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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Helene V. Galen, as Trustee )	CV 09-4738 RSWL (SHx)
for the Louis J. Galen )	
Revocable Trust of 1983, )	
Udt Dated May 23, 1983, )	ORDER Re: Plaintiff's
Plaintiff, )	Motion for Summary
v. )	Judgment <b>[11]</b> and
Avenue of the Stars )	Defendant's Motion for
Associates, LLC, )	Summary Judgment <b>[15]</b>
Defendant. )	

Plaintiff Helene V. Galen filed her Motion for Summary Judgment [11] on July 1, 2010. Defendant Avenue of the Stars Associates, LLC filed its Motion for Summary Judgment [15] on July 26, 2010. Both matters were originally set for hearing on August 23, 2010. Having taken both matters under submission on August 20, 2010, and having reviewed all papers submitted pertaining to these motions, the Court **NOW FINDS AND RULES AS FOLLOWS:**

The Court hereby **DENIES** Plaintiff's Motion for

1 Summary Judgment in its entirety. With regard to the  
2 Defendant, the Court **DENIES IN PART AND GRANTS IN PART**  
3 Defendant's Motion for Summary Judgment.

4 Summary judgment is appropriate when there is no  
5 genuine issue of material fact and the moving party is  
6 entitled to judgment as a matter of law. Fed. R. Civ.  
7 P. 56(c). A genuine issue is one in which the evidence  
8 is such that a reasonable fact-finder could return a  
9 verdict for the non-moving party. Anderson v. Liberty  
10 Lobby, 477 U.S. 242, 248 (1986). The evidence, and any  
11 inferences based on underlying facts, must be viewed in  
12 a light most favorable to the opposing party. Diaz v.  
13 American Tel. & Tel., 752 F.2d 1356, 1358 n.1 (9th Cir.  
14 1985).

15 Plaintiff asserts four grounds for Summary Judgment  
16 based on her Complaint: (1) regarding the Second Claim  
17 for Rescission, Defendant allegedly violated the federal  
18 Interstate Land Sales Full Disclosure Act (hereinafter,  
19 "ILSA") by failing to provide Plaintiff with a valid  
20 Property Report before she signed the Purchase and Sale  
21 Agreement (hereinafter, "Agreement"); (2) regarding the  
22 Third Claim for Rescission, Defendant allegedly violated  
23 the ILSA by failing to include a required disclosure in  
24 the Agreement; (3) regarding the Fourth Claim for  
25 Rescission, Defendant allegedly violated the California  
26 Subdivided Lands Act (hereinafter, "SLA") by failing to  
27 provide a valid Property Report and by failing to secure  
28 a signed Property Report Receipt before Plaintiff signed

1 the Agreement; and (4) regarding the Seventh Claim for  
2 Declaratory Relief, Defendant's alleged violation of the  
3 ILSA and the SLA entitles Plaintiff to the return of her  
4 deposit, with interest.

5 1. Second Claim for Relief for Rescission

6 The Court **DENIES** Summary Judgment for Plaintiff's  
7 Second Claim for Rescission. The ILSA prohibits the  
8 sale or lease of any lot unless a printed property  
9 report "has been furnished to the purchaser or lessee in  
10 advance of the signing of any contract or agreement for  
11 sale or lease by the purchaser or lessee". 15 U.S.C. §  
12 1703(a)(1)(B). Where the required property report "has  
13 not been given to the purchaser or lessee in advance of  
14 his or her signing such contract or agreement, such  
15 contract or agreement may be revoked at the option of  
16 the purchaser or lessee within two years from the date  
17 of such signing . . ." 15 U.S.C. § 1703(c).

18 Plaintiff fails to meet the burden of proof for  
19 Summary Judgment. Plaintiff, as the moving party, must  
20 show an "absence of evidence" to support the non-moving  
21 party's case. Celotex v. Catrett, 477 U.S. 317, 325  
22 (1986). Plaintiff argues that the binder she received on  
23 March 25, 2008, could not have included the most current  
24 Property Report, which is dated March 28, 2008  
25 (hereinafter, "March Property Report"). These facts  
26 fail to refute Defendant's assertions that its staff  
27 sent a subsequent package of materials that included the  
28 March Property Report before Plaintiff signed the

1 Agreement.

2 Defendant also lacks evidence that proves it sent  
3 Plaintiff the March Property Report. But Defendant, as  
4 the non-moving party has gone beyond the pleadings and  
5 designated specific facts showing that there is a  
6 genuine issue for trial. See Celotex, 477 U.S. at 324.  
7 In the instant case, the evidence demonstrates that a  
8 genuine issue of fact remains such that a reasonable  
9 fact-finder could return a verdict for the non-movant.  
10 See Anderson, 477 U.S. at 248.

11 2. Third Claim for Relief for Rescission

12 The Court **DENIES** Plaintiff's Third Claim for Relief  
13 for Rescission. The ILSA gives the purchaser additional  
14 grounds for revocation of a nonexempt contract or  
15 agreement pursuant to 15 U.S.C. § 1703(d)(3). See 15  
16 U.S.C. § 1703(d)(3). Although Defendant undisputably  
17 did not include the breach of contract provision under  
18 15 U.S.C. § 1703(d), the section merely requires that  
19 the Agreement "provide" for the terms as specified under  
20 the section. 15 U.S.C. § 1703(d). In the Agreement  
21 signed by Plaintiff, Defendant meets this requirement by  
22 complying with Cal. Civ. Code § 1675.

23 Since both 15 U.S.C. § 1703(d) and Cal. Civ. Code §  
24 1675 address the issue of how much of the buyer's  
25 payment constitutes liquidated damages to the seller  
26 should the buyer fail to complete the purchase of the  
27 property, Defendant does not need to include both  
28 statutory provisions in the Agreement. See 15 U.S.C. §

1 1703(d); Cal. Civ. Code § 1675. Furthermore, as  
2 California law mandates that "any contractual provision  
3 which calls for disbursement or a charge against  
4 Purchase Money based on Buyer's alleged failure to  
5 complete the purchase of the subdivision . . . must  
6 conform with Civil Code Sections 1675 . . .," Defendant  
7 properly followed the more stringent requirements of  
8 Cal. Civ. Code § 1675 in drafting the Agreement's  
9 liquidated damages provision. Cal. Code of Regs. §  
10 2791(c)(1) (emphasis added).

11 3. Fourth Claim for Relief for Rescission

12 The Court also **DENIES** Plaintiff's Fourth Claim for  
13 Rescission based on whether Defendant provided a valid  
14 Property Report and secured a Property Report Receipt.

15 The SLA also requires a copy of the property report  
16 be given to the prospective purchaser "prior to the  
17 execution of a binding contract or agreement for the  
18 sale or lease of any lot or parcel in a subdivision."  
19 Cal. Bus. & Prof. Code § 11018.1. As stated above,  
20 Plaintiff's evidence does not unequivocally demonstrate  
21 that Defendant failed to provide her with a valid  
22 Property Report prior to her signing the Agreement.  
23 Thus, the Court cannot reach Summary Judgment because a  
24 genuine issue of fact remains such that a reasonable  
25 fact-finder could return a verdict for the non-movant.  
26 See Anderson, 477 U.S. at 248.

27 Second, the California Code of Regulations require  
28 that a prospective purchaser "be given a copy of the

1 public report for which a receipt must be completed and  
2 retained." Cal. Code Regs. tit. 1, § 2795.1. The use  
3 of the term "prospective purchaser" in the Receipt's  
4 terms does not establish that Defendant violated the  
5 SLA. The Receipt clearly provides for situations such  
6 as the one at hand, where a "prospective purchaser" has  
7 signed a purchase and sale agreement but has yet to  
8 close escrow. The Receipt's language acknowledges that  
9 the Receipt's signatory may have already signed a  
10 purchase and sale agreement based on a conditional  
11 property report, and subsequently may be signing the  
12 Receipt for a final property report. Thus, Defendant  
13 did not violate the SLA by obtaining Plaintiff's  
14 signature for the Receipt after Plaintiff signed the  
15 Agreement.

16 While the Court finds that the use of the term  
17 "prospective purchaser" in the Property Report Receipt's  
18 language does not prove that the Receipt must be signed  
19 before the purchaser signs a purchase and sale  
20 agreement, genuine issues of material fact still exist  
21 as to whether Defendant provided Plaintiff a valid  
22 Property Report before she signed the Purchase and Sale  
23 Agreement.

24 4. Seventh Claim for Declaratory Relief

25 Accordingly, as the Court **DENIES** Summary Judgment  
26 for Plaintiff's claims under the ILSA and the SLA, the  
27 Court also **DENIES** Summary Judgment for Plaintiff's  
28 Seventh Claim for Declaratory Relief.

1 With regard to Defendant's Motion, Defendant  
2 asserts six grounds for Summary Judgment: (1) As to  
3 Plaintiff's claim for Damages and Rescission, Defendant  
4 asserts that it is exempt from ILSA under the "100 Lot  
5 Exemption" and, even if not exempt, that Plaintiff  
6 cannot meet her burden of proving that Defendant  
7 violated ILSA by failing to provide her with the most  
8 current Property Report before she signed the Purchase  
9 and Sale Agreement; (2) as to Plaintiff's claim for  
10 Rescission under ILSA, Plaintiff cannot meet her burden  
11 in proving that Defendant violated ILSA by failing to  
12 include specific language in the Agreement's liquidated  
13 damages clause; (3) as to Plaintiff's claim for  
14 Rescission under SLA, the Act does not require that  
15 Defendant provide the most current copy of the Property  
16 Report and secure a signed Receipt for the Property  
17 Report; (4) as to Plaintiff's claim for Unfair  
18 Competition, Defendant complied with ILSA and SLA and  
19 there is no statutory authority justifying such claim;  
20 (5) as to Plaintiff's claim for Constructive Trust,  
21 Defendant complied with ILSA and the SLA and there is no  
22 grounds to grant restitution or injunctive relief; and  
23 (6) as to Plaintiff's claim for declaratory relief,  
24 Defendant did not violate ILSA or the SLA and there is  
25 no basis by which Plaintiff can rescind the contract.

26 As an initial matter, the Court has determined that  
27 the Defendant does not qualify for the "100 Lot  
28 Exemption" and is therefore not exempt from the ILSA

1 requirements. The policy behind ILSA is to protect  
2 consumers and ensure that prior to purchasing certain  
3 types of real estate, a buyer is apprised of the  
4 information needed to make an informed decision. As  
5 such, the Court finds that the applicability of the  
6 exemption has to be contemporaneous with the sale of a  
7 particular lot and not at some point after the signing  
8 of the contract.

9 1. Plaintiff's First and Second Causes of Action  
10 for Damages and Rescission Under ISLA

11 The Court **DENIES** Defendant's Motion for Summary  
12 Judgment on the first and second causes of action for  
13 Damages and Rescission for violations of the Interstate  
14 Land Sales Full Disclosure Act. Genuine issues of  
15 material fact still exist as to whether Defendant  
16 violated the Interstate Land Sales Full Disclosure Act.  
17 Based on the facts presented, the Court cannot determine  
18 whether Plaintiff received the Property Report amended  
19 on March 28, 2008 before she signed the Purchase and  
20 Sale Agreement.

21 Additionally, the Court finds that a developer is  
22 required to give a prospective buyer a copy of a  
23 property report that is in effect prior to buyer's  
24 execution of the purchase agreement. Therefore, it is  
25 whether Plaintiff was in actual receipt of the March 28  
26 Report as opposed to the December 17 Report that is  
27 controlling on the issue of whether Defendant violated  
28 ISLA.



1        2. Plaintiff's Third Cause of Action for Rescission  
2        Under ISLA Regarding Liquidated Damages Clause

3        With regard to Defendant's Motion for Summary  
4 Judgment on the third cause of action for Rescission,  
5 the Court **GRANTS** Summary Judgment because Defendant  
6 meets the liquidated damages terms mandated under 15  
7 U.S.C. § 1703(d)(3) by using the breach of contract  
8 language in Cal. Civ. Code § 1675.

9        While Defendant undisputably did not include the  
10 breach of contract provision under 15 U.S.C. § 1703(d),  
11 the section merely requires that the Agreement "provide"  
12 for the terms as specified under the section. 15 U.S.C.  
13 § 1703(d). In the Agreement signed by Plaintiff,  
14 Defendant meets this requirement by complying with Cal.  
15 Civ. Code § 1675.

16        3. Plaintiff's Fourth Cause of Action for  
17        Rescission Under the California Subdivided Lands  
18        Act

19        The Court **DENIES** Defendant's Motion for Summary  
20 Judgment on the fourth cause of action for Rescission  
21 under the California Subdivided Lands Act. While the  
22 Court finds that the use of the term "prospective  
23 purchaser" in the Property Report Receipt's language  
24 does not prove that the Receipt must be signed before  
25 the purchaser signs a purchase and sale agreement,  
26 genuine issues of material fact still exist as to  
27 whether Defendant provided Plaintiff a valid Property  
28 Report before she signed the Purchase and Sale

1 Agreement.

2 4. Plaintiff's Fifth Cause of Action for Unfair  
3 Competition

4 The court **DENIES** Defendant's Motion for Summary  
5 Judgment on the fifth cause of action for Unfair  
6 Competition. Genuine issues of material fact still exist  
7 as to whether Defendant failed to provide Plaintiff with  
8 a valid Property Report before she signed the Purchase  
9 and Sale Agreement, in violation of ILSA and the SLA.

10 5. Plaintiff's Sixth Cause of Action for  
11 Constructive Trust

12 The court **DENIES** Defendant's Motion for Summary  
13 Judgment on the sixth cause of action for Constructive  
14 Trust. Genuine issues of material fact still exist as to  
15 whether Defendant failed to provide Plaintiff with a  
16 valid Property Report before she signed the Purchase and  
17 Sale Agreement, in violation of ILSA and the SLA

18 6. Plaintiff's Seventh Cause of Action for  
19 Declaratory Relief

20 Since the Court has **DENIED** Summary Judgment on six  
21 out of the seven preceding claims under the ILSA and the

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1 SLA, the Court also **DENIES** Summary Judgment on  
2 Defendant's Claim for Declaratory Relief.

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4 DATED: August 24,2010

5 **IT IS SO ORDERED.**

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RONALD S.W. LEW

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**HONORABLE RONALD S.W. LEW**  
Senior, U.S. District Court Judge

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