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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, )	
Plaintiff, )	<b>ORDER Re: Defendant's</b>
	<b>Motions in Limine</b>
	<b>[41][42][43][44] and</b>
v. )	<b>Plaintiff's Motions in</b>
	<b>Limine [46][47][48][49]</b>
Avenue of the Stars )	
Associates, LLC, )	
Defendant. )	

Defendant Avenue of the Stars Associates, LLC filed its Motions *in Limine* [41] [42] [43] [44] on October 04, 2010. Plaintiff Helene V. Galen filed her Motions *in Limine* [46] [47] [48] [49] on October 05, 2010.

Both matters were originally set for hearing on January 04, 2011. Having taken both matters under submission on December 27, 2010, and having reviewed all papers submitted pertaining to these Motions, the Court **NOW**

**FINDS AND RULES AS FOLLOWS:**

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1 **I. Defendant's Motions in Limine**

2 1. Defendant's Motion in Limine No. 1 To Exclude  
3 Trial Testimony By Any Witness Identified By  
4 Plaintiff After The Discovery Cut-Off Date Had  
5 Passed Including, But Not Limited To, The Testimony  
6 Of Bill Pham, Corazon Canamaso, And Ethel  
7 Concepcion

8 A. Legal Standard

9 Federal Rule of Civil Procedure 26(a)(1)(A)(I)  
10 states, in relevant part:

11 [A] party must, without awaiting a discovery  
12 request, provide to the other parties: (I)  
13 the name and, if known, the address and  
14 telephone number of each individual likely  
15 to have discoverable information -- along  
16 with the subjects of that information --  
17 that the disclosing party may use to support  
18 its claims or defenses, unless the use would  
19 be solely for impeachment.

20 Fed. R. Civ. P. 26(a)(1)(A)(I).

21 Federal Rule of Civil Procedure 37(c)(1) states  
22 that if a party fails to provide information or  
23 identify a witness as required by Rule 26(a), "the  
24 party is not allowed to use that information or witness  
25 to supply evidence ... at a trial, unless the failure  
26 was substantially justified or is harmless." Fed. R.  
27 Civ. P. 37(c)(1). Under Federal Rule of Civil  
28 Procedure 37(c)(1), the party facing sanctions

1 therefore has the burden of showing that a failure to  
2 comply with Federal Rule of Civil Procedure 26 was  
3 "substantially justified or harmless." Yeti by Molly,  
4 Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th  
5 Cir. 2001). The District Courts have broad discretion  
6 in imposing discovery sanctions under Federal Rule of  
7 Civil Procedure 37. Ritchie v. United States, 451 F.3d  
8 1019, 1026 (9th Cir. 2006).

9 B. Analysis

10 The Court **DENIES** Defendant's Motion *in Limine* No. 1  
11 to exclude trial testimony by any witness identified by  
12 Plaintiff after the discovery cut-off date had passed,  
13 including the testimony of Bill Pham, Corazon Canamaso,  
14 and Ethel Concepcion ("New Witnesses"). However, the  
15 Court finds that this ruling pertains only to the trial  
16 testimony of Bill Pham, Corazon Canamaso, and Ethel  
17 Concepcion and not to any other witnesses identified by  
18 Plaintiff after the discovery cut-off date had passed.

19 The Court finds that the prejudice to the Defendant  
20 from the late disclosure of the New Witnesses is not so  
21 severe as to warrant exclusion. While certainly late  
22 and past the discovery deadline, Plaintiff did serve  
23 Defendant with supplemental disclosures to inform  
24 Defendant about the New Witnesses two months before the  
25 original trial date. Moreover, the Defendant has been  
26 on notice with regard to the scope of Bill Pham's  
27 testimony because Bill Pham previously submitted to  
28 this Court a detailed Declaration in support of

1 Plaintiff's Opposition to Defendant's Motion for  
2 Summary Judgment. Thus, the scope of Bill Pham's  
3 testimony has been known to the Defendant, and would  
4 not constitute a surprise. Additionally, Bill Pham's  
5 Declaration submitted to this Court in support of  
6 Plaintiff's Opposition to Defendant's Motion for  
7 Summary Judgment sets forth the scope of his  
8 conversations and discussions with both Corazon  
9 Canamaso and Ethel Concepcion.

10 Accordingly, the Court **DENIES** Defendant's Motion *in*  
11 *Limine* No. 1 to exclude at Trial testimony by Bill  
12 Pham, Corazon Canamaso, and Ethel Concepcion.

13 2. Defendant's Motion in Limine No. 2 To Exclude  
14 Trial Testimony By Robert Gilmore

15 A. Legal Standard

16 Federal Rule of Civil Procedure, Rule 56(g) states,  
17 in relevant part:

18 If the court does not grant all the relief  
19 requested by the motion, it may enter an order  
20 stating any material fact—including an item of  
21 damages or other relief—that is not genuinely in  
22 dispute and treating the fact as established in the  
23 case.

24 Fed. R. Civ. P. 56 (g).

25 Federal Rule of Evidence 401 defines relevant  
26 evidence, stating that, "[r]elevant evidence means  
27 evidence having any tendency to make the existence of  
28 any fact that is of consequence to the determination of

1 the action more probable than it would be without the  
2 evidence." Fed. R. Evid. 401. Federal Rule of  
3 Evidence 402 provides that all irrelevant evidence is  
4 not admissible. Fed. R. Evid. 402.

5 B. Analysis

6 The Court **GRANTS** Defendant's Motion *in Limine* No. 2  
7 to exclude the trial testimony of Robert Gilmore.

8 Robert Gilmore is the Subdivision District Manager  
9 in the Los Angeles Office of the California Department  
10 of Real Estate ("DRE"). Plaintiff stated that she  
11 anticipated that Robert Gilmore would testify regarding  
12 the DRE's interpretation of the requirements and  
13 obligations imposed upon the sellers of lots by the  
14 California Subdivided Lands Act ("CSLA").

15 Specifically, Plaintiff designated Robert Gilmore as an  
16 expert witness to testify about the issue of whether  
17 the DRE interprets the CSLA as requiring that a  
18 prospective buyer must be provided with a receipt for  
19 the current public report and sign that receipt before  
20 signing a purchase agreement.

21 On August 24, 2010, the Court issued an Order [29],  
22 with regard to both Plaintiff's and Defendant's Motions  
23 for Summary Judgment [11, 15], finding that the  
24 Defendant did not violate the CSLA by obtaining  
25 Plaintiff's signature on the Receipt after Plaintiff  
26 signed the Agreement. As such, Plaintiff has informed  
27 the Court that she will not pursue her theory of  
28 liability that Defendant violated the CSLA by failing

1 to obtain a signed Receipt from Plaintiff before  
2 Plaintiff signed the Purchase Agreement.

3 Therefore, because the issue on which Robert  
4 Gilmore was expected to testify has already been ruled  
5 on by this Court, and because it appears that neither  
6 party will pursue this issue at Trial, the Court **GRANTS**  
7 Defendant's Motion *in Limine* No. 2 to exclude the trial  
8 testimony of Robert Gilmore.

9 3. Defendant's Motion *in Limine* No. 3 To Exclude  
10 The Trial Testimony Of Bill Pham Regarding His  
11 Review Of The Documents Provided To Him By  
12 Plaintiff And His Investigation As To Whether She  
13 Was Provided With The March Property Report Before  
14 She Signed The Purchase Agreement

15 A. Legal Standard

16 Federal Rule of Evidence 401 defines relevant  
17 evidence, stating that, "[r]elevant evidence means  
18 evidence having any tendency to make the existence of  
19 any fact that is of consequence to the determination of  
20 the action more probable than it would be without the  
21 evidence." Fed. R. Evid. 401. Federal Rule of  
22 Evidence 402 provides that all irrelevant evidence is  
23 not admissible. Fed. R. Evid. 402.

24 Under Federal Rule of Evidence 403, even relevant  
25 evidence may be excluded if its probative value is  
26 substantially outweighed by the danger of unfair  
27 prejudice. Fed. R. Evid. 403. Moreover, under Federal  
28 Rule of Evidence 602, a witness may not testify to a

1 matter unless evidence is introduced sufficient to  
2 support a finding that the witness has personal  
3 knowledge of the matter. Fed. R. Evid. 602.

4 B. Analysis

5 The Court **DENIES** Defendant's Motion *in Limine* No. 3  
6 to exclude the trial testimony of Bill Pham regarding  
7 his review of the documents provided to him by  
8 Plaintiff and his investigation as to whether Plaintiff  
9 was provided with the March Property Report before she  
10 signed the Purchase Agreement. The Court finds that  
11 Bill Pham's testimony would be directly relevant to the  
12 ultimate issue in this case of whether Plaintiff was  
13 given the March 28, 2008 Property Report. However, the  
14 Court notes that Bill Pham's testimony will still be  
15 subject to evidentiary objections that may be raised by  
16 the Defendant at Trial.

17 4. Defendant's Motion *in Limine* No. 4 To Exclude  
18 Evidence Or Argument That Defendant Was Required To  
19 Have Plaintiff Sign The Receipt For The March 28,  
20 2008 Public Report Before Signing The Purchase  
21 Agreement

22 A. Legal Standard

23 Federal Rule of Civil Procedure, Rule 56(g) states,  
24 in relevant part:

25 If the court does not grant all the relief  
26 requested by the motion, it may enter an order  
27 stating any material fact—including an item of  
28 damages or other relief—that is not genuinely in

1       dispute and treating the fact as established in the  
2       case.

3       Fed. R. Civ. P. 56 (g).

4       Federal Rule of Evidence 401 defines relevant  
5       evidence, stating that, “[r]elevant evidence means  
6       evidence having any tendency to make the existence of  
7       any fact that is of consequence to the determination of  
8       the action more probable than it would be without the  
9       evidence.” Fed. R. Evid. 401. Federal Rule of  
10      Evidence 402 provides that all irrelevant evidence is  
11     not admissible. Fed. R. Evid. 402.

12                B. Analysis

13      The Court **GRANTS** Defendant’s Motion *in Limine* No. 4  
14     to exclude evidence or argument that Defendant was  
15     required to have Plaintiff sign the Receipt for the  
16     March 28, 2008 Public Report before signing the  
17     Purchase Agreement.

18      The Court has already addressed, as a legal matter,  
19     the issue of whether the Defendant had to have obtained  
20     a receipt for the March Property Report prior to the  
21     time that Plaintiff signed the Purchase Agreement. In  
22     its August 24, 2010 Order [29], the Court found that  
23     the Defendant did not violate the CSLA by obtaining  
24     Plaintiff’s signature on the Receipt after Plaintiff  
25     signed the Agreement. Specifically, the Court reasoned  
26     that the Receipt’s language acknowledges that the  
27     Receipt’s signatory may have already signed a purchase  
28     agreement based on a conditional property report, and

1 subsequently may be signing the Receipt for a final  
2 property report.

3 Accordingly, the Court **GRANTS** Defendant's Motion *in*  
4 *Limine* No. 4 to exclude evidence or argument that  
5 Defendant was required to have Plaintiff sign the  
6 Receipt for the March 28, 2008 Public Report before  
7 signing the Purchase Agreement.

## 8 **II. Plaintiff's Motions in Limine**

### 9 1. Plaintiff's Motion in Limine No. 1 To Preclude 10 Defendant From Presenting Any Evidence Or Argument 11 Relating To The "100 Lot Exemption"

#### 12 A. Legal Standard

13 Federal Rule of Civil Procedure, Rule 56(g) states,  
14 in relevant part:

15 If the court does not grant all the relief  
16 requested by the motion, it may enter an order  
17 stating any material fact—including an item of  
18 damages or other relief—that is not genuinely in  
19 dispute and treating the fact as established in the  
20 case.

21 Fed. R. Civ. P. 56 (g).

#### 22 B. Analysis

23 Plaintiff argues that the Court's August 24, 2010  
24 Order [29] establishes that Defendant fails to qualify  
25 for the "100 Lot Exemption." Therefore, Plaintiff  
26 contends that there is no reason for Defendant to  
27 present any evidence or argument on this issue at  
28 Trial. The Court **GRANTS** Plaintiff Galen's Motion *in*

1 *Limine* No. 1 to Preclude Defendant from Presenting Any  
2 Evidence or Argument Relating to the "100 Lot  
3 Exemption."

4 The Court finds that its August 24, 2010 Order [29]  
5 established that Defendant failed to qualify for the  
6 "100 Lot Exemption." Therefore, pursuant to Federal  
7 Rule of Civil Procedure 56(g)<sup>1</sup>, this fact should be  
8 treated as established. Accordingly, the Court **GRANTS**  
9 Plaintiff's Motion *in Limine* No. 1 to preclude  
10 Defendant from presenting any evidence or argument  
11 relating to the "100 Lot Exemption."

12 2. Plaintiff's Motion in Limine No. 2 To Preclude  
13 Defendant From Presenting Any Evidence Or Argument  
14 That It Purportedly Complied With The ISLA And CSLA  
15 By Providing Plaintiff With The Expired December  
16 17, 2007 Property Report

17 A. Legal Standard

18 Federal Rule of Civil Procedure, Rule 56(g) states,  
19 in relevant part:

20 If the court does not grant all the relief  
21 requested by the motion, it may enter an order  
22 stating any material fact—including an item of  
23 damages or other relief—that is not genuinely in  
24

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25 <sup>1</sup> The Federal Rules of Civil Procedure were amended  
26 on December 01, 2010, subsequent to Plaintiff filing  
27 the instant Motion. As such, the Plaintiff relied on  
28 Federal Rule of Civil Procedure 56(d), which has now  
been recodified as Federal Rule of Civil Procedure  
56(g).

1 dispute and treating the fact as established in the  
2 case.

3 Fed. R. Civ. P. 56 (g).

4 B. Analysis

5 The Court **GRANTS** Plaintiff's Motion *in Limine* No. 2  
6 to preclude Defendant from presenting any evidence or  
7 argument that it purportedly complied with the ILSA and  
8 CSLA by providing Plaintiff with the expired December  
9 17, 2007 Property Report.

10 The Court has already addressed, as a legal matter,  
11 the issue of whether an expired property report can  
12 still suffice as complying with the Interstate Land  
13 Sales Full Disclosure Act ("ILSA") and CSLA in its  
14 August 24, 2010 Order [29]. The Court found that  
15 Plaintiff's receipt of the December 17, 2007 Property  
16 Report was insufficient to constitute compliance with  
17 the ILSA and CSLA. Specifically, the Court found that  
18 it was whether Plaintiff was in actual receipt of the  
19 March 28, 2008 Property Report as opposed to the  
20 December 17, 2007 Property Report that is controlling  
21 on the issue of whether Defendant violated the ISLA.

22 Accordingly, the Court **GRANTS** Plaintiff's Motion *in*  
23 *Limine* No. 2 to preclude Defendant from presenting any  
24 evidence or argument that it purportedly complied with  
25 the ILSA and CSLA by providing Plaintiff with the  
26 expired December 17, 2007 Property Report.

27 3. Plaintiff's Motion *in Limine* No. 3 To Exclude  
28 Any Evidence Or Argument That Defendant's Alleged

1 Violation Of The ISLA And CSLA Is Excused Because  
2 The Plaintiff Purportedly Was Not "Defrauded" Or  
3 Because Plaintiff Purportedly Has Buyer's Remorse

4 A. Legal Standard

5 Federal Rule of Evidence 401 defines relevant  
6 evidence, stating that, "[r]elevant evidence means  
7 evidence having any tendency to make the existence of  
8 any fact that is of consequence to the determination of  
9 the action more probable than it would be without the  
10 evidence." Fed. R. Evid. 401. Federal Rule of  
11 Evidence 402 provides that all irrelevant evidence is  
12 not admissible. Fed. R. Evid. 402.

13 B. Analysis

14 The Court **GRANTS IN PART AND DENIES IN PART**  
15 Plaintiff's Motion *in Limine* No. 3. The Court **GRANTS**  
16 Plaintiff's Motion *in Limine* No. 3 with regard to any  
17 evidence or argument that Defendant's violation of the  
18 ISLA and CSLA is excused because Plaintiff was not  
19 purportedly misled or defrauded. However, Plaintiff's  
20 Motion *in Limine* No. 3 is **DENIED** with regard to  
21 evidence or argument that Plaintiff's purported motive  
22 or reason for seeking to rescind the Purchase Agreement  
23 is due to buyer's remorse or a change in market  
24 conditions.

25 Defendant has not objected to or opposed  
26 Plaintiff's request that this Court exclude any  
27 evidence or argument that Defendant's violation of the  
28 ILSA and CSLA is excused because Plaintiff was not

1 misled or defrauded. Accordingly, the Court **GRANTS**  
2 Plaintiff's Motion *in Limine* No. 3 to exclude any  
3 evidence or argument that Defendant's violation of the  
4 ISLA and CSLA is excused because Plaintiff was not  
5 purportedly misled or defrauded.

6 With respect to evidence or argument that  
7 Plaintiff's purported motive or reason for seeking to  
8 rescind the Purchase Agreement is due to buyer's  
9 remorse or a change in market conditions, the Court  
10 **DENIES** Plaintiff's Motion *in Limine* No. 3. At Trial,  
11 the Court will be asked to decide whether Plaintiff  
12 received the March 28, 2008 Report. In order to rescind  
13 the Agreement under ILSA or CLSA, Plaintiff has the  
14 burden of proving that she did not. The Court finds  
15 that Plaintiff's motivation for bringing this Action is  
16 relevant to her credibility and the Court's  
17 determination of the ultimate issue in this case of  
18 whether she received the March 28, 2008 Report.

19 Accordingly, the Court **DENIES** Plaintiff's Motion *in*  
20 *Limine* No. 3 to exclude evidence or argument that  
21 Plaintiff's purported motive or reason for seeking to  
22 rescind the Purchase Agreement is due to buyer's  
23 remorse or a change in market conditions.

24 4. Plaintiff's Motion *in Limine* No. 4 To Exclude  
25 The Testimony Of Erica Llanos

26 A. Legal Standard

27 Federal Rule of Civil Procedure 26(a)(1)(A)(I)  
28 states, in relevant part:

1 [A] party must, without awaiting a discovery  
2 request, provide to the other parties: (I)  
3 the name and, if known, the address and  
4 telephone number of each individual likely  
5 to have discoverable information -- along  
6 with the subjects of that information --  
7 that the disclosing party may use to support  
8 its claims or defenses, unless the use would  
9 be solely for impeachment.

10 Fed. R. Civ. P. 26(a)(1)(A)(I).

11 Federal Rule of Civil Procedure 37(c)(1) states  
12 that if a party fails to provide information or  
13 identify a witness as required by Rule 26(a), "the  
14 party is not allowed to use that information or witness  
15 to supply evidence ... at a trial, unless the failure  
16 was substantially justified or is harmless." Fed. R.  
17 Civ. P. 37(c)(1). Under Federal Rule of Civil  
18 Procedure 37(c)(1), the party facing sanctions  
19 therefore has the burden of showing that a failure to  
20 comply with Federal Rule of Civil Procedure 26 was  
21 "substantially justified or harmless." Yeti by Molly,  
22 Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th  
23 Cir. 2001). The District Courts have broad discretion  
24 in imposing discovery sanctions under Federal Rule of  
25 Civil Procedure 37. Ritchie v. United States, 451 F.3d  
26 1019, 1026 (9th Cir. 2006).

27 B. Analysis

28 The Court **DENIES** Plaintiff's Motion *in Limine* No. 4

1 to exclude the testimony of Erica Llanos. The Court  
2 finds that Defendant has substantially justified its  
3 failure to timely supplement its initial disclosures.  
4 Defendant's counsel received Ms. Llanos' contact  
5 information on July 09, 2010, about a week after the  
6 discovery cut-off date of June 30, 2010. [See  
7 Declaration of Alicia Vaz ("Vaz Decl."), ¶¶ 7, 10.]  
8 Within twenty days of receipt of this information,  
9 Defendant filed its supplemental disclosures providing  
10 Plaintiff with Ms. Llanos' phone number and email  
11 address. [Id. at ¶ 17.]

12 Federal Rule of Civil Procedure 26 does not require  
13 a party to provide contact information for a witness it  
14 has disclosed when it does not have that information.  
15 See Fed. R. Civ. P. 26 (a)(1)(A)(I). Defendant has  
16 informed the Court that it has provided all of the  
17 information that it has about Ms. Llanos and her  
18 whereabouts to Plaintiff, including an email address  
19 and telephone number in its supplemental disclosures.  
20 [Vaz Decl., ¶¶ 3-5, 16-18.] Accordingly, the Court  
21 **DENIES** Plaintiff's Motion *in Limine* No. 4 to exclude  
22 the testimony of Erica Llanos.

23

24 DATED: March 1, 2011

25 **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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