump objects to this interrogatory on the ground that it is overly broad. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 36

Set forth the details relating to all contracts to which you or any Trump-related entity has been a party, and which were in effect at any point during the period January 1, 2004 to February 8, 2006 and were worth or involved payments exceeding \$25,000, including: (a) the nature of the contract; (b) date; (c) other parties; and (d) current status of the contract. Identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 36

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 37

Set forth the details relating to all speeches, lectures, or other addresses you have made and, if any, the remuneration you received for each, including but not limited to in connection

with the Learning Annex. For each, identify and attach all documents relevant thereto, including: (a) any contract; (b) a text of the address and/or notes used in delivering the address; and (c) any audio, video, or other recordings.

RESPONSE TO INTERROGATORY NO. 37

Trump objects to this interrogatory on the ground that it is overly broad and unduly burdensome. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 38

Identify all communications that you made about O'Brien or the Book, and identify and attach all documents relevant thereto.

RESPONSE TO INTERROGATORY NO. 38

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

INTERROGATORY NO. 39

Identify all of your communications, including but not limited to in any of your books, periodicals, articles, letters, blog postings, or public statements, in which you included information gathered from a confidential or unnamed source and did not disclose the source's identity.

RESPONSE TO INTERROGATORY NO. 39

Trump objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such the interrogatory is improper.

INTERROGATORY NO. 40

Identify each person you believe to have knowledge regarding the factual allegations set forth in the Complaint.

RESPONSE TO INTERROGATORY NO. 40

Trump objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump states that the persons who have knowledge regarding the factual allegations set forth in the Complaint include but are not limited to:

- (1) Trump
- (2) Allen Weisselberg
- (3) Michelle Scarbrough
- (4) Larry Ingrassia
- (5) Eric Dash
- (6) David McCraw
- (7) Tina Brown
- (8) Joseph Plambeck
- (9) Andrew Blumer

INTERROGATORY NO. 41

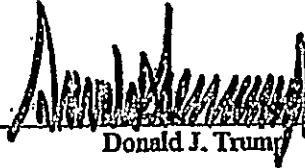
Identify each person likely to have discoverable information that you may use to support your claims, identifying the subjects of the information.

RESPONSE TO INTERROGATORY NO. 41

Trump objects to this interrogatory on the ground that the phrase "likely to have discoverable information" is vague and ambiguous. Trump further objects on the ground that it is premature to identify those persons Trump intends to call as witnesses at trial. As such, the interrogatory is improper.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the foregoing answers are true and correct. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.



Donald J. Trump

Dated: October 19, 2006

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August 26, 2004

VIA HAND DELIVERY
& FEDERAL EXPRESS

David E. McCraw, Esq.
The New York Times
229 W. 43rd Street
New York, NY 10036

Re: Mr. Donald J. Trump

Dear Mr. McCraw:

We serve as counsel to Mr. Donald J. Trump and various entities owned by Mr. Trump. Several current and former employees of my client, as well as current and former business associates of my client, have advised him that Timothy L. O'Brien ("O'Brien"), a reporter for *The New York Times*, has been harassing them and attempting to coax them into making false, deceptive and misleading statements about Mr. Trump and his various business ventures. It would appear that *The New York Times* is seeking to vindictively impugn Mr. Trump's credibility and the reputation of his successful business ventures, all to make for "good copy." This is in addition to all previous correspondence relating to Charles Bagli and his numerous ticket requests (and acceptances) for sporting and entertainment events for his personal use.

You should be aware that in large part, O'Brien is relying on sources who have false or incorrect information, or who are providing false or incorrect information either because they have been coaxed into doing so by O'Brien, or because they are disgruntled former employees or former business associates of my client, whose credibility is suspect. Any release by O'Brien and *The New York Times* of such information would be reckless on your part.

One example of the type of false, deceptive and misleading information that O'Brien intends to publish relates to Trump International Hotel & Tower, Chicago (the "Chicago Project"). I am sure you must be aware that the Chicago Project has been a huge success, selling over \$450,000,000 in under twelve months, with prices now averaging over \$1,000.00 per square foot (which is unprecedented in Chicago). Despite this, we understand that O'Brien intends to publish an article which states that the Chicago Project is over budget and that Mr. Trump is not paying his bills on time for the Chicago Project. I note that my client has not yet even begun demolition of the existing structure at the site on which the Chicago Project is to be built. Therefore, it would be impossible for O'Brien to state (as we have been told O'Brien is planning) that the

ROSEN WEINHAUS LLP
ATTORNEYS AT LAW

costs vs. budget can be made. The few contracts that we have negotiated thus far were negotiated for amounts less than the proposed budget. In addition, within the next few weeks, Mr. Trump will be purchasing his partner's share of the joint venture that owns the site of the Chicago Project and Mr. Trump will be paying \$73,000,000 for such purchase, money that Mr. Trump has readily available. Finally, with respect to the alleged statement that Mr. Trump is not paying his vendors on time for the Chicago Project, this is absolutely false. While we do negotiate invoices with vendors when appropriate (for example, if work is not performed to specifications, etc.), there is no vendor who has not been timely paid that which he was rightfully due.

You should also be aware of the fact (and if you are not, you are hereby put on notice) that at this time we have nearly completed the terms of the construction financing for the Chicago Project. The dissemination by you of any false, deceptive and/or misleading information may jeopardize such financing. As such, we implore you to conduct the requisite due diligence necessary to insure the veracity of the information and "facts" that will be contained in your article.

Another example relates to articles published by *The New York Times* about the reorganization of Trump Hotels & Casinos (the "Casino Transaction"). Despite the portrayal by *The New York Times* of the Casino Transaction in a negative light, it is actually an excellent deal, as reported quite accurately in *Barron's* and *The Wall Street Journal*. The investment bank that is purchasing a stake in the company was brought in by Mr. Trump, as was Executive Vice President Scott Butera, who is being considered by Mr. Trump as a candidate for the CEO position. Further, the suggestion by Mr. O'Brien and Eric Dash (in an article dated August 11, 2004) that Mr. Trump may not have the \$55,000,000 to invest in the Casino Transaction is misleading and false. Mr. Trump has far more than that amount of cash on hand and would be more than willing to provide evidence of this fact.

The publication by *The New York Times* of false, deceptive and misleading information would indicate an intent by *The New York Times* and Mr. O'Brien to recklessly jeopardize, destroy and/or demean Mr. Trump's reputation and that of his various successful projects, including, without limitation, the Casino Project, *The Apprentice* (the hit reality television series), and the Chicago Project.

As stated to you previously, Mr. Trump retains the highest regard for true, investigative journalism. What is puzzling to Mr. Trump is that *The New York Times* is relying on a reporter who has been (i) repeatedly criticized in the past for unprofessionally aggressive journalism and, most telling of all, (ii) compared to Jayson Blair (see attached article). It would appear that in relying on Mr. O'Brien to report these stories, *The New York Times* is condoning shoddy, reckless investigative journalism, thereby recklessly disregarding the truth.

Be advised that if you choose to be irresponsible and utilize any false, deceptive and/or misleading information, we shall vigorously pursue an action against *The New York Times* and Mr. O'Brien seeking to recover hundreds of millions of dollars in losses and damages that may be suffered by Mr. Trump, his affiliates and the above-mentioned projects, including, without limitation, losses of sales, delays in construction, and items of similar magnitude.

Please be advised and guided accordingly.

Very truly yours,

ROSEN WEINHAUS LLP

Lawrence Rosen
Lawrence S. Rosen

cc: Robert F. Montgomery, Esq. (via fax)
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BY FAX AND OVERNIGHT MAIL

November 2, 2006

Mark P. Ressler, Esq.
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William M. Tambussi, Esq.
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Westmont, NJ 08108

Donald J. Trump v. Timothy L. O'Brien, et al.

Dear Mark and Bill:

We received Plaintiff Donald J. Trump's Objections and Responses to Defendants' First Set of Interrogatories. We believe that these responses to our interrogatories are seriously deficient and request that you remedy these deficiencies by close of business on Tuesday, November 7. Otherwise, we plan to approach the Court for relief.

We do not intend in this letter to detail each and every objection to your interrogatories. Instead, we focus on several major issues that, if left unremedied, would interfere severely with our ability to defend this action.

First, your responses to Interrogatory Nos. 1 and 14 directly contradict numerous prior statements you have made both to defendants and to the Court in this litigation. In answering Interrogatory No. 1, you indicate that the defamatory statements at issue in this case include, among others, "statements that Trump is an incompetent businessman; statements that Trump is not an honest businessman; [and] statements concerning Trump's family and his relationship with his children." In response to Interrogatory No. 14, you claim that Mr. O'Brien made a defamatory statement that Mr. Trump "doesn't get involved with his kids until they are about 18."

Plaintiff's answers to these interrogatories are glaringly inconsistent with your earlier representations, including:

1728a

- In your Opposition to Defendants' Motion to Dismiss, the only allegedly defamatory statements you identified related to Mr. Trump's net worth. (Plaintiff Donald J. Trump's Memorandum of Law in Opposition to Defendants' Motion to Dismiss at 16.)
- In your Opposition to Defendants' Motion to Compel Discovery, you stated: "Trump's objections as to defendants' time-frame were appropriate given that the defamatory statements at issue in this case concern Trump's net worth as of the date the statements were published – that is, October 2005." (Plaintiff Donald J. Trump's Memorandum of Law in Opposition to Defendants' Motion to Compel Discovery at 2.)
- In your Responses to defendants' document requests and subsequent briefing on Defendants' Motion to Compel Discovery, you objected to producing documents not relating to net worth. In response to Request No. 31, for example, you agreed to provide only those sworn statements relating to plaintiff's "net worth, asset, or liabilities." (Plaintiff Donald J. Trump's Objections and Responses to Defendants' First Set of Document Requests at 22-23.) You likewise objected to Request No. 32, criticizing defendants for not limiting their request regarding gambling licensing proceedings to those "that related solely to Trump's finances." (Plaintiff Donald J. Trump's Memorandum of Law in Opposition to Defendants' Motion to Compel Discovery at 13.)
- At our October 20, 2006 appearance before Judge Snyder, your principal argument for limiting discovery was that only Mr. Trump's net worth in October 2005 was relevant to this action.

These inconsistencies severely prejudice defendants' ability to defend themselves. In fact, not only did you expand in your interrogatory responses upon the statements you have consistently claimed are the basis for your action, but your interrogatory answers do not provide the specificity required by Instruction No. 15 (to which you did not object), which requires that you identify the specific statements that you claim are defamatory.

In sum, we believe that your claim should be limited as you have fashioned it in nearly every prior filing – i.e., a claim about the falsity of certain limited statements about Mr. Trump's net worth. If you do not remedy these inconsistent statements by amending your interrogatory answers, we will ask the Court either to narrow the scope of the statements that are at issue to the statements regarding net worth or to order broader discovery if all of these areas – including Mr. Trump's relationship with his kids and his success as a businessman – will remain at issue in the case.

Second, notwithstanding the centrality of plaintiff's net worth to your complaint, several of your interrogatory responses have failed completely to provide any detail or to identify any individuals in response to simple and straightforward requests for which you must have current information. Instead, you have objected in various permutations that the requests are burdensome, not likely to lead to admissible evidence, or premature. These objections have no merit, and your continued refusal to describe the basis for your claims or to identify individuals with knowledge of these areas will severely prejudice defendants. For example:

- In response to Interrogatory Nos. 2, 3, 23, and 25, you have failed to identify your net worth, your assets and liabilities, credit obtained or extended, and real estate deals in which you were involved. As a plaintiff claiming that defendants' statements about your net worth are false, you bear the burden of proving falsity. At this stage, we cannot understand how your position on these issues would not be easily available to you, or how you possibly could imply that "the burden of deriving or ascertaining the answer is substantially the same for [defendants] as for [plaintiff]." R. 4:17-4(d): Interrogatory No. 2, for example, asks about plaintiff's net worth as of dates on which Mr. Trump or his representatives previously provided Mr. O'Brien estimates that were reported in the Book (Book at 153-54); and also as of dates on which the Book was published and plaintiff answered the interrogatories. Your generic referral to documents you have produced is inadequate.
- In response to Interrogatory Nos. 27, 28, and 29, you have refused to identify individuals with knowledge of Mr. Trump's net worth, representations made regarding Mr. Trump's net worth, and estimates of Mr. Trump's net worth. Similarly, in response to Interrogatory No. 30, you have refused to identify communications in which anyone has questioned you or any of your representatives about your net worth. Again, this information is clearly relevant and important to plaintiff's action.
- In response to Interrogatory No. 22, you have refused to identify accountants, accounting firms, or financial professionals that Mr. Trump has retained over the past five years. This information is necessary for defendants to understand which third parties may have relevant financial information and – consistent with the Court's rulings on October 20, 2006 – to seek discovery from those third parties.
- In response to Interrogatory No. 31, you have refused to identify the individuals who contributed to or created a brochure that claimed your net

worth was \$9.5 billion, or to discuss the factual basis for that claim, on the grounds that it is overly burdensome and not relevant. However, since this is one of the net worth estimates discussed in the Book, and is inconsistent with other estimates provided by plaintiff or his representatives, we cannot understand how information regarding its factual basis is not relevant, let alone burdensome.

Third, you frequently refuse to identify relevant communications and individuals, even where such communications and individuals underlie plaintiff's actual malice claims:

- In response to Interrogatory No. 17, you have refused to identify the specific individuals, including Mr. Trump's current and former employees and business associates, that Mr. Trump claims Mr. O'Brien harassed. This allegation is one of your alleged bases for actual malice, and it therefore is critical for us to obtain the identities of the people allegedly harassed so that we may depose them.
- In response to Interrogatory No. 38, you have refused to disclose communications that you made about Mr. O'Brien or the Book, and to identify any such documents, again on the grounds of burdensomeness and relevance. Defendants have produced to plaintiff such communications. And yet plaintiff refuses to do the same, despite the fact that such communications are clearly relevant.
- Similarly, in response to Interrogatory No. 10, you have refused to identify communications between Michelle Scarbrough and others relating to Mr. O'Brien or the other defendants. However, you have relied upon Ms. Scarbrough as a primary basis for your actual malice claim. Communications between her and others relating to defendants are clearly relevant, not overly burdensome, and not vague or ambiguous.

Fourth, in response to Interrogatory Nos. 20 and 21, you have refused to detail your damage claims or to disclose the business deals or opportunities that plaintiff has lost as a result of defendants' allegedly defamatory statements. This request is certainly not premature, and the identity of such deals should be immediately and clearly apparent to Mr. Trump, particularly given your representations to the Court and to defendants that such deals exist. Such disclosure is critical to enable defendants to address the question of whether there were in fact any damages arising from defendants' allegedly defamatory statements.

Fifth, in your objection to Instruction Number 20, you have indicated that you will deem the Interrogatories to cover the time period from January 1, 2005 through October 31, 2005. At our October 20, 2006 appearance before Judge Snyder, the Court ruled that the period of January 1, 2002 to February 8, 2006 was relevant to this action, and ordered disclosure of financial records for this broader time period. We assume that you did not address this broader timeframe in your interrogatory responses because you served your responses on the same day as our October 20, 2006 hearing. In light of the Court's ruling, however, we request that you revise your interrogatory responses to address this broader time frame.

Sixth, as noted above, this letter does not detail all of defendants' objections to plaintiff's interrogatory answers. However, defendants note generally additional interrogatory answers which are objectionable for various reasons, including that plaintiff has refused to provide substantive answers, has provided plainly insufficient answers, has failed to attach relevant documents, has ignored various instructions, and merely has referenced publicly available information:

- Interrogatory No. 4 (basis for claim in complaint regarding value of Mr. Trump's brand name)
- Interrogatory No. 12 (basis for claim in complaint about Mr. Trump's cash investments in real estate)
- Interrogatory No. 15 (person who approached Mr. O'Brien at Coliseum Books and the substance of what that person said)
- Interrogatory No. 16 (basis for claim in complaint regarding Mr. O'Brien's "history of anti-Trump reporting")
- Interrogatory No. 18 (basis for claims in paragraph 37 of complaint about Mr. O'Brien)
- Interrogatory No. 19 (basis for claims in paragraph 38 of complaint about Mr. O'Brien)
- Interrogatory No. 24 (family loans)
- Interrogatory No. 26 (past lawsuits)
- Interrogatory No. 32 (admitted misrepresentations in business dealings)
- Interrogatory No. 33 (claimed misrepresentations in business dealings)

Mark P. Ressler, Esq.
William M. Tambussi, Esq.

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November 2, 2006

- Interrogatory No. 34 (noncompliance with Generally Accepted Accounting Principles)
- Interrogatory No. 35 (prior defamation suits, whether threatened or actual)
- Interrogatory No. 36 (contracts involving payments exceeding \$25,000)
- Interrogatory No. 37 (speeches, lectures, or other addresses, and remuneration therefor)
- Interrogatory No. 39 (reliance on confidential or unnamed sources)
- Interrogatory No. 40 (persons with knowledge regarding complaint's allegations)
- Interrogatory No. 41 (persons likely to have discoverable information that plaintiff may use to support claims)

Finally, we have identified numerous deficiencies in your initial document production. However, rather than detailing them here or requesting that the Court intervene at this time, we will await your second production on November 20, 2006, which hopefully will cure these deficiencies.

Please contact me if you would like to discuss any of these concerns in greater detail.

Very truly yours,



Andrew J. Ceresney

cc: Mark S. Melodia, Esq.
James F. Dial, Esq.

1733a

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December 4, 2006

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

We have considered the arguments that you and Mr. Melodia made about plaintiff's interrogatory responses during our conference call on November 15, 2006. While we believe that all of our interrogatory responses were proper, we agree to supplement certain of the interrogatory responses to provide the information that you explained you were looking for.

Specifically, we will supplement the following interrogatory responses:

Interrogatory No. 1 -- we will identify the statements at issue;

Interrogatory No. 12 -- we will supplement the interrogatory response to the extent the subparts can be answered;

Interrogatory No. 15 -- we will identify the individual who approach O'Brien and the substance of what was said;

Interrogatory No. 16 -- we will identify the articles;

Interrogatory No. 17 -- we will identify the articles publicly reported on the Internet that were referred to in response to subpart (a), and will identify the individuals whom O'Brien harassed, intimidated, or threatened;

Interrogatory No. 18 -- we will identify the articles and websites referred to in the response;

Interrogatory No. 19 -- we will identify the articles and websites to which the response refers;

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Andrew J. Ceresney, Esq.

December 4, 2006

Page 2

Interrogatory No. 21 -- we will identify the lost deals for which Mr. Trump seeks damages;

Interrogatory No. 22 -- we will supplement the response to the extent it calls for identification of accountants, accounting firms, and financial professionals who were retained from 2002 to the present for work relating to valuing Mr. Trump's net worth;

Interrogatory No. 29 -- we will identify written estimates of Mr. Trump's net worth from 2002 to the present, including those made in mortgage loan applications or other applications to financial institutions; and

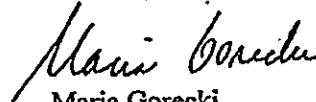
Interrogatory No. 31 -- we will identify the individuals who created the brochure to which you refer in the interrogatory.

We already have begun to prepare supplementary responses to these interrogatories but still need to finalize the information. We expect that we will be able to serve supplementary responses in the immediate future.

In light of our conference call, we reviewed our responses to Interrogatory Nos. 4, 10, 20, 23-26, 32-35, and 37-41. For the reasons we stated during the call, we do not intend to supplement our responses to those interrogatories.

As always, please feel free to contact me with any questions.

Sincerely,


Maria Gorecki

cc: James F. Dial (by e-mail)
Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

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January 11, 2007

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Please be advised that with respect to the transaction involving 400 Fifth Avenue that we referenced in response to Interrogatory No. 21 in our letter yesterday, the words "development and branding rights in connection with" were inadvertently omitted, so that the relevant portion of paragraph (iii) should read, "Defendants' Defamatory Statements were a factor in preventing Donald Trump from acquiring development and branding rights in connection with the property."

As always, please feel free to contact me with any questions.

Sincerely,



Mark P. Ressler

cc: Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

CERTIFICATION OF SERVICE

I certify that on this date, I caused the original and two copies of the following documents to be sent for filing via hand delivery to the Clerk, Law Division, Superior Court of New Jersey, Camden County, Hall of Justice, 101 South Fifth Street, Suite 150, Camden, New Jersey 08103:

1. Notice of Motion to Compel Plaintiff to Answer Interrogatories;
2. Letter Brief in Support of Motion to Compel;
3. Certification of Mark S. Melodia, Esq.
4. Proposed Order; and
5. This Certification of Service.

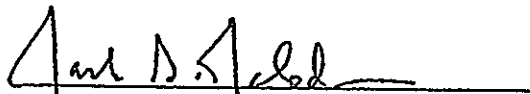
I further certify that on this date, I caused copies of the foregoing documents to be hand-delivered to the Honorable Irvin J. Snyder, J.S.C., Superior Court of New Jersey, Camden County, Hall of Justice, 101 South Fifth Street, Suite 530, Camden, New Jersey 08103.

I further certify that on this date, I caused copies of the foregoing documents to be served on counsel of record for Plaintiff, via email and overnight mail:

Mark P. Ressler, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019

William M. Tambussi, Esq.
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360 Haddon Avenue
Westmont, New Jersey 08108

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

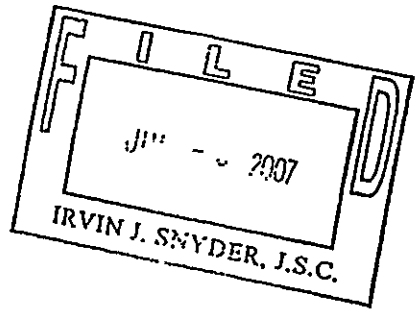

Mark S. Melodia

Dated: June 6, 2007

ORIGINAL

Order Granting Defendants'
Motion to Compel,
filed 7/6/07

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

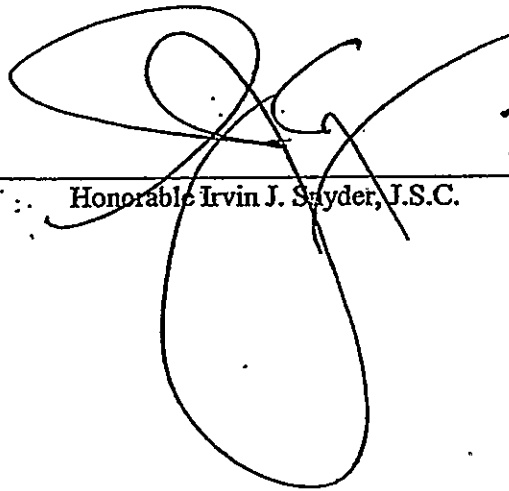
ORDER

THIS MATTER having been opened to the Court by Reed Smith LLP and Debevoise & Plimpton LLP, counsel for defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc. (Mark S. Melodia, Esq. of Reed Smith LLP, and Andrew J. Ceresney, Esq. and Andrew M. Levine, Esq. of Debevoise & Plimpton LLP appearing on behalf of defendants), on notice to Brown & Connery, LLP and Kasowitz, Benson, Torres & Friedman, LLP, counsel for plaintiff Donald J. Trump (William M. Tambussi, Esq. and William F. Cook, Esq. of Brown & Connery, LLP, and Mark P. Ressler, Esq. of Kasowitz, Benson, Torres & Friedman, LLP appearing on behalf of plaintiff), for an Order in accordance with R. 4:23-1, compelling Plaintiff to answer Defendants' First Set of Interrogatories, and the Court having reviewed the moving

and responding papers and the arguments of counsel; for the reasons stated on the record, and for other good cause shown;

IT IS on this 6th day of July, 2007, ORDERED

1. Defendants' Motion to Compel is GRANTED; and
2. On or before July 20, 2007, Plaintiff must respond fully to Interrogatory Nos. 4, ~~10~~, 17, 20, 26, ~~28~~; 35, and 38 from Defendants' First Set of Interrogatories; and
3. Counsel for Defendants serve a copy of this Order on all parties within 7 days of its receipt hereof.


7/6/07

Honorable Irvin J. Snyder, J.S.C.

Opposed

Unopposed



Copyright 1990 Gannett Company Inc.
USA TODAY

March 6, 1990, Tuesday, FINAL EDITION

SECTION: MONEY; Pg. 1B

LENGTH: 360 words

HEADLINE: How rich is Trump? Our guess: \$ 2.6B+

BYLINE: Paul Wiseman

BODY:

Glittery casinos, shining skyscrapers, an airline with his name stamped on it - Donald Trump amassed one of the 1980s' most publicized business empires. Strange thing, though: No one seems to agree on just how much it's all worth.

The question has taken on added significance now that the real-estate celebrity is embroiled in a divorce battle.

Estimates of the Trump fortune vary wildly. Forbes, perhaps the most cited source, put Trump's net worth at \$ 1.7 billion in its 1989 list of the USA's 400 richest people. Trump himself called that way too low. He suggested in a recent Playboy interview that Forbes issued a low-ball figure because the late Malcolm Forbes was jealous of Trump's yacht. Forbes sticks by its numbers.

On the high side, the New York Post recently calculated Trump's wealth at a staggering \$ 4.47 billion. The tabloid concluded that he easily could afford to shell out \$ 100 million for a divorce settlement with his wife, Ivana. (Their disputed prenuptial agreement calls for just \$ 25 million along with the couple's Connecticut estate.)

USA TODAY's entry in the how-rich-is-Trump guessing game: at least \$ 2.6 billion.

Why the dueling wealth estimates? Trump's fortune is built on real estate, and real estate estimates depend on debatable assumptions - especially in the ailing New York market.

Take Trump's Castle. Appraisal Group International, which does a lot of work for Trump, values the Atlantic City casino-hotel at \$ 800 million. But Salomon Bros., using the casino's projected cash flow, pegs it at just \$ 367 million.

Similarly, Appraisal Group says Trump's huge Taj Mahal casino, set to open April 2 on Atlantic City's Boardwalk, is worth \$ 1.1 billion. Casino analysts won't even guess its worth until visitors start lining up at the slot machines.

Another problem: Debt figures are readily available for the Trump properties that have issued public bonds. But for the strictly private properties, they're often not.

"Who the (expletive) knows?" Trump spat when Time asked him to pin down his wealth a year ago. "Really, who knows how much the Japs will pay for Manhattan property these days?"

GRAPHIC: EAR PHOTO; color, Robert Deutsch, USA TODAY (Donald Trump)

CUTLINE: DONALD TRUMP: Calls \$ 1.7 billion low



Copyright 1993 The Washington Post
The Washington Post

December 21, 1993, Tuesday, Final Edition

SECTION: STYLE; PAGE B1

LENGTH: 1564 words

HEADLINE: They Do, They Do, Already! Six Years, One Baby and a Zillion Bucks or So Later, the Trump-Maples Merger

SERIES: Occasional

BYLINE: Roxanne Roberts, Washington Post Staff Writer

DATELINE: NEW YORK, Dec. 20, 1993

BODY:

After naming their 2-month-old daughter Tiffany, anything else Donald Trump and Marla Maples dream up seems somehow anticlimactic. Impervious to that which resembles restraint or understatement, the real estate developer and his Georgia blonde long ago passed into a category of their own, where Too Much is True Trump.

So it should surprise no one that when The Donald and Maples finally blazed the matrimonial trail tonight, it was with 1,000 of their closest friends in the Grand Ballroom of Trump's Plaza Hotel — once managed by his former wife for \$ 1 and "all the dresses she could buy." And that there were hundreds of cameras, thousands of white orchids and one tiara with 325 diamonds worth \$ 2 million. The tab for the evening, including about \$ 60,000 worth of caviar, looked to be about \$ 1 million — but with Trump, a man possessed of an elusive net worth, you never know.

"The bride was a vision in white — just absolutely gorgeous," said New York Mayor David Dinkins. "Donald just beamed. It was a lovely, lovely ceremony."

What mattered to the bride was "all the warmth in the room," she said. "Looking out and seeing our friends and family that have been there through everything with us. Reading from 'The Prophet.' Just holding his hand tight and knowing we were home."

It was a ceremony many thought would never take place. After the Divorce of the Decade in 1991 from the first Mrs. Trump (just Ivana now, celebrated roman a' clef novelist and shopping network diva) and six years of the on-again, off-again, on-again affair with the aspiring actress (Marla Maples Trump as of tonight), Trump said he was persuaded to marry again by this month's shootings on a Long Island commuter train. "I figured life is short," he said, although it's unclear whether the multimillionaire has ever, in fact, set foot on a commuter train.

The media gobbled up the spectacle with upturned noses and eagle eyes: Trump is the publicity-crazed man they love to hate, but no detail of the hastily planned extravaganza is too small to report -- even the sedate New York Times served up tidbits on its front page Saturday, and New York Daily News columnist Amy Pagnozzi broke her self-imposed Trump ban with this wedding toast:

"Tacky. Overblown. Depraved in its conception," she wrote. "... Sure, things happen, people commit adultery, have out-of-wedlock kids -- but they can, nevertheless, be a little abashed about it."

But no -- this was an all-white wedding. Not even the champagne blushed.

Down the Aisle at Last

After the ceremony, the newlyweds posed for frenzied photographers, who persuaded the couple to dip and kiss, not once, not twice, but four times.

The bride, 30, wore something borrowed (the tiara with a 20-carat pear-shaped stone on top, loaned by jeweler Ronald Winston), and something white (this is, point out friends, her first marriage). The gown, made of double-faced satin, was off-the-shoulder and tightly fitted, with a simple but low V-neckline and tulle veil by designer Carolina Herrera. Herrera dresses the likes of Kennedys, British royals and other blue bloods; her custom wedding dresses start at \$ 15,000 for ordinary mortals.

This was not, however, the dress that the then-pregnant Maples carried in her luggage the past year, just in case Trump decided on a quickie trip down the aisle.

The Donald, Maples told NBC's "Today" show last summer, agreed to more than a dozen wedding dates but "just has a little freak-out" and backed out of them all.

Until tonight. The 47-year-old Trump, wearing a black tuxedo by Brioni, did not freak out.

The Guest List

The couple reportedly decided on tonight for the wedding because both had it free. Donald's dad, Fred, served as best man; Janie Elder, a pal of Marla's, was maid of honor. Metropolitan Opera singer Camilia Johnson performed at the ceremony. The Rev. Arthur Caliendo, who counseled Trump during his divorce from Ivana, performed the ceremony with traditional vows.

Trump "has got a middle-class mentality," said New York Post columnist Cindy Adams, "which means you do the right thing: Have a baby, you marry the lady."

There was no time to send engraved invitations, so the wedding guests received personal phone calls.

Among the attendees:

New York Sen. Al D'Amato, Howard Stern, Bianca Jagger, Robin Leach, Tommy Tune, Susan Lucci, Rosie O'Donnell, arms dealer Adnan Khashoggi, O.J. Simpson, Randall Cunningham, Evander Holyfield, Joe Frazier, Don King and assorted models in various states of dress.

"It's probably in poor taste to say it won't last," said Stern of the marriage, "but I give it four months."

If by some oversight you weren't invited, you can still send the newlyweds a gift: They're registered at Tiffany & Co., Aspery and Cartier.

Tune, who sent tiny tap shoes for the baby, was considering some for her parents. "The couple who taps together,

stays together."

No Tiffany

One family member who missed the ceremony: Tiffany Ariana Trump, born Oct. 13. The pregnancy was announced at a news conference in the lobby of the Palace Theater, where Maples was starring in "The Will Rogers Follies." The baby was named by her daddy, who acquired the air rights over the famed Fifth Avenue jewelry store to build Trump Tower.

Tiffany, wearing her own itchy-bitsy designer duds, was present for prenuptial pictures but was excused from the ceremony for security reasons.

A chip off the old block, Tiffany has already inspired a business empire: Maternity Moods by Marla, "stylish" maternity clothes introduced by the new mom last week at Macy's.

Trump's three children by his first marriage -- Donald Jr., 16, Ivanka, 12, and Eric, 9 -- were scheduled to attend the festivities but decided, according to Ivana, not to come.

Ivana, who is skiing in Aspen, Colo., was not invited.

Chuck Jones, the former Maples publicist who is accused of stealing her shoes and is suing Trump for \$ 700 million, also didn't make the guest list. (But, Chuck, thought you might like to know that Marla's white satin shoes were by Manolo Blahnik.)

Pictures for a Price

Though he is still quite the wheeler-dealer, The Donald is \$ 235 million in debt -- sort of a lingering hangover from a decade of overly ambitious deals. Perhaps that explains why the couple nixed the \$ 1,970 per kilo Petrossian Beluga caviar for the reception and settled on a cheaper version: Only \$ 1,670 per kilo for the 40 kilos.

Then there were the white orchids that covered the ballroom; the altar of white birches dripping with crystal facets; the 19-piece, five-tier, six-foot vanilla-cream wedding cake; and the sushi, smoked fish, lamb, turkey, beef and other goodies.

The couple, however, have not forgotten the less fortunate. Trump's own photographers had exclusive access to the ceremony and those pictures will be available for sale, with the proceeds going to the Trump foundation and distributed to charity.

"We thank the media for their interest and for their understanding of our wish to dedicate the private moments of this special day to a charitable purpose," the couple said in a statement.

No word on whether charity begins at home: Trump and Maples have been mum on terms of a prenuptial agreement. Trump renegotiated his deal with Ivana four times during their 13 years of marriage; she ended up with about \$ 25 million.

Maples told reporters she would happily sign whatever was necessary to make Trump's bankers happy.

It's been said clever girls never marry for money -- they just fall in love with rich men.

Decembers to Remember

Perhaps the wedding date was just a bow to sentiment -- December has been quite a month for the couple:

They Do, They Do, Already! Six Years, One Baby and a Zillion Bucks or So Later, the Trump-Maples Merger The Washington Post December 21, 1993, Tuesday, Final Edition

December 1987: They meet for the first time on the street — or in church. Whatever.

December 1989: Donald, Ivana and Marla meet on the ski slopes of Colorado. The cat is out of the bag, claws fully exposed. Two months later, the world discovers the blonde from Dalton, Ga.

December 1990: Donald and Ivana announce they're getting a divorce. Six months later, Marla receives a 7.45-carat diamond engagement ring.

December 1991: Marla throws a high heel at her beloved during a melee in the lobby of Washington's Four Seasons Hotel and vows she will never, ever marry him. They make up the next day.

December 1993: Donald and Marla exchange vows of eternal love.

A Pop Quiz

What does this all mean? Why does anyone care?

- a) It's really, really the end of the '80s. We mean it this time.
- b) The '80s are back.
- c) Marriage is cheaper than dating.
- d) Donald Trump has matured into a caring, thoughtful, committed man.
- e) For the February sweeps, "Beavis & Butt-head" should get married.
- f) Never underestimate a Southern belle.

Words to the Wife

Not that they asked, but sex experts have taken it upon themselves to counsel the bride and groom.

Skip the wedding night, Bob Berkowitz, host of CNBC's "Real Personal," told the New York Post. "They'll be exhausted following the wedding." Not to mention that the bride gave birth just two months ago.

Tonight the couple was asked if they planned to have more children. Maples rolled her eyes, Reuter reported, while Trump nodded and said, "Probably so."

Honeymoon plans call for a quick stop in Georgia for Christmas, then skiing in Telluride, Colo. — just a snowball's throw from Aspen and Ivana.

Kind of brings everything full circle.

GRAPHIC: PHOTO, MR. AND MRS. TRUMP: NEWLYWEDS DONALD AND MARLA BEAM FOR PHOTOGRAPHERS AFTER THEIR WEDDING LAST NIGHT. AP; PHOTO, HARRY NALTCHAYAN; PHOTO

LOAD-DATE: December 21, 1993

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Trump Good and Bad

Posted on July 3rd, 2007
by [Paul Burns](#) in [All News](#)
Read 813 times.

I'm a big fan of Mr. Donald Trump. This man arrived in the world with a golden spoon and has made himself larger. He has entertained us all with his life. He stays in there when things go wrong and does most things right. His mantras have become the American way and he is a brand, an icon, an American idol. Now that his Ivana kids are on the business wagon with him, he's into a new family too, I don't see him getting old, old, old mentally nor lessening his business endeavors. In fact, I see him reacting to the opportunities that the world's growth increasingly presents. Without ever meeting him, I sense that he's a genuine guy with empathy for others to offset his steely New York business resolve. I remember one TV image I have of him playing golf with Mark Wahlberg where his golf manners were impeccable. I don't expect that we would have a whole lot to talk about at dinner, but I'm sure he has social charm to match his business appeal.

What does Donald Trump do for a living? Well, among other things, he runs a private business in the real estate development industry, a business that eats money. This allows him never to present an audited financial statement to the general public, so he can engage in puffery to an unprecedented degree. I've seen estimates of his wealth from \$ 650 million to over \$ 5 billion. The higher estimates are mostly his own which brings a smile. But the general public impression mostly mirrors his estimates rather than the lower amounts, so his exaggerations are helpful to the Trump business model. His days are filled with discussions about deals and capital raising where his efforts are devoted to obtaining superior returns and the largest amounts of low cost, low risk capital.

The Trump name pops up everywhere in the world now. His reputation is solid from his base as one of the world's pre-eminent developers of high-rise housing. His relatively modest involvement in golf is big advertising. The non-real estate activities knock off bucks as well as keep the name hot. By his spin, he never has the wrong side of an issue and the public remembers it that way.

Since he's a brand now and his projects to date are seen to be hot, profitable sellers, he's able to make real estate development contracts on a non-recourse basis. Others take the financial risk in return for the Trump development and marketing expertise and superior returns. What distinguishes the Trump

organization is the ability to negotiate participation on a scale of 50/50 for such involvement rather than the 3% brokerage marketing fee and 10% development fee others might obtain. In other words, all his public pronouncements and bravado have worked, he's a success. Since he's working at the very top end of the housing food chain, the market remains solid in most cases and may continue unless the haves in this country move over to the have not side.

But Mr. Trump has problems too. His residential towers are not all financed non-recourse and his exposure is relatively high in Chicago, for instance. His office development in New York chugs along on a multi-phase basis. Multi-phase projects experience multi-markets, both good and bad, a trait which grows old and tests the market's inclination to occupy that much of one developer's product. His involvement with Trump International Resorts must rankle too. The gaming properties are marginal revenue producers and perpetually cash strapped. The Trump name is still there but Trump himself is not the manager and he is now the minority partner. The problem here is I sense a problem with the IRS where tax avoidance awaits a taxable event which will hurt big time. The recent failure of the property sale program indicates that all is not well. It may be that the failure is attributable to Trump needing more to pay the IRS.

Donald Trump is a big thinker and I don't believe he'd back away from any of this for an instant. I do believe, however, that he is going to model himself after the non-risk programs of the hotel franchisors in the future as much as possible, particularly when he gets into the offshore markets where he is not as experienced. Smart move now that he attracts capital that will make that plan work. No doubt that we're all going to hear about it, all you have to be is alive and awake to get the Trump message.

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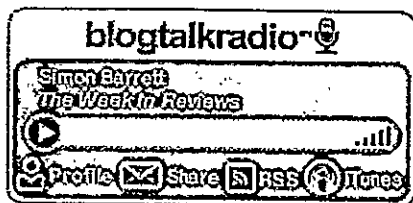
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July 30, 2004, Friday Late Edition - Final

Section C Page 1 Column 2 Desk: Business/Financial Desk Length: 991 words

Losses Increase as Cash Decreases, Straining Trump's Casinos

By TIMOTHY L. O'BRIEN and ERIC DASH

Trump Hotels and Casino Resorts Inc., the flagship of Donald J. Trump's debt-laden casino holdings, reported increased losses for the second quarter and a dwindling supply of cash yesterday, leaving the struggling company in an increasingly perilous financial position.

Beginning with Memorial Day weekend, the summer season typically is the most lucrative for casino companies because more people are on vacation and looking to gamble. But Trump Hotels lost \$17.6 million, or 59 cents a share, in the quarter, compared with a loss of \$10 million, or 46 cents a share, in the same quarter last year.

More ominously, Trump Hotels' cash reserves -- which it needs to help reduce its \$1.8 billion in debts -- are shrinking. The company says it has \$81.1 million on hand, down from \$124.3 million in the first quarter of the year.

Trump Hotels had \$106 million in cash on hand at the end of the second quarter last year.

Although Mr. Trump enjoyed a star turn as a business guru on the hit television show "The Apprentice," his casino company has never been profitable since going public in 1995. Trump Hotels, with casinos concentrated in Atlantic City, has been flirting with bankruptcy protection this year, scrambling to make a last-minute, \$73.1 million debt payment in May. A similar payment is due in November.

Trump Hotels is talking with its bondholders about restructuring its debts, two people briefed on the negotiations say. One plan under consideration involves a \$400 million cash infusion from the Credit Suisse Group that would greatly reduce Mr. Trump's equity stake in the company and force him to step aside as chief executive.

Bondholders would also have to accept a loss for the deal to go through.

"It's been a multidimensional chess game," said one of the people who had been briefed on the talks. "If you think about the complexities, with all the different groups, pulling them all together hasn't been quick."

Addressing his company's slumping profits, Mr. Trump said in an interview that rising gas prices had cut into gamblers' budgets in the second quarter. "Maybe the high rollers won't use their jets," he said. "For people who drive their automobiles, it certainly has an impact on the amount of money they have when they reach their destinations."

More important, he said that his company's earnings were hurt by gamblers who were winning more money than usual. Trump Hotels said in a news release that the "hold percentage" at its table games, a measure of how much money a casino rakes in from losing gamblers, fell substantially in the quarter.

"We consider ourselves to be very open to having people win," Mr. Trump said. "It's bad for me but it brings other people. It can even out over the course of a year."

Scott C. Butera, executive vice president of Trump Hotels, said that unusually lucky gamblers, combined with broader economic factors, "all played a role" in undermining the company's performance, particularly in May and June. He said he was surprised by the downturn in those months but declined to comment on the company's performance so far in July. While noting that other Atlantic City

casinos were also experiencing a weaker summer, Mr. Butera acknowledged that Trump Hotels' challenges remain greater than most because of its anemic finances.

"Other companies have more capital and a better ability to market," he said. "It's a question of how many resources you have to work with."

Mr. Trump said that he expected his casinos to perform better in July and August because late summer is typically Atlantic City's busiest season. But the long-term prospects of Trump Hotels remain doubtful. Pennsylvania recently legalized slot machine gambling in 14 locations in the state, and that could drain gamblers from Atlantic City. Trump Hotels may face better-financed casino rivals if recently announced mergers of Harrah's Entertainment Inc. with Caesars Entertainment Inc., and MGM Mirage with the Mandalay Resort Group, are completed. Mr. Trump's company said it had already lost business to the Borgata Hotel Casino and Spa, a high-end enterprise that opened in Atlantic City last summer and is co-owned by MGM Mirage and the Boyd Gaming Corporation.

Trump Hotels said that it lost \$66.4 million, or \$2.22 a share, for the six-month period ended June 30, compared with a loss of \$34.0 million, or \$1.55 a share, for the same period last year. Trump Hotels' shares are very thinly traded and investors had a muted response to the company's earnings announcement. The shares closed at \$2.06, down a penny, on lower than usual trading volume yesterday.

Mr. Trump, whose personal net worth is notoriously difficult to evaluate, voiced some confusion yesterday about his stake in Trump Hotels, part of which he holds directly and part of which he controls through a limited partnership. He initially said yesterday that he had a 41 percent stake in Trump Hotels. In March, he said in an interview that he had a 49 percent stake. Asked whether he had sold stock in the interim, he said he had not. After revisiting the topic with his

advisers, he said he actually holds about 56 percent of Trump Hotels' shares -- a stake worth about \$34.5 million.

Mr. Trump said that the Republican convention, which might draw fresh crowds into the New York region next month, should have a "big impact" on his company's bottom line in the next quarter.

Images: Photo: Donald J. Trump, the chief executive of Trump Hotels. (Photo by Susan Stava for The New York Times)(pg. C2)

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August 10, 2004, Tuesday Late Edition - Final

Section C Page 1 Column 5 Desk: Business/Financial Desk Length: 718 words

Trump Hotels Plans to Seek Bankruptcy

By **TIMOTHY L. O'BRIEN**

Trump Hotels and Casino Resorts, the centerpiece of Donald J. Trump's faltering casino holdings, said last night that it planned to file for bankruptcy protection by the end of September. The company hopes the move will allow it to reorganize under new management and with new financing that will ease its \$1.8 billion debt burden.

Under the terms of the agreement reached with Trump Hotels' bondholders, Mr. Trump will step aside as chief executive and his 56 percent equity stake will be reduced to about 25 percent. For Mr. Trump to hold onto that stake, he will be required to make a series of investments in the company, including a \$55 million cash investment and an exchange of Trump Hotels debt that he owns.

Trump Hotels said it expected its recapitalization plan to be completed by the first quarter of 2005.

"I have had a wonderful longstanding working relationship with CSFB, and I am proud to be able to partner with them," Mr. Trump said in a statement last night. "I look forward to our recapitalized company being a major player in the evolving gaming industry."

Under the agreement, one group of Mr. Trump's bondholders would exchange \$1.3 billion in debt for about \$228.2 million in cash, about \$852 million in new debt and about \$107 million in the reorganized company's stock. Another group of bondholders would exchange about \$406 million in debt for about \$56 million in cash and \$350 million in new notes. Yet a third group would swap \$68.8 million in debt for about \$500,000 in cash, \$48 million in new notes, and \$15.7 million in the reorganized company's stock.

Trump Hotels recently reported a second-quarter loss of \$17.6 million, or 59 cents a share, compared with a loss of \$10 million, or 46 cents a share, in the period a year earlier -- one yardstick of just how badly the company has been performing. Moreover, Trump Hotels' cash reserves are shrinking. The company said in its quarterly filing that it has \$81.1 million on hand, down from \$124.3 million in the first quarter of the year. The company had \$106 million in cash on hand at the end of the second quarter last year.

In an interview last night, Scott C. Butera, executive vice president of Trump Hotels, declined to say exactly when a reorganization agreement was reached with bondholders but said that disclosure of the agreement was made in a timely fashion consistent with regulatory requirements.

August 11, 2004, Wednesday Late Edition - Final

Section C Page 1 Column 3 Desk: Business/Financial Desk Length:
1081 words

MARKET PLACE; Trump Must Ante Up \$55 Million To Hold On to 25% of His Casino

By **TIMOTHY L. O'BRIEN** and **ERIC DASH**

As Donald J. Trump's publicly traded casino company, Trump Hotels and Casino Resorts, goes into a bankruptcy reorganization, Mr. Trump has to invest \$55 million of his money in the enterprise to maintain a large ownership stake.

But does he have it?

In an interview yesterday, as in many interviews before, Mr. Trump pegged his net worth at \$4 billion to \$5 billion, a figure that suggests he could easily chip \$55 million into the reorganization of the casino that bears his name.

"It's cash I have on hand," Mr. Trump said. "I'm very, very liquid."

In fact, it is nearly impossible to independently determine how wealthy Mr. Trump is, since most of his assets are privately held real-estate investments that lack the kind of unforgiving financial disclosure required of his publicly traded casino holdings. But a cursory examination of Mr. Trump's finances suggests that his claims of being a billionaire may be greatly exaggerated.

His casino holdings, as of about a week ago, were worth \$34.5 million. That, however, was when Trump Hotels' stock was trading around \$2-a share on the New York Stock Exchange. As of yesterday, the stock traded over the counter for 36 cents a share. Yesterday, Mr. Trump repeatedly said that his Trump Hotels stock represented only about 2 percent of his wealth; based on the prebankruptcy trading price of the shares, that would give him a net worth of about \$1.7 billion — well below the \$4 billion to \$5 billion figure he suggested earlier in the day.

But even \$1.7 billion may be too generous an assessment of Mr. Trump's wealth. Although Mr. Trump now distances himself from his casino business, for most of his life in the public eye, casinos were a significant pillar of his wealth, with a substantial inheritance from his wealthy father and his real estate holdings making up the rest. But past flirtations with personal and corporate bankruptcy forced Mr. Trump to either sell some prized real estate holdings or cede control of what remained to outside investors, particularly a group of wealthy Chinese financiers. While Mr. Trump still owns some handsome properties, his overall real estate holdings have been greatly diminished.

Two people with direct knowledge of the matter said that in the midst of his earlier financial crisis Mr. Trump borrowed \$20 million to \$30 million from his father's \$150 million estate to fend off creditors.

Mr. Trump disputed that yesterday, though he declined to provide a valuation of his father's estate. "I had zero borrowings from the estate," he said. "I give you my word."

In one well-publicized incident at the time, Mr. Trump's father even walked into one of his Atlantic City casinos to buy chips in order to give his son's casinos some much needed cash.

"That was in 1990, OK?" Mr. Trump said yesterday. "That was a long time ago."

Moreover, while most multibillionaires do not serve as hucksters in commercials for Visa and Verizon, Mr. Trump said his ubiquity on television was not only shrewd self-promotion -- it was lucrative.

"I get a lot of money from doing that, it's not little money," he said. "Other rich people don't do commercials because no one asks them. It's just like 'The Apprentice.' I can't tell you how many of my rich friends are dying, dying to have me put them on that show."

The Credit Suisse Group, a Wall Street investment bank leading the bankruptcy reorganization of Trump Hotels, will control the business if the revamping is completed. Credit Suisse offered to lend Mr. Trump the \$55 million he needs to maintain a 25 percent ownership interest, according to an investment banker involved in the transaction. But Mr. Trump said he planned to provide the money himself. If he does not come up with the money, his equity stake in the company will largely evaporate.

"I'm not interested in a loan for this," Mr. Trump said. "I'm doing it out of cash. You can check on this after the deal is done."

The source of Mr. Trump's proposed \$55 million investment has been an object of speculation among Trump Hotels bondholders and analysts. Jane Padreira, a fixed-income analyst who covers Trump Hotels for Lehman Brothers, was among several observers who think Mr. Trump will have to borrow the funds. "I don't believe that he has that kind of money," she said.

To be sure, the reorganization of Trump Hotels makes financial sense. The company owns prime casino locations in a growth industry, and if the bankruptcy plan succeeds in reducing the company's debt burden, Trump Hotels will be able to finance an overhaul of its properties.

Whether Mr. Trump is along for the ride as an owner, rather than simply as a marketer, will be determined by that \$55 million.

Even though the terms of the reorganization call for Mr. Trump to cede his chief executive post, Trump Hotels will pay him a \$2 million salary to stay aboard as chairman and help promote the casinos.

"It's pretty amazing to still be paid with no executive capacity, after driving the company into bankruptcy," said Jeffrey A. Sonnenfeld, an associate dean at the Yale School of Management, a frequent critic of Mr. Trump. "It is surprising that

the bondholders didn't say, 'You're fired.' Instead, they said, 'You are fired but we are still paying you.'"

Not all Trump Hotels bondholders have agreed to the bankruptcy reorganization plan, and that may still derail the deal. In the meantime, Mr. Trump said he intended to dip into his personal assets and remain in the casino business.

"One reason I have a lot of cash is because I'm in the condo business," Mr. Trump said. "I'm not bound to tell you how much cash I have, but I have a lot of cash and a lot of real estate."

Images: Photos: Trump Plaza Hotel and Casinos would be controlled after reorganization by Credit Suisse. Donald J. Trump, top, is trying to hold on to a 25 percent share. (Photo by NBC); (Photo by Craig Allen/Getty Images)(pg. C1); Donald J. Trump, shown in a frame from a TV ad for Visa credit cards, says he gets a lot of money for appearing in television commercials. (Photo by BBDO Worldwide)(pg. C5)

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September 8, 2004, Wednesday Late Edition - Final
Section C Page 1 Column 2 Desk: Business/Financial Desk Length:
2090 words

Correction Appended

The Midas Touch, With Spin on It

By TIMOTHY L. O'BRIEN and ERIC DASH

When Donald J. Trump kicks off the second season of his hit reality television show "The Apprentice" this Thursday evening, reality may be in short supply.

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DONALD J. TRUMP,)
)
Plaintiff,)
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vs.)
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TIMOTHY L. O'BRIEN, TIME)
WARNER BOOK GROUP INC.,)
and WARNER BOOKS INC.,)
)
Defendants.)
-----)

CONFIDENTIAL

No. CAM-L-545-06

June 26, 2008
11:07 a.m.

Deposition of ROB NISSEN, held at the
offices of Debevoise & Plimpton, 919 Third
Avenue, New York, New York, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

2	4
<p>1 2 APPEARANCES: 3 4 BROWN & CONNERY LLP 5 Attorneys for Plaintiff 6 360 Haddon Avenue 7 Westmont, New Jersey 08108 8 BY: WILLIAM M. TAMBUSSI, ESQ. 9 WILLIAM F. COOK, ESQ. 10 - and - 11 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP 12 1633 Broadway 13 New York, New York 10019-6799 14 BY: RACHEL E. LUBERT, ESQ. 15 16 DEBEVOISE & PLIMPTON LLP 17 Attorneys for Defendants 18 919 Third Avenue 19 New York, New York 10022 20 BY: ANDREW M. LEVINE, ESQ. 21 - and - 22 23 24 25</p>	<p>1 2 THE VIDEOGRAPHER: We're on the record. 3 My name is Chris Martin. I'm the videographer 4 for Veritext Court Reporting in New York City. 5 Today's date is June 26th, 2008, and the time 6 is 11:07 a.m. 7 This deposition is being held at the 8 office of Debevoise & Plimpton, 919 Third 9 Avenue, New York, New York. The caption on 10 this days is Donald J. Trump versus Timothy L. 11 O'Brien, Time Warner Book Group, Inc., and 12 Warner Books, Inc., case filed in the Superior 13 Court of New Jersey, Law Division: Camden 14 County. The case number is CAM-L-545-06, and 15 the witness today is Rob Nissen. 16 At this time will counsel please 17 introduce themselves for the record. 18 MR. TAMBUSSI: William Tambussi and 19 William Cook of Brown Connery for plaintiff 20 Donald Trump. 21 MS. LUBERT: Rachel Lubert from 22 Kasowitz, Benson, Torres & Friedman for 23 Plaintiff Donald Trump. 24 MR. MELODIA: Mark Melodia for the 25 defendants and for the witness from Reed</p>
3	5
<p>1 2 APPEARANCES (continued): 3 4 REED SMITH LLP 5 Princeton Forrestal Village 6 136 Main Street, Suite 250 7 P.O. Box 7839 8 Princeton, New Jersey 08543-7839 9 BY: MARK S. MELODIA, ESQ. 10 11 ALSO PRESENT: 12 KAREN ANDREWS, ESQ. (Hachette) 13 CHRIS MARTIN, Videographer 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 Smith, and Andrew Levine from Debevoise & 3 Plimpton, also for defendants and the witness. 4 Also with us today is Karen Andrews from the 5 Book Group, who is in-house counsel. 6 THE VIDEOGRAPHER: At this time the 7 court reporter, Laurie Collins will swear in 8 the witness. 9 ROB NISSEN, 10 called as a witness, having been duly sworn 11 by the notary public, was examined and 12 testified as follows: 13 EXAMINATION BY 14 MR. TAMBUSSI: 15 Q. Good morning, Mr. Nissen. My name is 16 Bill Tambussi, and I represent Donald Trump in an 17 action that has been filed against Timothy O'Brien 18 and some other folks that's pending. We're here 19 today to ask you some depositions about knowledge 20 that you may have about certain factual aspects of 21 that case. 22 We're in a setting here in a law 23 office. While it's somewhat semiformal, I guess, 24 not as formal as what you would be in a courtroom, 25 still everything you say is being recorded by the</p>

1 Nissen - Confidential

2 promotional maybe marketing material. I'm not
3 exactly sure. It might have been the editor
4 drafted that part of the release.

5 Q. Did anybody provide you with an outline
6 of the book at that point in time?

7 A. No.

8 Q. Did anybody provide you, for example,
9 with the contract between O'Brien -- Mr. O'Brien
10 and Warner Books?

11 A. No.

12 Q. Did you ever see the description of
13 what the book was supposed to be about that was
14 contained in the contract between Mr. O'Brien and
15 Warner Books?

16 MR. MELODIA: Objection to form.
17 Go ahead.

18 A. No.

19 Q. Did you ever see in early 2005 any
20 talking points about the book that Mr. O'Brien had
21 prepared?

22 A. I don't recall seeing them at that
23 time.

24 Q. Did you recall seeing any such
25 documents in your review of documents for your

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2 A. Yes.

3 Q. We know that Mr. O'Brien's book about
4 Donald Trump was published in October of 2005. Do
5 you recall that?

6 A. Yes.

7 Q. And Mr. Trump filed suit against
8 Mr. O'Brien in January 2006. Do you have a
9 recollection of that?

10 A. Yes.

11 Q. Using those time frames as reference
12 points, from the first quarter of 2005 until
13 publication of the book in October of 2005, can
14 you tell me what actions you took with regard to
15 the book about Donald Trump that Mr. O'Brien
16 wrote?

17 A. As previously stated, the first action
18 I would have been involved with is issuing that
19 general press release, announcement release, in
20 the early part of the year. The next step likely
21 would have been sending out galleys, advanced
22 copies, of the book in the summer, roughly July --
23 somewhere in the summer of that year. Then the
24 next step after that actually would have been
25 getting the finished book out to the media late

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2 preparation for your deposition today?

3 A. Yes.

4 Q. What do you recall seeing by way of
5 your preparation of your deposition today with
6 regard to Mr. O'Brien's talking points?

7 A. A one -- a one-page sheet that did
8 include some points, highlights of the book or
9 points in the book. There were a number of things
10 drafted, I believe, but, yeah, I just recall -- I
11 recall seeing one specifically listing some
12 talking points.

13 Q. As we sit here today, do you have any
14 recollection as to when you first saw that
15 document?

16 A. I don't, no.

17 Q. Let me see if I can establish some
18 timelines, and tell me if they comport with your
19 recollection. We know from a document produced in
20 discovery that Mr. O'Brien signed an agreement to
21 write a book about Donald Trump in or about
22 December of 2004. Okay? If you can accept that
23 for a moment. You then say that you first become
24 aware of this in early 2005? Would that be in the
25 first quarter of 2005?

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2 September/early October that year.

3 Q. Between the time that the general press
4 release was issued in early 2005 and your receipt
5 of the advanced copies in the summer of 2005, did
6 you have any or take any activities relevant to or
7 related to this book by Timothy O'Brien?

8 A. None that I recall. Typically a
9 very -- there is a lull, a period, where not much
10 happens until the galleys are available.

11 Q. Okay. Did you have any communications
12 with Mr. O'Brien between the time of the issuance
13 of the general press release in early 2005 and
14 receipt of the galleys in the summer of 2005?

15 A. I don't recall any specific
16 communications. There may have been, but I don't
17 recall specifically.

18 Q. What type of communications would you
19 have with Mr. O'Brien between the issuance of the
20 general press release in early 2005 to the --
21 between then and the time of the receipt of the
22 galleys?

23 MR. MELODIA: Objection to form.

24 Q. You can answer it.

25 A. There may have been e-mail

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December 3, 2007

THOMAS F. CONNERY, JR. (1915-2004)
HORACE G. BROWN (1902-1990)
HOWARD G. KULP, JR. (1906-1987)

^v CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

* ALSO ADMITTED IN PENNSYLVANIA
* ALSO ADMITTED IN NEW YORK
* ALSO ADMITTED IN DELAWARE
* ALSO ADMITTED IN MARYLAND

FILE NO. 06-0041

Clerk, Superior Court of New Jersey
Law Division – Civil Part
Camden County Hall of Justice, Suite 150
101 S. 5th Street
Camden, NJ 08103

BY HAND DELIVERY

Re: Trump v. O'Brien, et al.
Superior Court Of New Jersey, Law Division
Docket No. L-545-06

Dear Sir or Madam:

We represent the plaintiff in the above matter, Donald J. Trump. Please find enclosed an original and one (1) copy of the following items:

- (1) Brief in Further Support of Motion to Compel Discovery and in Opposition to Defendants' Cross-Motion to Compel Discovery;
- (2) Certificate of Service;
- (3) Reply Certification of Counsel; and
- (4) Certification of Scott Walter, Forensic Computer Analyst.

**BROWN & CONNERY
LLP**

DECEMBER 3, 2007
PAGE 2

We respectfully ask that you file the original of the above and return one (1) copy stamped "filed" in the enclosed self-addressed stamped envelope.

Please be advised that the above motion is returnable for **December 7, 2007**.


Please charge our account number 10300 (reference number 060041000) for any applicable filing fees.

Please be further advised that in compliance with the discovery protocol established between the parties, the exhibits submitted in support of this motion are submitted only to the Court.

Thank you for your generous attention.

BROWN & CONNERY LLP

By:



William F. Cook

WFC/mmb
Enclosures

cc: Honorable Michael J. Kassel, J.S.C. (by hand delivery)
Andrew J. Ceresney, Esq. (by electronic mail and regular mail)
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DONALD J. TRUMP,

Plaintiff,

vs.

**TIMOTHY O'BRIEN, TIME WARNER
BOOK GROUP INC., AND WARNER
BOOKS INC.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY

Docket No. L-545-06

**BRIEF IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY AND IN OPPOSITION
TO DEFENDANTS' CROSS-MOTION
TO COMPEL DISCOVERY**

Returnable: December 7, 2007

INTRODUCTION

In his moving brief, plaintiff Donald J. Trump ("plaintiff" or "Trump") set forth the numerous compelling reasons why defendants should be required to provide additional discovery in connection with personal computers used or maintained by defendant Timothy O'Brien ("O'Brien") while he wrote, marketed, or otherwise discussed TrumpNation: The Art of Being the Donald ("the Book") -- particularly, O'Brien's deposition testimony that suggested he would destroy evidence he considered

damaging in a defamation case, and his testimony that when he searched his personal computer for emails responsive to plaintiff's discovery requests, he found none. In response, defendants not only fail to offer any justifiable reason why further discovery of O'Brien's personal computers should not be had, they, in fact, provide additional justification for the relief plaintiff seeks. Specifically, defendants now admit that O'Brien disposed of the first and second computers that he used in connection with the Book, disposed of the second computer after litigation had begun and after he had been served with discovery requests, and he purposefully ran a delete utility on the second computer before he disposed of it, in an attempt to remove all information from the hard drive. Plaintiff's motion clearly should be granted, and a forensic computer analyst should be allowed to review all three of the personal computers O'Brien used in connection with the Book to determine whether any deleted information can be retrieved. In the alternative, if defendants cannot or do not produce all three of O'Brien's personal computers, Trump should be entitled to an adverse inference at trial that the computer(s) contained information that would be damaging to O'Brien in this case.

In a transparent attempt to deflect attention from O'Brien's shocking behavior, defendants now cross-move for relief from plaintiff's purported discovery deficiencies. Defendants' claims have no merit, as plaintiff fully complied with the Order that is the subject of defendants' cross-motion in aid of litigants' rights, and he appropriately responded to the interrogatories that are the subject of defendants' cross-motion to compel.

For these reasons, plaintiff respectfully requests that his motion be granted and defendants' cross-motion be denied.¹

ARGUMENT

I. Plaintiff's Motion to Compel a Forensic Examination of O'Brien's Personal Computers Should Be Granted

A. Plaintiff Has Complied With R. 1:6-2

As a preliminary matter, defendants contend that plaintiff failed to comply with R. 1:6-2 prior to the filing of the instant motion. Defendants' claim is without merit. As plaintiff's counsel certified, a good faith effort was made to resolve the underlying discovery dispute on multiple occasions.

First, plaintiff's counsel met and conferred with defendants' counsel at O'Brien's deposition concerning whether defendants had fully produced information from O'Brien's personal computers, including emails, letters, and other documents. (See Deposition of Timothy O'Brien ("O'Brien Dep."), at 493:22-502:8.) Plaintiff's counsel asked O'Brien directly whether he or his attorneys decided whether any given information from O'Brien's computers was discoverable. (See Tambussi Certification ("Tambussi Cert."), at ¶¶ 26-29.) Plaintiff's counsel permitted O'Brien to confer with his counsel for six minutes during the pending question. During the deposition, plaintiff's counsel also asked directly for O'Brien to produce his personal computers for forensic analysis. Defendants clearly were in a position at O'Brien's deposition to provide a simple "yes" or "no" answer as to whether they would provide the requested discovery, but they did not. Plaintiff's counsel's request was not so complex or academic as to

¹ Plaintiff notes that defendants' opposition was not filed in a timely manner pursuant to R. 1:6-3.

require several weeks following O'Brien's deposition for defendants to answer "yes" or "no," but that is what happened. (See O'Brien Dep., at 493-22 to 502-8.)² Notwithstanding the conference on this issue at O'Brien's deposition, plaintiff's counsel followed up on November 6, 2007 in a good faith effort to make an additional attempt to resolve the issues concerning O'Brien's personal computers, as well as the joint defense agreement. (See Tambussi Cert., at ¶¶ 26-29.) Given that defendants had been on notice of plaintiff's request for such information since June 8, 2006, given that defendants were on notice of plaintiff's renewed request for such information on October 16, 2007, and given plaintiff's counsel's concern that with more time, additional information from O'Brien's computers might be deleted, it was not unreasonable for plaintiff to demand production of all of O'Brien's personal computers, databases, or other electronic storage devices by the close of business on November 12, 2007. (See Plaintiff's Exhibit C, Correspondence of November 6, 2007 from Maria Gorecki, Esq. to Andrew Ceresney, Esq., at 1-3.) Defendants were advised in that correspondence that if plaintiff did not receive a satisfactory response by November 12, 2007, plaintiff would need to seek the Court's assistance. (Id. at 3.) In a last-minute email sent on November 12, 2007, defendants advised that they were still in the process of preparing a response to plaintiff's November 6, 2007 letter.³

² Defendants suggest that plaintiff's counsel failed to comply with R. 1:6-2 because all counsel could have conferred regarding O'Brien's personal computers and the joint defense agreement while sitting together in a deposition on November 13-14, 2007. Defendants' argument is not persuasive, as all counsel had already conferred on these issues during O'Brien's deposition on October 16, 2007.

³ It is not plaintiff's concern that defendants were in the midst of "preparing for three days of depositions of plaintiff's accountants" in the period between plaintiff's letter of November 6, 2007 and plaintiff's requested due date of November 12, 2007 where

In light of the circumstances, defendants' response was unacceptable. Contrary to defendants' suggestion, nothing in R. 1:6-2 requires a party to wait weeks on end to find out from an adversary whether certain requests will be accommodated. Moreover, the present discovery timetable in this matter does not lend defendants the luxury of long periods of time to provide simple "yes" or "no" answers.

In any case, as defendants' opposition brief makes clear, the parties cannot resolve the issue on their own -- plaintiff rightfully believes he is entitled to the production of the computers to a forensic computer analyst, and defendants continue to resist such production.

Plaintiff has fully complied with R. 1:6-2, and defendants' arguments to the contrary should be rejected in their entirety.⁴

B. Defendants' Failure to Produce Full Discovery from O'Brien's Personal Computers Is Improper

In their brief, defendants identify three separate personal computers used by O'Brien during the periods when he was drafting, marketing, and engaging in post-publication correspondence concerning the Book. (Def.'s Br. at 2-3.) By way of summary, defendants represent as follows:

- In the summer or fall of 2005, O'Brien "discarded" a personal computer that "he used in the course of working on the Book."⁵ (Def. Br., at 2-3.)

defendants had long before received plaintiff's clear requests for discovery and the parties had conferred with respect to such discovery during O'Brien's deposition. (See Def. Br., at 2.)

⁴ With respect to defendants' argument concerning outstanding discovery obligations, the enclosed Certification of Counsel addressing defendants' cross-motion to compel contains plaintiff's counsel certification that plaintiff is not in default of any discovery obligations.

⁵ Defendants do not say where O'Brien "discarded" the first personal computer used in connection with the Book.

- After O'Brien "discarded" the first personal computer in the summer or fall of 2005, O'Brien began using a new personal computer. (Def. Br., at 3, n. 1.) This second personal computer was used until approximately April 2006. O'Brien continued to possess the second personal computer until the summer of 2007, at which time he gave the computer to a family member for use, only after running a delete utility on it in an attempt to scour it of information. (Id.)
- In or about April 2006, O'Brien began using a new personal computer. (Def. Br., at 3, n. 1.) This third computer is O'Brien's current personal computer. (Id.)

Defendants suggest that they cannot fathom why a forensic evaluation of O'Brien's personal computers would be needed. (See Def. Br., at 6-7.)

Defendants' arguments are overly simplistic, short-sighted, and inconsistent. As an initial matter, defendants -- who, until their opposition brief, did not advise of the existence of three separate personal computers used by O'Brien since the beginning of 2005 -- present incomplete or contradictory information as to O'Brien's use and operation of each computer. First, defendants provide no information about how the first personal computer was "discarded." (Def. Br., at 6-7.) Even if the first computer is no longer in O'Brien's possession, custody, or control, defendants must explain where O'Brien discarded the computer so that plaintiff can make an effort to retrieve it.

Second, defendants present conflicting explanations as to the scope, nature, and extent of O'Brien's use of the second and third personal computers. On November 16, 2007, defendants advised by letter that after O'Brien obtained the second personal computer, O'Brien "moved any and all files relating to Mr. Trump or TrumpNation from his old personal computer to his work computer at The New York Times[.]" (See Def. Ex. C, at 2.) Defendants further advise that O'Brien "did not do any additional work on

the Book on any personal computer he subsequently possessed.”⁶ Yet in their opposition, defendants advise that O’Brien “searched both his second and third personal computers when collecting documents for counsel’s review[.]” (See Def. Br., at 3, n. 1.) It is completely unclear why plaintiff felt compelled to search his second and third personal computers when collecting documents in response to plaintiff’s requests if O’Brien “did not do any additional work on the Book on any personal computer he subsequently possessed.”

Indeed, defendants’ claims concerning the lack of any evidence on the second or third personal computers are belied by their own representations. Specifically, defendants advise that at the time O’Brien performed his search of his personal computers for this litigation, O’Brien could not search his first personal computer because it was not in his possession. (Def. Br., at 3, n. 1.) Yet defendants also claim that O’Brien “provided all potentially responsive documents to counsel” at this time. (*Id.*) If O’Brien did not search his first personal computer at all when he collected documents, but O’Brien produced documents from his personal computers, then the only documents O’Brien would have produced from his personal computers would have been from his second and/or third personal computers. This completely conflicts with defendants’ representation that O’Brien “did not do any additional work on the Book on any personal computer he subsequently possessed.” (See Def. Ex. C, at 2.) These rank inconsistencies leave plaintiff in a state of total confusion as to whether all discovery has been produced from O’Brien’s personal computers.

⁶ In this letter, defendants glossed over the fact that O’Brien possessed a third personal computer during the relevant time period.

Third, defendants fail to appreciate the scope of plaintiff's document request concerning the production of electronically stored information. As discussed at length in the Tambussi Certification, plaintiff's document requests defined the term "document" to include, among other things "computer printouts, computer disks, computer tapes, computer data, computer memory, e-mails . . . , discs and any other data compilations of any kind or in any other form capable of being read, heard or otherwise understood." (See Tambussi Cert., ¶ 3.) The request is not limited, as defendants would have it, to accessible work files or saved emails. (See Def. Br., at 6-7.) Nor is the request limited to files containing O'Brien's actual work on the Book (see Def. Ex. C, at 2), but includes any correspondence or other information referring to the Book, its contents, or promotional strategies. (See Tambussi Cert., ¶ 4 (citing Plaintiff's Requests Nos. 1, 4-7, 23, 35, 53).)

A professional imaging of O'Brien's personal computer hard drives is required, and plaintiff's requests in this regard are not, as defendants claim, "devoid of legal support." (See Def. Br., at 6.) Indeed, the discoverability of computer metadata is a prominent issue that has been addressed by numerous state and federal courts in recent years. For example, in Simon Property Group L.P. v. mySimon, Inc., 194 F.R.D. 639, 640-41 (S.D. Ind. 2000), the District Court for the Southern District of Indiana granted a plaintiff's motion to compel the production of computers for the purpose of obtaining deleted files. To implement that ruling, the District Court ordered the same exact remedy plaintiff requests plaintiff here, which the District Court described as follows:

Based on the factors outlined in Rule 26(b)(2)(iii), and in light of the sparse record on the issue, the court concludes that plaintiff is entitled to attempt (at its own expense) the

task of recovering deleted computer files from computers used by the four named individuals, whether at home or at work. Plaintiff has shown in its motion papers some troubling discrepancies with respect to defendant's document production.

The court believes that the basic structure adopted by the court in Playboy Enterprises, Inc. v. Welles, 60 F. Supp.2d 1050, 1054-55 (S.D.Cal.1999), offers the best approach here, although the court is not adopting at this time all aspects of that court's protocol.

In essence, plaintiff shall select and pay an expert who will inspect the computers in question to create a "mirror image" or "snapshot" of the hard drives. *** Defendant shall have a chance to object to the selection of the expert. The court will appoint the expert to carry out the inspection and copying as an officer of the court.

The expert shall then use his or her expertise to recover from the "mirror image" of the hard drive of each computer, and to provide in a reasonably convenient form to defendant's counsel, all available word-processing documents, electronic mail messages, powerpoint or similar presentations, spreadsheets, and similar files. The court intends that files making up operating systems and higher level programs in the computer not be duplicated, and that the copying be limited to the types of files reasonably likely to contain material potentially relevant to this case. Cf. Adobe Systems, Inc. v. South Sun Products, Inc., 187 F.R.D. 636, 642-43 (S.D.Cal.1999) (noting that Microsoft Office 97 occupies more than 200 megabytes on hard drive of a personal computer). To the extent possible, the expert shall also provide to defendant's counsel: (a) the available information showing when any recovered "deleted" file was deleted, and (b) the available information about the deletion and contents of any deleted file that cannot be recovered.

After receiving these records from the expert, defendant's counsel shall then have to review these records for privilege and responsiveness to plaintiff's discovery

requests, and shall then supplement defendant's responses to discovery requests, as appropriate.

The expert shall sign the protective order in the case and shall retain until the end of this litigation the "mirror image" copies of the hard drives and a copy of all files provided to defendant's counsel. At the end of this litigation, the expert shall then destroy the records and confirm such destruction to the satisfaction of defendant. The expert shall not disclose the contents of any files or documents to plaintiff or its counsel or other persons. Because the expert will serve as an officer of the court, disclosure of a communication to the expert shall not be deemed a waiver of the attorney-client privilege or any other privilege. The expert may designate assistants to help in this project. Each assistant shall sign the protective order in this case and shall be subject to all provisions applicable to the expert.

The expert shall file a report with the court setting forth the scope of the work performed and describing in general terms (but without disclosing the contents) the volume and types of records provided to defendant's counsel. See McGuire v. Acufex Microsurgical, Inc., 175 F.R.D. 149, 157 n. 12 (D. Mass. 1997) (noting that printouts of only the filenames for two years totaled 478 pages in length). After the expert has been selected, all communications between the expert and plaintiff's counsel shall take place either in the presence of defendant's counsel or through written or electronic communication with a copy to defendant's counsel.

Id. at 641-42.

Based on this procedure, the District Court granted plaintiff's request for discovery. Of additional significance, the District Court found it particularly appropriate to order the discovery of such information in light of plaintiff's request for information concerning bad faith by the defendants. Id.

Simon Property Group shares many strong similarities with the instant case. First, plaintiff seeks evidence of actual malice – a form of bad faith – by O'Brien. Plaintiff has

made a preliminary showing that O'Brien's personal computers and/or accounts at one time contained such evidence, as shown by virtue of the Dillon email discussed in the Tambussi Certification. (See Tambussi Cert., ¶¶ 19-21 (referring to Dillon's discussion of how O'Brien's promotional efforts were called "a war" in which "we need to annihilate the enemy, not just irritate him.") Second, plaintiff here, like the plaintiff in Simon Property Group, has "shown in its motion papers some troubling discrepancies with respect to defendant's document production." Simon Property Group, 194 F.R.D. at 641-42. As noted above, defendants represent that O'Brien "did not do any additional work on the Book on any personal computer he subsequently possessed" (see Def. Ex. C, at 2), yet claim that O'Brien provided documents to counsel based on a search of some personal computer that clearly could not have been his first computer, as that had been "discarded." (Def. Br., at 2-3; Def. Br., at 3, n. 1.) It is certainly a troubling discrepancy where defendants claim there is no information from the second and third personal computers, yet the only documents that could have been produced were from those computers, given O'Brien's dispossession of the first computer months before. These troubling discrepancies are compounded by defendants' unduly narrow limitation of plaintiff's document request solely to "additional work on the Book" (see Def. Ex. C, at 2), as well as the lack of any evidence that O'Brien himself possesses the professional qualifications to engage in a forensic analysis of his computer.

Other authorities have recognized the need for the production of computer metadata in appropriate circumstances. In Playboy Enterprises, Inc. v. Welles, 60 F. Supp. 2d 1050 (S.D. Cal. 1999), cited in Simon Property Group, the Southern District of California ruled that a plaintiff was entitled – through the procedure outlined above – to

review information stored on a defendant's hard drive, particularly deleted emails. The Court ordered the production of such information over defendant's objection that her business would "suffer financial losses due to the approximate four to eight hour shutdown required to recover information from the hard drive." Id. at 1054. Clearly, there is no claim that O'Brien would suffer such financial hardship here, but even if he did, such a hardship would not preclude the requested discovery. see also Antioch Co. v. Scrapbook Borders, Inc., 210 F.R.D. 645 (D. Minn. 2002) (ordering selection of a neutral computer forensic expert to create "mirror image" of defendants' computer equipment); Zubulake v. UBS Warburg LLC, 217 F.R.D. 309 (S.D.N.Y. 2003) (forensic evaluation would be necessary following an appropriate distribution of costs); Lipco Elec. Corp. v. ASG Consulting Corp., 4 Misc. 3d 1019(A), 798 N.Y.S. 2d 345 (N.Y. Sup. 2004) (forensic evaluation would be necessary following an appropriate distribution of costs).⁷

In further support of plaintiff's position, plaintiff submits the Certification of Scott Walter, a computer forensic analyst with the firm of Miles Computer Technologies in Moorestown, New Jersey. Mr. Walter has extensive expertise in electronic discovery, computer forensics, data recovery, court testimony, corporate internal investigations and preventative services. (See Walter Certification, ¶ 1.) Mr. Walter's work has involved sensitive information stored on digital media, including hard drives, cell phones, digital cameras, personal desk assistants, CDs, DVDs, flash cards, or tapes. (Id.) As noted by Mr. Walter, a forensic evaluation of O'Brien's personal computers could very easily yield

⁷ There can be no reasonable dispute that such authority would be appropriate persuasive authority in New Jersey given New Jersey's preference for broad pretrial discovery. See Payton v. N.J. Turnpike Auth., 148 N.J. 524, 535 (1997); Abtrax Pharmacs., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 512 (1995).

discoverable information related to emails, deleted emails, documents, and/or files once stored on such computers. (See Walter Certification, ¶ 5.) This would be accomplished through a mirror imaging of the hard drives of O'Brien's personal computers. (See Walter Certification, ¶ 4.) This information "would not otherwise be found by a mere search of the visible domain of an operating system." (See Walter Certification, ¶ 5.) Defendants have readily admitted that no such forensic expert ever evaluated O'Brien's personal computers for such information. The Walter Certification further supports plaintiff's application for a forensic evaluation of O'Brien's personal computers here.

For all of these reasons, plaintiff respectfully renews his request that O'Brien be required, as in Simon Property Group, to submit his personal computers to a forensic expert for a mirror imaging of his hard drives.

C. O'Brien's Failure to Maintain Relevant Information Warrants an Inference of Spoliation

In their opposition, defendants represent that O'Brien's first personal computer is no longer in his possession, custody, or control. (See Def. Br., at 6.) Had O'Brien maintained that computer, plaintiff respectfully submits that plaintiff would have been entitled, on the basis of document requests made in this matter as well as the underlying case law, to seek a forensic evaluation of it. At this time, it is unclear whether O'Brien's first personal computer is capable of retrieval directly by O'Brien or by plaintiff through appropriate legal process. However, to the extent that O'Brien's first personal computer is now completely unavailable, plaintiff respectfully submits that O'Brien's failure to maintain the computer warrants an adverse inference of spoliation.

“Spoliation typically refers to the destruction or concealment of evidence by one party to impede the ability of another party to litigate a case.” Jerista v. Murray, 185 N.J. 175, 201-03 (N.J. 2005) (citing Rosenblit v. Zimmerman, 166 N.J. 391, 400-01 (2001)). In the civil context, a finding of spoliation can result in “an adverse trial inference against the party that caused the loss of evidence.” Id. at 201-202 (citing Rosenblit, supra, 166 N.J. at 401-06). In Jerista, the New Jersey Supreme Court described the history of the adverse inference charge for spoliation as follows:

“Since the seventeenth century, courts have followed the rule ‘omnia praesumuntur contra spoliatorem,’ which means ‘all things are presumed against the destroyer.’” [Rosenblit, 166 N.J. at 401, 766 A.2d 749]. The spoliation inference permits the jury to infer that the evidence destroyed or concealed would not have been favorable to the spoliator. Id. at 401-02, 766 A.2d 749 (citing cases in which evidence was intentionally or deliberately destroyed). The inference serves the purpose “of evening the playing field where evidence has been hidden or destroyed.” Id. at 401, 766 A.2d 749. Notably, a number of jurisdictions have crafted remedies in cases in which parties lost or destroyed critical trial evidence, even when the loss was not willful. See, e.g., Reilly v. Natwest Mkts. Group Inc., 181 F.3d 253, 267-68 (2d Cir. 1999) (holding that “[t]rial judges should have the leeway to tailor sanctions to insure that spoliators do not benefit from their wrongdoing” and “that a finding of bad faith or intentional misconduct is not a sine qua non to sanctioning a spoliator with an adverse inference instruction”); cert. denied, 528 U.S. 1119, 120 S.Ct. 940, 145 L.Ed.2d 818 (2000); Sweet v. Sisters of Providence in Wash., 895 P.2d 484, 490-92 (Alaska 1995) (holding that defendant’s negligent or intentional spoliation of evidence relevant to plaintiff’s medical malpractice claim shifted burden of proof of legal causation and negligence away from plaintiffs); Velasco v. Commercial Bldg. Maint. Co., 169 Cal.App.3d 874, 215 Cal.Rptr. 504, 506 (1985) (concluding “that a cause of action may be stated for negligent destruction of evidence needed for prospective civil litigation”); Pub. Health Trust v. Valcin, 507 So.2d 596, 599-601 (Fla.1987) (adopting

rebuttable presumption of negligence where defendant health care provider could not produce key records in malpractice action).

Jerista, 185 N.J. at 203 (emphasis added).

Based on this understanding, the Jerista Court determined that “the jury should be instructed that it may infer that the missing evidence would have been helpful to plaintiffs’ case and inured to defendant’s detriment” as long as plaintiff could “make a threshold showing that defendant’s recklessness caused the loss or destruction of relevant evidence” in the underlying suit in a malpractice case. Id. In other words, an adverse inference was warranted based on a finding of defendant’s recklessness, not necessarily a finding that the destruction of evidence was willful, wanton, or egregious.

Assuming O’Brien’s first personal computer is no longer available, plaintiff respectfully submits that his failure to maintain that computer was patently reckless. The discovery heretofore adduced already establishes that from the very inception of defendants’ efforts to create, publish, and promote the Book, defendants sought, as a clear and calculated marketing strategy, to make Trump, in O’Brien’s own words, “go ballistic.” (See Exhibit P-1, Email Correspondence Between O’Brien and Arthur Sulzberger, September 6, 2005.) O’Brien expressed concerns to his agent in July 2005 that he was “concerned that as soon as Donald sees the book in its entirety, he will go ballistic,” (see Exhibit P-2, Email Correspondence Between Andrew Blauner, Rick Wolff, Emi Battaglia, and O’Brien, July 13-14, 2005), and that defendants should decide whether “we want to save that particular PR pop for the fall[.]” (Id.) O’Brien was intimately involved in the development of a “game plan” whereby any exception taken by plaintiff to O’Brien’s work would “only help excite the masses[.]” (Id.) Defendants

stuck to this game plan to and through the publication of the Book, relishing shortly after publication how “[a]t some point we’re going to reach a tipping point on this book . . . and Trump is going to either do something or say something that will add jet fuel to this book.” (See Exhibit P-3, Email Correspondence Between Wolff and O’Brien, October 31, 2005, at 1.)

Where defendants clearly had a quasi-militant game plan to force Trump “to do something or say something” to induce an international frenzy for the Book, it was completely reckless for O’Brien not to expect that Trump could take some form of legal action. Plaintiff respectfully submits that the discovery already recovered clearly and unequivocally meets the recklessness threshold necessary to warrant an adverse inference of actual malice stemming from such spoliation, particularly where defendants admit that O’Brien had files and other data relative to his malicious defamatory campaign on that personal computer prior to the acquisition of his second personal computer. (See Def. Br. at 7.) Such an inference is particularly compelled given O’Brien’s own deposition testimony, under oath, that if he had been in possession of evidence that would be damaging to him in a lawsuit, he would have destroyed that evidence. (See Tambussi Cert., ¶ 19 (citing O’Brien Dep. 576:23-577:10).

An adverse inference also is warranted to the extent information cannot be retrieved from that computer. Defendants admit that O’Brien did not dispose of that computer until after litigation was commenced, and even after plaintiff served and O’Brien answered discovery requests. Knowing full well that plaintiff was seeking information from O’Brien’s personal computers, and that plaintiff could supplement his requests, O’Brien nevertheless gave his computer away, after first running a utility that

purposefully deleted O'Brien's information from the computer. We assume that O'Brien's counsel told him early in this litigation not to get rid of evidence or potential evidence, and that O'Brien's ignored this instruction. We might also assume that O'Brien's wife, a litigator at Sidley Austin who clerked for the Honorable Walter K. Stapleton of the United States Court of Appeals for the Third Circuit and the Honorable Joseph E. Irenas of the United States District Court for the District of New Jersey, told him not to destroy evidence, and that he ignored those instructions, too.

For these reasons, plaintiff respectfully requests that if O'Brien does not produce the three personal computers and databases or other electronic storage devices for an independent forensic imaging pursuant to Simon Property Group and similar authorities, and if the deleted information cannot be retrieved, plaintiff be entitled to an adverse inference for spoliation.⁸

II. Defendants' Cross-Motion Is Baseless and Should Be Denied

Defendants' cross-motion has two parts: they cross-move in aid of litigants' rights, and they cross-move to compel. Both parts should be denied. First, defendants are not entitled to the order they seek in aid of litigants' rights because Trump complied with the July 6, 2007 Order of the Honorable Irvin J. Snyder (the "July 6 Order"), and responded fully to Interrogatory Nos. 4, 10, 17, 20, 26, 35, and 38 from defendants' first set of interrogatories to plaintiff.⁹ Second, defendants are not entitled to an order compelling discovery because Trump has responded appropriately to defendants' second

⁸ Given defendants' production of information related to joint defense agreements, cost-sharing agreements or common interest agreements concerning this litigation, plaintiff shall withdraw his request for such information.

⁹ Defendants concede that Trump complied fully with the July 6 Order as it pertains to Interrogatory Nos. 10, 17, 26, 35, and 38.

set of interrogatories. It is obvious that defendants have manufactured these discovery disputes in an attempt to distract the Court from the premise of plaintiff's motion to compel -- O'Brien's shocking testimony during deposition that he would destroy evidence that he considered damaging -- and from the other shocking admission defendants had to make in their opposition brief (although they tried to bury it in a footnote) -- that the two personal computers O'Brien used in connection with writing the Book and before the Book was published (i.e., his first and second personal computers) no longer are in O'Brien's possession, custody, or control, and that, in fact, O'Brien disposed of one of the computers after litigation began and after document requests were served on him, and purposefully ran a "delete utility" to delete information from that computer before he disposed of it by giving it to a family member.

A. Defendants' Cross-Motion in Aid of Litigants' Rights Should Be Denied

Defendants argue that Trump has violated the July 6 Order by not responding more fully to Interrogatory Nos. 4 and 20 from defendants' first set of interrogatories. In fact, and as shown below, Trump did respond fully to Interrogatory Nos. 4 and 20.

1. Interrogatory No. 4

Interrogatory No. 4 from defendants' first set of interrogatories requests as follows:

Set forth the complete factual basis for the claim contained in paragraph 3 of the Complaint that "the value of Trump's brand name alone is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value," specify any alternative valuations and responses thereto, and identify and attach all documents relevant thereto,

including but not limited to any financial statements (audited, unaudited, or compilations) or other documents that assign a particular value to the Trump brand name.

On October 20, 2006, Trump responded by objecting to the interrogatory on several grounds and stating subject to the objections that "Trump will offer the testimony of an expert witness or witnesses that the value of the 'Trump' brand name is in the hundreds of millions, if not billions, of dollars."

Unsatisfied with Trump's response, defendants moved to compel a more specific response and, on July 6, 2007, the Court ordered Trump to respond fully to the interrogatory.

On July 20, 2007, Trump complied with the Court's order and supplemented his response by noting his objections and responding, subject to and without waiving the objections, as follows:

The factual bases for the allegation contained in paragraph 3 of the Complaint that "the value of Trump's brand name alone is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value" include, among other things, the fact that (i) Trump has entered into licensing agreements, and has been asked to enter into licensing agreements, for the use of the "Trump" brand name in connection with real estate, merchandise and other ventures, for millions of dollars; (ii) the "Trump" brand name is one of the most recognizable brand names in the world; and (iii) the "Trump" brand name has been used in connection with some of the country's most well-known and admired buildings, golf courses and casinos, best-selling books and one of the most popular television programs.

Trump has never conducted a valuation of the "Trump" brand name, and is not aware of any "alternative valuations" of the "Trump" brand name. Trump intends to have an expert conduct a valuation of the "Trump" brand name for presentation at trial. At the appropriate time during the expert discovery phase, Trump will disclose

such information and make expert disclosures as required by the Court's rules.

It is clear that Trump complied with the July 6 Order by fully responding to Interrogatory No. 4. He stated that he has never conducted a valuation of the "Trump" brand name; that to establish at trial the value of the "Trump" brand name, he will rely on the testimony of an expert retained for this litigation for that purpose; and that he will provide the expert disclosures as required by the Court.

Defendants take issue with Trump's response in three respects. First, they claim that Trump does no more in his supplemental response than he did in his initial response -- i.e., state that expert disclosures will be forthcoming. (Defs.' Br. at 13.) Defendants misrepresent what Trump has done. In fact, in his supplemental response, Trump did far more than state that he will rely on an expert at trial to establish the value of his brand; he made it clear that the reason why he will rely on expert testimony to establish the value of his brand name is because he has never conducted a valuation of the "Trump" brand name and is not aware of any "alternative valuations" of it.

Second, defendants claim that Trump has violated the July 6 Order by not specifically stating at this time what documents Trump's branding expert will rely on. (Defs.' Br. at 13.) Defendants' claim requires an untenable stretch of the July 6 Order and the Court Rules for expert disclosures, neither of which requires such expert disclosures at this stage.

Third, defendants claim that Trump has violated the July 6 Order by not identifying "any damage to that brand name." (Defs.' Br. at 13.) If defendants were only to read Interrogatory No. 4, it would be obvious that they did not ask for information

about damage to the "Trump" brand name in Interrogatory No. 4, and the Court's July 6 Order, accordingly, does not compel such information in response to Interrogatory No. 4.

2. Interrogatory No. 20

Interrogatory No. 20 from Defendants' First Set of Interrogatories asked Trump the following:

To the present, set forth the nature and amount of, and facts and data supporting each and every claim of damages in this action, including a description of: (a) the method used to calculate the total amount of such damages; (b) the source of all facts and data supporting such damages; (c) all persons involved in making such calculations of damages; and (d) all persons with knowledge of such damages or any data used to calculate such damages. Identify and attach hereto copies of all documents on which you relied in calculating such damages.

On October 20, 2006, Trump responded by objecting that the interrogatory was premature, but nevertheless representing that he intended to claim damages for his loss of business opportunities as a result of defendants' defamatory statements, the injury to his reputation sustained as a result of defendants' defamatory statements, and the injury sustained by the Trump brand name as a result of the defendants' defamatory statements.

Not satisfied with Trump's response, defendants moved to compel a more specific response and, on July 6, 2007, the Court ordered Trump to respond fully to Interrogatory No. 20. Defendants claim that "notwithstanding the Order, plaintiff provided no supplemental information in his July 20, 2007 response." (Defs.' Br. at 13.) In fact, on July 20, 2007, in full compliance with the Court's July 6 Order, Trump supplemented his response as follows:

Trump objects to this interrogatory on the ground that it is premature, as Trump's damages, in part, will be the subject of expert testimony at trial, and the expert phase of discovery has neither begun nor been scheduled. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

The nature of Trump's damages include, but are not limited to, the following:

(1) Trump's loss of business opportunities as a result of defendants' defamatory statements about Trump in October 2005. Trump has already identified these lost business opportunities to defendants. Trump is providing additional information relating to these lost business opportunities on Monday, July 23, 2007 in response to Defendants' Second Set of Interrogatories Directed to Plaintiff.

(2) The injury to Trump's reputation sustained as a result of defendants' defamatory statements. Trump is not required to present evidence that assigns an actual dollar value to the injury to his reputation.

As promised in his supplemental response to Interrogatory No. 20, Trump responded to defendants' second set of interrogatories and disclosed specific information about the lost business opportunities for which he seeks damages, including the names of the persons of whom he is aware were involved in the negotiations. In fact, defendants have scheduled the deposition of two of those individuals -- Howard Lorber of Prudential Douglas Elliman and Tevfik Arif of Bayrock Group -- for January 9 and January 11, 2008, respectively.

Thus, defendants' claim that plaintiff has violated the Court's July 6, 2007 Order because he "provided no supplemental information" (Defts. Br. at 13), rests on a blatant misrepresentation of the facts. Trump provided specific information about his lost business opportunities, correctly stated that he is not required to present evidence

assigning an actual dollar value to the injury to his reputation, and withdrew his claim for damages resulting from injury sustained by the Trump brand name as a result of the defendants' defamatory statements.¹⁰

B. Defendants' Cross-Motion to Compel Discovery Should Be Denied

The second part of defendants' cross-motion -- to compel supplemental responses to Interrogatory Nos. 1-8; 9; 11; and 12, 14, and 15 from defendants' second set of interrogatories -- likewise is without merit, as Trump responded appropriately to all of these interrogatories.

1. Interrogatory Nos. 1-8

With Interrogatory Nos. 1-8, defendants sought additional information about the business opportunities that Trump lost as a direct result of defendants' publication of false and defamatory statements about him. Specifically, as to each lost opportunity, defendants asked for: (a) each person involved in relevant negotiations or other communications relating to the transaction; (b) the specific location of the proposed project; (c) the nature of plaintiff's participation or interest in the proposed transaction; (d) the amount of money plaintiff claims he lost and the full basis for calculating such loss; (e) the steps taken by plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction; (f) any involvement or influence of any governmental entity or official in the transaction; (g) any government approvals or permits that plaintiff obtained or attempted to obtain; (h) the current status of the

¹⁰ Although Trump has withdrawn his claim for damages resulting from injury to his brand, Trump will offer at trial the testimony of a branding expert about the value of Trump's brand name as of October 2005, which is relevant to the issue of Trump's net worth at the time the Book was published.

transaction; (i) the full basis for plaintiff's belief that defendants' defamatory statements affected, impaired, interfered with, or caused the loss of the transaction; (j) the decision-maker who plaintiff believes made a decision relating to the transaction in part because of defendants' defamatory statements, the specific defamatory statements that the person relied upon, and the nature of the person's reliance; (k) all other factors of which plaintiff is aware, not relating to the defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction; and (l) all communications relating to the negotiation, discussion, or termination of the transaction.

Appropriately, Trump objected to these interrogatories on the grounds that they are overly broad, unduly burdensome, oppressive, vague and ambiguous, and seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, Trump provided specific information in response to the interrogatories. In his 22-page response to Interrogatory Nos. 1-8, Trump identified the person who engaged in negotiations on his behalf with respect to each of the projects -- which was either Tevfik Arif, Jody Kriss, or Constantine Yudin of Bayrock Group or Howard Lorber of Prudential Douglas Elliman, not Trump or any Trump Organization employee; the basis for his belief that defendants' defamatory statements affected, impaired, interfered with, or caused the loss of the transaction; and the nature of Trump's participation or interest in the property. In addition, Trump explained that for many of these lost business opportunities, the project was cancelled before an agreement could be reached on some of the elements about which defendants asked.

Trump clearly has endeavored to answer defendants' interrogatories. To the extent defendants insist they need additional details about the lost business opportunities,

they will soon have the opportunity to depose persons from Bayrock Group and Prudential Douglas Elliman who were involved in the negotiation of the deals on behalf of Trump.¹¹

2. Interrogatory No. 9

Interrogatory No. 9 sought detailed information about all offers or proposals to license the Trump name for any purpose, including (a) the date and specific terms of each offer or proposal; (b) each person involved in relevant negotiation or other communications relating to such an offer or proposal; (c) the role of each such person; (d) all communications relating to any such offer or proposal, including but not limited to negotiations of any terms; (e) whether the offer or proposal resulted in a licensing agreement; (f) for each offer or proposal that did not result in a licensing agreement, all factors as to which plaintiff is aware as to why not; (g) for each offer or proposal that did result in a licensing agreement, the date and specific terms of each such agreement; (h) the current status of all projects planned or currently in development pursuant to a licensing agreement; (i) the date and sum of each payment from the licensee to plaintiff or any Trump-related entity, as well as the date and sum of each payment by plaintiff or any Trump-related entity to the licensee; and (j) all relevant documents.

Trump appropriately objected to this interrogatory on the grounds that it is overly broad, unduly burdensome, oppressive, and seeks information neither relevant nor

¹¹ For example, defendants insist that Trump identify the "developers, investors and related persons" with whom Bayrock Group negotiated concerning a project to develop a Trump International Hotel and Tower in Istanbul, Turkey. (Defs.' Br. at 16.) Trump does not have that information. However, he explained in his answer to Interrogatory No. 5 that Tevfik Arif of Bayrock Group engaged in the negotiations on Trump's behalf, and defendants can ask Mr. Arif about that when they depose him in early January.

reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, Trump referred defendants to the license agreements previously produced, as well as the license agreements to be produced to defendants.

Defendants argue that this detailed information about all offers or proposals to license the Trump name for any purpose "is potentially relevant to plaintiff's net worth and finances, as well as to plaintiff's claim that defendants' allegedly defamatory statements damaged his brand and reputation." (Defs.' Br. at 18-19.) First, Trump has produced the relevant license agreements to defendants. Second, to the extent Trump derived income from license agreements in 2005, that information is reflected in Trump's 2005 personal tax return, which he produced to defendants. Third, defendants' claim that such information is potentially relevant to Trump's claim for damage to his brand utterly fails to persuade because, as indicated above, Trump withdrew his claim for damages based on injury to his brand. Finally, to the extent such information is potentially relevant to Trump's net worth or damage to his reputation, defendants do not need information as detailed as they requested, which it would be onerous for Trump to provide because Trump has received innumerable requests to license his name over the years.

For the foregoing reasons, Trump's response to Interrogatory No. 9 was entirely appropriate.

3. Interrogatory No. 11

Interrogatory No. 11 concerned Bayrock Group. Specifically, Interrogatory No. 11 called for: (a) a description of the nature of the relationship between Trump or any Trump-related entity and Bayrock Group or any related entity; (b) all licensing or other

agreements between Trump or any Trump-related entity and Bayrock Group or any related entity; (c) the current status of all projects planned or currently in development pursuant to such agreements; (d) the specific locations of all such projects; (e) the nature of Trump's participation or interest in such projects; (f) all payments that Trump or any Trump-related entity has made to or received from Bayrock Group or any related entity; (g) whether Bayrock Group or any related entity was involved, and, if so, the nature of the involvement, with any of the lost business opportunities Trump claims; and (h) all relevant documents.

Trump appropriately objected that this interrogatory is improper because it is overly broad, unduly burdensome, oppressive, and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants argue in conclusory fashion that "Information regarding plaintiff's other business dealings with Bayrock is relevant to plaintiff's net worth and finances, as well as to the upcoming Bayrock deposition" (Defs.' Br. at 19), but they do not even attempt to explain why, for example, they would need all payments that Trump or any Trump-related entity has made to or received from Bayrock Group or any related entity, or why any information relating to a project that Trump began with Bayrock after the Book was published would be relevant to this litigation.

Defendants also state that Trump should be required to produce any documents relating to the lost business opportunities that are in the possession, custody, or control of Bayrock, arguing that such a request is appropriate "because plaintiff has identified Mr. Arif as his corporate representative and agent regarding a number of the allegedly lost business opportunities, and claimed that plaintiff has no documents relating to these

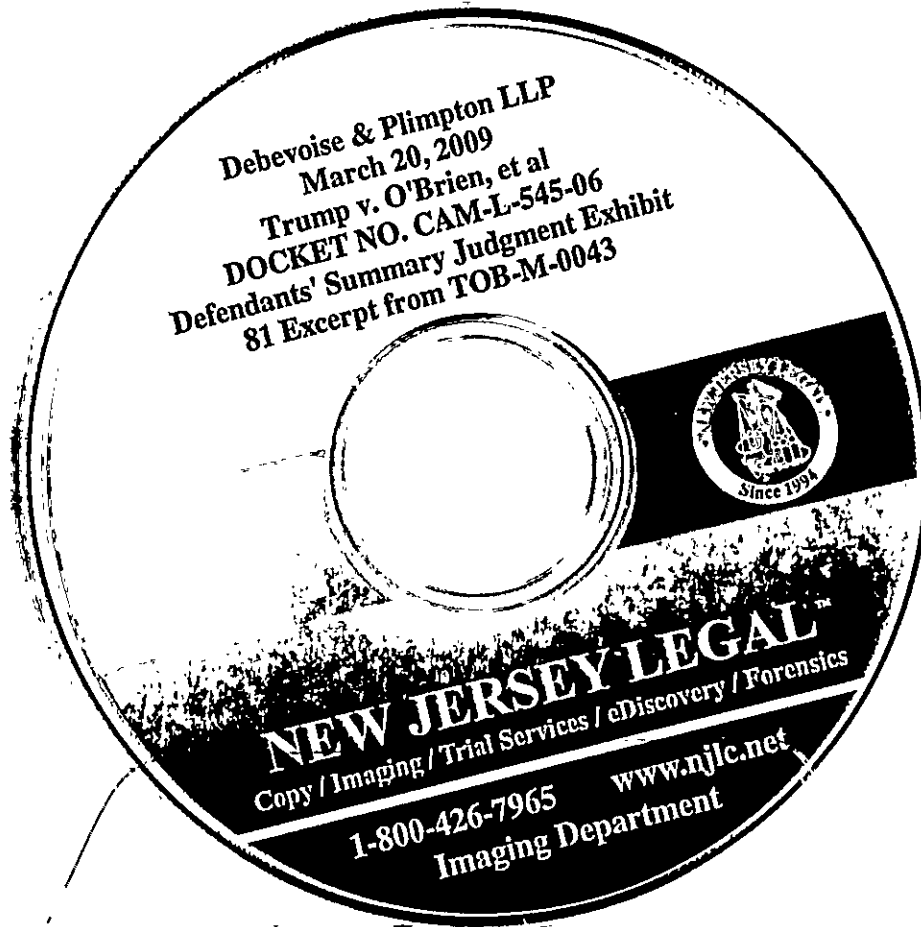
transactions.” Trump has not identified Mr. Arif as a corporate representative; rather, Trump suggested that defendants depose Mr. Arif, who works for Bayrock Group, not the Trump Organization, as the person most knowledgeable about certain of Trump’s lost business opportunities. A request for documents from Bayrock should be directed to Bayrock, not Trump. In any case, when defendants depose Mr. Arif in January, they can seek to confirm plaintiff’s understanding that Bayrock has no other documents relating to the lost business opportunities other than those already produced in this litigation.¹²

4. Interrogatory Nos. 12, 14, and 15

Interrogatory Nos. 12, 14, and 15 called for information about offers or proposals to purchase certain of Trump’s properties. Specifically, Interrogatory No. 12 called for information about any offer or proposal by Vornado Realty Trust or any related entity to buy from or sell to Trump or any Trump-related entity any share of the partnership that owns or controls 555 California Street in San Francisco and 1290 Avenue of the Americas in New York, or any offer or proposal by Trump or any Trump-related entity to buy from or sell to Vornado Realty Trust or a related entity any share of that partnership. Interrogatory No. 14 called for similar information relating to the Gossman Estate in Palm Beach, Florida. And Interrogatory No. 15 called for similar information relating to 40 Wall Street in New York, New York.

Trump appropriately objected to all three interrogatories because they are overly broad, unduly burdensome, oppressive, and seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

¹² Defendants’ request in a footnote that Trump be required to produce documents in the possession of Howard Lorber similarly is without merit.





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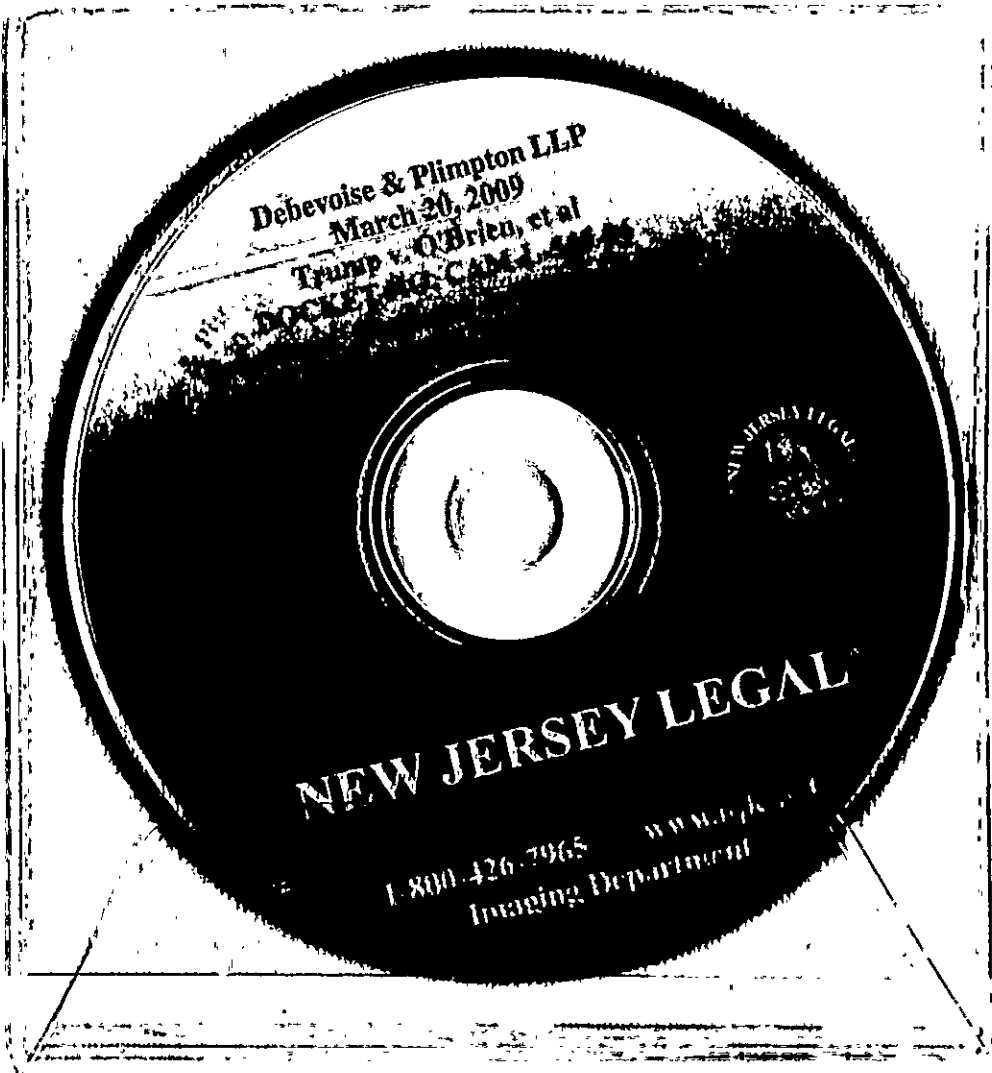


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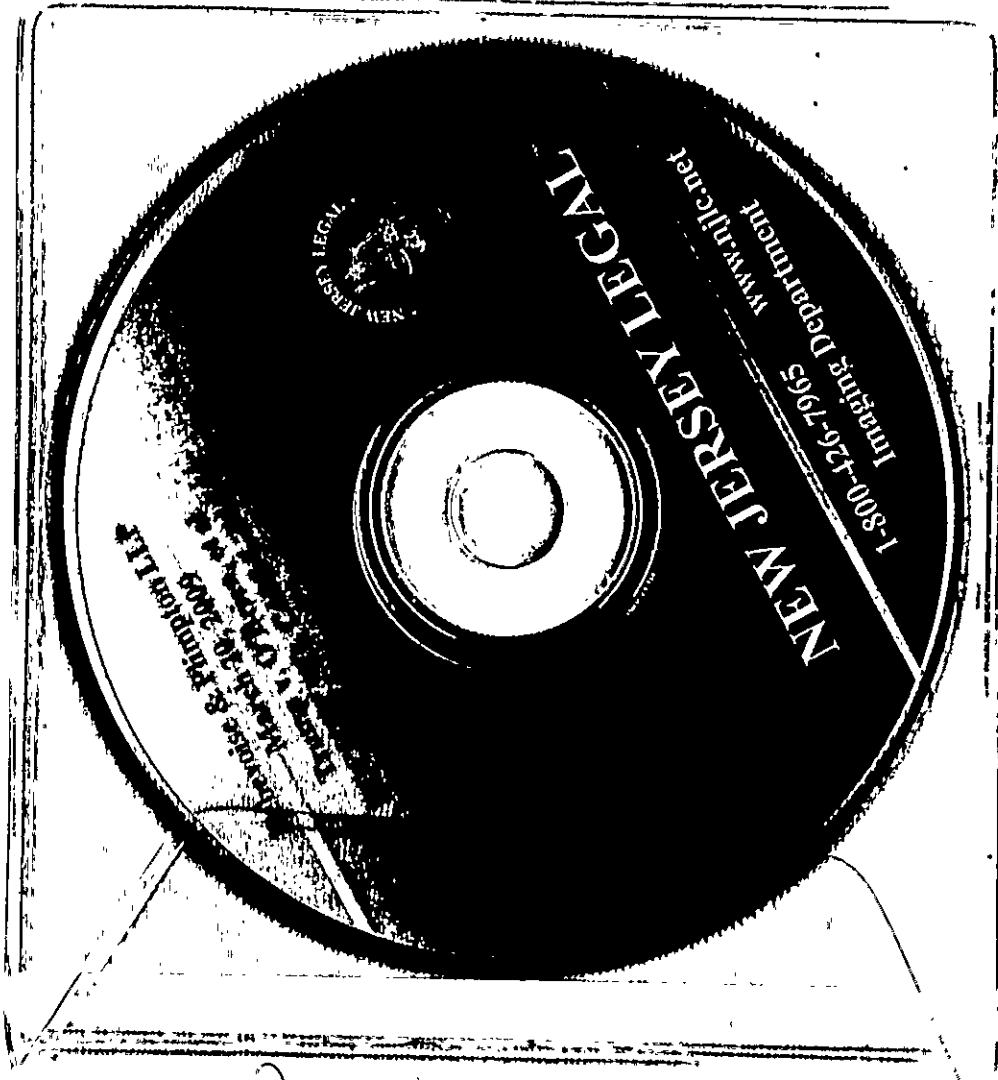


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