UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM R. WEINSTEIN, individually and on behalf of the People of the United States of America, Plaintiff Pro Se, -vs.- DONALD J. TRUMP, in his official capacity as President of the United States of America, and DONALD J. TRUMP, JR., ERIC TRUMP and ALLEN WEISSELBERG, as Trustees of a publicly described but not publicly named Trust, Defendants.	:	No. 17-cv-1018-RA [rel. No. 17-cv-458-RA] **SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiff William R. Weinstein ("Plaintiff"), individually and on behalf of the People of the United States of America ("the People" or "the Class"), alleges upon personal information as to himself, and upon information and belief as to all other allegations, for his Second Amended Class Action Complaint ("Complaint") against Defendants Donald J. Trump, in his official capacity as President of the United States of America, and Donald J. Trump, Jr., Eric Trump and Allen Weisselberg, as Trustees (collectively "the Trustees") of a publicly described but not publicly named Trust (the "Trust"), as follows:

THE PARTIES

1. Plaintiff is a citizen of the United States and New York State, and resides within this District.

2. President Trump, who was inaugurated on January 20, 2017, is the 45th President of the United States. President Trump is a citizen of New York State, and might also be considered a citizen of Washington, D.C. during his term of Office while he resides at the White House. He is being sued in his official capacity as President.

3. Donald J. Trump, Jr., Eric Trump and Allen Weisselberg are the Trustees of the Trust, and are all citizens of New York State. The Trustees' business address is 725 Fifth Avenue, New York, New York 10022 (Trump Tower).

JURISDICTION AND VENUE

4. (a) The Article III judicial Power is jurisdictionally vested in this Court under 28 U.S.C. § 1331, because the action arises under the Constitution and/or involves a substantial question of federal law under the Constitution.

(b) Additionally, the Article III judicial Power is jurisdictionally vested in this Court under 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005, because:

(i) The Class Plaintiff seeks to represent is comprised of the People, who number more than 300 million;

(ii) There is diversity of citizenship between any one member of the Class (named and unnamed) and President Trump and the Trustees. The People comprising the members of the Class are citizens of all 50 states, and also the District of Columbia, the Territories and the Commonwealth of Puerto Rico included within the definition of the word "States" under 28 U.S.C. § 1332(e); and

(iii) The matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs. The "profits from foreign governments' patronage of President Trump's hotels and similar businesses during his presidential term" that are the subject of this action are estimated to substantially exceed $5,000,000, including but not limited to the profits from: (A) one of the largest tenants of Trump Tower, the Industrial and Commercial Bank of China (ICBC), which is owned by a foreign nation, China; (B) another tenant who leases office space in Trump Tower, Abu Dhabi Tourism & Culture Authority, an entity owned by the foreign

nation of the United Arab Emirates; (C) the patronage by foreign nations and their diplomats, agents, agencies and instrumentalities of the Trump International Hotel Washington, D.C., located at 1100 Pennsylvania Avenue N.W., approximately one-half mile from the White House; and (D) the patronage by foreign nations and their diplomats, agents, agencies and instrumentalities of President Trump's many other hotels and similar businesses in the United States and throughout the world.

5. Venue is proper in this District under 28 U.S.C. § 1391(e)(1), because President Trump, a defendant, is "an officer . . . of the United States . . . acting in his official capacity," and (A) one or more of the Trustee defendants reside in this judicial district, (B) a substantial part of the events giving rise to Plaintiff's claims have occurred and will occur in this judicial district, and a substantial part of personal property that is the subject of the action is situated within this judicial district, and (C) Plaintiff resides in this judicial district and the action does not center directly on real property, as with actions concerning the right, title or interest in real property.

STATEMENT OF FACTS

6. In light of his vast business holdings, including in a number of foreign countries as well as the United States, President Trump has been subjected to many criticisms about conflicts of interest in connection with his holding Office as President of the United States of America. Additionally, issues have been raised whether certain moneys received by President Trump on account of these business holdings violate Article I, § 9, Clause 8, of the Constitution of the United States ("Foreign Emoluments Clause"), and also Article II, § 1, Clause 7, of the Constitution ("Domestic Emoluments Clause").

7. The Foreign Emoluments Clause provides that "no Person holding any Office of Profit or Trust under them shall, without the consent of the Congress, accept any present,

Emolument, Office or Title, of any kind whatever, from any King, Prince or foreign State." However, neither the Foreign Emoluments Clause nor the Constitution provides a procedure for the disposal of prohibited presents and Foreign Emoluments received but not accepted by President Trump.

8. In fact, an action was filed in this Court on January 23, 2017, describing in detail numerous conflict of interest concerns, and identifying a number of President Trump's business holdings alleged to be problematic under the Foreign Emoluments Clause. *See Citizens for Responsibility and Ethics in Washington v. Donald J. Trump, in his official capacity as President of the United States of America*, No. 17-cv-458-RA (S.D.N.Y.) ("*CREW*"). In its original complaint, CREW sought, among other relief, a declaration that the conduct involving President Trump described in its complaint "is violating or will violate the Foreign Emoluments Clause," and also sought injunctive relief enjoining President Trump "from violating the Foreign Emoluments Clause, as construed by this Court." A substantially expanded Second Amended Complaint that includes original plaintiff CREW and three additional plaintiffs all alleging injuries as a result of President Trump's violations of the Foreign Emoluments Clause and seeking comparable relief was filed in *CREW* on May 10, 2017.

I. President Trump's Plan To Eliminate "Even The Appearance" Of Potential Violations Of The Foreign Emoluments Clause

9. During a January 11, 2017 press conference[1] held before President Trump was inaugurated as the 45th President of the United States on January 20, 2017, a plan intended to establish a structure for eliminating claimed conflicts of interest and potential violations of the Foreign Emoluments Clause was announced by counsel Sheri Dillon on behalf of then-President-elect Trump (the "Plan").

[1] Full transcript and video of January 11, 2017 conference available at: https://www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html?_r=0.

10. A "White Paper" entitled "Conflicts of Interest and the President" authored by Ms. Dillon and five other lawyers from the firm of Morgan, Lewis & Bockius LLP ("MLB") provided background for President-elect Trump's January 11, 2017 press conference, including a detailed presentation of the Plan and the actions President Trump had taken and would take to eliminate the claimed conflicts of interest and potential Foreign Emoluments Clause violations. A copy of the "White Paper" is Exhibit 1 to Plaintiff's Complaint.[2]

11. To address possible ethics and conflict of interest issues, the Plan generally involves the transfer by President Trump, as Trustor, of all of his investments and business assets—commonly known as The Trump Organization ("TTO")—into the Trust, and President Trump is completely walled-off and precluded from any involvement in the management of TTO during the entirety of his term of Office. Instead, the Trustees, collectively and unanimously, will have the management authority and full decision-making authority over TTO and its assets for the duration of President Trump's Presidency. Further, the Plan and the Trust's Trust Agreement limit the ability of the businesses of TTO to engage in defined foreign and domestic transactions posing conflict of interest concerns. White Paper, at 2-3.

12. To address both conflict of interest concerns and issues relating to potential violations of the Foreign Emoluments Clause and the Domestic Emoluments Clause, the Trust Agreement also prohibits TTO "from entering into any new transaction or contract with a foreign country, agency, or instrumentality thereof, including a sovereign wealth fund, foreign government official, or member of a royal family, the United States government or any agency or instrumentality thereof, or any state or local government or any agency or instrumentality thereof, other than normal and customary arrangements already undertaken before [President Trump's] election." White Paper, at 3.

[2] White Paper available at: https://assets.documentcloud.org/documents/3280261/MLB-White-Paper-1-10-Pm.pdf.

13. To further eliminate issues relating to potential violations of the Foreign Emoluments Clause, President Trump has promised and agreed that he "will donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury." White Paper, at 6.

14. During the January 11, 2017 press conference, Ms. Dillon described President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury," in relevant part, as follows (emphasis added):

> I'm going to turn to one last topic today that has been of interest lately called emoluments. That's a word I think we've all become familiar with and perhaps had not heard before.
>
> And we're gonna describe some other actions that President-elect Trump is taking *to avoid even the appearance of a conflict.*
>
> * * *
>
> The Constitution does not require President-elect Trump to do anything here. But, just like with conflicts of interests, *[President-elect Trump] wants to do more than what the Constitution requires.*
>
> * * *
>
> So, President-elect Trump has decided, and we are announcing today, that he is going to voluntarily donate all profits from foreign government payments made to his hotel to the United States Treasury. *This way, it is the American people who will profit.*

15. Because President Trump has "voluntarily" promised and agreed to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause and "to do more than what the Constitution requires," the issue of "the Consent of the Congress" or the need for any specific Congressional action under the Foreign Emoluments Clause regarding the acceptance of the profits President Trump has agreed to donate to the U.S. Treasury for the intended benefit of the People has been obviated.

16. The "profits from foreign governments' patronage of his hotels and similar businesses during his presidential term" that President Trump has promised and agreed to donate to the U.S. Treasury for the intended benefit of the People will be contributed to a specific account established in 1843 called "Gifts to the United States." When made, the donations are considered unconditional gifts to the United States government.

17. Under the Internal Revenue Code, 26 U.S.C. § 170(c)(1), a "charitable contribution" is defined to include "a contribution or gift to or for the use of … the United States … if the contribution or gift is made for exclusively public purposes." Thus, "all [of the] profits from foreign governments' patronage of his hotels and similar businesses during his presidential term" that President Trump has voluntarily promised and agreed to donate to the U.S. Treasury so that "the American people … will profit" "to avoid even the appearance of a conflict" regarding potential violations of the Foreign Emoluments Clause, constitute "charitable contributions" under 26 U.S.C. § 170(c)(1).

18. Even though under the Plan President Trump has transferred or will transfer all of his investments and business assets into the Trust, President Trump is still treated as the owner of all of these investments and business assets and their profits under federal law. Specifically under federal income tax law, 26 U.S.C. § 673, President Trump is treated as the owner because he has retained a reversionary interest in the investments and business assets that takes effect at the end of his term of Office as President. Additionally or alternatively, under 26 U.S.C. § 676, President Trump is treated as the owner of the investments and business assets because the power to revest title to the investments and business assets and profits in President Trump is exercisable by President Trump, and/or the Trustees who are non-adverse parties to President Trump.

19. It is unclear to date whether President Trump has completed all of the acts necessary to comply with the Plan as described in the White Paper. For example, public real estate records show that President Trump has transferred a number of his properties, including Trump Tower, and a number of condominium units and related property interests into his personal trust, The Donald J. Trump Revocable Trust, which is registered in New York State. Other records indicate that President Trump's ownership in the Trump International Hotel Washington, D.C., has also been transferred to The Donald J. Trump Revocable Trust.

20. On January 23, 2017, one of the lawyers for TTO, Alan Garten, confirmed that the Trust has been set up, suggesting that the Trust described in the Plan is a separate trust from The Donald J. Trump Revocable Trust that has existed since 2014. However, Mr. Garten would not confirm on February 7, 2017 whether all of President Trump's investments and business assets had been transferred to the Trust.

21. A Certification of Trustee, dated January 26, 2017, that was included as an attachment to correspondence dated January 27, 2017 relating to the transfer of President Trump's ownership in the Trump International Hotel Washington, D.C., to The Donald J. Trump Revocable Trust, states that The Donald J. Trump Revocable Trust was created on April 7, 2014, and therefore has long pre-existed the Plan, although the Certification also states that this trust was recently amended by a Second Amendment dated January 17, 2017.[3] The Certification also indicates that, as of January 26, 2017, only defendants Donald J. Trump, Jr., and Allen Weisselberg are the trustees of The Donald J. Trump Revocable Trust, and that they were appointed trustees on January 19, 2017. Defendant Eric Trump, one of the three Trustees

[3] January 26, 2017 Certification of Trustee available at https://www.propublica.org/documents/item/3442581-Trump-International-Hotel-Liquor-License-Filings.

identified in the Plan, is not identified in the Certification as a trustee of The Donald J. Trump Revocable Trust.

22. A newly revised Certification of Trustee dated February 10, 2017 was included as Exhibit 14 to a March 23, 2017 letter from Kevin Terry of the U. S. General Services Administration to Donald J. Trump, Jr., regarding compliance with the government lease relating to the Trump International Hotel Washington, D.C.[4] The February 10, 2017 Certification continued to identify only defendants Donald J. Trump, Jr., and Allen Weisselberg as the trustees of The Donald J. Trump Revocable Trust, but it also identifies defendant Eric Trump as Chairman of the Advisory Board of The Donald J. Trump Revocable Trust. There is no mention of an Advisory Board in the White Paper, and there was no mention of an Advisory Board during the January 11, 2017 press conference.

23. Based on the facts alleged in ¶¶ 19-22 of the Complaint above, among other reasons, the identity of the Trust described in the Plan remains unclear.

24. The February 10, 2017 Certification of Trustee has modified the provision of the January 26, 2017 Certification stating that "[t]he purpose of the Trust is to hold assets for the exclusive benefit of Donald J. Trump." The February 10, 2017 Certification states that "[t]he purpose of the Trust is to hold assets for the benefit of Donald J. Trust." The elimination of the word "exclusive" supports the conclusion that, to the extent The Donald J. Trump Revocable Trust continues to hold any "profits from foreign governments' patronage of his hotels and similar businesses during [President Trump's] presidential term," then those profits are to be donated to the U.S. Treasury for the benefit of the People.

[4] February 10, 2017 Certification of Trustee available as Exhibit 14 at https://www.documentcloud.org/documents/3525993-Contracting-Officer-Letter-March-23-2017.html#document/p161. *See also* ProPublica, *Trump's Changing Trust, Annotated,* April 3, 2017, https://projects.propublica.org/graphics/trump-trust.

25. The February 10, 2017 Certification also includes a provision stating that "[t]he Trustees shall distribute net income or principal [from The Donald J. Trump Revocable Trust] to Donald J. Trump at his request, as the Trustees deem necessary for his maintenance, support or uninsured medical expenses, or as the Trustees otherwise deem appropriate." This provision confirms President Trump's status under Internal Revenue Code § 676 as the "owner" of the "profits from foreign governments' patronage of his hotels and similar businesses during [President Trump's] presidential term" to be donated to the U.S. Treasury for the benefit of the People, to the extent those profits are held within The Donald J. Trump Revocable Trust rather than the separate Trust described in the Plan.

26. However, the February 10, 2017 Certification also states that "the Trustees are subject to certain restrictions and limitations with respect to certain transactions and actions made on behalf of the Trust, and the Trustees hereby represent and warrant that they have complied with and shall continue to comply with such restrictions and limitations." Upon information and belief, these restrictions and limitations include those resulting from President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" for the benefit of the People.

27. The February 10, 2017 Certification also includes a provision that "[a]ny person may rely conclusively on the facts stated in a certificate signed by any Trustee." This necessarily includes the January 26, 2017 and February 10, 2017 Certifications.

28. On or about April 4, 2017, during an interview with ProPublica, attorney Alan Garten of TTO confirmed that TTO would not release the trust agreement for The Donald J. Trump Revocable Trust. Further, MLB did not respond to ProPublica's request for comment

about the release of the trust agreement when ProPublica was referred to the firm by Mr. Garten.[5]

29. To this date, the Trust Agreement described under the Plan and its specific terms have not been disclosed to the People.

II. The Implementation Of The Plan Regarding Foreign Emoluments

30. Until paid to the Treasury, all of the "profits from foreign governments' patronage of his hotels and similar businesses during [President Trump's] presidential term" that President Trump has promised and agreed to donate to the U.S. Treasury for the benefit of the People" "to avoid even the appearance of a conflict" regarding potential violations of the Foreign Emoluments Clause, of necessity, are or will be held in the Trust managed and controlled by the Trustees, or are otherwise under the Trustees' control until placed in the Trust, and the Trust Agreement and other relevant documents either expressly or impliedly address these profits. However, the White Paper includes no specifics regarding the procedures to be employed by the Trustees to account for these profits and pay them to the U.S. Treasury.[6]

31. On March 17, 2017, the Washington Post quoted a spokeswoman for TTO regarding the actions being taken to satisfy President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury." According to the spokeswoman, TTO "has developed

[5] https://www.propublica.org/article/trump-pull-money-his-businesses-whenever-he-wants-without-telling-us.

[6] As noted in ¶ 12 above, the White Paper also addresses steps being taken to prevent violations of the Domestic Emoluments Clause, which prohibits President Trump from receiving during his term of Office "any other Emolument from the United States, or any of them" except his guaranteed Compensation. White Paper, at 4, 5. (Although at page 4 the White Paper cites to "Article II, § 7, Clause 7" of the Constitution for the Domestic Emoluments Clause, the correct citation is to Article II, § 1, Clause 7.) The Domestic Emoluments Clause includes no provision for "the Consent of the Congress" to validate President Trump's retention of these prohibited Emoluments. Nor—as with the Foreign Emoluments Clause—does the Domestic Emoluments Clause or the Constitution provide a procedure for the disposal of prohibited Domestic Emoluments received by President Trump. In any event, the Plan as publicly described in the White Paper does not include a promise or agreement by President Trump to donate to the U.S. Treasury during his presidential term all profits from patronage by "the United States, or any of them," of his hotels and similar businesses, and any such profits are beyond the scope of this Complaint.

and is implementing its policy to identify profits from foreign-government patronage at our hotels and similar businesses within the scope of the policy." The spokeswoman also said the company would rely on standard accounting practices for the hotel industry.[7]

32. Later on March 17, 2017, USA Today published an article entitled "Trump hasn't donated hotel profits from foreign governments yet."[8] This article identified the spokeswoman on behalf of TTO as Amanda Miller, who described the same policy discussed in the Washington Post article, and said that TTO "plans to make the donation after the end of the calendar year." Miller, however, would not provide a copy of the policy to USA Today or otherwise specify how TTO would determine which payments come from foreign government patrons. Nor would TTO state how much it had accrued to date from foreign government patronage. Miller, however, did confirm that in calculating profits, TTO will "apply the accounting and financial reporting guidance provided for in the Uniform System of Accounts for the Lodging Industry."

A. The April 21, 2017 Letter Request of the Committee on Oversight and Government Reform of the U.S. House of Representatives Regarding President Trump's Promise and Agreement To "Donate All Profits from Foreign Governments' Patronage of His Hotels and Similar Businesses During His Presidential Term to the U.S. Treasury"

33. On April 21, 2017, Representative Jason Chaffetz, Chairman, and Representative Elijah E. Cummings, Ranking Minority Member, sent a bipartisan letter on behalf of the U.S. House of Representatives Committee on Oversight and Government Reform to Sheri Dillon of MLB "regarding President Trump's business interests."[9]

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[7] *See* https://www.washingtonpost.com/politics/trumps-camp-made-three-big-promises-to-donate-money-to-charity-what-happened/2017/03/17/7c9ebaec-0a72-11e7-a15f-a58d4a988474_story.html.

[8] *See* https://www.usatoday.com/story/news/politics/2017/03/17/trump-wait-until-after-end-year-donate-profits-foreign-governments/99313784/.

[9] The letter can be found by date on the Committee website: https://oversight.house.gov/2017/04/letter/.

34. The April 21, 2017 letter specifically focused on President Trump's promise and agreement under the Plan as described by Ms. Dillon during the January 11, 2017 press conference "to voluntarily donate all profits from foreign government payments made to his hotel to the United States Treasury" because "he wants to do more than what the Constitution requires," and referenced the USA Today article regarding the year-end timing for the donation of the profits.

35. The April 21, 2017 letter then included the following request for documents and information:

> So the Committee can better understand the mechanics of how this arrangement will be implemented, and specifically the timing for submitting remuneration pursuant to the plan you announced on January 11, 2017, please provide the following documents and information as soon as possible, but no later than noon on May 12, 2017:
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> 1. All documents referring or relating to:
>
> a. the process by which payments from foreign governments or foreign government-owned entities are identified;
> b. the process or formula by which the profits from such payments are calculated;
> c. the manner in which those profits are donated to the U.S. Treasury;
> d. how details about the amount of profits identified and donated to the U.S. Treasury are tracked or publicly reported; and
> e. whether the Trump Organization, President Trump, or his trust plans to claim donations to the U.S. Treasury as a gift for tax deduction purposes.
>
> 2. Documents showing which specific entities within the Trump Organization will be donating profits derived from foreign government sources.

The April 21, 2017 letter also requested a briefing of Committee staff no later than May 19, 2017 regarding the documents.

B. President Trump's Response to the April 21, 2017 Committee Letter Request

36. By letter dated May 11, 2017 addressed to Representatives Chaffetz and Cummings, the Executive Vice President and Chief Compliance Counsel for TTO, George Sorial, responded to the Committee's April 21, 2017 letter "which requested information relating to [TTO's] policy with respect to the voluntary donation of profits from foreign government payments at Trump properties."[10]

37. According to Mr. Sorial's May 11, 2017 response:

> … TTO also developed and published a new written policy, titled the "Donation of Profits from Foreign Government Patronage Policy" ("the Policy"), which memorializes and provides guidance regarding TTO's voluntary program to identify and donate profits derived from foreign government patrons. In addition to stating a general overview of the Policy and its purpose, the Policy outlines the voluntary procedure by which TTO identifies and donates to the U.S. Treasury profits from foreign government patronage at its hotels and similar businesses during President Trump's tenure in office.

Enclosed as Exhibit A to the letter was a copy of the Policy, described by Representative Cummings as a "glossy eight-page pamphlet."[11] Also enclosed as Exhibit B was an email forwarding the pamphlet to various TTO entities that was described by Mr. Sorial but not posted as part of Representative Cummings May 24, 2017 press release.

38. The Policy discloses how President Trump and TTO have interpreted and intend to implement President Trump's ambiguous promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term

[10] Available at: https://democrats-oversight.house.gov/news/press-releases/cummings-raises-grave-concerns-about-president-s-refusal-to-comply-with. As further discussed below, this is the website address of the May 24, 2017 Press Release by Representative Cummings entitled "Cummings Raises Grave Concerns About President's Refusal To Comply With Emoluments Clause Of Constitution." The posted press release includes links to various documents, including the May 11, 2017 letter from Mr. Sorial, as well as the pamphlet produced by Mr. Sorial setting out the "policy" regarding the actions to be taken in connection with President Trump's Foreign Emoluments promise and agreement described in the White Paper and by Sheri Dillon during the January 11, 2017 press conference. The posted press release also includes a link to Representative Cummings' May 24, 2017 letter response to Mr. Sorial regarding the "policy" as described in the pamphlet.

[11] *See* Note 10 above.

to the U.S. Treasury"—the promise and agreement made by President Trump "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause and "to do more than what the Constitution requires," so that "it is the American people who will profit."

39. The Policy states the following, in substantial and relevant part:

Page 2 (emphasis in original):

The purpose of this policy is to define the procedure and application of The Trump Organization's (the **"Company")** voluntary directive to donate all profits from foreign governments' patronage at our hotels and similar businesses during President Trump's presidential term to the U.S. Treasury.

We acknowledge that it is not customary in the hospitality industry to identify and calculate profits from a particular customer group. Therefore, this policy has been designed for our hotels and similar businesses to rely on known and identifiable source data and documentation to quantify amounts and profit calculations.

Regarding the calculation of profit, consistent with the hospitality industry, our hotels follow the accounting and financial reporting guidance provided for in the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition **("USALI").** The USALI provides a format of operating statement which calculates and defines net income **("Profit")** as operating revenue less all expenses in connection with the business.

Page 3 (emphasis in original):

Our portfolio of hotels and similar businesses (the **"Properties")** consists of both (1) wholly-owned hotels, resorts and clubs. and (2) managed hotels and condominium-hotels. The scope of this policy is applicable to:

(1) Profit generated from foreign governments' patronage from wholly-owned Properties and;

(2) Profit generated from management fees earned from managed hotels and condominium-hotels attributed to foreign governments' patronage.

The policy is <u>not</u> applicable to profits earned by and attributed to the owners of condominium-hotel units located in the Company's managed condominium-hotel properties, as those profits belong to the individual condominium-units owners.

Page 4:

To fully and completely identify all patronage at our Properties by customer type is impractical in the service industry and putting forth a policy that requires all guests to identify themselves would impede upon personal privacy and diminish the guest experience of our brand. It is not the intention nor design of this policy for our Properties to attempt to identify individual travelers who have not specifically identified themselves as being a representative of a foreign government entity on foreign government business.

Page 5:

It is the intention of this policy for our Properties to make commercially reasonable efforts using the three sources noted below to determine when a Property has received revenue from an entity that represents a foreign government on foreign government business ("Foreign Government Revenues")[:] … 1. All direct billings from the Property to a foreign government; 2. All contracted group, banquet and catering business with the Property from a foreign government; and 3. All payments received by the Property via check or electronic payment (I.e., bank wire transfer) from a reasonably identifiable foreign government entity. (emphasis omitted)

This policy defines **"foreign government entity"** to mean a (i) department or agency of a foreign government, (ii) a foreign embassy, (iii) a foreign political party, (iv) members of a royal family, or (v) a sovereign wealth fund. We recognize that foreign governments can be organized in very different ways. Some may operate through state-owned and state-controlled entities in industries such as aerospace and defense, banking, finance, healthcare, energy and others, which may not be reasonably identifiable as foreign government entities, and therefore may not be included in our calculation of profit to be donated. (emphasis in original)

Page 6:

In summary, the USALI calculation of Profit is defined as total operating revenue ("Revenue") less (1) total departmental expenses, (2) total undistributed expenses and (3) total non-operating expenses.

As our Properties generate various revenue streams from sales of product offerings with different revenue pricing and cost structures, our most relevant measure of Profit is the Revenue received by the Property less the costs required to provide such Revenue. To attempt to individually track and distinctly attribute certain business-related costs as specifically identifiable to a particular customer group is not practical, nor would it even be possible without an inordinate amount of time, resources and specialists, which would still be subject to some measure of estimation and cost allocation methodology.

Page 7 (emphasis in original):

As such, the most reasonable and effective way to measure Profit from a particular customer base is to apply an overall Property Profit calculation on a pro-rata basis to the revenue generated from that customer base. It is our policy therefore to calculate Profit from foreign governments' patronage in this manner. An example of this methodology is summarized below for illustrative purposes only:

Example: A wholly-owned hotel generated on an annual basis $10,000,000 in Revenue, of which $500,000 (5%) was identified as Foreign Government Revenue. The hotel's total annual department expenses are $7,500,000 and annual

non-operating expenses are $1,000,000. Annual net income (Profit) for this hotel is $1,500,000.

1 In this example, the hotel's gross operating profit as defined by USALI is $2,500,000, or 25% of Revenue. The hotel applies the same 25% gross operating percentage margin to the $500,000 of Foreign Government Revenue to determine its gross operating profit on the Foreign Government Revenue to be $125,000 ($500,000 x 25%).

2. The hotel then applies a 5% (based on the % of Foreign Government Revenue) allocation to the non-operating business expenses, which calculation is $50,000 ($1,000,000 x 5%).

3. The hotel profit therefore attributed to being from foreign government patronage **("Foreign Government Profit")** is $75,000 in this example. This is calculated as gross operating profit amount of $125,000, less the $50,000 amount of non-operating expenses for a net Foreign Government Profit of $75,000.

Foreign Government Profit shall be tabulated for each wholly-owned Property on an Annual basis.

Page 8:

On an annual basis, and after the completion of our fiscal year, the Company's wholly-owned Properties shall send their Foreign Government Profit to a master Company bank account for aggregation. Also on an annual basis, and after the completion of the Company's fiscal year, the Company shall send to the same master Company bank account its accumulation of Profit from management fees that is deemed attributed from foreign governments' patronage. The Company shall then make its annual donation of Profit from foreign governments' patronage to the U.S. Treasury in one lump sum payment from this master account representing its voluntary donation in accordance with this policy.

40. There are a number of deficiencies in the Policy that prevent it from achieving President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause and "to do more than what the Constitution requires," so that "it is the American people who will profit." A non-exhaustive list of these deficiencies follows.

41. Nowhere does the Policy describe any or even use the word "trust." Thus, President Trump and the Trustees have apparently abandoned the part of the Plan described by Sheri Dillon at the January 11, 2017 press conference and in the White Paper to set up the

separate Trust to avoid conflict of interest and foreign emolument issues. The TTO properties that are known or likely to receive Foreign Government Revenues should be segregated in the Trust as originally represented to the People, rather than buried within TTO as a whole.

42. The Policy narrowly applies only to "wholly-owned hotels, resorts and clubs. and managed hotels and condominium-hotels." Among other types of properties, the Policy excludes partially owned hotels, resorts and clubs, managed residential condominiums, and TTO residential condominium units and other residential properties sold to foreign nations and their diplomats, agents, agencies and instrumentalities. The Policy also excludes commercial property rental proceeds received from foreign nations and their diplomats, agents, agencies and instrumentalities, including but not limited to the Industrial and Commercial Bank of China (ICBC) and the Abu Dhabi Tourism & Culture Authority which both lease property in Trump Tower. There are also other properties receiving payments from foreign nations and their diplomats, agents, agencies and instrumentalities that may be known by President Trump and the Trustees or can be identified by an examination of the full portfolio of TTO's properties.

43. The Policy includes no mechanism or procedure to determine as completely as possible the transactions with foreign nations and their diplomats, agents, agencies and instrumentalities, and affirmatively rejects the need for such a mechanism or procedure. The Policy favors secrecy over transparency, contrary to the expressly stated purpose of President Trump's promise and agreement of "avoid[ing] even the appearance of a" potential violation of the Foreign Emoluments Clause. President Trump's promise and agreement to make the prescribed charitable contributions to the U.S. Treasury for the benefit of the People must be construed against President Trump, as the recipient of the revenues possibly violating the Foreign Emoluments Clause, and in favor of the People.

44. The Policy includes no mechanism or procedure to ensure compliance by each affected property with the requirements of the Policy.

45. (a) Although the term "profits" included in President Trump's promise and agreement is ambiguous, and although annual revenues and operating and non-operating expenses for a particular property are fungible in their totality and not readily allocable to any individual customer, the Policy calculates the Foreign Government Profits narrowly in a way that allows the Foreign Government Revenues to substantially and materially benefit President Trump rather than "the American people" by subsidizing the operating and non-operating expenses. In the example provided in the Policy and quoted above, for a property with $10,000,000 of total revenues including $500,000 of Foreign Government Revenues, $7,500,000 of operating expenses and $1,000,000 of non-operating expenses, the total non-Foreign Government Revenues of $9,500,000 exceed all of the non-allocable operating and non-operating expenses by $1,000,000. Thus, the Foreign Government Revenues of $500,000 are properly viewed as pure profit to the property and President Trump in order "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause. Furthermore, and particularly egregious, the formula prescribed in the Policy allows the Foreign Government Revenues to be reduced by non-operating expenses such as depreciation, a major component of all property-based businesses that requires no cash outlay whatsoever and thus provides no legitimate basis for offset. The Policy also contains no provision for non-operating interest expense even if that interest expense is accrued rather than paid or is attributable to a lender who is a foreign nation or its agents, agencies and instrumentalities. The Policy is also silent as to the treatment of tax expense, even though the Policy as described would reduce the amount of the

charitable contributions to be donated to the U.S. Treasury by the taxes directly apportionable to the non-Foreign Government Revenues.

(b) The bottom line regarding the "profits" computation is that although the Uniform System of Accounts for the Lodging Industry applied under the Policy may be appropriate for ensuring the comparability of the "format of operating statement" and computation of profits in the lodging industry, it is *not* compatible with President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause and "to do more than what the Constitution requires," so that "it is the American people who will profit."

C. Negative Reaction To The Policy

46. On May 24, 2017, Ranking Minority Member Elijah Cummings of the House of Representatives Committee on Oversight and Government Reform issued a press release entitled "Cummings Raises Grave Concerns About President's Refusal To Comply With Emoluments Clause Of Constitution." *See* Note 10. The press release has links to various documents including Mr. Sorial's May 11, 2017 letter and the Policy. The release also includes a link to Representative Cummings' May 24, 2017 letter to Mr. Sorial expressing severe criticisms regarding the paucity of documents produced with Mr. Sorial's May 11, 2017 letter, and the inadequacy of the Policy.

47. Specifically regarding the Policy, Representative Cummings' criticisms in his May 24, 2017 letter included the following:

(i) "This pamphlet raises grave concerns about the President's refusal to comply with the Constitution merely because he believes it is 'impractical' and could 'diminish the guest experience of our brand.'"

(ii) "The pamphlet makes clear that the Trump Organization will not attempt to identify all foreign emoluments that are prohibited by the Constitution."

(iii) "Instead, the pamphlet states that the Trump Organization will check only three sources of information: direct billings to foreign governments; group, banquet, and catering contracts with foreign governments; and payments from a 'reasonably identifiable foreign government entity.'"

(iv) "Based on this pamphlet, it does not appear that Trump Organization businesses will ask any of their customers whether they represent foreign governments and would therefore be providing prohibited emoluments. Instead, these officials would have to self-report voluntarily and proactively."

(v) "The pamphlet does not separate and identify profits from specific foreign governments, instead using a formula to estimate the profits received[.]"

(vi) "The pamphlet does not appear to capture indirect payments by foreign governments through third parties. … Trump Organization businesses will expend no effort to identify payments from these government entities, according to the pamphlet."

48. Representative Cummings concluded his criticisms of the Policy as follows:

> The deficiencies in this approach are obvious. Under the policy outlined in this pamphlet, foreign governments could provide prohibited emoluments to President Trump, for example, through organizations such as RT, the propaganda arm of the Russian government, or a host of other entities that are funded and controlled by foreign governments. Those payments would not be tracked in any way and would be hidden from the American public.

In addition to his forceful criticisms, Representative Cummings requested that, on or before June 2, 2017, Mr. Sorial schedule a briefing with Committee Staff to discuss the issues identified in Representative Cummings' letter in greater detail, and that Mr. Sorial fully comply with the request for documents and information in the April 21, 2017 bipartisan letter.

49. Also on May 24, 2017, the Ranking Minority Members of the House of Representatives Committee on the Judiciary and its Subcommittees issued a letter directly to President Trump regarding issues under the Foreign Emoluments Clause.[12] The May 24, 2017 letter stated:

> We were disappointed to learn today that in its response to a bipartisan request for foreign emolument information from the House Oversight and Government Reform Committee, the Trump Organization indicated it would be "impractical" to "fully and completely identify all patronage" at the Organization's properties. As a result, it is now all the more important that we ask you directly to provide an accounting of items constituting a "present" or "Emolument" from foreign governments, their agents, and instrumentalities as set forth below.

50. The May 24, 2017 Committee on the Judiciary letter requested information on a number of issues related to foreign emoluments in order for President Trump to "submit … a full accounting of all items that may constitute a 'present' or 'Emolument' that you have received or anticipate receiving from a foreign government or its agent or instrumentality."

51. Among the information requested for the period since President Trump took Office on January 20, 2017 is: (i) the identity of any present or emolument received from a foreign government or its agent or instrumentality; (ii) the identity of all businesses in which President Trump has any ownership interest that transacted business with, or received any payment from, a foreign government or its agent or instrumentality; (iii) whether President Trump has received any payments from the trust described by Sheri Dillon during the January

[12] *See* Letter to Trump on Emoluments 5.24.17: https://democrats-judiciary.house.gov/story-type/letter/letter-trump-emoluments-52417.

11, 2017 press conference to which the TTO businesses had been or would be transferred; and (iv) the identity of any businesses in which President Trump has an interest that are required to pay a financial obligation to a foreign government or its agent or instrumentality, and the terms of such obligations, including modifications.

52. Additionally, the May 24, 2017 Committee on the Judiciary letter specifically requested information regard President Trump's promise and agreement to "voluntarily donate all profits from foreign government payments made to [your] hotel to the United States Treasury" described by Ms. Dillon during the January 11, 2017 press conference, including a copy of any document showing that the commitment had been reduced to writing, the identification of which hotels it applies to, and a detailed list of each applicable payment received and the date it was transmitted to the U.S. Treasury.

53. No date for the production of the requested information was specified in the May 24, 2017 Committee on the Judiciary letter.

54. On May 29, 2017, the New York Times published an editorial entitled "Isn't Some of the Trump Hotel Profit Ours?"[13] The editorial addressed President Trump's promise and agreement described by Ms. Dillon during the January 11, 2017 press conference to "voluntarily donate all profits from foreign government payments made to his hotel to the United States Treasury."

55. The editorial also addressed the Policy, which it described as "[a] slick eight-page brochure" whose "bottom line" found at the bottom of Page 4 was quoted:

> "Putting forth a policy that requires all guests to identify themselves would impede upon personal privacy and diminish the guest experience of our brand[.] It is not the intention nor design of this policy for our properties to attempt to identify individual travelers who have not specifically identified themselves as

[13] Available at https://www.nytimes.com/2017/05/29/opinion/trump-hotel-emoluments-clause.html.

being a representative of a foreign government entity on foreign government business."

56. The editorial then offered a solution:

Ethics experts say it would be easy to encourage foreign government patrons to identify themselves. If online reservation forms let guests request a hotel room away from the elevators, they could also include a box to check if you're a foreign government emissary.

Common sense leads to the same solution.

III. The Miscellaneous Receipts Act, 31 U.S.C. § 3302

57. The Miscellaneous Receipts Act, 31 U.S.C. §3302, governs the requirement for the deposit of government moneys with the U.S. Treasury.

58. Specifically, 31 U.S.C. § 3302 provides in relevant part:

(a) Except as provided by another law, an official or agent of the United States Government having custody or possession of public money shall keep the money safe without—
(1) lending the money;
(2) using the money;
(3) depositing the money in a bank; and
(4) exchanging the money for other amounts.
(b) Except as provided in section 3718(b) of this title, an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.
(c)(1) *A person having custody or possession of public money*, including a disbursing official having public money *not for current expenditure, shall deposit the money without delay in the Treasury or with a depositary designated by the Secretary of the Treasury under law. Except as provided in paragraph (2), money required to be deposited pursuant to this subsection shall be deposited not later than the third day after the custodian receives the money.* The Secretary or a depositary receiving a deposit shall issue duplicate receipts for the money deposited. The original receipt is for the Secretary and the duplicate is for the custodian. (emphasis added)
(2) The Secretary of the Treasury may by regulation prescribe that a person having custody or possession of money required by this subsection to be deposited shall deposit such money during a period of time that is greater or lesser than the period of time specified by the second sentence of paragraph (1).
(d) An official or agent not complying with subsection (b) of this section may be removed from office. The official or agent may be required to

> forfeit to the Government any part of the money held by the official or agent and to which the official or agent may be entitled.
>
> (e) An official or agent of the Government having custody or possession of public money shall keep an accurate entry of each amount of public money received, transferred, and paid.

59. In connection with President Trump's charitable promise and agreement to "donate all profits" to the U.S. Treasury for the benefit of the People, each Trustee is a "person having custody or possession of public money," and is required to deposit these monies with the U.S. Treasury "not later than the third day after the custodian receives the money" under § 3302(c)(1).

60. The Trustees know on a contemporaneous basis which of the properties, based on their extensive operating histories, receive "profits from foreign governments' patronage of [President Trump's] hotels and similar businesses," because these properties historically earn profits based on non-foreign government revenues in excess of annual operating and non-operating expenses. Thus, all foreign government revenues from these properties must be deposited with the U.S. Treasury within three days of receipt under § 3302(c)(1), and not as much as a year or more after receipt under the procedures set out in the Policy.

61. Additionally, there is no reason that the computation of the promised and agreed charitable contributions of "all profits" payable to the U.S. Treasury for other properties cannot be paid by the Trustees much more quickly than a year or more after receipt. Upon information and belief, the profitability of the properties is reviewed at least quarterly, if not monthly, and those contributions could be paid within three days or some other reasonable time after the completion of the measuring period and the calculation of the profits for that measuring period.

62. Furthermore, because the Trustees are agents of President Trump for the purposes of calculating and paying the promised and agreed donations of "all profits" to the U.S. Treasury,

they are required under § 3302(e) to "keep an accurate entry of each amount of public money received, transferred, and paid." The Policy, which does not require the complete identification of all payments received from the patronage by foreign nations and their diplomats, agents, agencies and instrumentalities, and includes no procedures to ensure compliance by the TTO properties receiving these payments, violates the Miscellaneous Receipts Act, including both § 3302(e) and § 3302(c).

63. Thus, the goal of Plaintiff's lawsuit is to provide a mechanism and appropriate procedures to ensure, on behalf of the People, that "all profits from foreign governments' patronage of [President Trump's] hotels and similar businesses during his presidential term" that President Trump has promised and agreed will be paid to the U.S. Treasury are, in fact, paid to the U.S. Treasury, and that the payments are made in compliance with applicable law, including the Miscellaneous Receipts Act, and in accordance with the express purpose of President Trump's charitable promise and agreement: "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause and "to do more than what the Constitution requires" so that "the American people … will profit."

64. To achieve this goal, Plaintiff seeks an order and judgment by the Court, among other things, (i) imposing an equitable constructive trust for the benefit of the People on "all profits from foreign governments' patronage of [President Trump's] hotels and similar businesses during his presidential term," (ii) directing an equitable accounting of these profits, and appointing a master under Federal Rule of Civil Procedure 53 with the necessary authority to perform the accounting of these profits for payment to the U.S. Treasury, and (iii) directing the payment by the Trustees of these properly accounted for profits to the U.S. Treasury in accordance and compliance with the Miscellaneous Receipts Act. Plaintiff also seeks

corresponding declaratory relief establishing the right to these equitable remedies, and related injunctive relief to ensure that President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" is fully complied with.

CLASS ACTION ALLEGATIONS

65. Plaintiff brings this action individually and as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), asserting claims on behalf of the Class comprised of the People of the United States of America.

66. Rule 23(a)(1) is satisfied because the People are numerous.

67. Rule 23(a)(2) is satisfied because the entitlement of Plaintiff and the People to an equitable constructive trust on and equitable accounting for "all profits from foreign governments' patronage of [President Trump's] hotels and similar businesses during his presidential term," and to a direction by the Court that the Trustees pay the proper amounts of profits to the U.S. Treasury, as well as the entitlement of Plaintiff and the People to corresponding declaratory relief establishing the right to these equitable remedies, are common questions of law and fact shared by all of the People.

68. Rule 23(a)(3) is satisfied because Plaintiff's claims are typical of the claims of all of the People.

69. Rule 23(a)(4) is satisfied because Plaintiff, a member of the Class, is committed to the vigorous prosecution of the claims of the People, and has more than 25 years of experience in the prosecution of class actions, including complex business class actions and class actions involving constitutional issues, by which he can adequately represent their interests.

70. Rule 23(b)(2) is satisfied because the same injunctive and other equitable relief and declaratory judgment would provide relief to each and all of the People, and the Complaint seeks no individualized awards of damages.

COUNT I
Declaratory and Corresponding Affirmative Relief – Equitable Constructive Trust

71. Plaintiff realleges and incorporates each and every allegation set forth in this Complaint as if set forth verbatim herein.

72. President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term" to the U.S. Treasury so that "it is the American people who will profit," and "to avoid even the appearance of a conflict" regarding potential violations of the Foreign Emoluments Clause, is enforceable by the Court. *E.g., Allegheny College v. The Nat'l Chautauqua County Bank of Jamestown*, 246 N.Y. 369 (1927) (Cardozo, J.).

73. Plaintiff and the People are the intended third-party beneficiaries of President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury." Thus, Plaintiff and the People have an enforceable property interest in these profits.

74. These profits belong in good conscience to the People, and can clearly be traced to particular funds held in the Trust and/or under the possession, custody and control of the Trustees.

75. President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term" is ambiguous, including the terms "all profits" and "hotels and similar businesses." Thus, his promise and agreement to make the prescribed charitable contributions to the U.S. Treasury must

be construed against President Trump, as the recipient of the revenues possibly violating the Foreign Emoluments Clause, and in favor of the People, to ensure the satisfaction of the express purposes for his promise and agreement: (i) "to avoid even the appearance of a" potential violation of the Foreign Emoluments Clause; and (ii) "to do more than what the Constitution requires" so that "it is the American people who will profit."

76. Plaintiff and the People are entitled, under 28 U.S.C. §§ 2201-2202, to (i) a declaratory judgment that these profits, as construed by the Court, should be held in an equitable constructive trust for the benefit of the People, and (ii) the corresponding imposition by the Court of the constructive trust on all payments by foreign nations and their diplomats, agents, agencies and instrumentalities to all of the real estate properties and related integrated businesses held in the Trust and/or owned, in whole or part, by TTO, until an equitable accounting determines how much of these revenues are or will be "profits" payable to the U.S. Treasury.

77. Additionally, the Court should issue an injunction requiring the Trustees to (i) identify all properties that the Trustees know are receiving payments by foreign nations and their diplomats, agents, agencies and instrumentalities for which the non-foreign government revenues have historically exceeded the operating and non-operating expenses of those properties, and (ii) implement sufficient administrative procedures to identify on a timely basis *all* payments by foreign nations and their diplomats, agents, agencies and instrumentalities to *all* of the real estate properties and related integrated businesses held in the Trust and/or owned, in whole or part, by TTO.

COUNT II
Declaratory and Corresponding Affirmative Relief – Equitable Accounting

78. Plaintiff realleges and incorporates each and every allegation set forth in this Complaint as if set forth verbatim herein.

79. The extraordinarily complex nature of the business holdings of TTO requires the exercise of the equitable judicial Power of this Court to unravel the sources and amounts of "all profits from foreign governments' patronage of [President Trump's] hotels and similar businesses during his presidential term" that should be held in the constructive trust until paid to the U.S. Treasury.

80. Plaintiff and the People are entitled, under 28 U.S.C. §§ 2201-2202, to (i) a declaratory judgment that these profits earned during President Trump's term of Office are subject to an equitable accounting, and (ii) the corresponding direction by the Court to conduct such accounting to determine the amounts of profits that should be paid to the U.S. Treasury.

81. Additionally, the Court should appoint a master under Fed. R. Civ. P. 53 with the necessary authority to perform the accounting, to be paid from the profits accounted for under the terms and procedures approved by the Court. Alternatively and preferably, the master, along with those whom the master chooses to assist in the performance of the master's duties, should be asked to perform the necessary accounting services pro bono and without compensation, in light of the complexity of this historic situation and its importance in protecting and preserving our Constitutional form of government.

COUNT III
Declaratory and Corresponding Affirmative Relief – Payment of Profits

82. Plaintiff realleges and incorporates each and every allegation set forth in this Complaint as if set forth verbatim herein.

83. As the "profits from foreign governments' patronage of [President Trump's] hotels and similar businesses" earned during President Trump's term of Office are placed in the equitable constructive trust imposed by the Court and equitably accounted for by the master,

then, in accordance with President Trump's charitable promise and agreement, these profits should be paid by the Trustees to the U.S. Treasury.

84. Plaintiff and the People are entitled, under 28 U.S.C. §§ 2201-2202, to (i) a declaratory judgment that, after the profits placed in the equitable constructive trust are equitably accounted for by the master and the accounting for these profits approved by the Court, the Trustees must pay these profits to the U.S. Treasury within a reasonable time prescribed by the Court, and (ii) the corresponding direction to the Trustees by the Court to make these payments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the People of the United States of America, prays for relief, and judgment in his and their favor, as follows:

A. Certifying this action as a Class action under Fed. R. Civ. P. 23(a) and 23(b)(2), with Plaintiff certified as representative of the Class comprised of the People;

B. Under 28 U.S.C. §§ 2201-2202,

(i) declaring that President Trump's promise and agreement to "donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury" is enforceable,

(ii) declaring that Plaintiff and the People are the intended third-party beneficiaries of President Trump's charitable promise and agreement, and thus have an enforceable property interest in these profits,

(iii) declaring that President Trump's ambiguous charitable promise and agreement must be construed against President Trump, as the recipient of the revenues possibly violating the Foreign Emoluments Clause, and in favor of the People, to ensure the satisfaction of the express purposes for his promise and agreement "to avoid even the appearance of a"

potential violation of the Foreign Emoluments Clause, and "to do more than what the Constitution requires" so that "it is the American people who will profit,"

(iv) declaring that these profits should be held in an equitable constructive trust for the benefit of the People,

(v) imposing an equitable constructive trust on all payments by foreign nations and their diplomats, agents, agencies and instrumentalities to all of the real estate properties and related integrated businesses held in the Trust and/or owned, in whole or part, by TTO, until an equitable accounting determines how much of these revenues are or will be "profits" payable to the U.S. Treasury, and

(vi) issuing an injunction requiring the Trustees to identify all properties that the Trustees know are receiving payments by foreign nations and their diplomats, agents, agencies and instrumentalities for which the non-foreign government revenues have historically exceeded the operating and non-operating expenses of those properties, and to implement sufficient administrative procedures to identify on a timely basis *all* payments by foreign nations and their diplomats, agents, agencies and instrumentalities to *all* of the real estate properties and related integrated businesses held in the Trust and/or owned, in whole or part, by TTO;

C. Under 28 U.S.C. §§ 2201-2202,

(i) declaring that "all profits from foreign governments' patronage of [President Trump's] hotels and similar businesses" earned during President Trump's term of Office are subject to an equitable accounting,

(ii) directing such accounting to determine the amounts of profits that should be paid to the U.S. Treasury, and

(iii) appointing a master under Fed. R. Civ. P. 53 with the necessary authority to perform the accounting, to be paid from the profits accounted for under the terms and procedures approved by the Court. Alternatively and preferably, the master, along with those whom the master chooses to assist in the performance of the master's duties, should be asked to perform the necessary accounting services pro bono and without compensation, in light of the complexity of this historic situation and its importance in protecting and preserving our Constitutional form of government;

D. Under 28 U.S.C. § 2201-2202,

(i) declaring that after the profits placed in the equitable constructive trust are equitably accounted for by the master and the accounting for these profits approved by the Court, the Trustees must pay these profits to the U.S. Treasury within a reasonable time prescribed by the Court, and

(ii) directing the Trustees to make these payments;

E. Awarding the costs and disbursements incurred in connection with this action, including fees and expenses, under 28 U.S.C. § 2412 or as otherwise appropriate; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: June 2, 2017

/s/ William R. Weinstein
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PLAINTIFF PRO SE AND ATTORNEY FOR THE PEOPLE OF THE UNITED STATES OF AMERICA

EXHIBIT 1

Morgan Lewis

WHITE PAPER

Conflicts of Interest and the President

Background for President-Elect Trump's January 11, 2017 Press Conference
Prepared by Morgan, Lewis & Bockius LLP[1]

I. OVERVIEW

From President Washington to Vice President Rockefeller to President-Elect Trump, many of this Nation's leaders have been extraordinarily successful businessmen. Neither the Constitution nor federal law prohibits the President or Vice President from owning or operating businesses independent of their official duties, as a careful textual and historical analysis shows.

Generally speaking, federal conflict-of-interest laws prohibit "officers" or "employees" of the United States from taking positions against the country's interests, maintaining outside employment, receiving an outside salary for official duties, or taking official acts that affect their personal financial interests.[2]

But these laws have historically not applied to the President or Vice President. As then-Assistant Attorney General Antonin Scalia observed in an Office of Legal Counsel memorandum, the term "officer" typically includes neither the President nor Vice President.[3] And since 1989, Congress has approved this tradition by expressly excluding the President and Vice President—along with Members of Congress and federal judges—from most conflict-of-interest laws.[4] The Office of Government Ethics has recently re-affirmed that these conflict-of-interest laws do not apply to the President.[5]

Though Congress has long exempted the President and Vice President from federal conflict-of-interest laws, consistent with a tradition extending back to the Founding, many of these public servants have nevertheless sought to provide extra assurances that their undivided commitment is to the good of the country. For example, Presidents Johnson and Carter voluntarily stepped away from their broadcasting stations and peanut farms.[6]

Today, President-Elect Trump wishes to announce his own plans to transfer management of his businesses and to voluntarily limit those businesses' ability to engage in transactions that could pose any conflict-of-interest concerns.

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1 Authored by: Sheri Dillon, Fred F. Fielding, Allyson N. Ho, Michael E. Kenneally, William F. Nelson, and Judd Stone.

2 *See generally* 18 U.S.C. §§ 203, 205, 207-09.

3 Memorandum from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, to Kenneth A. Lazarus, Associate Counsel to the President, *Applicability of 3 C.F.R. Part 100 to the President and Vice President* (Dec. 1974).

4 18 U.S.C. § 202(c) (stating that, unless otherwise provided, "officer" and "employee" do not include President or Vice President).

5 Letter from Walter M. Shaub, Jr., Director, Office of Government Ethics, to Senator Thomas R. Carper, at 2 (Dec. 12, 2016) ("[T]he primary criminal conflicts of interest statute, 18 U.S.C. § 208, is inapplicable to the President[.]").

6 *See* Megan J. Ballard, *The Shortsightedness of Blind Trusts*, 56 KAN. L. REV. 43, 54-56 (2007).

II. THE PRESIDENT-ELECT'S PLAN

Leadership and Management of The Trump Organization

President-Elect Trump will relinquish management of his investment and business assets for the duration of his Presidency. To accomplish this, all of President-Elect Trump's investment and business assets, commonly known as The Trump Organization—comprised of hundreds of entities—have been or will be conveyed to a Trust, which will be managed for the duration of his Presidency by his sons, Don and Eric, and a Trump executive, Allen Weisselberg. Collectively—and unanimously—Allen, Don, and Eric will have the authority to manage The Trump Organization and have full decision-making authority for the duration of the Presidency, without any involvement whatsoever by President-Elect Trump. To implement this transfer, President-Elect Trump will resign from all official positions he holds with The Trump Organization entities.

Further, to ensure that The Trump Organization continues to operate in accordance with the highest ethical standards, President-Elect Trump is appointing an Ethics Advisor to the management team. Under the terms of the Trust Agreement, written approval of the Ethics Advisor is required for all actions, deals, and transactions that could potentially raise ethics or conflict-of-interest concerns. President-Elect Trump, as well as Don, Eric, and Allen are committed to ensuring that the activities of The Trump Organization are beyond reproach, and that the Organization avoids even the appearance of a conflict of interest, including through any advantage derived from the Office of the Presidency.

As part of her family's transition to Washington, D.C., President-Elect Trump's daughter, Ivanka Trump will resign from all of her positions in The Trump Organization and the Ivanka Trump brand/fashion business and will have no involvement with the management or operations of either organization. As she and her husband Jared move their family to D.C. in the coming weeks, Ms. Trump will be focused on settling her children into their new home and schools.

Status of President-Elect Trump's Investments

President-Elect Trump has already disposed of his investments in publicly traded or easily liquidated investments. As a result, the Trust will hold only two kinds of assets: liquid assets, such as cash, obligations of the United States government, and positions in a government-approved diversified portfolio, and the President-Elect's preexisting, illiquid, very valuable business assets. These include Trump-owned, operated, and branded golf clubs, commercial rental property, resorts, hotels, and rights to royalties from preexisting licenses of Trump marks, productions, books, goods, and similar assets. Examples of these assets include Trump Tower, Mar-a-Lago, Trump International Hotels, and Trump Vineyard Estates.

Status of The Trump Organization's Deals and Rules for Entering into New Deals

The President-Elect also recognizes that his election was a significant event for the country—and one from which he should not benefit personally. The President-Elect therefore directed The Trump Organization to terminate all pending deals—over 30 in number—which resulted in an immediate financial loss of millions of dollars, not just for President-Elect Trump but for Don, Ivanka, and Eric as well.

Since then, The Trump Organization has not sought or entered into any new deals. It has in essence been functioning only as an asset management company, and will continue to do so until after the new management and ethics review structure, as set forth in the Trust Agreement, is in place. Going forward, the Trust Agreement places severe restrictions on new deals to avoid any possible conflicts of interest or concerns that The Trump Organization is exploiting the Office of the Presidency.

First, the Trust Agreement prohibits—without exception—new foreign deals during the duration of President-Elect Trump's Presidency. Specifically, the Trust and The Trump Organization will be prohibited at all times during the Presidency from engaging in any new deals with respect to the use of the "Trump" brand or any trademark, trade name, or marketing intangibles associated with The Trump Organization or Donald J. Trump in any foreign jurisdictions.

Second, new domestic deals will go through a rigorous vetting process. At a minimum, new deals shall require: (i) the unanimous vote of approval of the Trustees, and (ii) written confirmation from the Ethics Advisor that the proposed transaction is both substantively and procedurally an arm's-length transaction, that it involves an appropriate counterparty, and that it does not raise potential conflicts of interest or similar ethics issues. President-Elect Trump will have no role in deciding whether The Trump Organization engages in any new deal, and he will be completely sequestered from any information regarding the Organization's decisions; in other words, he will learn about them only through the media, as the American People would.

Third, the Trust Agreement prohibits The Trump Organization from entering into any new transaction or contract with a foreign country, agency, or instrumentality thereof, including a sovereign wealth fund, foreign government official, or member of a royal family, the United States government or any agency or instrumentality thereof, or any state or local government or any agency or instrumentality thereof, other than normal and customary arrangements already undertaken before the President-Elect's election.

Further Measures Taken to Isolate President-Elect Trump from The Trump Organization

To further reinforce the President-Elect's separation from The Trump Organization, the Trust Agreement will sharply limit the information that the President-Elect receives regarding the Trust's assets. Reports transmitted to the President-Elect will only reflect the profit or loss of the Company as a whole. The reports will not include an accounting of the performance of each individual business within the Company. Conversely, the President-Elect will not share nonpublic information with The Trump Organization or the Trust, and the Trust will not make use of any nonpublic information, from any governmental source, to engage in financial transactions on the Company's behalf.

To assist its employees in operating at the highest level of integrity and ethical standards, The Trump Organization has established the new position of Chief Compliance Officer. The sole responsibility of the Chief Compliance Officer is to ensure that The Trump Organization businesses are operating at the highest levels of integrity and are not taking any actions that actually exploit, or even could be perceived as exploiting, the Office of the Presidency. In addition, The Trump Organization has directed that no communications of the Organization, including social media accounts, will reference or otherwise be tied to President-Elect Trump's role as President of the United States or the Office of the Presidency.

In summary, President-Elect Trump is taking these extraordinary steps to ensure that the Office of the Presidency is isolated from The Trump Organization. President-Elect Trump promised the American People that he would Make America Great Again: he takes these steps to assure the American People that his sole focus is on that pledge—and that he intends only for the American People to benefit from his term as President.

III. THE FOREIGN EMOLUMENTS CLAUSE

Some commentators have claimed that the Constitution prevents the President-Elect from owning interests in businesses that serve foreign customers. In particular, they object to the Trump International Hotel in Washington, D.C.

On assuming office, the President-Elect will be bound by—and will scrupulously abide by—his obligations under the Constitution. That includes the obligations created by the constitutional provision that these

commentators highlight, the Foreign Emoluments Clause. That provision prohibits an individual holding an "Office of Profit or Trust" under the United States from "accept[ing]" a "present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State" without congressional approval.[7] But these commentators are wrong to suggest that business in the ordinary course at any of the Trump International Hotels, or at any of the President-Elect's businesses, risks violating this obligation.

The scope of any constitutional provision is determined by the original public meaning of the Constitution's text.[8] Here that text, understood through historical evidence, establishes that foreign governments' business at a Trump International Hotel or similar enterprises is not a "present, Emolument, Office, or Title." So long as foreign governments pay fair-market-value prices, their business is not a "present" because they are receiving fair value as a part of the exchange.[9] It clearly is not an "Office"[10] or a "Title"[11] from that government. These commentators therefore must rest their argument on the final category of prohibited benefit: "Emolument."

As shown below, an emolument was widely understood at the framing of the Constitution to mean any compensation or privilege associated with an *office*—then, as today, an "emolument" in legal usage was a payment or other benefit received as a consequence of discharging the duties of an *office*. Emoluments did not encompass all payments of any kind from any source, and would not have included revenues from providing standard hotel services to guests, as these services do not amount to the performance of an office, and therefore do not occur as a consequence of discharging the duties of an office.

The Constitution's text shows that the word had this more limited meaning. Apart from the Foreign Emoluments Clause, the term emolument appears twice more in the Constitution, and both times refers to compensation associated with an office. First, the Incompatibility Clause bars congressmen from assuming "any civil Office . . . the Emoluments whereof shall have been encreased during" the congressman's tenure. U.S. CONST. art. I, § 6, cl. 2. Second, the Compensation Clause, which guarantees the President's compensation during his term of office, prohibits him from "receiv[ing] within that Period any other Emolument from the United States, or any of them." *Id.* art. II, § 7, cl. 7.

Although the Supreme Court has never interpreted the scope of the Foreign Emoluments Clause, it long ago understood "emolument" this way in another context. The Court explained that "the term *emoluments* . . . embrac[es] every species of compensation or pecuniary profit derived from a discharge of the duties of [an] office." *Hoyt v. United States*, 51 U.S. 109, 135 (1850). Other legal experts early in the Nation's history used the word the same way, including Alexander Hamilton and James Madison in *The Federalist Papers*[12] and Attorneys General in numerous formal opinions.[13]

Supporting this understanding is parallel language in the nearly adopted Titles of Nobility Amendment to the Constitution. In 1810, Congress voted by overwhelming margins to extend the Foreign Emoluments Clause to all citizens, not just federal officials.[14] The proposed amendment would have prohibited private citizens' acceptance of "any present, pension, office, or emolument, of any kind whatever, from any

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7 U.S. CONST. art. I, § 9, cl. 8.

8 *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 78-92 (2012); Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CIN. L. REV. 849, 862-64 (1989).

9 *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "gift" as "[t]he voluntary transfer of property to another without compensation").

10 *See id.* (defining "office" as "[a] position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose").

11 As suggested by the immediately preceding prohibition on the granting of titles of nobility, U.S. CONST. art. I, § 9, cl. 8, "Title" refers to official titles of honor or distinction.

12 *See, e.g.*, THE FEDERALIST 2, 177, 243, 268, 340, 379-80 (G. Carey & J. McClellan eds., 2001).

13 *E.g.*, *Salaries of Officers of Arkansas Territory*, 1 Op. Att'y Gen. 310, 310 (1819); *Salaries to Ministers and Consuls*, 2 Op. Att'y Gen. 470, 471 (1831); *Marshal of Florida*, 6 Op. Att'y Gen. 409, 410 (1854).

14 20 ANNALS OF CONGRESS 671, 2050-51 (1853).

Emperor, King, Prince, or foreign Power," stripping violators of their citizenship and barring them from state or federal office.[15] The amendment came within two states of ratification—indeed, because of a publishing mistake, several generations believed it *was* part of the Constitution.[16]

Yet there is no evidence anyone at the time thought the proposed amendment restricted citizens' ability to engage in commerce with foreign nations, their governments, their representatives, or their instrumentalities. That suggests that the public did not understand the prohibition on accepting foreign emoluments to prohibit commerce with foreign states or their representatives through fair-market-value exchanges—and, by implication, that the Foreign Emoluments Clause does not reach these transactions. Given the importance of foreign trade in the Nation's early decades, the absence of any indication that the proposed amendment would have had this effect further supports understanding "emolument" not to encompass fair-market-value transactions—consistent with the term's other uses in the Constitution, its common legal use at the Founding, and the Supreme Court's explanation of the term.

There are further problems with understanding "emoluments" to include any kind of benefit an individual might receive. For one thing, it would have been redundant to list "present" and "Emolument" in the Clause separately, because any present would already qualify as a benefit. For another thing, it would lead to absurd results. For example, if the Constitution's Article II prohibition on the President receiving "any other Emolument from the United States, or any of them" refers to *any* benefit, including fair-market-value transactions, then the President violates the Constitution by purchasing Treasury bonds or receiving interest on a retirement account from federal or State bonds.[17] That cannot be correct.

Commentators who argue for a more expansive understanding of the Clause tend to focus not on the Constitution's original public meaning, but on more subjective conceptions of the policies behind the Clause. Moreover, while non-judicial opinions provided to guide members of the Executive Branch have suggested that the Clause has a broad scope, none of the published opinions has gone so far as to classify fair-market-value transactions as emoluments. And the factual circumstances giving rise to opinions finding Foreign Emoluments Clause violations are different from those here.[18]

Other opinions fully accord with the Constitution's original public meaning and are incompatible with the notion that the Constitution prohibits the President-Elect's businesses from renting hotel rooms to foreign governments at fair-value rates. One opinion, for example, declined to view a pension as an emolument because it was neither a gift nor a salary.[19] Another reached a similar conclusion about civil damages paid to a victim of Nazi persecution because they were "not paid as profit, gain, compensation, perquisite, or advantage flowing to him as an incident to possession of an office or as compensation for services rendered."[20] Still another acknowledged that emoluments were "profit[s] arising from office or

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15 *Id.* at 671.

16 *See* Gideon M. Hart, *The "Original" Thirteenth Amendment: The Misunderstood Titles of Nobility Amendment*, 94 MARQ. L. REV. 311, 313-15 (2010); Curt E. Conklin, *The Case of the Phantom Thirteenth Amendment: A Historical and Bibliographic Nightmare*, 88 LAW LIBR. J. 121, 126 (1996) ("[T]hree or more generations of Americans grew up assuming that the amendment was law.").

17 *See* Andy Grewal, *Should Congress Impeach Obama for His Emoluments Clause Violations?*, YALE J. ON REG.: NOTICE & COMMENT (Dec. 13, 2016), http://yalejreg.com/nc/should-congress-impeach-obama-for-his-emoluments-clause-violations/.

18 *See, e.g.*, *To the Secretary of the Air Force*, 49 Comp. Gen. 819, 820–21 (1970) (informant for Columbian government); *In re: Major Stephen M. Hartnett, USMC, Retired*, 65 Comp. Gen. 382, 383 (1986) (employment by Royal Saudi Navy); *Application of Emoluments Clause to Part-Time Consultant for the Nuclear Regulatory Commission*, 10 Op. O.L.C. 96, 96 (1986) (work on contract with Taiwanese government); *Authority of Foreign Law Enforcement Agents to Carry Weapons in the United States*, 12 Op. O.L.C. 67, 69 (1988) (foreign law-enforcement agents); *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 119 (1993) (partnership in law firm that represented foreign government); *Emoluments Clause and World Bank*, 25 Op. O.L.C. 113, 114 (2001) (contractual employment relationship).

19 *President Reagan's Ability to Receive Retirement Benefits from the State of California*, 5 Op. O.L.C. 187, 191 (1981).

20 *Assistant Comptroller General Weitzel to the Attorney General*, 34 Comp. Gen. 331, 334 (1955).

employment" and generally required services for a foreign government amounting to accepting an office from a foreign state.[21]

In short, the Constitution does not forbid fair-market-value transactions with foreign officials. To put to rest any concerns, however, the President-Elect is announcing he will donate all profits from foreign governments' patronage of his hotels and similar businesses during his presidential term to the U.S. Treasury. Historically, when federal officers received a gift or emolument from a foreign state, they surrendered possession of it to the federal government,[22] though they were permitted to retain amounts necessary to offset their business expenses.[23] Although the Constitution does not require the President-Elect to do the same for profits from his businesses' fair-market-value transactions, he wants to eliminate any distractions by going beyond what the Constitution requires.

[21] *To C.C. Gordon, U.S. Coast Guard*, 44 Comp. Gen. 130, 130-31 (1964); *see also Foreign Diplomatic Commission*, 13 Op. Att'y Gen. 537, 538 (1871) ("[A] minister of the United States abroad is not prohibited by the Constitution from rendering a friendly service to a foreign power, even that of negotiating a treaty for it, provided he does not become an officer of that power.").

[22] *E.g.*, 12 ANNALS OF CONGRESS 443 (1851).

[23] REMINISCENCES OF JAMES A. HAMILTON 210 (1869) (officer who received horses as gift from foreign state was entitled to be paid for "expenses incident to their transportation and keeping"); *cf. Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 119 (1993) (objecting to retention of law firm profits, not pre-expense revenues).