

MAR 08 2010

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

*Ab013
90040*

D23 Zaver V. Sinanian

1 DANIEL E. PARK, State Bar No. 174524
dpark@lurieparklawfirm.com
2 LISA M. LAWRENCE, State Bar No. 240375
lisa@lurieparklawfirm.com
3 RAFFI L. KASSABIAN, State Bar No. 260358
raffi@lurieparklawfirm.com
4 SONIA J. TAYLOR, State Bar No. 263553
sonia@lurieparklawfirm.com
5 **LURIE & PARK LLP**
15303 Ventura Boulevard, 9th Floor
6 Sherman Oaks, California 91403
Telephone: (818) 380-3022
7 Facsimile: (818) 380-3023

8 Attorneys for Plaintiffs Toni Ko, Brian Lynch,
individually and as Trustee on behalf of the Brian
9 Lynch Revocable Living Trust, Robert Kimmach, and
Kristie Kimmach, John Tuohy, Rick Arpin, and James
10 Duprey

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13
14 TONI KO, an individual; BRIAN LYNCH,
individually and as Trustee on behalf of the
15 BRIAN LYNCH REVOCABLE LIVING
TRUST; ROBERT KIMNACH, and
16 individual; KRISTIE KIMNACH, an
individual; JOHN TUOHY, an individual;
17 RICK ARPIN, an individual; and JAMES
DUPREY, and individual

18 Plaintiffs,

19 v.

20 DONALD J. TRUMP, an individual;
TRUMP MARKS, LLC, a Delaware
21 limited liability company; DONALD
TRUMP, JR., an individual; IVANKA
22 TRUMP, an individual; S&P
DESTINATION PROPERTIES, U.S.,
23 INC., a Delaware corporation; S&P
DESTINATION PROPERTIES, INC., a
24 Nevada corporation; SOUTHLAND
TITLE OF SAN DIEGO, a California
25 corporation; SOUTHLAND TITLE
CORPORATION, a California corporation;
26 LANDAMERICA TITLE COMPANY, a
California corporation and DOES 1
27 through 100, inclusive,

28 Defendants.

Case No.: **BC433300**

COMPLAINT FOR:

- 1) **FRAUD;**
- 2) **UNJUST ENRICHMENT;**
- 3) **NEGLIGENCE;**
- 4) **UNFAIR BUSINESS PRACTICES UNDER BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.;**
- 5) **NEGLIGENT MISREPRESENTATION;**
- 6) **BREACH OF FIDUCIARY DUTY AND**
- 7) **AN ACCOUNTING**

DEMAND FOR JURY TRIAL

CHECK: 355.00
CASH:
CHANGE:
CARD:

CIT/CASE: BC433300 LEA/DEP#:
RECEIPT #: 029465980074
DATE PAID: 03/08/10 02:11:37 PM
PAYMENT: \$355.00
RECEIVED: 0310

1 Plaintiffs Toni Ko, Brian Lynch, Robert Kimnach, Kristie Kimnach, John Tuohy, Rick
2 Arpin and James Duprey (collectively, "Plaintiffs") allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiffs are a group of individuals who were duped by Defendants into buying
5 hotel-condominium units that were never built. With the complicity of Defendants, the
6 developers of the units depleted Plaintiffs' deposits – even though they never broke ground on the
7 project, much less obtained the necessary building permits or construction loans.

8 2. The Trump Defendants falsely led Plaintiffs to believe that they were financial
9 backers of the project, know as the "Trump Ocean Resort Baja" ("Trump Baja" or "Project").
10 The Project was located in northern Baja California, Mexico – a 30-minute drive from downtown
11 San Diego, California.

12 3. Trump Baja was widely known to buyers and the public as a Donald J. Trump
13 resort. It was marketed to be developed by Trump in partnership with Irongate, a Los Angeles-
14 based real estate development and investment company. Trump Baja was highly-touted as a
15 reprise of a prior Trump-Irongate partnership that produced the Trump International Hotel and
16 Tower Waikiki Beach Walk in Hawaii.

17 3. In October 2006, Trump and Irongate announced their plans to build Trump Baja:
18 a \$200 million luxury resort consisting of 526 suites located within two high-rise towers, along
19 with restaurants, a spa, fitness center, tennis courts and swimming pools. The Project was to be,
20 in the words of Donald Trump, a resort that would "set the standard of premier property
21 ownership and excellence in service for all of Northern Mexico."

22 4. Thereafter, Trump, and those charged with selling the resort's units, embarked on
23 a sustained and intensive marketing effort to capture potential buyers by appealing to the public's
24 long-standing belief in the stability, luxury, and exclusivity of owning a piece of Donald Trump
25 property. Buyers were bombarded with advertisements, brochures, direct-mail, newsletters,
26 billboards, press releases, and information on the Trump-Baja and Trump Organization websites,
27 all of which advertised the Project as a Trump development to be built in conjunction with
28 Irongate. Furthermore, there were marketing devices and events called the "Exclusive Priority
Reservation Program," the "VIP Event," and the "Selection Event," the last two of which were

1 personally attended by Trump's daughter Ivanka Trump and Trump's son Donald Trump, Jr. to
2 promote buyers' confidence in and to assure them of Trump's extensive involvement in the
3 Project.

4 5. The objective of these marketing devices was to impress upon potential buyers
5 Trump's personal commitment to and confidence in the Project. The sellers also wanted to
6 emphasize the strength of Trump's relationship with Irongate. The combined effect of this
7 marketing campaign was that buyers flocked to the Selection Events to purchase units based on
8 their belief in the soundness of investing in what reasonably appeared to be a Trump property.

9 6. The Project failed. Today the project site shows little sign of construction other
10 than a large excavation with six cement pads at the middle of the site. Up until the time
11 Defendants notified Plaintiffs of the Project's failure in late December 2008, Defendants told
12 inquiring buyers, falsely and repeatedly, that construction loans either had been obtained or were
13 imminently to be obtained and that vertical construction would go forward. Because these
14 misrepresentations hid the true nature of the Project's progress, Plaintiffs not only forbore
15 asserting of their rights to demand back their deposit monies but in some instances continued to
16 pay in additional deposit monies. All the while, Defendants were withdrawing these deposit
17 monies for uses wholly unrelated to the Project's construction. Indeed, long after Defendants
18 knew the project had failed, and as late as December 2008, Defendants were still depleting the
19 remainder of buyers' deposit monies out of escrow accounts. In all, Defendants stole hundreds of
20 thousands of dollars they received in Plaintiffs' total deposits.

21 7. In late December 2008, it was announced to buyers that all of their deposit funds
22 had been spent and were gone. Also, contrary to what Plaintiffs believed, Trump had only
23 licensed the use of his name to the project and was not involved as an equity partner and had
24 never invested any of his own money in the Project.

25 8. Due to Defendants' misrepresentations to Plaintiffs that convinced them that the
26 Trump Baja was in fact a Trump property, Plaintiffs were persuaded to buy units in the Trump
27 Baja. And due to Defendants' subsequent misrepresentations covering up the Project's failure
28 and their illegal withdrawal of Plaintiffs' deposit monies, Plaintiffs now find themselves left with
nothing Therefore Plaintiffs seek general, specific, and punitive damages in an amount to be

1 proven at trial but in no event less than \$10 million.

2 **PARTIES AND JURISDICTION**

3 9. Plaintiff TONI KO is an individual who at all relevant times has resided in the
4 State of California, County of Los Angeles.

5 10. Plaintiff BRIAN LYNCH is an individual who at all relevant times has resided in
6 the State of California, County of Ventura. BRIAN LYNCH is also Trustee of Plaintiff BRIAN
7 LYNCH REVOCABLE LIVING TRUST.

8 11. Plaintiffs ROBERT KIMNACH and KRISTIE KIMNACH, husband and wife, are
9 individuals who at all relevant times have resided in the State of California, County of San Diego.

10 12. Plaintiff JOHN TOUHY is an individual who resided in the State of Washington,
11 County of King, through December, 2007, and in the State of Arizona, County of Maricopa, from
12 January 2008 to present.

13 13. Plaintiff RICK ARPIN is an individual who at all relevant times has resided in the
14 State of Nevada, County of Clark.

15 14. Plaintiff JAMES DUPREY is an individual who at all relevant times has resided in
16 the State of California, County of Los Angeles.

17 **The Trump Defendants**

18 15. At all times herein mentioned, Defendant DONALD J. TRUMP ("TRUMP") was
19 and is an individual residing in the State of New York. At all times herein mentioned, TRUMP
20 was doing business within the State of California and had specific dealings within the State of
21 California related to the transactions which are the subject of this action.

22 16. At all times herein mentioned, Defendant DONALD J. TRUMP, JR. ("TRUMP,
23 JR.") was and is an individual residing in the State of New York. At all times herein mentioned,
24 Defendant, TRUMP, JR. had specific dealings within the State of California related to the
25 transactions which are the subject of this action.

26 17. At all times herein mentioned, Defendant IVANKA TRUMP ("IVANKA") was
27 and is an individual residing in the State of New York. At all times herein mentioned, Defendant
28 had business dealings within the State of California related to the transactions which are the
subject of this Action.

1 S&P INC. held themselves out in advertisements for the Project as a licensed California Broker.

2 22. When the term "S&P Defendants" is used in this Complaint, it shall be deemed to
3 refer to S&P U.S. and S&P INC.

4 **The Escrow Defendants**

5 23. At all times relevant hereto, Defendant SOUTHLAND TITLE OF SAN DIEGO, is
6 and was a Corporation organized and existing under and by virtue of the laws of the State of
7 California, and at all times herein mentioned was conducting business in the State of California
8 relative to the transactions which form the basis of this Action.

9 24. At all times relevant hereto, Defendant SOUTHLAND TITLE CORPORATION,
10 is and was a Corporation organized and existing under and by virtue of the laws of the State of
11 California, and at all times herein mentioned was conducting business in the State of California
12 relative to the transactions which form the basis of this Action.

13 25. At all times relevant hereto, Defendant LANDAMERICA TITLE COMPANY, is
14 and was a Corporation organized and existing under and by virtue of the laws of the State of
15 California, and at all times herein mentioned was conducting business in the State of California
16 relative to the transactions which form the basis of this Action.

17 26. When the term "Escrow Defendants" is used in this Complaint, it shall be deemed
18 to refer to SOUTHLAND TITLE OF SAN DIEGO, SOUTHLAND TITLE CORPORATION and
19 LANDAMERICA TITLE COMPANY

20 **FACTS COMMON TO ALL CAUSES OF ACTION**

21 27. In or about mid-2006 the Trump Defendants and the S&P Defendants announced
22 that Trump Baja would be developed and marketed via "partnership between the Trump
23 Organization CEO, Donald J. Trump, on the one hand, and Los Angeles-based real estate
24 development and investment company Irongate, on the other hand."

25 28. This partnership plans called for issuance of press releases to numerous news
26 outlets as well as sending letters and emails to prospective buyers, highlighting TRUMP's
27 personal participation in the Project.

28 29. Other marketing materials included articles published on the Trump-Baja website,
www.trump-baja.com, which has since been removed. One such article, entitled "Trump, Partner

1 to Build Resort,” written by Roger Vincent of the Los Angeles Times, identified TRUMP and
2 Irongate as the principals of the Project, who were both also co-developing the Trump
3 International Hotel and Tower Waikiki Beach Walk in Hawaii. Another example of the
4 marketing materials is one of the promotional booklets sent to buyers to encourage them to
5 register in the “Exclusive Priority Reservation Program.” Other marketing materials included the
6 “Baja Beauty Book,” which was a brochure that identified “The Team” on the Project as
7 Defendant TRUMP. The brochure further stated that “Mr. Trump is *personally involved* in
8 everything that his name represents.” Similarly, a Press Release dated “April XX [sic], 2007”
9 announced that “Following the success of the Lobby Tower at Trump Ocean Resort, Trump
10 Organization CEO Donald J. Trump has announced *his* next real estate release, which is the Spa
11 Tower at Trump Ocean Resort.”

12 30. These statements were in direct contrast to the real facts, which were that
13 Defendant TRUMP MARKS had simply lent the “Trump” name to the Project. Nonetheless, the
14 misleading promotional efforts continued until TRUMP withdrew from the Project in or around
15 January 30, 2009, following the Project’s failure.

16 31. The developers marketed and sold the Project as the “Trump Ocean Resort Baja”
17 with the Defendants’ press releases, marketing materials, advertisements, billboards, letterheads,
18 stationery, and cover letters of documents sent to Plaintiffs all referring to the “Trump” name.
19 Headshot photographs of TRUMP appeared on most of these materials as well. The Defendant
20 developers used the “Trump” name in marketing the Project to mislead the Plaintiffs into
21 believing they were purchasing units within the Donald Trump and the “Trump Organization’s”
22 real estate portfolio. Indeed, the website www.Trump.com listed (prior to the recent removal of
23 this information from the website) the “Trump Ocean Baja Resort” as part of the Trump holdings
24 within the “Trump Real Estate Portfolio.”

25 32. Furthermore, Trump family members joined in the promotion of the Project to
26 further entice the Plaintiffs’ attention. TRUMP JR and IVANKA both appeared at various
27 promotional events to sell Project units. At these events, both TRUMP JR. and IVANKA
28 announced that they themselves were purchasing units within both towers. Furthermore, when
various Plaintiffs questioned IVANKA with regard to whether TRUMP was merely licensing his

1 name to the Project, IVANKA denied the same and replied that TRUMP was a developer and
2 held an equity interest in the Project. IVANKA also provided the same answer when asked by
3 AP and other press.

4 33. All of these materials bolstered Plaintiffs' confidence and convinced them that
5 they were buying into a "Trump" building to be titled with the "Trump" name. They believed
6 that such a purchase was a sound investment which would yield a premium price over similar
7 quality buildings that were not "Trump" buildings.

8 34. Nowhere in the sales materials sent and provided to the Plaintiffs or in any other
9 documents relating to the sale or development of the property, was it ever disclosed that TRUMP
10 was merely licensing his name to the project. The Plaintiffs only became aware of this material
11 fact after the Project had failed and Defendants wrongfully depleted all of Plaintiffs' deposit
12 monies.

13 35. Moreover the manner of TRUMP's branding and his organization's statements led
14 people to believe that Irongate was his agent and that he had a greater role in the Project than as a
15 mere licensor. As discussed above, many aspects of the relationship between the Trumps and PB
16 signified that the relationship went beyond a mere licensing agreement. Both the promotional
17 materials and the various statements made by The Trumps indicated to the public that TRUMP
18 had a significantly large financial investment in the Project and that TRUMP was not merely a
19 licensor, but a developer.

20 36. Throughout the time that Plaintiffs were solicited, all marketing materials
21 touted TRUMP's personal involvement and "equity" participation as a developer of the Project.

22 37. Throughout the time that Plaintiffs were solicited, all marketing materials
23 touted TRUMP's Furthermore, Plaintiffs allege on information and belief that TRUMP and the
24 Trump defendants received, through payments to TRUMP MARKS, substantial sums of money
25 paid from Plaintiffs' deposit funds. The Trump defendants were paid an up-front fee for
26 attaching the "Trump" name, and were paid commissions in the form of additional funds based
27 upon the number of sales of the Project's units. However at no time did TRUMP, TRUMP
28 MARKS, TRUMP JR., or IVANKA ever disclose or represent that they were getting paid on a
commission basis for their efforts in promoting the Project.

1 38. Plaintiffs were never advised until in or around December 2008 or January 2009
2 that TRUMP was *not* personally involved as an investor, TRUMP never had an equity stake in
3 the Project, and that the Project was not TRUMP's real estate development or responsibility.
4 Defendants failed to disclose that, in reality, TRUMP, TRUMP MARKS, TRUMP JR. and
5 IVANKA used TRUMP'S reputation as a successful real estate developer to persuade Plaintiffs to
6 purchase units in the Project.

7 39. Thus when Plaintiffs entered into the purchase agreements to buy units in the
8 Project, TRUMP was *not* in fact an equity investor in the Project. He had simply licensed the
9 "Trump" name pursuant to a licensing agreement with Defendant TRUMP MARKS and had a
10 vested interest in pushing for as many sales of the Project's units as possible.

11 40. Among the other representations to buyers were that buyers' monies placed into
12 escrow would be accounted for and monitored on a regular basis and that buyers would receive
13 regular updates and accounting for the use of these funds. Defendants represented that they
14 would withdraw these funds in good faith and in accordance with proper and prudent construction
15 and development standards. Defendants also represented that they had financing approved and
16 that financiers were ready to start funding the Project. Defendants further represented that all
17 permits had been obtained and that because both the funding and permits had been secured.

18 41. In further bolstering the Project, the S&P Defendants represented to Plaintiffs that
19 Irongate, as developer of the Project, was in a financially secure position and would therefore
20 commence building without any construction loans. According to the S&P Defendants, this was
21 the reason why TRUMP worked with them.

22 42. Contrary to these representations, the fact was that TRUMP and Irongate did not
23 have financing approved; nor did they have construction permits secured for the Project.

24 43. Moreover, the S&P Defendants failed to disclose to buyers that the site on which
25 the Project was to be built had existing mold and contamination problems.

26 44. After Plaintiff purchasers entered into their Agreements and after Plaintiffs began
27 depositing their deposit monies into escrow, Plaintiffs inquired as to the Project's progress.
28 Various agents and employees of S&P continually misrepresented and overstated the construction
financing as well as the construction progress of the Project. In fact, little construction had ever

1 moved forward on the site and Defendants never secured any construction loans for the Project.
2 These misrepresentations were made to buyers to prevent them from taking any action to enforce
3 their rights, to allow buyers to continue depositing their money into escrow, and/or prevent them
4 from stopping Defendants from continually withdrawing their deposit monies from escrow.

5 45. Moreover, Escrow Defendants failed to inquire and investigate as to how
6 Plaintiffs' deposit monies were used and did not require any backup or substantiating information
7 before releasing Plaintiffs' deposit monies.

8 46. Plaintiffs are informed and believe that the Escrow Defendants breached their
9 fiduciary duty to Plaintiffs by dispersing Plaintiffs' deposit funds to the developers without
10 verifying whether the funds were being misused.

11 47. Plaintiffs' deposit monies were deposited into escrow and, according to the
12 Agreement, were to be used for "development" purposes. In fact, however, Plaintiffs' deposit
13 monies were used improperly and in ways not related to development costs.

14 48. However not all purchasers were required to pay a deposit up front. Plaintiffs are
15 informed and believe that Defendants allowed various "favored" parties to purchase units without
16 placing any deposits on them that would later be drained out of the escrow accounts as were the
17 Plaintiffs'.

18 49. In this way, the "risk" of loss of deposit monies was placed entirely on the non-
19 favored purchasers, including Plaintiffs, while favored purchasers stood to reap rewards if the
20 Project proved successful but would lose nothing if the Project were not successful. This
21 arrangement was never shared with or disclosed to buyers.

22 50. Due to defendants' wanton, willful, malicious, and fraudulent activities, Plaintiffs
23 have been damaged severely and therefore see to recover damages in an amount to be proven at
24 trial but no less than \$10,000,000.

25 **FIRST CAUSE OF ACTION**

26 (For Fraud)

27 (Against Defendants DONALD J. TRUMP; TRUMP MARKS, LLC; DONALD TRUMP, JR.;
28 IVANKA TRUMP; S&P DESTINATION PROPERTIES, U.S., INC.; and S&P DESTINATION
PROPERTIES, INC.)

1
2 51. Plaintiffs incorporate herein the allegations set forth in all the preceding
3 paragraphs, as if set forth herein at length.

4 52. Defendants, and each of them, willfully, wantonly and maliciously misrepresented
5 several material facts to Plaintiffs with regards to the Project.

6 A. The Trump Defendants misrepresented the nature of TRUMP's involvement with
7 the Project by communicating to Plaintiffs that TRUMP was a major investor when,
8 in reality, he was a mere licensor.

9 B. IVANKA misrepresented to the press that TRUMP was a developer of the
10 Project, and not merely a licensor.

11 C. The S&P Defendants were aware that the underlying property had existing mold
12 contamination and moisture problems and failed to disclose same to Plaintiffs.

13 D. The S&P Defendants misrepresented the financing as well as the construction
14 progress of the Project.

15 E. Defendants misrepresented that banks were lined up to finance the Project
16 because of TRUMP's association;

17 F. Defendants continued to demand deposit monies from Plaintiffs by falsely
18 reassuring Plaintiffs that the construction was reasonably progressing;

19 G. Defendants falsely reassured Plaintiffs that their deposit monies were "protected"
20 in escrow and for them not to be concerned about any delays with construction;

21 H. Defendants misrepresented that all necessary permits for construction had been
22 secured.

23 53. Defendants knowingly and willfully misrepresented the facts stated
24 hereinabove. The true facts were the following:

25 A. Trump was a mere licensor with regard to his involvement with the
26 Project;

27 B. Financing for the construction was not secured;

28 C. Defendants misappropriated the funds to their own benefit;

D. All necessary permits were not secured;

- 1 E. The Project was on a standstill from the very first day Defendants
- 2 sought Plaintiffs' deposits and Defendants had knowledge of this;
- 3 F. Defendants never reported or accounted for the use of the funds until
- 4 Plaintiffs' funds were exhausted;
- 5 G. Defendants' used the funds imprudently.

6 54. At the time these misrepresentations and failures to disclose were made, Plaintiffs
7 were ignorant of the falsity of Defendants' representations and believed same to be true and
8 accurate. Plaintiffs were also ignorant of the existence of the true facts not disclosed and willfully
9 suppressed by said Defendants.

10 55. The misrepresentations by Defendants were intentionally made to induce
11 Plaintiffs to invest in the underlying Project. But for the "Trump name" and the guarantee that
12 the Project was well funded, Plaintiffs would never have invested in the condominium units. The
13 misrepresentations by Defendants were intentionally made to induce Plaintiffs to invest, and
14 Plaintiffs reasonably relied upon the false representations because of the association the Project
15 had with TRUMP, a major, successful real estate mogul.

16 56. These representations were made and/or authorized to be made by the Defendants,
17 their principals, agents and/or employees, and/or were ratified and/or adopted by the Defendants,
18 their principals, agents and/or employees with the intent to deceive Plaintiffs.

19 57. As a direct and proximate result of Defendants' willful and malicious conduct
20 toward Plaintiff buyers, Plaintiffs now find themselves out of their investment and deposit
21 monies.

22 58. In committing the acts alleged herein, Defendants acted with oppression, fraud and
23 malice by making misrepresentations and failing to disclose true, material facts to Plaintiffs.
24 Thus, Plaintiffs are entitled to an award of exemplary damages in an amount sufficient to punish
25 and set an example of said Defendants, and each of them in addition to general and special
26 damages.

27 59. WHEREFORE, Plaintiffs have been damaged in an amount to be proven at trial but
28 no less than \$10,000,000.

1 **SECOND CAUSE OF ACTION**

2 (For Unjust Enrichment)

3 (Against All Defendants)

4 60. Plaintiffs incorporate herein the allegations set forth in all the preceding
5 paragraphs, as if set forth herein at length.

6 61. Defendants were enriched through the misappropriation of Plaintiffs' deposit
7 monies for their own self-promotion.

8 62. Defendants made their deposits with the understanding that the deposits would be
9 used in conjunction with the master project or otherwise be left in their escrow accounts.

10 63. The Trump Defendants and S&P Defendants took Plaintiffs' money unjustly –
11 when they knew that Trump Baja was not being properly managed.

12 64. Furthermore, Plaintiffs believe that some of the Defendants were paid
13 commissions and/or fees based upon the sales of units at the Project. The sales of units at the
14 Project to Plaintiffs were accomplished by the use of the fraudulent statements,
15 misrepresentations, conduct, and/or acts, and omissions of Defendants as alleged hereinabove.

16 65. WHEREFORE, Plaintiffs pray for restitution in an amount to be proven at trial.

17 **THIRD CAUSE OF ACTION**

18 (For Negligence)

19 (Against Defendants DONALD J. TRUMP; TRUMP MARKS, LLC; DONALD TRUMP, JR.;
20 IVANKA TRUMP; S&P DESTINATION PROPERTIES, U.S., INC.; S&P DESTINATION

21 PROPERTIES, INC.; FIRST AMERICAN FUND CONTROL;

22 SOUTHLAND TITLE CORPORATION; and SOUTHLAND TITLE OF SAN DIEGO)

23 66. Plaintiffs incorporate herein the allegations set forth in all the preceding
24 paragraphs, as if set forth herein at length.

25 67. Defendants owed Plaintiffs a duty of care in the manner in which they executed,
26 planned and promoted the Project and in their communications with Plaintiffs, which are
27 identified and set forth hereinabove, and which are incorporated herein by reference. Moreover,
28 the Escrow Defendants owed a duty in the handling of Plaintiffs' deposit monies. Defendants'
breached their duty and failed to act with reasonable care by misappropriating Plaintiffs' deposit

1 monies and making several misrepresentations to Plaintiffs, all of which are identified and set
2 forth hereinabove, and which are incorporated herein by reference.

3 68. Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

4 69. But for Defendants' negligence, Plaintiffs would never have invested their money
5 in the Project. Moreover, but for Defendants' misappropriation of Plaintiffs' funds, there would
6 be adequate reserves to return to Plaintiffs. Finally, but for the Escrow Defendants negligence,
7 the developers would never have had access to the funds which they ultimately dissipated.

8 70. The harm suffered by Plaintiffs was foreseeable, since it was likely that if
9 the misrepresentations were never made, Plaintiffs would never have invested in the Project.

10 71. Defendants are vicariously liable based on the partnership, agency, ratification, co-
11 conspirator and/or other relationships identified and set forth hereinabove.

12 72. As a direct and proximate result of Defendants' conduct to Plaintiff buyers,
13 Plaintiffs now find themselves out of their investment and deposit monies.

14 73. Thus, Plaintiffs are entitled to an award of general and special damages.

15 FOURTH CAUSE OF ACTION

16 (For Unfair Business Practices Under Business & Professions Code §§ 17200, et seq.)

17 (Against Defendants DONALD J. TRUMP; IRONGATE DEVELOPMENT; TRUMP MARKS,
18 LLC; DONALD TRUMP, JR.; IVANKA TRUMP; S&P DESTINATION PROPERTIES, U.S.,
19 INC.; and S&P DESTINATION PROPERTIES, INC.)

20 74. Plaintiffs incorporate herein the allegations set forth in all the preceding
21 paragraphs, as if set forth herein at length.

22 75. California Business and Professions Code, §17200 prohibits businesses
23 from engaging in "any unlawful, unfair or fraudulent business act or practice and unfair,
24 deceptive, untrue or misleading advertising," and was designed to protect competitors and
25 consumers from illegal, fraudulent and "unfair" business practices.

26 76. Defendants, and each of them, engaged in fraudulent, unfair and deceptive
27 behavior when they knowingly misrepresented material information relating to the Project to
28 Plaintiffs in order to induce them to invest in the Project.

1 77. As a direct and legal result of Defendants' willful, malicious and unfair
2 conduct to Plaintiff buyers, Plaintiffs now find themselves out of their investment and deposit
3 monies.

4 78. WHEREFORE, Plaintiffs pray for restitution in an amount to be proven at trial.

5 **FIFTH CAUSE OF ACTION**

6 (For Negligent Misrepresentation)

7 (Against Defendants DONALD J. TRUMPTRUMP MARKS, LLC; DONALD TRUMP, JR;
8 IVANKA TRUMP; S&P DESTINATION PROPERTIES, U.S., INC.; and S&P DESTINATION
9 PROPERTIES, INC.)

10 79. Plaintiffs incorporate herein the allegations set forth in all the preceding
11 paragraphs, as if set forth herein at length.

12 80. The Trump Defendants and S&P Defendants made several misrepresentations to
13 Plaintiffs, all of which are identified and set forth hereinabove, and which are incorporated herein
14 by reference.

15 81. Defendants' representations were false as discussed hereinabove.

16 82. Defendants had reasonable grounds to believe that the representations were false at
17 the time they sought and/or held Plaintiffs' deposits for the condominium units.

18 83. Defendants made such statements negligently and with the intent to induce
19 Plaintiffs to rely on the representations so that they can increase Plaintiff' confidence in the
20 Project.

21 84. Plaintiffs reasonably relied on Defendants' representations because
22 Defendants bolstered Plaintiffs' confidence by making a false representation that Trump was a
23 substantial equity investor in the Project.

24 85. Plaintiffs' reliance on Defendants' representations was a substantial factor
25 in causing Plaintiffs' harm.

26 86. As a direct and legal result of Defendants' negligent conduct, Plaintiffs now find
27 themselves out of their investment and deposit monies. Thus, Plaintiffs are entitled to an award
28 of exemplary damages in an amount sufficient to punish and set an example of said Defendants,
and each of them in addition to general and special damages.

1 **SIXTH CAUSE OF ACTION**

2 (For Breach of Fiduciary Duty)

3 (Against Defendants FIRST AMERICAN FUND CONTROL;
4 SOUTHLAND TITLE CORPORATION; and SOUTHLAND TITLE OF SAN DIEGO)

5 87. Plaintiffs incorporate herein the allegations set forth in all the preceding
6 paragraphs, as if set forth herein at length.

7 88. The Escrow Defendants had a fiduciary relationship with Plaintiffs by virtue of the
8 fact that they were entrusted with holding and managing Plaintiffs' deposit monies for the Project.

9 89. But the Escrow Defendants failed to act as reasonably careful developers would
10 have acted under the same or similar circumstances and willfully, wantonly and maliciously acted
11 against Plaintiffs' interests. The deposit monies were limited for use in connection with the
12 development of the master project. Instead, Escrow Defendants allowed the S&P Defendants, as
13 well as the developers, to use these funds for lavish expenditures and self-promotional events,
14 absent Plaintiffs' knowledge or consent.

15 90. As a direct and legal result of Developer Defendants' malicious, fraudulent
16 and oppressive conduct towards Plaintiff buyers, Plaintiffs now find themselves out of their
17 investment and deposit monies. By reason of their conduct, and as a result, Plaintiffs are entitled
18 to an award of exemplary damages in an amount sufficient to punish and set an example of said
19 Defendants, and each of them, in addition to general and special damages.

20 91. WHEREFORE, Plaintiffs pray for damages in an amount to be proven at trial but no
21 less than \$10,000,000.

22 **SEVENTH CAUSE OF ACTION**

23 (For An Accounting)

24 (Against FIRST AMERICAN FUND CONTROL;
25 SOUTHLAND TITLE CORPORATION; and SOUTHLAND TITLE OF SAN DIEGO)

26 92. Plaintiffs incorporate herein the allegations set forth in all the preceding
27 paragraphs, as if set forth herein at length.

28 93. The Escrow Defendants owed Plaintiffs a fiduciary duty by virtue of the fact
that they were entrusted with holding Plaintiffs' monies and making use of the funds in a proper,

1 prudent and honest manner.

2 94. Moreover, Escrow Defendants owed Plaintiffs a fiduciary duty of care to act with
3 the utmost care, in addition to the duty to exercise a reasonable degree of skill and care in their
4 performance of their duties as escrow holders. Plaintiffs are unaware of the total amount of the
5 deposit funds, which were disbursed by Escrow Defendants, as well as the amount of funds so
6 disbursed for improper purposes and/or for purposes not reasonably or properly related to the
7 development of the Project which might have otherwise been avoided by exercise of reasonable
8 diligence. Furthermore, Plaintiffs are unaware of various other details, including expenditures
9 and utilization of Plaintiffs' deposit monies. Plaintiffs do not have access to the books and
10 records of the Escrow Defendants, or to any other records or things, which would allow Plaintiffs
11 to make a reasonable or accurate accounting of the funds so disbursed. Plaintiffs believe and
12 allege that an accounting will disclose that the deposit monies disbursed by Escrow Defendants
13 were misappropriated and used improperly for purposes unrelated to the development of the
14 Project such that a reasonable escrow holder would believe that disbursement was not in
15 accordance with the terms of the escrow instructions, and that there is due and owing sums to
16 Plaintiffs.

17 95. As a direct and legal result of Defendants' conduct towards Plaintiff
18 buyers, Plaintiffs now find themselves out of their investment and deposit monies. The total
19 amount of said expenditures, the details of such expenditures and the utilization of all the funds
20 which Plaintiffs entrusted to the Defendants are unknown and because Plaintiffs do not have
21 access to Defendants' books and records, and the same cannot be ascertained without a full
22 accounting from the Defendants.

23 96. Based on the above, Plaintiffs demand a full accounting of and from the
24 Escrow Defendants, and each of them, relative to the use and expenditure of the monies including
25 a detailed accounting of all disbursements from the escrow monies.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

3 As to the First Cause of Action:

- 4 1. General damages according to proof;
- 5 2. Special damages according to proof;
- 6 3. Punitive damages in an amount sufficient to punish the defendants and to deter similar
- 7 future conduct, all in an amount according to proof but in no event less than \$10,000,000.

8 As to the Second Cause of Action:

- 9 1. Restitution according to proof.

10 As to the Third Cause of Action:

- 11 1. General damages according to proof;
- 12 2. Special damages according to proof.

13 As to the Fourth Cause of Action:

- 14 1. Restitution according to proof.

15 As to the Fifth Cause of Action:

- 16 1. General damages according to proof;
- 17 2. Special damages according to proof;

18 As to the Sixth Cause of Action:

- 19 1. General damages according to proof;
- 20 2. Special damages according to proof;
- 21 3. Punitive damages in an amount sufficient to punish the defendants and to deter similar
- 22 future conduct, all in an amount according to proof but in no event less than \$10,000,000.

23 As to the Seventh Cause of Action:

- 24 1. That Defendants make a full and complete accounting of all funds deposited by the
- 25 Plaintiffs.

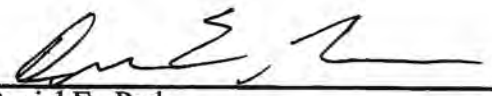
26 And as to all Causes of Action:

- 27 1. Costs of suit; and
- 28 2. For other and further damages, relief, and/or remedies as the Court deems just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 3, 2010

LURIE & PARK LLP
Daniel E. Park


By: 
Daniel E. Park
Attorneys for Toni Ko, Brian Lynch,
individually and as Trustee on behalf of the
Brian Lynch Revocable Living Trust, Robert
Kinnach, and Kristie Kinnach, John Tuohy,
Rick Arpin, and James Duprey

DEMAND FOR JURY TRIAL

By its undersigned attorney, Plaintiff hereby demands trial by jury.

Dated: March 3, 2010

LURIE & PARK LLP
Daniel E. Park

By: 
Daniel E. Park
Attorneys for Toni Ko, Brian Lynch,
individually and as Trustee on behalf of the
Brian Lynch Revocable Living Trust, Robert
Kinnach, and Kristie Kinnach, John Tuohy,
Rick Arpin, and James Duprey

